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How We Got Where We Are: The Lessons of History

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No More "Housing of Last Resort"

The Importance of Affordability and Resident Participation in In Rem Housing

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How We Got Where We Are: The Lessons of History

by David Reiss[1]

Current City policy toward the In Rem Housing stock has been developed with little regard for the lessons learned from history. The history of this housing stock shows how we got into the situation we are in, what approaches have been tried and failed and which have succeeded, and how government has made policy for this housing stock.

This history shows that the City's aversion to assuming responsibility for tax-delinquent housing interferes with appropriate long-range planning for the in rem stock. This history also shows that the City has focused on returning this housing stock to the private market, regardless of the relative success or merit of its particular attempts to do so. In fact, some private market approaches that have proven problematic have essentially been revived as the mainstays of current policy. At the same time, successful approaches have sometimes been minimized or neglected. The history of in rem housing demonstrates the forces that brought (and brings) housing in this city to the brink of abandonment. It illustrates the difficulty of relying solely on the private market to provide affordable housing in New York City and suggests that the most politically influential viewpoints are not necessarily promoting the most realistic in rem policies.

The history of in rem housing demonstrates the forces that brought (and brings) housing in this city to the brink of abandonment.

The history of housing in New York City

Since the middle of the Nineteenth Century, New York City has had the nation's most severe housing problem.[2] One commentator identifies the source of this problem as part of New York's unique role as the first stop for many immigrants to America:

> The interdependent symbiotic relationship between continual influxes of poor, yet willing workers, and the availability of jobs is perhaps the most important characteristic of the city's history. And the intervention of governmental regulation into the housing market must be viewed, at least in part, as a

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[2] Richard Plunz, *A History Of Housing In New York City: Dwelling Type And Social Change In The American Metropolis* (1990), p. 35.

consequence of its role as a nexus for inexpensive labor. The economic foundations of New York City fostered the flow of immigrants into its boundaries, thereby generating severe and continuing pressure on its internal housing markets.[3]

Beginning in the late Nineteenth Century, New York City experienced a massive construction boom that housed the incoming industrial work force. But this same boom has left the City with an aging, less durable housing stock by the end of the Twentieth Century. This reliance on aging housing was further compounded by later trends: "The Northeast is unique within the United States in its dependence on the inventory of older housing. Much of the housing boom of the 1960's bypassed the region completely."[4]

New York City found itself in a housing crisis in the early 1970's. From 1970 to 1978, the City lost 3,274 units *a month* from its housing stock.[5] New housing construction declined sharply.[6] Rapid flight of middle-class New Yorkers increased disparities in wealth distribution and helped foment a dramatic housing crisis characterized by rampant arson and widespread abandonment in low-income neighborhoods. The City itself became more stratified into rich and poor neighborhoods, some with luxurious highrises and others with dangerous slums:

> By the 1970's, Manhattan had evolved toward a post-industrial economy, with an attendant class displacement involving substantial growth in the middle- and upper-income population, as evidenced by the recent boom in luxury housing. At the same time, for the entire city, the proportion of population officially counted as poor increased, from 14.9 percent in 1969 to 23.4 percent in 1983, far above the national increase of 2.9 percent for the same period. By 1987, the official percentage in poverty inched even higher.[7]

Yet, this crisis has also led to creative responses. Perhaps because its housing market is unique, New York City not only led the nation in the seriousness of its housing crisis, but also

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[3] George Sternlieb, *Housing And Economic Reality: New York City* (1976), p. 25. This role has not substantially changed. See Richard Perez-Pena, "New York's Foreign-Born Population Increases," *New York Times*, Mar. 9, 1996, p. 25.

[4] Sternlieb [fn. 3], p. 36.

[5] Michael A. Stegman, *Housing and Vacancy Report, New York City* (1987), p. 201.

[6] New York City Department of City Planning and New York City Department of Buildings, Housing Assistance Plan, Federal Fiscal Year 1989, Dec. 1988 (NYC Table 1-1): Housing production was over 20,000 units in the years 1972 through 1976, but consisted of around 10,000 units per year during the years 1977 to 1985. Production went up slightly (to 12,000 and 13,000 units) in 1986 and 1987.

[7] Plunz [fn. 2], p. 322. This trend continues. The poor households in New York City constitute 24.4% of the population according to the latest figures. Anthony J. Blackburn, *Housing New York City 1993* (1993), p. 102.

> led the nation in innovation and reform. While other cities have had their interludes in housing design, in New York can be found something of all of them. The horrors of the tenement were perfected in New York, and most reform legislation originated here as did most housing philanthropy. Wealthy New Yorkers embraced the technical innovations of the high-rise as no other Americans did -- or have done since. Public housing for the poor originated in New York, as did government subsidies for middle-class housing much later.[8]

The unique demands of the New York City housing market have created a complex situation, with many different types of housing and regulation. While many complain that this complexity *causes* the affordable housing shortage in the City, history indicates that these features were primarily *responses* to market inadequacies,

> designed to fill gaps of need left untouched by the supply provided by the private sector. When the market, i.e., the intersection of the forces of supply and demand, failed to distribute housing units to households efficiently, direct public action was initiated. Since each public program was a response to a different demand sector and each response the reaction to a different interplay of forces, it is understandable that there is no homogenous housing market in New York City but a differentiated whole comprising many submarkets.[9]

The housing market in New York City thus represents the outcome of complex and unique forces in its history, which must be recognized and accounted for in any sensible housing policy.

The dynamics of tax collection and landlord abandonment

One of the most important source of revenues necessary to the operation of New York City government is real estate taxes.[10] The City, like most jurisdictions, has the power to encourage the payment of its real estate taxes through the threat of foreclosure. If an owner does not pay real estate taxes, the City may bring an "in rem" proceeding -- a proceeding against the building itself ("in rem" is Latin for "against the thing") -- to obtain title. Vesting is "the acquisition of properties through legal action for non-payment of property taxes" by the government.[11] Tax delinquent housing does not automatically belong to the City. The City must choose to take ownership of it.

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[8] Plunz [fn. 2], p. xxxv.
[9] Sternlieb [fn. 3], p. 1.
[10] Such taxes constitute about a fourth of the City's revenues, amounting to nearly $8 billion. Steven Lee Myers, "Mayoral Aide Lowers Estimate on Property Tax Revenues," *New York Times*, Jan. 17, 1996, p. B3. Recently, the City has repeatedly had to revise its property tax collection projections downward. *Id.*
[11] Stegman (1987) [fn. 5], p. 207.

Private sector housing follows a simple rule: "In order to remain as decent, well-maintained private housing, buildings must have a cash flow sufficient to maintain viability."[12] In New York City, cash flow problems have arisen for a variety of underlying reasons: incomes among the poor and working classes have not kept pace with inflation; public assistance payments have generally fallen behind housing costs;[13] fuel costs, water and sewer charges, and other building expenses have increased dramatically; rent regulation has limited the revenue in some buildings (although not primarily in very poor neighborhoods); declining neighborhoods have limited the demand for some good buildings; and owners have sometimes overmortgaged their holdings.[14]

The decision to abandon a building is often carefully calculated by a landlord who wants to maximize his or her profit.

When landlords begin to recognize that they cannot profitably manage their properties, they attempt to increase revenues through rent increases (sometimes legal, sometimes not); fail to pay mortgage charges, taxes, and city water and sewer charges; do not replace failing systems; cut corners on providing heat and hot water; and defer or eliminate routine maintenance.[15] Landlords completely abandon title when the income from their property does not cover operating costs and the value of the cleared land is less than the demolition cost.[16] The decision to abandon a building is often carefully calculated by a landlord who wants to maximize his or her profit. A landlord may decide a few years in advance to abandon a building, after evaluating whether it can be sold, demolished or reused.

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[12] Citizens Housing and Planning Council of New York, Inc., *Preserving New York's Low-Income Housing Stock* (May 1992), p. 9.

[13] One book draws a direct connection between housing abandonment and the shelter allowance, noting that abandonment

> is being caused by the failure to raise both the basic welfare grant and the rent allowance since 1974. The freeze on welfare rents means that mothers must choose between paying the landlord and feeding their kids. They invariably choose their kids. As Horton and Brecher have pointed out in *Setting Municipal Priorities -- 1981* ". . . by 1980 shelter allowances were far below the cost of even minimally acceptable housing. The result: a $1 billion annual gap between what poor people can afford to pay and what housing costs."

Jack Newfield et al., *The Permanent Government: Who Really Rules New York?* (1981), pp. 268-69.

[14] Citizens Housing and Planning Council, *In Rem: Recommendations for Reform* (Sept. 1981), p. 1. Other factors also contributed to abandonment beside landlord inability to sustain sufficient cash flow from building revenues. The ability of some owners to sell or refinance their properties was adversely affected by the practice of "redlining" by financial institutions, which were based on explicit racial criteria, that prevented minority or changing neighborhoods from receiving investment.

[15] Department of Housing Preservation and Development, *In Rem Program, First Annual Report* (Sept. 1978-Sept. 1979), p. 2 (not paginated).

[16] Edwin S. Mills and Bruce W. Hamilton, *Urban Economics* (4th ed.) (1989), p. 224.

Once the decision to abandon is made, the landlord will stop paying property taxes,[17] which will immediately reduce operating expenses by roughly one-third. Closer to the expected abandonment date, the landlord will completely stop maintenance, reducing costs by another one-third.[18] Over a period of about 5 years, during which rents continue to be collected, this "milking" process may make it possible for a landlord to save approximately 25 percent of the initial value of the property in operating expenses, as compared with the options of demolition and resale.[19]

The onset of abandonment in New York City and the City's response

Housing abandonment became a major problem for American cities in the 1970s. In a 1978 study by the federal government's General Accounting Office, 113 of 149 responding cities reported having an abandonment problem.[20] However, abandonment hit New York City particularly hard.[21] And where abandoned buildings in other cities were generally vacant, many of those in New York were occupied or partially occupied[22]: in New York City, there were few alternatives for low-income tenants besides continuing to live in their abandoned buildings.

Abandonment hit New York City particularly hard. And where abandoned buildings in other cities were generally vacant, many of those in New York were occupied or partially occupied.

It was clear by the mid-1970s that New York City had an abandonment crisis. As of 1976, the City owned 4,611 multifamily buildings and was about to acquire another 1,770. More than a fifth of multifamily residential properties were in tax arrears. Fourteen percent of those in arrears had been delinquent for more than three years.[23]

At that time, the City had to wait for three years of tax arrears to accumulate before being able to commence in rem foreclosure proceedings. The City could not assume responsibility for buildings, in most cases, until the proceedings, which frequently lasted as long as two years, were final. During this long period between initial nonpayment of taxes

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[17] M.J. White, "Property Taxes and Urban Housing Abandonment," *Journal of Urban Economics*, 20 (1986): 312-330 (a study of housing abandonment in New York City.)

[18] See Mills [fn. 17], p. 224.

[19] Mills [fn. 17], p. 224. See also *In Rem: Recommendations for Reform* [fn. 14], p. 1.

[20] Michael A. Stegman, *The Dynamics of Rental Housing in New York City* (1982), p. 207. For additional information and analysis on the problem of abandonment, see Sarah Hovde, *An Early Assessment of the Giuliani Administration's "Building Blocks!" Initiative* (unpublished Masters thesis, Columbia University, 1995).

[21] See, e.g., Sam Howe Verhovek, "After Exodus, Hope Comes To A South Bronx Block," *New York Times*, Nov. 10, 1987, p. B1 (describing the abandonment of one block).

[22] Stegman (1982) [fn. 20], p. 207. See also Robert Friedman, "City On The Brink: Housing For Too Many, There's No Place Like Home," *New York Newsday*, Jan. 22, 1989, p. 5.

[23] *Id.*

and final vesting, buildings would continue to deteriorate as landlords continued to milk them and their tenants.

The City Council evaluated legislative responses to this problem[24] and passed Local Law #45 which, beginning in 1977, reduced the period before which the City could bring foreclosure proceedings from three years to one.[25] Local Law #45 was both intended as a tax enforcement measure against delinquent landlords and as a means to preserve low- and moderate-income housing by seizing marginal properties prior to their severe deterioration.[26] While Local Law #45 was not intended to make the City into a landlord of last resort for low-income tenants, it also had that effect.[27]

> **Auctions, while quick, were not generating any net revenues because the City provided mortgages to purchasers who often failed to repay them or to pay taxes due on these properties, which thus ultimately returned to City ownership.**

In 1976, the Council had passed Local Law #29 to establish the Department of Housing Preservation and Development (HPD), which replaced the Housing Development Administration (HDA) as the City's housing arm.[28] In 1979, Local Law #3 mandated the transfer of jurisdiction for the daily management, maintenance, repair, treatment and disposition of all residential City-owned properties from the Department of General Services to HPD's Office of Property Management (OPM).[29]

OPM "centrally managed" occupied and vacant in rem properties while they remained under the City's control. OPM became, in effect, the new landlord for in rem tenants.[30] As such, OPM was (and is) responsible for management, repair and renovation of in rem buildings, and for the development and operation of programs to return them to private ownership.

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[24] Charles Brecher and Raymond D. Horton, eds., *Setting Municipal Priorities, 1981*, (1980), p. 166. Note that actual vesting often did not take place for up to 7 years. Harry DeRienzo et al., *The New York City In Rem Housing Program: A Report* (1985), p. 4.

[25] New York City Administrative Code Sec. 11-412. See *First Annual Report* [fn. 15], p. 3 (not paginated).

[26] Stegman (1987) [fn. 5], p. 207. The law also raised the penalty rate for late payments by linking it to the prime rate. This kept landlords from treating deferred taxes as a low interest loan. *Setting Municipal Priorities* [fn. 24], p. 166.

[27] Carol Felstein and Michael A. Stegman, *Toward the 21st Century, Housing in New York City* (May, 1987), prepared for The Commission on the Year 2000, p. 31.

[28] Luis F. Sierra, "The Contribution of New York City's Task Forces and Working Groups to City-Owned Housing Policies 1978 to the Present," *Housing in the Balance: Seeking a Comprehensive Policy for City-Owned Housing* (May 1993), p. 7. HDA had been created in 1967 as a super-agency to deal with New York City's housing. *Id.*

[29] *Id.* at p. 7.

[30] *First Annual Report* [fn. 15], pp. 2-3.

Prior to the creation of OPM, the City had disposed of buildings in two ways: by negotiation or auction. Negotiated sales to nonprofits and limited profit corporations were slow and infrequent, and therefore, to the City's dismay, did not reprivatize much of the stock. Auctions, while quick, were not generating any net revenues because the City provided mortgages to purchasers who often failed to repay them or to pay taxes due, which thus ultimately returned the buildings to City ownership.[31] Accordingly, and in response to community pressure, the City ended auctions in 1978 to halt this "revolving door."[32]

HPD acknowledged that the creation of OPM signalled a move away from a rapid disposition strategy through auctions:

> The establishment of the Office of Property Management within HPD signified this Administration's change in attitude towards the treatment of the City's owner-abandoned housing stock. It represented a recognition that the City's long term housing objectives could only be served by a planned treatment and disposition program which took into account local neighborhood development efforts and the existence of other complementary housing programs and initiatives in developing comprehensive treatment and disposition strategies.[33]

In HPD's first year (1978-79), it was landlord to 35,000 households in 4,100 buildings, comprising nearly 2 percent of all renters living in New York City. Sixty-five percent of in rem units were clustered in 10 of 59 community boards. By 1978, in rem and at-risk properties comprised 8.4 percent of all properties and 20.9 percent of all units. Some communities were particularly affected: for example, in Bronx's Community District 3, 40 percent of all units were in rem.[34]

The goal of disposition

OPM created the Division of Alternative Management Programs (DAMP) to dispose of in rem property through sales. DAMP came into being in September 1978 and initially consisted of two already ongoing programs, the Community Management Program (in existence since 1972), and the Tenant Interim Lease Program (begun August 1978). At that

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[31] *Setting Municipal Priorities* [fn. 24], p. 166. See also *First Annual Report* [fn. 15], p. 1 ("[A]n HPD study of 885 residential multiple dwellings sold at auction from January 1976 through February 1978 disclosed that 788 buildings (90%) were delinquent in either tax or purchase money mortgage payments, or both, as of early 1979. Of the delinquent properties, 43% had never made a single tax payment and 31% were already four or more quarters in arrears and eligible again for foreclosure.") [relying on IN REM Pricing Study, HPD, OPMA, Nov. 1978.]. See also Nancy A. Brownstein, "Comment: The Warranty Of Habitability As Applied to New York City In Rem Housing: A Premature Promise," *Brooklyn Law Review*, 50: 1103, 1107-08 (1984).

[32] *First Annual Report* [fn. 15], p. 48.

[33] *Id.* at p. 11.

[34] *Id.* at p. 8.

time, these two programs involved 85 buildings with 1700 units.[35]

The oldest program, the Community Management Program (CMP), was designed to actively involve tenants and community groups in the maintenance and day-to-day management of buildings in deteriorating neighborhoods. CMP contracted with locally-based nonprofit community organizations to manage and upgrade from 100 to 350 units of in rem housing.[36]

The TIL program institutionalized what had become a fact of life in abandoned buildings: in many cases, tenants were already their de facto managers.

Under the Tenant Interim Lease program (TIL), organized tenant groups living in in rem buildings could sign an 11-month, renewable lease with HPD which allowed them to manage and maintain their buildings from the proceeds of the rent roll. HPD designed this program to "promote and develop self-management skills among tenants."[37] This program arose partly as a response to efforts by housing advocacy groups, including a previous incarnation of the Task Force on City-Owned Property. It also institutionalized what had become a fact of life in abandoned buildings: in many cases, tenants were already their de facto managers.

Within a year, four new programs were added to DAMP: 7A Extension, the Management in Partnership Program, New York City Housing Authority (NYCHA) Management, and the Private Ownership and Management Program. DAMP also dramatically expanded the original two programs. In that year, 413 buildings with 8,200 units were turned over to DAMP.[38]

The 7A Extension Program "provide[d] court appointed administrators managing privately-owned buildings with a legal basis for continuing to manage their properties after they become City-owned."[39] Under the Management in Partnership Program (MIPP), HPD contracted with established "housing management organizations (the Senior Partners) to provide four inexperienced community based groups (the Junior Partners) with the training necessary to make them successful housing managers."[40] The Private Ownership and

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[35] *Id.* at p. 30.
[36] *Id.* at p. 31.
[37] *First Annual Report* [fn. 15], p. 34.
[38] *Id.* at p. 30.
[39] *Id.* at p. 36. See also Lisa W. Foderaro, "City's 7-A Administrators Help Neglected Buildings," *New York Times*, Jan. 12, 1986, sec. 8, p. 7.
[40] *Id.* at p. 37. See also Alan S. Oser, "Management Of City-Held Properties," *New York Times*, Nov. 27, 1981, p. B27 ("MIPP could not find willing Senior Partners."). The City tried a another for-profit/not-for-profit partnership later in the 1980s, the Neighborhood Ownership Works ("NOW") program. See Penny Loeb, "City Tops Slumlord Business: Study Shows Worst Housing Operated By Government Agency," *New York Newsday*, Jan. 3, 1993, p. 6. NOW was soon terminated. Michele Cotton, ed., *The In Rem Organizer's Sourcebook* (1995), p. 7.

Management Program (POMP) was designed to convey in rem buildings to for-profit landlords. The HPD-NYCHA program was designed to revitalize deteriorating City-foreclosed housing located near public housing projects. It was intended not only to improve the in rem stock, but also to "to protect the investment of the Federal Government in these neighborhoods."[41]

In most of these programs, HPD generally used available federal Section 8 subsidies after sale to cover the difference between the higher rents set after renovation to carry the building and the amount of rent that the in-place residents could afford. HPD stated that "[t]hese rental subsidies will insure that rent levels established in each building to be sold will provide economic self-sufficiency for such buildings, *without* placing undue hardship on low-income families or causing displacement."[42]

The City responded to the slowdown in the disposition pipeline by delaying further vesting of tax-delinquent buildings.

The initial response to DAMP programs appeared positive, as its rent collection rates might indicate.[43] But the City found that disposition of buildings through DAMP to new owners was still slow: there were no sales in TIL or CMP in the first two years.[44] The City was concerned that tenants might simply want to remain in the programs indefinitely as a hedge against future costs and problems. The City responded to the slowdown in the DAMP disposition pipeline by delaying further vesting of tax-delinquent buildings.[45]

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[41] *Id.* at p. 41. ("Under HARP, the NYCHA purchases the buildings from the City, but rehabilitates them using public Housing Authority substantial rehabilitation funds, and then operates them as conventional public housing."). This program had two components. In the first, the Housing Authority Management Program (HAMP), HPD contracted with the NYCHA for management and moderate rehabilitation of occupied City-owned buildings neighboring NYCHA projects. The second component, the Housing Authority Rehabilitation Program (HARP), involved substantially vacant City-owned buildings near public housing projects. This program was discontinued. See also Anthony DePalma, "New York Plays Reluctant Landlord," *New York Times*, Dec. 14, 1986, p. 1 (Housing official criticizes NYCHA takeover of in rem housing). This program is evaluated in the Task Force's Brooklyn Survey. See "What We Have to Work With: The Lessons of the Task Force Surveys" in this report.

[42] *First Annual Report* [fn 15], p. 52 (italics in original).

[43] After its first year, HPD believed that "[t]he growth in . . . [DAMP] . . . has been accompanied by increased tenant satisfaction, demonstrated by the fact that rent collections in alternative management buildings average over 80% of rent billed." *Id.* at p. 30.

[44] Ronald Lawson et al., "Tenant Responses to the Urban Housing Crisis, 1970-1984," in *Tenant Movement in New York City, 1904-1984* (Ronald Lawson et al., eds.) (1986), p. 241 ("Eventually, in mid-1980, the first five TIL buildings were sold to their tenants. The CMP, however, did not sell its first building until 1982. Consequently, four of the nineteen CMP contracts were cut out in 1980.").

[45] *Id.*

Acceptance of the role of "landlord of last resort"

Between 1978 and 1979, HPD vested about 14,000 buildings.[46] These immense additions to the in rem stock created "a great fear on the part of government that privately owned housing was in danger of going the way of the dinosaur, and that the City, just emerged from a debilitating fiscal crisis, would again be plunged into ruin by the demands of a collapsing inner city rental market."[47] The managerial demands on HPD became overwhelming and

> city officials also privately feared that tax-foreclosed property really was the housing of "last resort" (despite their public oratory to the contrary). Thus for a number of years HPD policy, succinctly expressed, was "We have enough property."[48]

As the City realized in late 1979 that it was becoming the permanent owner of a large stock of in rem housing, its reluctant acquiescence to the role of landlord of last resort began to waver. Then-Mayor Koch found the in rem stock to be too expensive to administer and hoped to sell it more quickly.[49] His administration threatened to resume auctions in November of 1979, with "a fanfare of media publicity that attracted the lower middle class and boosted prices."[50]

Immense additions to the in rem stock created "a great fear on the part of government that privately owned housing was in danger of going the way of the dinosaur."

In its First Annual Report, HPD stated that DAMP would ultimately be judged "by whether buildings upgraded and sold through them are maintained by their owners over the long term and continue to pay real estate taxes."[51] It was soon clear that HPD began to have doubts about DAMP's ability even to generate sales. Yet, HPD continued to rely heavily on DAMP: by the end of its second year, more than one-third of

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[46] Anthony DePalma, "Pace Of Building Abandonment Tumbles," *New York Times*, July 10, 1988, sec. 10, p. 1.

[47] Felstein and Stegman [fn. 27], p. 28. The City also avoided using foreclosure as a regulatory enforcement measure of last resort for the same reason: it did not want to run all low-income housing in New York.

[48] Felstein and Stegman [fn. 27], p. 29.

[49] Lawson [fn. 45], p. 241 (The total bill to the City between 1978 and 1981 was $342 million, while it collected less than $100 million in rents. Rent collection during the first three years averaged less than 50 percent.). See also Michael Goodwin, "City Struggling In Attempts To Sell Tax-Delinquent Apartment Buildings," *New York Times*, Apr. 8, 1981, p. B1.

[50] Lawson [fn. 45], at p. 241. At the same time, there were reports that the City was delaying approval of TIL sales where the market was reviving. *Id.*

[51] *First Annual Report* [fn. 15], p. 56.

the City's occupied apartments were in DAMP,[52] its six programs managing 645 buildings with 15,205 units.[53]

By the end of its third year, DAMP's rent collections were averaging 86 percent for its 640 buildings,[54] indicating that either tenants were pleased with their services or afraid of getting evicted (or both). HPD was pleased with this result, particularly because it was "coupled with the fact that an aggressive rent restructuring program ha[d] been implemented in order to bring buildings to economic self-sufficiency." DAMP, although not generating many sales, was decreasing operating costs and improving the conditions within buildings. And as DAMP programs failed to meet HPD's standards, HPD would terminate them: MIPP was merged into CMP in the third year.[55]

Distressed as it is, the in rem stock is the sole housing option for thousands of poor families in New York.

Even though the Koch administration grew impatient with the lack of DAMP sales, the City did not return to auctions. The City had to take certain political realities into account in developing its response to the in rem crisis. Housing activists were advocating for in rem units to be preserved as a resource for low- and moderate-income people. And HPD was learning that it was unable to sell in rem buildings to for-profit landlords without special incentives.[56]

Conflicts also existed within the City government as it attempted to define in rem policy. Professor Michael Stegman, the author of a series of reports on the in rem stock commissioned and published by HPD,[57] noted in his first report in 1982 that a subtle tension existed between the administration and the housing bureaucracy:

> Although it is not explicitly City policy to own and manage landlord-abandoned stock permanently, local housing officials understand that the economics of marginal rental housing are such as to make private ownership of these properties unlikely without some form of assistance. They recognize that, distressed as it is, the in rem stock is the sole housing option for

[52] Department of Housing Preservation and Development, *In Rem Housing Program, Second Annual Report*, p. 1.

[53] *Id.* at p. 4.

[54] Department of Housing Preservation and Development, *In Rem Housing Program, Third Annual Report*, p. 5.

[55] *Id.* at p. 16.

[56] See Lawson [fn. 45], p. 240.

[57] The Stegman reports were commissioned to provide a statistical overview of the situation of in rem housing through the 80s and early 90s because the City felt that its "planning and program development efforts would be substantially enhanced if more detailed information on the occupants of city-owned buildings were available." Stegman (1982) [fn. 20], p. 208.

thousands of poor families in New York.[58]

This recognition that the options for low-income families other than in rem housing were limited may have played a role in lessening the City's insistence on disposition. Also, as a result of the continual vesting of dauntingly large batches of new tax-delinquent buildings, disposition apparently became a less urgently pursued goal.

Sales were also slowed by opposition. Tenants and housing advocates were critical of some aspects of disposition. A lawsuit was brought by tenants against HPD in 1982 on the grounds that the DAMP programs infringed on state constitutional rights by raising tenants' rents without promulgating guidelines or providing proper notice and adequate tenant consultation. This lawsuit slowed down sales for a while. However, the City soon promulgated rules for rent increases, and the case was dismissed as moot in 1985.[59]

HPD attempted to limit the rate of growth in the in rem stock to one that the City felt OPM could handle.[60] By 1982, the City had irregularly carried out seven separate sets of in rem vestings.[61] By 1984, the City decided to vest annually in each borough.[62] But, willingly or unwillingly, HPD continued to receive more in rem properties: in some years in the 1970s and early 1980s, the City was vesting 10,000 to 30,000 units.[63]

Between the enactment of Local Law #45 in 1977 and Stegman's first report in 1982, HPD had returned 1,600 in rem buildings, with 17,000 units, to the private for-profit and non-profit sectors. Fiscal year 1981 marked the first time that the number of units in the in rem stock actually diminished. However, Stegman's first report found that in 1981 there were still approximately 4,000 occupied in rem buildings with 33,816 units.[64]

Stegman's next report found that abandonment continued to be a problem. In the first quarter of 1984, there were 120,000 units of in rem housing, 38 percent, or 45,798 units, of which was occupied. Because virtually all of the net additions to the stock since 1981 were occupied, there was a 35 percent increase in the number of occupied units.[65]

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[58] Stegman (1982) [fn. 20], p. 207. See also Felstein and Stegman [fn. 27], pp. 31-32.
[59] *Laureano v. Koch*, 454 N.Y.S.2d 956 (Sup. Ct. 1982), rev'd 473 N.Y.S.2d 445 (App. Div. 1st Dept. 1984), rev'd as moot, 479 N.E.2d 821 (1985).
[60] Alan S. Oser, "Approach to Rehabilitation of West Harlem's Housing," *New York Times*, Oct. 10, 1980, p. A23.
[61] There were two vestings each in Manhattan and Richmond (Staten Island), one in each of the other boroughs. Stegman (1982) [fn. 20], p. 207.
[62] Stegman (1987) [fn. 5], p. 207.
[63] Alan S. Oser, "Taking Steps To Head Off Abandonment," *New York Times*, March 29, 1992, sec. 10, p. 5.
[64] Stegman (1982) [fn. 20], p. 208.
[65] Stegman, *Housing in New York: Study of a City* (1985), p. 228.

The in rem housing stock continued to grow as disposition failed to keep pace with vestings. By the end of Fiscal Year 1986, there were 49,861 occupied in rem units and 55,782 vacant in rem units.[66]

The growth in the in rem stock was not counterbalanced by disposition. In fact, *The Mayor's Private Sector Survey* noted that as of the end of Fiscal Year 1989, DAMP had sold only 16,952 units over the last ten years. Furthermore, between 1983 and 1989, the number of buildings remaining in DAMP's portfolio at the end of each fiscal year had been steadily increasing to the point that DAMP's inventory of in rem stock was approximately 18,000 units, which was over half the number of occupied units centrally managed by HPD. While this transfer to DAMP reduced the building operating costs to the City, the backlog in DAMP also demonstrated that HPD was having difficulty selling buildings -- "especially in the POMP program where the inventory ha[d] climbed 480 percent since 1983."[67]

The in rem housing stock continued to grow as disposition failed to keep pace with vestings.

The 1987 Stegman report pointed out that there had been improvements in the in rem stock since 1984. The dilapidation rate had been cut in half, to 8 percent; the incidence of multiple maintenance deficiencies was also down by more than a fifth, to 39 percent of the total units; the number of repeated breakdowns in building heating systems had been almost cut in half, to 16 percent. Stegman noted that the City's extensive rehabilitation program was the primary cause of these improvements: "Since landlords usually redeem the better buildings, improvements in the in rem stock [were] due primarily to the city's extensive repair and renovation efforts rather than to vesting better quality stock since 1984."[68]

At least partly as the result of litigation, the City also began to add social and infrastructural goals to the in rem agenda throughout the 1980s. HPD began to house homeless families in the in rem stock and to return abandoned, vacant buildings to active use.[69] Felstein and Stegman concluded that "[t]he overwhelming evidence is that the in rem program has been a critical factor in preserving low-income housing."[70]

Although the City never explicitly withdrew the goal of disposition of the whole stock, by its Sixth Annual Report it acknowledged that the in rem program had changed its focus: "FY 1984 was the year that OPM established in rem housing as housing of choice. Instead of being the owner of last resort, the City became a preferred owner to the current

[66] Stegman (1987) [fn. 5], p. 207.

[67] *Material in support of the Report issued by The Mayor's Private Sector Survey* (Sept. 1989), pp. 10-11.

[68] Stegman (1987) [fn. 5], p. 209.

[69] Felstein and Stegman [fn. 27], pp. 31-32. See also DePalma, "Reluctant Landlord" [fn. 42], p. 1 (some criticize the homeless policy for ghettoizing the very poor).

[70] Felstein and Stegman, p. 36.

and prospective tenants."[71]

In the late 80s, Paul Crotty, then-HPD Commissioner similarly stated, "We'll be in the business of providing housing for low-income New Yorkers for the foreseeable future. It's not a business we like to be in, but there is no alternative."[72] He also said that "the city has recognized that these buildings ought to be treated as permanent resources."[73] Later HPD Commissioner Abraham Biderman similarly observed, "We don't ever expect to be in a position where we are out of the housing business."[74]

"We don't ever expect to be in a position where we are out of the housing business."

Tax collection improved in the 1980s. Some have suggested that the threat of prompt vesting increased compliance; no doubt an improved economy was a considerable factor. By the late 80s, abandonment decreased. By 1988, it receded to dramatically reduced levels as the strengthening economy increased housing demand.[75] However, tax delinquency remained a persistent problem in low-income neighborhoods.[76]

The POMP experience

Three main modes of disposition of occupied residential units have been employed by the City: sale to tenant cooperatives, to nonprofit community groups, and to for-profit landlords.

Sale to tenant cooperatives has taken place primarily through the Tenant Interim Lease Program, or "TIL,"[77] which has operated throughout the era of In Rem Housing. Sale of buildings to tenant cooperatives through TIL has been the "tortoise" of the disposition programs: slow, steady, and, at this point, the winner of the race among the major disposition programs in terms of sheer numbers of units privatized. The City has not generally promoted the TIL program, presumably because its lack of speed. Although TIL has not been without problems,[78] it has generally been well-received by the public and the

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[71] The City of New York, *The In Rem Housing Program: 6th Annual Report*, p. 1 (not paginated).
[72] DePalma, "Reluctant Landlord," [fn. 42], p. 1.
[73] Paul Crotty, "Letter to the Editor: New York City Has Been Making Major Strides as a Landlord, *New York Times*, Mar. 1, 1988, p. A22.
[74] DePalma, "Building Abandonment," [fn. 47], p. 1.
[75] Ronald Smothers, "New Law Reduces Brooklyn Tax Foreclosures," *New York Times*, Sept. 12, 1982, sec. 8, p. 7. In 1988, property tax collections were as high as 98 percent. DePalma, "Building Abandonment," [fn. 47], p. 1.
[76] See, e.g., findings of Victor Bach and Sherece Y. West, *Housing on the Block* (1993).
[77] Some tenant cooperative buildings were also created through the Community Management Program (CMP).
[78] See, e.g., Matthew Josefowicz, "New Windows Installed in Foster Mom's Apartment," New York Newsday, Aug. 17, 1993, p. 29, and Matthew Josefowicz, "Not a Quick Fix: Clashes Delay Building Repairs," New

press.[79]

Sale to nonprofit community groups occurred primarily through the Community Management Program, or "CMP." CMP was a long-lasting program that predated even the existence of HPD, but was discontinued during the Dinkins administration and replaced by a short-lived program, Neighborhood Ownership Works (NOW), which was supposed to involve nonprofits and for-profits in a partnership effort. NOW was unpopular with the community groups who were supposed to participate in it, largely due to the fact that it gave them very little control over the rehabilitation process. NOW was replaced by the current administration with Neighborhood Redevelopment Program (NRP), a program more similar to CMP which is just now starting up. CMP was generally a well-received program.[80]

TIL has been the "tortoise" of the disposition programs: slow, steady, and, at this point, the winner of the race among the major disposition programs in terms of sheer numbers of units privatized.

The third main mode of disposition employed by the City has been sale to for-profit landlords, accomplished primarily through the Private Ownership and Management Program, or "POMP." The POMP program was the only major program to be discontinued as a result of abuses and widespread protest. The experience with POMP is worth special attention because the current administration is placing its main emphasis on disposition through a similar program it has created for sales to private for-profit landlords.[81]

POMP was created in 1979 to try to interest the real estate sector in in rem buildings. Earlier that year, HPD had contacted some of the City's larger real estate management firms to determine if they would be willing to manage the City's in rem stock on a "pro bono" basis. The firms declined to participate in this initiative. HPD then contacted smaller firms with experience managing fifty- to seventy-five-year-old properties in low-income areas.

York Newsday, Aug. 12, 1993, p. 31 describing factionalism in particular TIL buildings. The previous Task Force report, *Housing in the Balance*, also describes the difficulty some of these undercapitalized, insufficiently rehabilitated TIL buildings have had in remaining economically solvent. Ann Henderson, "Low Income Tenant Cooperatives: Can They Survive?", p. 65.

[79] See, e.g., Anthony DePalma, "The Rocky Road to Tenant Management," New York Times, June 26, 1988, sec. 10, p. 1; Sam Howe Verhovek, "On One Woman's Grit: A Building Revives," New York Times, Aug. 22, 1987, sec. 1, p. 29; David W. Dunlop, "New Hope for the Abandoned Tenant," New York Times, Apr. 25, 1982, sec. 8, p. 7. See also Jacqueline Leavitt and Susan Saegert, *From Abandonment to Hope: Community Households in Harlem* (1990).

[80] Two analyses have been published by the Community Service Society, which feature some generally positive profiles of CMP buildings: Doug Turetsky, *We Are the Landlords Now* (1993) and Vicki Ann Oppenheim and Luis F. Sierra, *Building Blocks: Community-Based Strategies to Counteract Housing Disinvestment and Abandonment in New York City* (1994).

[81] See "What We Expect to Happen: The Contours of Current City Policy" in this report.

Some of these firms expressed an interest in managing and buying in rem units.[82]

HPD soon thereafter inaugurated the Private Ownership and Management Program (POMP) to take advantage of this private sector interest. According to then-Mayor Koch, POMP was

> designed to encourage not only good management of City-owned properties, but also their eventual return to the tax roll. We need the experience and commitment of the responsible private real-estate sector to get these buildings into decent shape after years of neglect by their former owners and to ensure that proper, efficient management will be the rule during the contract and after sale.[83]

Through POMP, the City turned over in rem buildings to for-profit managers who would oversee City-funded rehabilitation and, in time, take ownership of them. In most cases, the buildings were expected to be maintained as low- and moderate-income rentals.[84]

City officials generally praised POMP, and in the early 80s it received generally positive attention. A POMP manager was named one of the City's best landlords by the Daily News in 1982.[85] In 1984, POMP received the HUD National Recognition Award.[86] Nonetheless, former HPD official Joseph Shuldiner sounded a word of warning: "[T]he reason why we have so many of these abandoned buildings is that their brethren landlords allowed them to run into the ground. So if you sell them privately, how do you make sure that you sell them to good guys and not bad guys?"[87]

In spite of some evidence that the program was beginning to have difficulties -- including adverse news coverage and criticism at public hearings -- POMP grew rapidly through the 80s. By the end of Fiscal Year 1986, POMP had entered into 30 contracts with 23 management firms. In addition, a total of 100 buildings with 4,110 units had been sold through POMP.[88] By 1989, POMP received nearly half of the total funds allocated to DAMP.[89] At the same time, the commitment to the nonprofit sales program (CMP)

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[82] Diane Adler, "HPD's Private Ownership and Management Program," *New York Affairs*, Fall 1986, pp. 117-119.

[83] Quoted in Adler [fn. 81], p. 117.

[84] Bureau of the Audit, Office of the Comptroller, City of New York, ME 89-106, *Audit Report on the New York City Department of Housing Preservation and Development's Private Ownership and Management Program* (Apr. 1991), p. 1.

[85] Adler [fn. 81], p. 120.

[86] Adler [fn. 81], p. 118.

[87] Rita Giordano, Housing Program Defended, *New York Newsday*, Jan. 29, 1991, p. 8.

[88] Department of Housing Preservation and Development, *In Rem Housing Program, Annual Report, FY 1985 and 1986*, p. 17.

[89] Barry Meier, "City on the Brink: POMP and Circumstances: City Effort Gets Mixed Evaluation," *New York Newsday*, Jan. 24, 1989, p. 6. At the same time that additional funds were committed, productivity of

decreased and the tenant cooperative sales program (TIL) stagnated.[90] By January 1991, POMP had sold 230 buildings, consisting of 8,393 units, and had another 4,350 units in the pipeline.[91]

POMP began to face broader and more serious criticism in 1990 after HPD placed 9 buildings that were sold through POMP under the control of a 7-A Administrator because the POMP landlord had maintained them in extremely poor condition.[92] Nonetheless, Joan Wallstein, the Assistant Commissioner in charge of DAMP, still felt such enthusiasm for the program that she declared that "every in rem building is a potential candidate for POMP."[93]

"The reason why we have so many of these abandoned buildings is that their brethren landlords allowed them to run into the ground. So if you sell them privately, how do you make sure that you sell them to good guys and not bad guys?"

In April 1991, the City of New York's Office of the Comptroller, Bureau of Audit released the findings of a two-year investigation of POMP covering the period December 1979 through October 1990. According to that audit, many POMP landlords had failed to correct dangerous building code violations in buildings bought through POMP. In spite of this fact, six of these nine firms were subsequently award POMP contracts to manage and purchase 85 more buildings.[94] The audit found that there were 955 legal proceedings brought against tenants in the 1433 units sampled, for a rate of 66.6 percent. Of those, 162 (17%) resulted in marshall-enforced evictions.[95] These findings, coupled with complaints by activists and tenants that had been raised for years, led to reevaluation of the program.[96] Then-Mayor Dinkins ended intake into the program in May 1991.

the program actually decreased. Citizens Housing and Planning Council, *The Housing Network, Part II: Recommendations for Improving HPD's Production and Preservation Programs* (undated), p. 29.

[90] *The Housing Network* [fn. 88], p. 25.

[91] Giordano, "Housing Program Defended" [fn. 86], p. 8.

[92] *Id.*

[93] *Id.* at 3.

[94] *Audit* [fn. 83], at p. 7. Manuel Perez-Rivas, "Audit Says City Rewards Lax Landlords," *New York Newsday*, Apr. 29, 1991, p. 21.

[95] *Audit* [fn 83], at p. 17. Marshall-enforced evictions do not represent the only means of displacing tenants. Some tenants, unaware of their rights or believing that they have no other recourse, may leave "voluntarily" before that point.

[96] Rita Giordano, "Mixed News for Housing Advocates," *New York Newsday*, May 18, 1991, p. 11; Chris Yurko et al., "POMP Killed," *City Limits*, Aug./Sept. 1991, p. 5.

The retrenchment of the 1990s

The 1990s have once again seen an increased rate of tax delinquency and abandonment. Between fiscal year 1990 and 1991, tax delinquencies of Bronx and Manhattan walk-ups increased by 44 and 32 percent respectively.[97] In a Community Service Society study of housing disinvestment in New York City, using 1989 Department of Finance data, researchers found that many poor neighborhoods continued to have a substantial risk of mass abandonment. The report indicated that the private sector has only a tenuous hold on the low-income housing stock: "Eighteen of the city's 59 community districts face high risks, either a combination of high tax arrears and mortgage foreclosures or an unusually high rate of tax arrears." The neighborhoods most at risk were also those that have already been hardest hit by earlier waves of abandonment in the 1970's: the South Bronx, Harlem, and East Brooklyn.[98]

> **The City responded to this increase by ceasing vesting. It has not vested any buildings since 1993. Instead, it will replace vesting with a policy that focuses on auctioning tax liens.**

A 1992 Citizens Housing and Planning Council report similarly noted that in the twenty poorest community districts, there were over 350,000 units of privately owned rent-regulated housing, 50,000 of which were in immediate jeopardy of lapsing into abandonment or City ownership.[99] Buildings in serious tax arrears grew from 13,737 in 1989 to 18,003 in 1993.[100]

The City responded to this increase by ceasing vesting. It has not vested any buildings since 1993.[101] Instead, it is replacing vesting with a policy that focuses on auctioning tax liens on delinquent buildings.[102]

Until the City's recent moratorium on vestings, HPD's annual vestings had averaged about 5,200 units within 400 to 500 buildings. Owners have generally redeemed about two-thirds of the vested buildings, which means that "the rate of building intake has just about

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97 *Preserving New York's Low-Income Housing Stock* [fn. 8], p. 8 (citing New York City Department of Finance, *Annual Report on the New York City Real Property Tax, Fiscal Year 1992.*) At the end of fiscal 1991, 14,634 walk-up apartment buildings were in arrears; while the number of walk-up buildings in arrears has not changed significantly during the past several years [prior to the issuance of this report], the average amount of those arrears has increased from $1,922 to $3,034 -- suggesting that buildings in arrears were becoming more deeply in debt, at least partly as a result of longer periods of accumulating arrears without vesting.

98 *Housing on the Block* [fn. 77] at p. 8.

99 *Preserving New York's Low-Income Housing Stock* [fn. 12], p. 1.

100 Shawn G. Kennedy, "Defaults Rise, Posing Peril for Housing," *New York Times*, May 31, 1994, p. B1.

101 Shawn G. Kennedy, "New York City Stops Foreclosing On Tax-Delinquent Buildings," *New York Times*, Mar. 13, 1995, p. B1.

102 See discussion at "What We Expect to Happen: The Contours of Current City Policy" in this report.

balanced the rate of disposition."[103]

In the late 80s, about as many units moved into City ownership as moved out. Between 1986 and 1991, about 13,600 units were vested; at the same time, about 10,300 units were sold out of City ownership. At the time of the 1992 Stegman report, the City owned just under 40,000 occupied units.[104] In 1994, HPD reported that it owned about the same number of occupied units, with 30,826 occupied Centrally Managed units in 3,098 buildings and another 8,600 units still in DAMP.[105]

The 1990s have threatened a return to the conditions seen in the late 1970s, when the first big influx of in rem property came into City ownership. Increasing rates of delinquency coincide with an economic weakening, including a decrease in real wages and the loss of jobs. At the same time, there is an additional fact about that 1990s that may make the situation even more exigent than in the 1970s; at least in the 70s, the public assistance shelter allowance was on a par with the median rent in New York City,[106] meaning that low-income residents could afford half the apartments in the City. Now, however, the median rent is more than double the average shelter allowance for rent.[107]

The 1990s have threatened a return to the conditions seen in the late 1970s.

The City's private for-profit market orientation

As has been seen, throughout the years that the City has been taking tax-delinquent buildings into its ownership, the emphasis has been on returning them to the private sector.

In 1989, *The Mayor's Private Sector Survey* advocated a disposition strategy tilted toward the for-profit sector, although it recognized that it might be difficult to privatize the entire stock. It identified HPD's primary goal as the reduction of its in rem portfolio of occupied buildings to an "irreducible minimum" number of properties -- approximately 10,000 units. In order to achieve this goal, HPD would need to rehabilitate 71,000 units in

[103] *Preserving New York's Low-Income Housing Stock* [fn. 12], p. 14 (footnote omitted); *The Mayor's Private Sector Survey* (Sept. 1989), p. 57, agreed that vesting will remain a live issue for New York: "While vesting has slowed, the process continues and is expected to add 3,000 to 4,000 units per year."); Felstein and Stegman [fn. 27], p. 30 (although 500 city owned buildings were sold in fiscal 1985, representing 5% of the total and 12% of occupied in rem buildings, the ownership of another 1,185 was assumed).

[104] Michael A. Stegman, *Housing and Vacancy Report, New York City 1991* (1991), pp. 77, 81.

[105] This amounts to about 1.5 percent of all rental units. Lloyd Chrein, "Unhappily Ever After: Good Intentions Can't Save Some Landlords from Losing Their Buildings," *New York Newsday*, Jan. 13, 1995, p. D1. In 1978, the City owned about 2 percent of all rental units. *First Annual Report* [fn. 15] at p. 8.

[106] Newfield [fn. 13], pp. 268-69.

[107] *Housing New York* [fn. 7], p. 202. The median gross rent for 1992 (including utilities) was $551 per month; the shelter allowance for a family of three is $278.

DAMP's programs and "recycle" them.[108]

However, *The Mayor's Private Sector Survey* was not too optimistic that this reduction would occur, because of opposition from the advocacy community and operational failures at HPD.[109] The Private Sector Survey emphasized that HPD should stick to its "mandate of recycling properties and not becoming the landlord of last resort." It asserted that "community managers are better able to provide the nurturing that HPD's troubled housing stock needs, and may be able to do so more cost effectively."[110]

The cycle of abandonment could be broken if the city removed previous tax liabilities and let owners choose a site's best use, whether a cooperative conversion, a middle income rental building, or possibly even as a low cost commercial use such as a parking lot.

The Mayor's Private Sector Survey concluded that HPD could not achieve its own disposition goals, given its track record: "While innovative programs have been developed and have achieved some success, we do not believe the existing programs have the potential to dispose of the 71,000 units that must be recycled to meet the Agency's goals for the next decade."[111]

The City's emphasis on the private for-profit sector reflected the point-of-view of powerful individuals and groups with an influence on government. For example, the Citizen's Housing and Planning Council (CHPC) has argued that the for-profit private sector is the most efficient provider of housing and must be protected at all costs:

> [F]ar greater efforts are needed to retain our threatened housing stock in private ownership. It is many times more efficient to support existing private ownership than it is to publicly own and operate the same housing after abandonment, deterioration and city foreclosure. Efforts to keep marginal

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[108] *The Mayor's Private Sector Survey* [fn. 104], p. 10. The irreducible minimum would be mandated by the City on a permanent basis and used for emergency housing. *Id.*

[109] *Id.* at p. 63 ("The growth in the inventory reflects strongly held views in many communities that buildings should not be sold to for-profit groups. . . . While programs for selling to not-for-profit and tenant groups are more popular, they probably lack the capacity to dispose of a large number of units. In short, the existing programs offer an important, but only partial solution to disposing of the large number of units at issue.")

[110] *Id.* at p. 5. "Community managers" apparently included both local nonprofit and for-profit entities.

[111] *The Mayor's Private Sector Survey*, p. 6. See also p. 57:

> Both from policy and budget perspectives, enormous benefits flow from recycling these properties. Fostering community ownership and management can improve the long-term economic and social well-being of the tenants. The same is true for the neighborhoods; buildings that once contributed to decay can become powerful stabilizing influences. Significant financial benefits also flow. For each unit recycled, the City can save $2,100 in direct operating costs and also return the property to the tax rolls.

property in private hands run the risk of abuse by slumlords, but in order to deal with the in rem problem at the large scale required by today's economic conditions, the city must be prepared to take risks while still protecting against potential abuse. We cannot afford to withhold aid and continue current in rem operations in the fear that we will inadvertently help the few bad guys.[112]

CHPC members have been in a position to influence City policy toward in rem buildings. Members now occupy the chairmanship of the City Planning Commission and the Corporation Counsel, as well as ran the campaign of the current mayor.[113]

It was correctly prophesied that "the debate over disposition of the in rem stock will become increasingly bitter and polarized during the next few years."

Professor Peter D. Salins, Director of the Department of Urban Affairs and Planning at Hunter College, represents a view unconcerned with preserving the in rem stock for low-income residents. Rather, he supports its use, where possible, as higher-income housing or even for parking lots:

> In more marginal neighborhoods, buyers might have to struggle to find a use for their properties. But the cycle of abandonment could be broken if the city removed previous tax liabilities and let owners choose a site's best use, whether a cooperative conversion, a middle income rental building, or possibly even as a low cost commercial use such as a parking lot.[114]

The for-profit free market orientation, while characterizing the governmental approach and supported by some elements of the scholarly and advocacy community, was bitterly contested by many others, including community groups and other scholars and advocates. It was correctly prophesied that "the debate over disposition of the in rem stock will become increasingly bitter and polarized during the next few years."[115]

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[112] *In Rem: Recommendations for Reform* [fn. 14], p. 2.

[113] Former CHPC member Joseph Rose is chair of the City Planning Commission; William Grinker was the Mayor's campaign manager; Paul Crotty is corporation counsel.

[114] Peter D. Salins, *Scarcity by Design* (1992), pp. 106-07. See also DePalma, "Reluctant Landlord" [fn. 42], p. 1 (Robert C. Rosenberg, a realtor and former First Deputy Commissioner of the HDA, stated that, "If I were running the city, I would establish certain goals. Each year I would sell off a certain percentage of the buildings, making sure that the sales were greater than the intake of new buildings. You just have to get them out.") But see Andrew Scherer, "Is There Life After Abandonment?" The Key Role of New York City's In Rem Housing in Establishing an Entitlement to Decent, Affordable Housing," *New York University Review of Law and Social Change*, vol. XIII, 931, 964-65 (1984-85) ("[I]f the City is ever to make a serious commitment to guaranteeing decent housing, its policies will inevitably have the effect of driving marginal landlords out of business. Ideally, this would happen in time to salvage deteriorating properties and preserve them as a resource for low-income tenants.").

[115] Felstein and Stegman [fn. 27], p. 37.

History as applied to current city policy

This history illustrates several facts about City in rem policy that are important and suggestive. First, the City has been reluctant to assume responsibility for tax-delinquent housing and has avidly sought to avoid the expenditure and effort involved in the operation of this housing stock. Second, the City has tried to focus on returning this housing stock to the private market, frequently the for-profit private market, as the preferred response. Third, the City's private market approaches have proven problematic in the case of auctions and the for-profit disposition program, POMP. Fourth, while the City has turned to the for-profit private sector to help it solve the problem of abandonment, it has been reluctant to accept the idea that there may be some real market inadequacy at the root of the problem. Fifth, previous efforts to dispose of the in rem stock at any "massive" rate have been unsuccessful.

The administration has not argued convincingly that its programs can both save the City money and protect low-income residents.

The City's determination to avoid responsibility for this housing has impeded it from conducting a thoughtful analysis with the necessary detachment. Instead, it has gravitated toward any approach that promises speedy, large-scale disposition, as well as avoidance of assuming ownership. In doing so, it has embraced traditional American market solutions, which have strong political support from powerful, well-capitalized real estate groups and the business community, and advertise the efficiency and success that is sought.

Yet, market-oriented privatization strategies have not really delivered. Auctions and for-profit sales have come closest to providing the City's desired fast-track rate of reprivatization. However, auctions proved to be quick only in the short-term: the buildings often returned to tax arrears and back into City ownership. POMP, the for-profit sales program, was likewise fairly speedy, compared to other disposition programs, but it resulted in high numbers of evictions of low-income residents, waste of public resources, and poor building conditions. From the evidence of the past twenty years, it would be safe to conclude that the low-income housing market in New York City is not functioning well and that there is some real risk in the City's efforts to return the in rem stock to the private market that produced it.

The City's current policy focuses on tax lien auctions of delinquent properties, disposition of in rem buildings to for-profit owners, and getting out of the business of owning property through a combination of preventing vestings and accelerating sales.[116] These "new" policies all have echoes in the past. It is not evident why tax lien auctions

[116] For a full discussion, see "What We Expect to Happen: The Contours of Current City Policy" in this report.

should avoid the "revolving door" that afflicted direct auctions. There is no apparent reason why sale to for-profit owners should work any better than it did before. It is unclear why the City will now be any more effective at preventing vestings and disposing of buildings than were past administrations. The rhetoric of the Giuliani administration's new in rem program trumpets the synergies of a free market approach, but fails to demonstrate why such an approach will work in communities that private businesses have fled, leaving the City and residents to fend for themselves. The administration has not argued convincingly that its programs can both save the City money and protect low-income residents.