
Abandonment of Residential Property in an Urban Context

Roslyn Corenzwit Lieb

Richard A. Merel

Alice S. Perlin

Michael B. Sadoff

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PROJECT

ABANDONMENT OF RESIDENTIAL PROPERTY IN AN URBAN CONTEXT

INTRODUCTION

During the past decade the phenomenon of abandoned residential property has surfaced as a menacing social problem. It is the purpose of this article to examine and analyze this phenomenon in two ways: by identifying the problem as a sequential succession of events consisting of myriad social and economic components ultimately resulting in "abandonment," and by examining the current remedial avenues available in combatting the problem. The analysis is classified into two broad categories: federal and local. The role of the Department of Housing and Urban Development (HUD) in its attack on abandonment will be the focal point of the discussion on federal remedies. In particular, the effectiveness of HUD's property disposition programs will be evaluated. On the local level, the current resurgence of an old remedy, homesteading, is considered as one possible solution to abandonment.

DEFINITION

In the context of residential housing, the meaning of the term "abandonment," is defined as an evolving process which consists of several phases that can be described in both general and specific terms.¹ Although there has been a limited amount of research done on abandonment, the definition itself has been variously characterized. One study defines abandoned housing as that which is vacant and derelict, *i.e.*, buildings which are unoccupied and have been vandalized, boarded, deteriorated, or dilapidated, or have unmaintained grounds.² The National

1. G. STERNLIEB, R. BURCHELL, & V. PAULUS, *RESIDENTIAL ABANDONMENT: THE ENVIRONMENT OF DECAY* (Center for Urban Policy Research, Rutgers University, 1972) reprinted in Council of Planning Librarians Exchange Bibliography No. 342 (1972) [hereinafter cited as STERNLIEB, BURCHELL & PAULUS].

2. G. AKAHOSHI & E. GASS, *A STUDY OF THE PROBLEMS OF ABANDONED HOUSING AND RECOMMENDATIONS FOR ACTION BY THE FEDERAL GOVERNMENT AND LOCALITIES*, Feb. 1971 (draft of a research report prepared under contract to the U.S. Dept. of Housing and Urban Development of Research and Technology by Linton, Mields and Coston, Inc.) [hereinafter cited as AKAHOSHI & GASS].

Urban League defines abandonment as the product of five basic external factors: (1) a decline in the area's socio-economic status; (2) a racial or ethnic change; (3) property speculation and exploitation; (4) weakened market conditions; and, (5) disinvestment.³ George Sternlieb, a noted authority in the area of housing abandonment, defines an abandoned building as "one which has been removed from the housing stock for no apparent alternative profitable reason and for which no succeeding use occurs on the land."⁴ Mr. Sternlieb's definition refers to the final stage of the abandonment process. That is the point at which the owner decides to give up any remaining interests (either *de jure* or *de facto*) that he may still possess in the building itself. This definition is much less descriptive than any of the others but it provides an exact and realistic way in which to identify the term. Thus, for the purposes of this paper, it shall be used to define the point in time at which a building is considered abandoned.

In a much broader sense, the process of abandonment can be defined as a result of the changing economic functions of the central cities—a reflection of the dispersion and weakening of their economic base along with the rapid racial changes occurring in core cities.⁵ These two factors, to be discussed in detail later, initially open the door for the development of the *abandonment process*—the topic of the next section.

ABANDONMENT AS A PROCESS

Although numerous attempts have been made to design and frame a comprehensive and informative definition of the phenomenon of abandonment, leading authorities have concluded that the abandonment cycle cannot be defined as a specific moment in time at which certain conditions exist. Rather, it is a process including a number of elements which collectively contribute towards the culmination of final abandonment. According to a recently published study prepared by the National Urban League:

[F]inal abandonment is the end of an historical process which has less to do with housing quality than with who lives in it, who owns it, and the willingness of investment capital to remain engaged.⁶

Other noted authorities have suggested that abandonment is a process of disinvestment of private capital in all areas of cities—a process which,

3. NATIONAL URBAN LEAGUE, THE NATIONAL SURVEY OF HOUSING ABANDONMENT (3d ed. 1971) (conducted by the Center for Community Change) [hereinafter cited as NATIONAL URBAN LEAGUE].

4. STERNLIEB, BURCHELL & PAULUS, *supra* note 1, at 10.

5. NATIONAL URBAN LEAGUE, *supra* note 3, at 12.

6. *Id.* at 18-19.

in turn, results from a series of actions in which properties are permitted to degenerate and decay until they become untenable.⁷

A private research company which has recently published a study concentrating on the abandonment problem as it exists in the large metropolitan cities perceives the problem as being the final product of a number of extraneous contributing factors.⁸ According to this study, the abandonment cycle first begins as a result of deferred maintenance caused by ownership turnover due to speculation and tax considerations. Subsequently, tenants refuse to pay rents in rebellion against deteriorated conditions caused by the failure to maintain aging buildings. In the absence of rental income, all maintenance and necessary reparations are deferred, further accelerating the dilapidation of the building. Finally, when current taxes are assessed and become due, owners abandon these buildings which no longer generate an income sufficient to meet current expenditures. This uninhabited shell of a building represents the final product of the abandonment cycle.

Yet, another study regards the abandonment process as one which begins with the subjective intent of the building owner who decides that if he continues to retain ownership of the aging property, it will result in unacceptable losses. This causes the owner to suspend any additional investment or maintenance and reparations.⁹ Soon thereafter, the building becomes vacant in response to the failure to maintain and properly secure the building, leaving an unattractive, unoccupied structure susceptible to vandalism. Once a building becomes unoccupied, it is often stripped of all but its outer shell, leaving behind the final product of the abandonment cycle—an open, vacant and structurally dangerous building.

These theories represent only a few of the many attempts to describe the progression of events leading to abandonment. In the following section, another theory (diagramed in Figure 1) will be offered through a discussion of the causes of abandonment in relation to the various stages of the abandonment process.

I. Inflow and Outflow of Residents

According to the abandonment study conducted by the National Urban League, the process of abandonment is strongly correlated with the occurrence of white flight from northern industrial cities.¹⁰ Between 1940 and

7. STERNLIEB, BURCHELL & PAULUS, *supra* note 1, at 2.

8. AKAHOSHI & GASS, *supra* note 2.

9. Sangster, *Abandonment of Inner City Properties*, 5 FED. HOME LOAN BANK J. 14, 17 (1972).

10. NATIONAL URBAN LEAGUE, *supra* note 3, at 13.

PROGRESSION OF EVENTS IN HOUSING ABANDONMENT

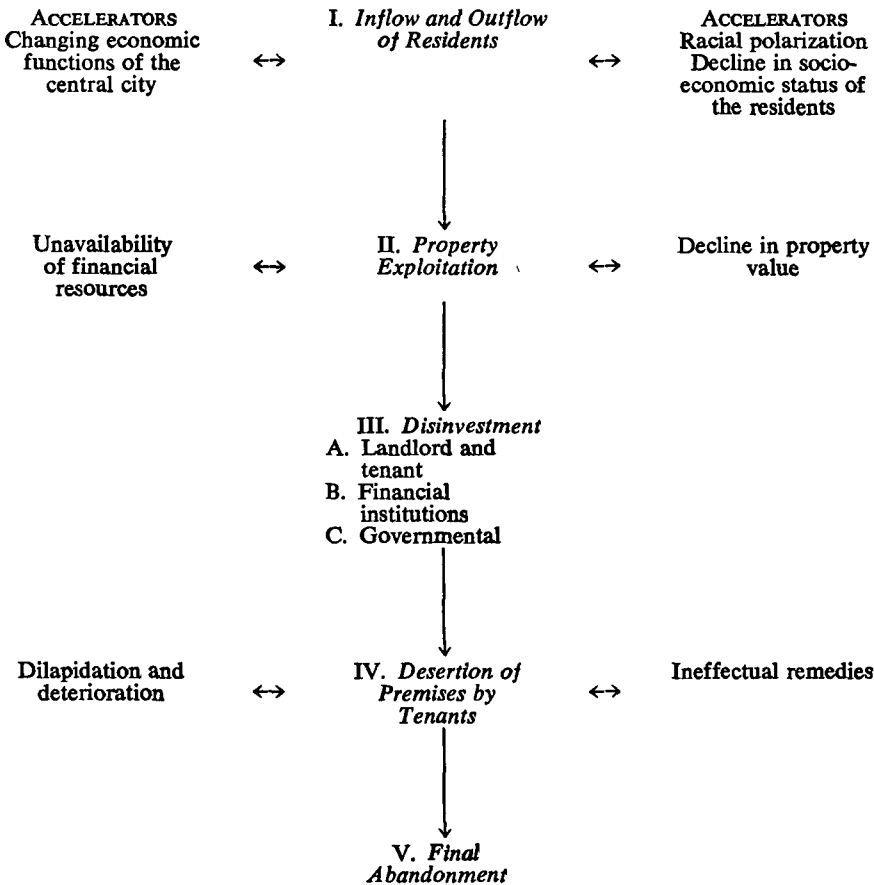


Figure 1. The above diagram is a representation of the authors' theory describing the causes involved in the abandonment process. The theory consists of a five tier progression of events which is discussed in the following sections.

1960 the black population of New York, Newark, Chicago and other northern industrial cities grew on the average of over 250 percent.¹¹ This increase was caused primarily by the migration of southern blacks into northern urban areas. Because of discrimination, these blacks were unable to find alternative housing and were forced to settle in "hand-me-down" housing previously occupied by low or middle-income groups. The availability of alternative housing accelerated white flight from areas where blacks began to settle. Soon, these areas became ghettos and the process of abandonment began to develop.

11. *Id.*

The history of the North Lawndale community in Chicago is a typical example of these migratory patterns. During the late 1920's, newly constructed two-flats, three-flats, and multi-family structures housed the large influx of European immigrants arriving in the Chicago area. After 1930, these immigrants began to move into other communities, and by 1940, Lawndale became the port of entry for migrating southern blacks.¹² In addition, the extensive freeway construction and other public projects helped push the blacks already living in Chicago into the North Lawndale area.¹³ During the decade between 1950 and 1960 approximately 74,000 blacks migrated to the Lawndale community, while nearly 80,000 whites left.¹⁴ By 1970 North Lawndale was almost 100 percent black.¹⁵ In 1957, the Chicago Department of Urban Renewal designated North Lawndale as part of a conservation area, *i.e.*, "a slum and blighted area."¹⁶ The median family income of the North Lawndale community in 1959 was \$4,981 as compared to the \$6,738 median income of all Chicago families in 1960.¹⁷ Approximately one in every four families had an income of less than \$3,000.¹⁸ These conditions plus a strong demand for rental units paved the way for the exploitation tactics of professional "slumlords."

II. Property Exploitation

The occurrence of racial and economic polarization helped create, and are accelerated by, the exploitative tactics of real estate brokers, speculators and established landlords. These exploitative tactics compose the second stage in the abandonment process. Although several different methods of exploitation are practiced, the three most common forms appear to be: (1) "blockbusting," (2) "red lining," and, (3) minimum maintenance.

"Blockbusting" (sometimes called "panic peddling") refers to a large variety of techniques used by real estate brokers and speculators whereby scare tactics are used to trigger immigration of blacks into an all-white neighborhood.¹⁹ The exact technique of blockbusting may vary, but es-

12. AKAHOSHI & GASS, *supra* note 2, at 102.

13. *Id.*

14. COMMUNITY RENEWAL PROGRAM STUDY, LOCAL COMMUNITY FACT BOOK: CHICAGO METROPOLITAN AREA—1960, 319 (E. Kitagawa & K. Taeuber eds. 1963).

15. AKAHOSHI & GASS, *supra* note 2, at 102.

16. *Id.* at 97-98. For a definition of the phrase "slum and blighted area," see ILL. REV. STAT. ch. 67½, § 65 (1971).

17. COMMUNITY RENEWAL PROGRAM STUDY, *supra* note 14, at 246, 248.

18. *Id.*

19. See Comment, *Blockbusting: Judicial and Legislative Response to Real Estate Dealers' Excesses*, 22 DEPAUL L. REV. 818 (1973).

entially the blockbuster persuades a frightened, white property owner to sell his property at a deflated price before the neighborhood "turns black." The unscrupulous blockbuster then turns around and resells the property to an unsuspecting black person at an inflated price. This practice has been subject to judicial scrutiny,²⁰ and has been found to violate the Civil Rights Act of 1866.²¹ Sometimes a speculator will purchase the property at its true value or even at a price above its market value if the resale of the property to a black family will destroy the racial homogeneity of the immediate neighborhood or block. Of course, any technique used creates a self-fulfilling prophecy by accelerating the outflow of whites from the neighborhood and increasing the migration of blacks into it. Because financial institutions usually avoid financing the migrating blacks in a racially changing area, a speculator may further increase his profits by financing the repurchase himself. His terms generally consist of inflated credit charges with title to the building remaining in the speculator's name; then the building may be repossessed in the event of default and resold on similar terms. This cycle is usually repeated over and over again until the property becomes worthless, at which point it is abandoned. This financing technique places a heavy burden on the black purchaser. For the purchasers who *are* able to meet the financial costs, little money can be found to maintain the condition of the property, let alone to improve it. Thus, this exploitation helps create a climate of despair and disinvestment among the black purchasers themselves. It is at this stage of the abandonment process that greater efforts should be made to prevent blockbusting and unscrupulous real estate speculation. This will not be an easy task since a number of other factors contribute to the problem.

One of these factors deals with the problem surrounding financial lending. Financial institutions practice what is known as "red lining," which

20. See *Contract Buyers League v. F. & F. Investment*, 300 F. Supp. 210 (N.D. Ill. 1969). Plaintiffs sought relief for alleged sales of used residential property to blacks at inflated prices and under more stringent terms than would have been charged to white purchasers. Judge Will held that plaintiffs' allegations of "blockbusting" stated a sufficient claim under § 1982 of the Civil Rights Act of 1866 which provided that: "all citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. § 1982 (1866).

21. Federal, state, and local legislation have been implemented in an effort to eliminate the practices involved in blockbusting. *E.g.*, 42 U.S.C. § 3604(e) (1970); ILL. REV. STAT. ch. 38, §§ 70-51 to 70-53 (1971); CHICAGO, ILL., MUNICIPAL CODE §§ 198.7B(3) (F)-(G) (1972).

involves the withholding of mortgages, insurance policies, and other financial support in "high risk" neighborhoods. These areas usually consist of non-white neighborhoods or communities threatened with non-white integration. By refusing to grant these neighborhoods the necessary resources normally provided to all-white areas not threatened with racial integration, the neighborhood becomes ripe for the speculators. Unable to obtain a loan to make necessary repairs on a building, an owner becomes more vulnerable to the scare tactics of a speculator; he may decide to sell his property at a price below the market value from fear of sustaining a greater loss later. Also, a black family that purchases the property from a speculator has little if any resources left for general repairs. "Red lining" forces the black owner to disinvest, subdivide his building into small units in order to provide the necessary income, or borrow the additional capital from the speculator at inflated interest rates. The last alternative will only lead to greater financial burdens for the property owner, and, therefore, is the most dangerous.

Investment syndicates have allegedly taken advantage of the "red lining" practiced by financial institutions. The syndicates have purchased properties inexpensively in these areas from owners who had no access to funds and have purportedly exploited the tenants by charging high rents.²²

Supplying minimal maintenance is probably the most frequently used method of exploitation and, undoubtedly, is a major cause of abandonment. When financial sources are cut-off, the owners themselves may decide to exploit their tenants rather than to sell their property to a speculator. The method consists of raising the rents, splitting apartments into smaller units and lowering maintenance standards. The last method is obviously the easiest to do and thus usually occurs first. Even when financing is available, the owner may have little interest in reinvestment. The elderly, white remnants of earlier immigrant groups are opposed to reinvestment since they have spent most of their lives paying off their original mortgage and dread the thought of having to go into debt again.²³ Small scale absentee owners may also be prone to supplying minimal maintenance; their lack of professionalism and inadequacies of scale hamper their profits. Finally, the ethnic minority resident-owner in a poor financial position may choose to provide minimal maintenance rather than sell

22. NATIONAL URBAN LEAGUE, *supra* note 3, at 40. See also *Contract Buyers League v. F. & F. Investment*, 300 F. Supp. 210 (N.D. Ill. 1969).

23. Sternlieb, *Abandonment and Rehabilitation: What is to be Done?*, in *HOUSING: 1970-1971*, at 62, 64 (G. Sternlieb & L. Sagalyn eds. 1972) [hereinafter cited as Sternlieb, *Abandonment*].

his property. The strategy of minimal maintenance is indeed a dangerous one since, if left uncontrolled, it will lead the owner down the dead end road to hard core disinvestment.

III. Disinvestment

It is at this stage in the abandonment process that the cycle becomes irreversible; the structures have deteriorated to such a degree that further capital reinvestment would be financially unwise. The transitional change that has taken place in the constituency of the urban communities, the property exploitation resulting from deceptive and unscrupulous practices by property speculators, and the absence of prolonged ownership patterns collectively combine to ignite a general negative feeling towards capital investment on the part of landlords, tenants, financial institutions, and government and public agencies. Since the causes precipitating the negative reinvestment attitude experienced by these sources are for the most part mutually exclusive of one another, this stage in the abandonment process will be sub-divided into three sections. The first, causes leading to disinvestment by tenants and landlords, will be afforded the greatest amount of attention because this category of individuals is most closely and immediately associated with the abandonment problem. The second section will concentrate on the causes leading to disinvestment by financial institutions, and the third, causes leading to disinvestment by government and public agencies.

A. Disinvestment by Tenants and Landlords

Neighborhood Attitudes, Conditions and Traditions

The general condition of urban communities where the abandonment problem is most prevalent is one of the major causes leading to disinvestment by resident occupiers and their respective landlords. The unattractive physical appearance of the surrounding community discourages residents and landlords from providing additional capital for purposes of maintenance and rehabilitation of aging structures. It is apparent that the abandonment problem encompasses more than the mere decay and dilapidation of aging structures; it is the decline of an entire community.

Lack of adequate shopping facilities further contributes to this negative neighborhood attitude towards maintenance and reparation. Little attempt is made to establish facilities conducive to the present needs of a growing community. A recent study prepared by a private research

organization on the problem of abandonment indicates that, as a result of the 1960 riots in the southern area of the City of Chicago, a major portion of the commercial establishments were destroyed, vandalized or shut down.²⁴ This is one of many reasons why the City of Chicago experiences a constantly increasing rate of abandoned structures in that area. In fear of crime and vandalism, commercial establishments construct bar and grate protection in hope of deterring potential vandalism. Although this tactic may reduce the level of burglary and other related crimes, it is another factor contributing to the general unattractive appearance of the community. According to a local organization based in the North Lawndale community of Chicago,²⁵ approximately 160 retail establishments had left the Lawndale area since 1954 because of this atmosphere of crime and vandalism.

Overcrowding of educational institutions is yet another reason for the general discontent felt by residents of inner city communities. In the same study on abandonment,²⁶ statistics published by the Chicago Public Schools²⁷ indicated that the student-teacher ratio was 33:1 in schools located within the Lawndale area of Chicago, a ratio far above the average for the entire city. Overcrowded schools result in a relatively inferior education for the children of the community and contribute to the desire of families to relocate.

Finally, inadequate recreational and park facilities within inner-city communities contributes to the general disinvestment attitude. Also, existing recreational centers contribute to an atmosphere of danger for unsuspecting and innocent community members who may be easy prey for neighborhood street gangs during evening hours.

Elderly Owners

Although there has been a general migration by the original occupants and owners of inner-city neighborhoods towards the perimeters of the metropolitan city, remnants of earlier immigrant groups remain behind, often elderly individuals whose reinvestment interest is minimal. In most instances, the elderly homeowners own their property free from financial

24. AKAHOSHI & GASS, *supra* note 2, at 121.

25. MARCON O'LEARY AND ASSOCIATES, LAWDALE CENTER: A STRATEGY AND ACTION PLAN (Prepared by the Lawndale People Planning and Action Conference 1968) as cited in AKAHOSHI & GASS, *supra* note 2, at 122.

26. AKAHOSHI & GASS, *supra* note 2, at 122.

27. DEPARTMENT OF OPERATIONS ANALYSIS, CHICAGO PUBLIC SCHOOLS, SELECTED SCHOOL CHARACTERISTICS, 1969-70, April 3, 1970, as cited in AKAHOSHI & GASS, *supra* note 2, at 121.

encumbrances, have limited incomes, and are therefore reluctant to assume financial responsibilities for rehabilitation.²⁸ As a result of this failure to reinvest at a time when relatively minimal capital investment to refurbish aging structures is required, when these properties eventually descend into the hands of new owners by way of inheritance, substantial investments are necessary for purposes of rehabilitation. These new owners, not owners by choice in most instances, are unwilling to invest capital necessary for renovation and either sell the properties or abandon them once the income generated from the property is no longer sufficient to meet current costs and expenses.

Crime and Vandalism

Although there is a very real relationship between crime and the abandonment process, in many instances it is the *imagined* level of criminal activity that is responsible for the negative attitude of landlords and tenants. According to statistics provided by the Chicago Police Department from the years 1964 to 1969, crime rose approximately 29 percent in the North Lawndale district of Chicago.²⁹ The offense of murder rose 150 percent during that same period.

Partially occupied premises open the door to vandalism and crime and ignite fear in the tenants of these partially occupied, partially vacant buildings. This constant fear of injury coupled with a lack of confidence in local law enforcement authorities in responding to the needs of the community, engenders a desire to relocate as soon as it is economically feasible.³⁰

Absentee Ownership

Under absentee ownership, private syndicates own a few parcels of property located in depressed areas of the city and retain ownership principally in hope of making a quick profit. Once this possibility has diminished because of the owners' inability to sell the property or the increased costs of maintenance, these parcels degenerate to the point where rehabilitation costs become burdensome, eventually forcing owners to abandon the premises when current property taxes accrue.³¹ A stronger ownership pattern is therefore necessary if an attempt is to be made to curb abandonment.

28. Sternlieb, *Abandonment*, *supra* note 23, at 64.

29. CHICAGO POLICE DEPARTMENT, CHICAGO POLICE ANNUAL REPORTS, 1966 AND 1969, as cited in AKAHOSHI & GASS, *supra* note 2, at 123.

30. See AKAHOSHI & GASS, *supra* note 2, at 124.

31. Sternlieb, *Abandonment*, *supra* note 23, at 64.

Code Enforcement

Code enforcement policies have a dramatic impact in the housing disinvestment process. The crux of the problem is that at the time when code enforcement should have been rigorously enforced, *i.e.*, approximately ten years earlier, there was minimal effective enforcement. Conversely, at a time when code enforcement should be relaxed, it is being rigorously enforced. In many instances, code enforcement brings about the final completion of the abandonment process which was partially caused, ironically, by ineffective code enforcement during the previous ten or twenty years.

For example, many resident owners are forced to illegally sub-divide their units to generate more income. When the housing code is stringently applied, parcels need to be reconverted to the legal number of rental units. The result is twofold. First, the owner has to incur the reconversion costs. Second, the owner loses the rental income. In many cases, the owner is forced to default on his mortgage and the mortgagee eventually abandons because the generated income is not sufficient to meet operating expenses.³²

Another illustration of code enforcement as a catalyst for disinvestment occurs when a building has been drained by its owner over a period of years without effective code enforcement. City authorities begin to clamp down on enforcement at a time when the capital reinvestment needed to bring the property within code standards requires a "high risk" investment. As a result, the owner abandons the property rather than undertake an investment.

A project entitled FACE, the Federally Assisted Code Enforcement project, was implemented in the North Lawndale area of Chicago. The program involved routine inspection of buildings located within selected FACE areas. If these inspections uncovered code violations, owners were notified to make necessary improvements; if violations were not remedied within a designated time period, the case was referred to the Chancery Division of the court whereby a judgment was entered either imposing a fine, issuing an injunction requiring reparations, or ordering demolition. The reports indicated that over 80 percent of the buildings within the selected area had code violations. Of that group, approximately 80 percent of the buildings were demolished. Code enforcement was probably the straw that broke the camel's back, *i.e.*, the motivating factor causing abandonment of properties below the codal standards. The project

32. NATIONAL URBAN LEAGUE, *supra* note 3, at 41.

FACE was terminated in January of 1970.³³

While code enforcement may be highly successful in some situations in curbing negligent maintenance of buildings, the sporadic enforcement of antiquated building codes upon owners who are already besieged by financial burdens hastens abandonment. New York City's Concentrated Code Enforcement Program spent thousands of dollars in loans for needy homeowners. The procedure was not effective because owners refused to become indebted to the city for buildings that were already on the verge of condemnation.³⁴ The conclusion that can be drawn is that code enforcement, in order to operate as an effective device to curb abandonment, requires reorganization of its standards and method of enforcement consistent with the present-day needs of the urban homeowner.

Taxation

Real property taxation, which is typically and uniformly employed by state and local authorities, is regressive in nature and bears no relation to one's ability to pay. As a result, lower income homeowners are unable to generate an income sufficient both to maintain the property and to pay the taxes. One alternative measure which may serve as an effective tool in providing supplemental relief to city homeowners experiencing financial difficulty is to initiate as an alternative tax measure, a procedure whereby an indigent homeowner can apply his tax assessment toward home improvement. The effect of this program would be twofold. First, it would ease the financial burden of those who would otherwise be unable to generate sufficient income necessary to maintain their homes. Second, the rate of abandonment could be curbed since homeowners would be given additional impetus to revitalize rather than abandon. However, it is necessary to note that the administrative machinery required to administer this proposal effectively poses complications, the solution to which is beyond the scope of this article.

The Illinois Constitution requires taxation by valuation and uniformity. This method of assessment utilized by the Department of Revenue results in inequities to lower income homeowners. For example, the tax rate on property located south of 87th Street in Chicago is \$69.12 per \$1000 assessed value, regardless of the individual property owner's ability to pay.³⁵

33. AKAHOSHI & GASS, *supra* note 2, at 125.

34. Suttles, *Abandoned Residential Buildings*, 4 URBAN DATA SERVICE REPORT 1, 3 (1972).

35. 2 CCH STATE TAX REP., ILL. ¶ 77-000 (1973).

The existence of differential assessments in favor of single family dwellings presents an additional burden on tenants and owners of multi-unit dwellings since unfavorable tax features discourage construction of multi-unit dwellings likely to be occupied by low-income families.³⁶

Financing

Because of their location, homeowners within inner city communities are unable to obtain conventional financing for reinvestment. Factors such as the age of the structure, the unattractive appearance of the community, the low socio-economic status of the inhabitants, contribute to create an atmosphere of apprehension and reluctance by financial institutions providing financial aid.³⁷ In many instances, deterioration and dilapidation are so far advanced that individuals cannot provide sufficient collateral necessary to obtain conventional financial assistance. As a result, homeowners resort to the use of unconventional means of obtaining financial assistance through intermediary speculators.³⁸

Urban Renewal

Urban renewal can also be identified as an adverse policy stimulating the disinvestment process. When the need for low income housing to accommodate economically stable ethnic minorities was at its height, major cities were demolishing entire low income communities. This additional pressure for an adequate low income housing market provided incentives for establishing a market for "slum property" in order to accommodate the growing need for multi-unit dwellings for lower income families.³⁹

B. Disinvestment by Financial Institutions

Defaults

To understand why the default rate on mortgage and contractual agreements was so high for property located within inner city communities, it is useful to understand, as an example, the financial situation during the

36. CLAYTON, Director of Housing, National Urban League, ABANDONED, 1971. [hereinafter cited as CLAYTON].

37. STERNLIEB, BURCHELL & PAULUS, *supra* note 1, at 4.

38. See STERNLIEB, BURCHELL & PAULUS, *supra* note 1. Because of the unavailability of conventional financing, resident owners resort to using intermediary speculators for financial assistance. As a result of this unorthodox method of financing, owners obtain mortgages on homes with inflated prices arising from the speculative practices of the intermediary and eventually default because of the cash flow burden.

39. CLAYTON, *supra* note 36, at 275.

1950's in the Lawndale area of Chicago. At that point in time, some financial institutions provided mortgage money to investor-speculators who were in a position to provide collateral sufficient to obtain conventional financing. These speculators, taking advantage of their favorable positions, would buy property at a deflated price and sell at an inflated price to unsuspecting purchasers. As a result, the cash flow burden in many cases became too great and defaults resulted for whatever amount the homeowner had paid to the speculator-seller. Upon re-acquiring the property, the speculator would repeat the same process with another unsuspecting purchaser. Because this process created over-exploitation, banks and other financial institutions declined to make further investment in the Lawndale district.⁴⁰

Collateral

Depressed neighborhoods are predominantly inhabited by ethnic minorities whose incomes have stabilized. With the rising cost in the standard of living, families whose incomes are fixed are finding it more difficult to earmark a percentage of their earnings for savings and investment. Therefore, individuals desiring home ownership and/or financial assistance are financially incapable of providing the institutionally required collateral necessary for home improvement loans or mortgage agreements. As a result, available investment capital is siphoned into middle income communities leaving capital-seeking lower income families holding aging, unattended structures.

Negative Neighborhood Effect

Most financial institutions refrain from undertaking reinvestment programs essentially because each home on which it advances a loan or executes a mortgage agreement would be subject to the negative neighborhood effect of the surrounding houses. Financial institutions would not be exercising sound business judgment in establishing these programs in inner city communities and therefore concentrate on the suburbs in order to maximize profit and minimize loss.

Although the unattractive appearance of a neighborhood is one of the major causes leading to disinvestment by landlords and tenants, this psychological impact is contagious and carries over to financial institutions. For a *single* financial institution to adopt a reinvestment program in a depressed neighborhood would be financially unwise. A recent study

40. NATIONAL URBAN LEAGUE, *supra* note 3, at 39.

on abandonment indicates that a few non-profit corporations initiated re-investment programs in the Lawndale area of Chicago in the early 1960's.⁴¹ The result: several black-operated insurance companies became insolvent by 1968, holding an estimated twenty-five million dollars in foreclosed mortgages.

Lack of Available Funds

With the rising cost of money, the energy crisis, and spiralling inflation, financial institutions have been reducing the availability of capital for mortgages and home-improvement loans. Many financial institutions are now requiring thirty to forty percent in down payments before they will consider providing capital. Since reinvestment programs in the inner city communities carry the highest risk factor, it appears that these residents will be the first to suffer the capital shrinkage. Using Chicago as an example, a few statistics may illustrate why the risk factor in these areas is so high:

- (1) Approximately 2.6 percent of the housing stock in the North Lawndale area of Chicago is abandoned.⁴²
- (2) In 1972, 1,857 permits for demolition were issued by the City of Chicago for buildings located within inner city communities.⁴³
- (3) According to Judge Franklin Kral of the Housing Court, there were 13,406 cases of building violations and approximately 1,333 buildings were demolished in the last year.⁴⁴

C. Disinvestment by Government and Public Agencies

Speculators

Since the enactment of Section 223(e)⁴⁵ of the National Housing Act guaranteeing mortgage agreements, real estate speculators have utilized FHA and HUD programs to obtain quick profits at the federal government's expense. As a result of deceptive real estate practices, HUD is now the largest owner of single family dwellings in the nation. The increase in mortgage foreclosures has forced the agency to incur the expense of a guarantor. In response to this ever increasing debt there has been

41. *Id.* at 40.

42. *Id.* at 99.

43. McCarthy, *City's War on Old Buildings Halted by U.S. Fund Cut-Off*, Chicago Today, Sept. 28, 1972, at 2, col. 1.

44. Terry, *The City's Epidemic of Dying Buildings*, Chicago Tribune, Aug. 6, 1972, § 1A, at 3, col. 1.

45. See discussion accompanying notes 70-75 *infra*.

a recent move by a number of prominent Congressmen to eliminate these programs. Two of the foremost Democratic experts on housing policy, Representatives Thomas Ashley and Milton P. Semer, believe that the FHA programs accelerate the abandonment cycle and should be recast.⁴⁶

Welfare Agencies

According to "The City's Epidemic of Dying Buildings,"⁴⁷ welfare agencies are authorized to withhold rent payments if a building has deteriorated beyond certain established minimum standards. This procedure accelerates the abandonment process because a landlord, initially reluctant to make necessary repairs, will be even less willing to renovate without the receipt of income from the property.

An alternative which may be more attuned to the present day abandonment problem is the application of these withheld funds towards reparation of the property rather than towards the payment of rent. Although such a procedure would disturb traditional principles of property law, it could be an effective method of renovating aging buildings since the program would place the burden upon the landlord to make the necessary repairs or suffer a loss of rental income.

Current Cut-Backs

The recent cut-back policy adopted by the federal government in granting additional funds necessary for the continued operation of many federally subsidized programs is indicative of the general divestment process taking place on the governmental and administrative level. Without additional federal funding, many organizations, primarily concerned with relieving the housing shortage, will disappear.

According to Chicago's Building Commissioner, Joseph F. Fitzgerald, many buildings identified for demolition are still standing because of these same cut-backs.⁴⁸ These buildings represent a danger to their communities in providing hazardous "playgrounds" to unsuspecting children. Unfortunately, the current administration's attempt to reduce federal expenditures will adversely affect these programs designed to help alleviate the abandonment problem. In the context of governmental spending, such programs occupy a low position in the hierarchy of governmental priorities.

46. Lilley & Clark, *Urban Report/Federal programs spur abandonment of housing in major cities*, 4 NAT'L J. 26 (1972) [hereinafter cited as Lilley & Clark].

47. See *supra* note 44.

48. See *supra* note 43.

IV. *Desertion of Premises*

Once all maintenance on a building ceases, it is only a matter of time before the structure becomes uninhabitable. At this stage of the process the tenant will abandon the premises; the landlord, confronted with tax payments and a lack of available alternatives, usually decides to abandon the building also. The tenant's abandonment precedes that of the landlord, because of the deplorable living conditions in the building and the futility of any remedies available to the tenant.

Several of the remedies available to an indigent tenant living in substandard housing may actually accelerate the abandonment process. The *constructive eviction* doctrine is a prime example.⁴⁹ Under this concept the tenant is discharged from paying rent when the landlord or his agent breaches the duty not to interfere substantially with the tenant's enjoyment of the premises, provided the tenant abandons the property within a reasonable time.⁵⁰ The fact that the constructive eviction doctrine requires the tenant to abandon the property "within a reasonable time" indirectly promotes the final abandonment of the building by the landlord. In other words, when tenants abandon the premises and are concurrently discharged from their duty to pay rent, the landlord is left without adequate rental income; unless new tenants move in, the landlord will probably abandon the building as soon as taxes become due.⁵¹ Thus, the doctrine of constructive eviction seeks to relieve the tenant from his financial obligations to pay rent on a substandard housing unit, yet, at the same time, fails to *induce* the landlord to correct the substandard conditions. Although one of the positive effects of the constructive eviction doctrine is the termination of the tenant's liability, a negative effect is the acceleration of final abandonment by the landlord. In ghetto areas where there is already a shortage of low income housing, constructive eviction adds to the housing dilemma.

Recently, the concept of the *implied warranty of habitability* has been

49. This doctrine was first introduced in the United States in *Pendleton v. Dyett*, 4 Cow. 581 (N.Y. 1825).

50. See Groll, *Property: Spring v. Little: Landlord-Tenant Law Approaches the Twentieth Century*, 1972 *Survey of Illinois Law*, 22 DEPAUL L. REV. 51, 55 and n.18 (1972). According to Groll, the doctrine discharges the tenant from his obligation to pay rent when each of the following elements exist:

(1) the landlord, or his agent, must intentionally act or fail to act in violation of an express or inferred obligation; (2) the act or omission must cause a material deprivation of the tenant's use and beneficial enjoyment of the premises; and (3) the tenant must vacate the premises within a reasonable length of time.

51. AKAHOSHI & GASS, *supra* note 2, at 130.

applied to cases involving the relationship between landlord and tenant.⁵² Unfortunately, this concept may have a potential for accelerating the abandonment process. Under the implied warranty of habitability doctrine the contractual nature of the landlord-tenant relationship is used to justify the creation of an implied guarantee that the premises rented are in suitable living condition.⁵³ In *Pines v. Perssion*,⁵⁴ the tenants of a rented home sued to recover their security deposit plus the cost of labor for the repairs they made of the leased premises. The court found that an implied warranty of habitability was breached by the landlord's failure to repair defective heating, plumbing and electrical systems which existed in violation of the building code. This breach enabled the tenants to escape liability beyond the reasonable rental value of the premises during the time of actual occupancy. The court concluded:

Respondents' covenant to pay rent and appellants' covenant to provide a habitable house were mutually dependent, and thus a breach of the latter by appellant relieved respondents of any liability under the former.⁵⁵

*Javins v. First National Realty Corporation*⁵⁶ applied the same concept in allowing the tenant to remain in possession of his leased premises without paying rent. The tenant's defense was based on the fact that numerous violations of the housing code existed in the building. The court held that

a warranty of habitability, measured by the standards set out in the Housing Regulations for the District of Columbia, is implied by operation of law into leases of urban dwelling units covered by those Regulations and that breach of this warranty gives rise to the usual remedies for breach of contract.⁵⁷

In *Javins* the housing or building code becomes the standard used in determining what constitutes habitability. In *Spring v. Little*,⁵⁸ the Illinois Supreme Court applied the same reasoning and concluded that the warranty of habitability is determined by the relevant building code regulations. The court stated:

We find the reasoning in *Javins* persuasive and we hold that included in the contracts, both oral and written, governing the tenancies of the defendants in the multiple unit dwellings occupied by them, is an implied

52. See *Lemle v. Breeden*, 51 Hawaii 426, 462 P.2d 470 (1969).

53. See generally Peters, *Implied Warranty of Habitability: An Incipient Trend in the Law of Landlord-Tenant*, 40 *FORDHAM L. REV.* 123 (1971).

54. 14 Wis. 2d 590, 111 N.W.2d 409 (1961).

55. *Id.* at 596, 111 N.W.2d at 413.

56. 428 F.2d 1071 (D.C. Cir. 1970).

57. *Id.* at 1072-73.

58. 50 Ill. 2d 351, 280 N.E.2d 208 (1972).

warranty of habitability which is fulfilled by substantial compliance with the pertinent provisions of the Chicago building code.⁵⁹

At first glance *Spring v. Little*⁶⁰ and the implied warranty of habitability doctrine seem to offer a plausible remedy which could help cure the substandard housing dilemma in Chicago. On the other hand, such remedies might only amount to legal sanctions aimed at treating the symptoms caused by the more complex problem of disinvestment. For example, consider the case of the indigent tenant living in substandard housing. Unable to afford the doctrine of "repair and sue,"⁶¹ he chooses instead to withhold rent payments. When the landlord seeks to evict him and collect the rental payments, the indigent tenant raises the defense that the landlord breached his implied warranty of habitability. Theoretically, if the tenant pleads that he is ready, willing, and able to pay the rent due over and above the damages he has sustained he will be allowed to remain on the premises. If the landlord refuses to repair the premises, the tenant may refuse to pay the damages sustained *pro tanto* and will be allowed to remain on the premises. Faced with this dilemma the landlord may choose simply to abandon the building, leaving the tenant in a structure devoid of any maintenance. Thus, the warranty of habitability doctrine not only seems to be an ineffectual remedy for indigent tenants but also has the potential for accelerating the abandonment process in substandard housing areas.

V. Final Abandonment Procedures

Once property has progressed through the aforementioned phases of the abandonment cycle, an unattractive, vacant and dilapidated shell is all that remains of what used to be a productive, viable unit. But the process does not terminate at this point. Unattractive and hazardous buildings must be demolished or they will continue to pose a threat to unsuspecting children and other residents of the community.

The administrative procedure followed in the City of Chicago to locate and demolish abandoned property is an example of the methods likely to be followed in most metropolitan areas. The following information was furnished by John Hight, Chief of the Demolition Department for the City of Chicago.

59. *Id.* at 366, 280 N.E. at 217.

60. 50 Ill. 2d 351, 280 N.E.2d 208 (1972).

61. Under this doctrine the tenant may make minor repairs himself and may sue the landlord for the cost. If the repairs are major, the tenant may sue for damages—the difference between the value of the premises in-repair and out-of-repair. *Oppenheimer v. Szulerecki*, 297 Ill. 81, 130 N.E. 325 (1921).

Step 1—Locating the Property

The Building Department of the City of Chicago initially learns of the existence of an abandoned building from three sources: (1) citizens of a community complaining of unoccupied buildings in their immediate areas, (2) local organizations who have taken it upon themselves to locate these unoccupied buildings, and (3) Aldermen who respond to information given to them from complaining residents of their respective wards.

Step 2—Inspection Procedure

Once a particular unit is brought to the attention of the Building Department, a building inspector examines the structure to determine whether it is open, vacant, unoccupied and structurally hazardous. The inspector is required to file a report based upon his findings.

Step 3—Title Search

The city next conducts a title search of those properties which have been categorized as "abandoned."

Step 4—Litigation

After receipt of the building file the Legal Department initiates a suit in the Chancery Court to obtain either a decree of demolition or an order to repair. Service of process is issued upon all individuals who have recorded interests in the property.

In most cases the Chancellor enters a decree of demolition since the property is no longer generating income sufficient to warrant repairs. In such a case the city is often responsible for razing the building because the property owner fails to make an appearance in court.

Step 5—Demolition Procedures

After having been authorized to demolish the building, the city solicits bids from independent contractors. The contractor selected has forty days within which to demolish the building.

Step 6—Obtaining Liens

After demolition, the city obtains a lien on the property equivalent to the demolition cost. If the owner does not pay this amount, the property is subject to foreclosure by the city in which case the municipality becomes the owner of the property.

Step 7—Sale of Property

Once a title company determines there are no recorded encumbrances on the property and the city secures title to the land, the Real Estate Department obtains an appraisal of the property. City agencies have first priority to purchase the property. If these bureaus are not interested, the Real Estate Department solicits private bids either from Aldermen or private citizens. The repurchase of the property marks the end of the abandonment cycle.⁶²

HUD PROGRAMS—ABUSES AND ABANDONMENT

In general, federal programs designed to meet housing needs have encountered difficulty,⁶³ incurring criticism as to their adequacy, fairness and efficiency.⁶⁴ Construction of new units has fallen behind the schedule proposed by HUD in 1968.⁶⁵ To augment this problem, the supply of low cost housing in existence has been reduced as evidenced by rapid deterioration and abandonment.⁶⁶

The underlying theory of the federal programs is the filtering⁶⁷ or "trickling down" policy which suggests that the construction of new houses will release older housing which will, in turn, filter down to income levels the poor can afford. In theory, this would create abandonment as the poor leave their homes, and, in this context, abandonment could or should be viewed as a positive event.⁶⁸ But it appears that the filtering process does not work well enough to provide housing the poor can afford. Abandonment indicates the market is failing to keep in use some of the adequate housing that has already filtered down to low income families.⁶⁹

Historically,⁷⁰ some HUD programs have been subject to abuse, and, as a result, have augmented rather than reduced the abandonment problem. In the wake of the 1968 riots, Congress enacted section 223(e)⁷¹

62. Interview with J. Hight, Chief of Demolition Department of the City of Chicago, in Chicago, October 5, 1973.

63. COMMITTEE FOR ECONOMIC DEVELOPMENT, FINANCING THE NATION'S HOUSING NEEDS 10 (1973) [hereinafter cited as C.E.D.].

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 47.

68. Sternlieb, *Abandonment*, *supra* note 23, at 63.

69. C.E.D., *supra* note 63.

70. For a brief history of the country's housing programs, see P. MARTIN, THE ILL-HOUSED, 1136-55 (1971).

71. 12 U.S.C. § 1735c (1970).

of the National Housing Act which established a special risk pool in order to back up mortgages in areas that were traditionally red-lined by HUD. In combination with section 221(d)(2),⁷² which liberalized the standards for the FHA insurance program, this legislation resulted in a large amount of real estate speculation at the expense of both poor and, ultimately, the federal government.⁷³

As a result, HUD, as the parent of the FHA, faced the prospect of becoming, against its will, the largest owner of abandoned housing in a number of cities.⁷⁴ According to Mr. James Hutchinson, Chief of Consumer Services-Public Affairs of the Chicago HUD office, the problem relating to sections 223(e) and 221(d)(2) has now been remedied.⁷⁵ Quite simply, HUD will no longer guarantee a mortgage on a dwelling that has not been raised to building code standards.

HUD PROPERTY DISPOSITION PROGRAMS

Despite its efforts to combat mortgage failures, HUD, as a mortgage guarantor, still becomes the eventual owner of abandoned property pursuant to mortgage defaults from a host of other problems.⁷⁶ The question then arises—what is HUD's role in the battle against abandonment? It is the purpose of this section to discuss the existing HUD property

72. *Id.* § 17151.

73. The cycle began as unscrupulous realtors applied blockbusting measures to homeowners located in declining neighborhoods. Next, the speculator obtained FHA approval for a mortgage guarantee, which was not difficult in light of section 223(e). The realtor then sought an inflated appraisal of the property. At this point, the owner-realtor quite easily located a savings and loan to assume the mortgage since payment was guaranteed by the FHA. The last step in this speculative cycle was finding an unsuspecting buyer. Speculators found it easy to convince poor families to purchase these homes since they were FHA insured. Once the speculator recouped his money from the transaction, the family was left with a home in need of substantial improvements. Because of his lack of capital required to make these major expenditures, the owner allowed the property to deteriorate until he eventually stopped his mortgage payments. Once the mortgage was in default, the private lender foreclosed; and FHA as guarantor paid the lending institution thus acquiring the property. Lilley & Clark, *supra* note 46, at 26-33.

74. Detroit and Philadelphia, in particular, encountered the greatest problems. *Id.*

75. Interview with Mr. James Hutchinson, Chief of Consumer Services-Public Affairs—HUD, in Chicago, October 26, 1973 [hereinafter cited as Hutchinson interview].

76. As of October, 1973, it was estimated that in the Chicago metropolitan area: (1) HUD owned some 2600 units outright; (2) approximately 1800 additional insured mortgages were in default with the mortgage companies where HUD was merely "waiting out" the twelve-month redemption period, 28 U.S.C. § 2410(c) (1970); ILL. REV. STAT. ch. 77, § 18 (1971); and, (3) as many as 8500 more units could be in varying stages of default. Hutchinson interview, *supra* note 75.

disposition programs for single-unit dwellings; evaluate their effectiveness; demonstrate the problems encountered; and propose possible solutions. The disposition problems faced in multi-unit abandonments will also be discussed.

When HUD⁷⁷ acquires abandoned properties,⁷⁸ a protection and rehabilitation plan is implemented. The property disposition branch of HUD, subject to an Area Management Broker contract,⁷⁹ hires an outside agent, an Area Management Broker (AMB). Upon HUD's acquisition of property, the AMB must make emergency repairs, protect the property, and keep it safe and secure.⁸⁰

HUD assigns a realty specialist from its department to work concurrently with the AMB. Initially, they determine whether the property is worth rehabilitating.⁸¹ If worthwhile, generally an independent engineering company in conjunction with the AMB and realty specialist write specifications⁸² to enable the house to meet building code standards. The specifications must then be approved by the HUD realty specialist, and the property is thus ready for disposition.⁸³

In disposing of their acquired properties HUD may follow any one of several alternatives.⁸⁴ First, HUD may dispose of the property by an

77. *Department Of Housing And Urban Depeloment (HUD)*. The term HUD will be used . . . to denote both the local HUD Area or HUD Insuring offices which have prime responsibility for acquiring, maintaining, rehabilitating and disposing of properties acquired in their jurisdictions, as well as the Department as an organizational and policy making entity.

HUD, AREA MANAGEMENT BROKERS GUIDE FOR THE PROPERTY DISPOSITION PROGRAM ONE-TO FOUR-FAMILY PROPERTIES 1 (HM G 4310.5, March, 1972).

78. *Acquired Properties*. An individual property or group of properties acquired by the Secretary of HUD out of the various mortgage insurance and other assistance programs. . . .

Id.

79. *Area Management Broker Contract*. This is a contract between HUD and a broker or other qualified individual to arrange for and supervise the management, operation, repair, rehabilitation, maintenance and rental of properties acquired within the geographic area specified in the contract. These contracts are normally competitively bid. . . .

Id.

80. *Id.* at 17.

81. *See* note 90 *infra*.

82. HUD, *infra* note 85, at 3-1.

83. *Id.* at 17-18.

84. Whenever possible, the first priority of HUD is to rehabilitate and sell acquired properties. Interview with Mr. Robert Goldstaff, Director of Property Disposition Branch—HUD, in Chicago, October 26, 1973 [hereinafter cited as Goldstaff interview].

individual sale.⁸⁵ In this situation, the rehabilitation generally has already been performed under HUD supervision.⁸⁶ Second, subject to HUD guidelines,⁸⁷ the property may be disposed of via a bulk sales program.⁸⁸ This method, as will be discussed later, is specially designed to appeal to the speculative contractor who performs both the rehabilitation and sales function. Third, the property may be sold for cash "as is" to anyone.⁸⁹ The purchaser here takes no warranty, is not eligible for mortgage insurance, and is personally responsible for rehabilitation. Finally, where it has been determined that it is not economically feasible to repair the property, HUD may authorize demolition of a building in order that the land alone may ultimately be sold.⁹⁰

The practicalities of HUD's disposition program have indicated that rehabilitation on a single house basis is often not financially practicable for a small contractor who may be unable to obtain the financing necessary to make improvements. Furthermore, when considered on a house by house basis, some of the housing locations are naturally more appealing to potential buyers than are others. Therefore, it is not surprising that the bulk sales program has provided a workable alternative to HUD in aiding it to dispose of all its properties. This program is designed to lure larger contractors who can obtain financing. Pursuant to HUD regulations,⁹¹ a "package"⁹² of houses in varying locations and stages of disrepair is assembled. HUD requires a minimum bid for this package, and

85. "Individual Sale means a sale of not more than one individual home property at the published price and terms." HUD, PROPERTY DISPOSITION HANDBOOK ONE-TO FOUR-FAMILY PROPERTIES 1 (4310.5, September, 1970, as amended through February, 1973) [hereinafter cited as HUD].

86. See *id.* at 65-66.

87. *Id.* at 134-1 to 134-18.

88. "Bulk Sale means the sale of more than one property to a single purchaser in a single transaction." *Id.* at 1.

89. *Id.* at 67-3 to 68-1.

90. *Criteria for Repairing or Razing Acquired Properties.* Accordingly, disposition programs for properties needing extensive repairs must be based upon a comparison of the anticipated net recovery from the sale of property in a repaired condition with the anticipated net recovery from the cost of razing the property and selling the lot. . . .

Id. at 68-2.

91. See *id.* at 134-7.

92. In establishing the size of a Bulk Sale Package to be offered, the availability and capability of those most likely to bid must be considered, along with the need for prompt completion of rehabilitation work and the level of the ultimate sales demand. . . .

Id. at 134-2.

then oral or sealed bidding takes place.⁹³ The highest bidder must pay ten percent of the "as is" property value initially with the balance to be paid while the work is in progress.⁹⁴ As his reward, the contractor is entitled to the profit (the excess over his cost to achieve minimum Building Code standards and the "as is" value paid to HUD) and the sales commission if he sells the property outright.

One of the most interesting aspects of the bulk sales disposition program has been the community organization involvement. Local housing authorities and nonprofit sponsors generally obtain the contracts through negotiation rather than bidding.⁹⁵ These organizations are then entitled to the profit that the contractors received as discussed above. Often the organization performs a community service by training local personnel to rehabilitate the houses.

One such organization, the Bickerdike Redevelopment Corporation,⁹⁶ was recently formed in the near northwest side of Chicago. The corporation is a not-for-profit, tax-exempt housing organization. It was formed by a group of concerned citizens for the purpose of sponsoring the construction of family homes in the community by rehabilitating abandoned buildings at a low cost. The program also supplies counseling to residents who have recently purchased a rehabilitated building.

According to Mr. Bruce Gottschall,⁹⁷ executive director of the program, HUD has title to almost fifty abandoned buildings within the community. Bickerdike initially purchased three of these buildings for a total cost of \$4,500. After receiving a loan from the American National Bank and Trust Company, the corporation proceeded to renovate these buildings. All construction on the buildings was completed by a local contractor who employed laborers from within the community. After the rehabilitation was completed, the buildings were sold to local residents for an average price of \$20,000. The purchasers were all able to obtain a mortgage guaranteed by HUD. The Bickerdike organization is planning to purchase six additional buildings in the near future. It is hoped that if the program's success continues, it will be a demonstration that the abandonment problem can be mitigated while supplying new and improved housing to the community.

93. See *id.* at 134-8. According to Mr. Robert Goldstaff, Director of Property Disposition Branch—HUD, oral bidding has produced the best results. Goldstaff interview, *supra* note 84.

94. See HUD, *supra* note 85, at 134-8 to 134-12.

95. See *id.* at 134-1.

96. Interview with Bruce Gottschall, Executive Director of the Bickerdike Redevelopment Corporation, in Chicago, Dec. 20, 1973.

97. *Id.*

Given the elaborate guidelines of HUD's disposition programs, the key question relates to their effectiveness. From the consumer's standpoint, the programs are appealing. The home buyer takes the rehabilitated property with the same warranty protections as a newly insured HUD home.⁹⁸ From HUD's standpoint, there have been virtually no problems in *selling* acquired houses.⁹⁹ That is, the disposition programs have worked. However, according to Mr. Robert Goldstaff, Director of Property Disposition Branch, Chicago HUD office, the problems that have been encountered have been twofold.¹⁰⁰ First, the acquisition of new properties has exceeded their disposition thereby creating an inventory backlog for HUD, which presently lacks adequate staff to handle this larger burden. The solution here simply appears to require a greater allocation of HUD resources and personnel. The second, and perhaps the most perplexing problem faced by HUD has stemmed largely from the delayed acquisition of abandoned units.

In Illinois, there is a twelve-month redemption period before HUD can obtain title to property where the mortgagor has defaulted.¹⁰¹ The necessity for allowing a mortgagor to meet his mortgage payments where he has a legitimate reason for falling in arrears is clear. However, abandonment was apparently not considered when the forebearance statute was conceived; and it is in this regard that HUD's programs have been impeded. While HUD, as guarantor of the mortgage must abide by the twelve-month redemption period, this lapse of time can have a devastating effect on both the HUD program and the local neighborhood. While the unsupervised property lies idle, the abandoned unit can be vandalized long before HUD can acquire title. Yet, perhaps the most harmful result is that an abandoned structure is a detriment to the neighborhood.¹⁰²

What then can be done to remedy the problems of delayed acquisition?¹⁰³ First, the legislature must recognize a distinction for redemption

98. *Correction of Defects—Section 235 Sales.* Section 518(b) of the National Housing Act provides for the correction of structural and other defects in a single family dwelling covered by a mortgage insured under section 235.

HUD, *supra* note 85, at 142-1. For warranty procedures concerning bulk sales, *see id.* at 134-16 to 134-18.

99. Hutchinson interview, *supra* note 75.

100. Goldstaff interview, *supra* note 84.

101. 28 U.S.C. § 2410(c) (1970); ILL. REV. STAT. ch. 77, § 18 (1971).

102. *See* discussion accompanying note 7 *supra*.

103. These proposals have been drafted with the assistance of Mr. James Hutchinson, Chief of Consumer Services-Public Affairs—HUD. Hutchinson interview, *supra* note 75.

purposes between abandoned and unabandoned properties. Criteria must be established which enable HUD to acquire a building more rapidly when it has been abandoned. Such criteria may provide for an early "default event" where, subject to notification safeguards, the mortgagor has failed to demonstrate his intent to make up for his arrearage in payments.

In conjunction with a more expedient foreclosure statute, the abandonment period could be further shortened through a co-operative program with local police. Upon the discovery of what appears to be an abandoned structure, police who regularly patrol a neighborhood could be required to turn in an "abandonment report" to a central computer file which in turn would identify HUD insured mortgages. With a rapid notification program such as this, HUD could then begin its inquiry to determine whether the property would qualify for a rapid foreclosure.

The property disposition programs as set forth above have related to single family dispositions. Disposition of multi-family dwellings¹⁰⁴ has not enjoyed the success of the single family units. The reason for the standstill is a basic one. On January 8, 1973, the executive branch of the federal government placed a moratorium on federal housing subsidies.¹⁰⁵ This resulted in the freezing of 221(d)(3)¹⁰⁶ and 236¹⁰⁷ funds. Without provision for rent subsidies, many tenants have now become unable to afford the rent that would be demanded by a newly rehabilitated building. Consequently, both existing and potential landlord-mortgagors of such structures have become economically unable to meet the increased mortgage payments that would be required by rehabilitation. As a result of this freeze, no one can now rehabilitate multi-family dwellings, inhabited or otherwise. In focusing on abandoned multi-family dwellings, the problem is clear. Unless rent subsidy funds again become available to low income tenants, abandoned multi-family dwellings are destined to lie idle.

104. *Multifamily (Project) Property* means any rental property, or combination of properties, consisting of 5 or more living units, . . . and such accessory/commercial structures provided to service the property, acquired as the result of default by a mortgagor on one or more mortgages comprising a single development and insured under any multifamily section or title of the National Housing Act. . . .

HUD, PROPERTY DISPOSITION HANDBOOK MULTIFAMILY PROPERTIES 1 (RHM 4315.1, February, 1971).

105. Speech by George Romney, Secretary of the Department of Housing and Urban Development, Jan. 8, 1973 on file with *DePaul Law Review*.

106. National Housing Act § 221(d)(3), 12 U.S.C. § 1715l(d)(3) (1970).

107. National Housing Act § 236, 12 U.S.C. § 1715z-1 (1970).

URBAN HOMESTEADING—A REMEDY FOR ABANDONMENT

History of Homesteading

On May 20, 1862, the United States Congress enacted the nation's first Federal Homesteading Act.¹⁰⁸ In the pioneer tradition, 160 acres of free land were awarded to anyone who would settle on it for five years. The conditions for the land grant were that the settler (1) be the head of a family or 21 years of age, and (2) be a United States citizen or have filed such a legal declaration.¹⁰⁹ The individual was awarded a certificate of title at the end of the five year period if the land had been cultivated. The purpose of the Federal Homesteading Act was to develop the frontiers and to stimulate the nation's economy. This enactment provided the catalyst for one of the country's greatest mass migrations and generated the transformation of barren lands into productive fields.

Gradually the wastelands became extinct and open space was no longer a plentiful commodity; homesteading became relevant only as a history book topic. "New frontiers" formed in congested urban centers whose densely populated areas generated their own kind of vacancies—not open spaces but abandoned buildings. These structures, in blighted areas of the nation's major cities, turned productive areas into wastelands. Many individuals with a choice fled to the suburbs, allowing the inner cities to decay further. These neglected areas have become America's "new frontiers"¹¹⁰ and municipalities are considering a unique application of the old Homestead Act—urban homesteading.

Each year cities take possession of many homes through gifts, abandonment, tax foreclosures, and other legal processes. Rather than allowing these buildings to reach the point of demolition, some cities have decided to distribute them through homesteading. The recipients are required to live in the homes for a fixed period of years while bringing them up to building code standards. Upon completion of these requirements, title vests in the occupant. Similar to the plan of the 1860's, urban homesteading is not a profit-making venture. It is an attack on waste and uselessness—a fight against urban blight.

While effective treatment of the blight problem requires an organized effort, the federal programs have not proven to be adequate. Municipalities, confronted with abandonment daily, are logical units to treat the

108. An Act to secure Homesteads to actual settlers on the Public Domain, ch. 75, §§ 1 *et seq.* 12 Stat. 392-94 (1862).

109. *Id.*

110. Phrase introduced by Councilman Joseph E. Coleman of Philadelphia, Address by Joseph E. Coleman, Common Council of Detroit, August 21, 1973.

problem. Urban homesteading removes cities from the real estate business while providing needed housing and, hopefully, an increase in tax revenues.

Urban Homesteading—A Modern Day Concept

On May 17, 1973, Wilmington, Delaware became the first municipality in the United States to enact an urban homesteading plan.¹¹¹ The city already possessed many vacant, though structurally sound, homes which could be used to meet the housing shortage and stop the chain of deterioration. Three months later the first ten families were awarded homes by lottery. The applicants came from diversified backgrounds—black and white, young and old, professionals and workers, poor and middle income families. The basic provisions of the Wilmington ordinance can be found in Appendix A.

The house may neither be rented as an apartment nor sold during the three year period. Businesses usually transacted at home may be operated in a homestead house provided the owner resides there. Groups of unrelated individuals are ineligible for the program.¹¹² The many requirements established for the program have not included income qualifications. The primary emphasis on a combination of income and building skills sufficient to complete rehabilitation may make selection difficult. To assure that a qualified applicant is not denied participation in the program, long term low interest loans have been made available; however, these are limited. To stimulate the program, Wilmington has developed a special tax incentive plan. Although the homesteader is responsible for paying annual property taxes, his liability is reduced by subtracting one-half of the increased valuation from capital improvements from the original assessment for a five year period.¹¹³

In Wilmington an organized program of implementation is embodied in section seven of the homestead ordinance which authorizes the mayor

111. WILMINGTON, DEL., CODE ch. 33A (1973).

112. A constitutional issue may be raised by this prohibition. In *United States Dept. of Agriculture v. Moreno*, 413 U.S. 528 (1973), the United States Supreme Court held unconstitutional a 1971 amendment to the Food Stamp Act which made an entire household ineligible for food stamps if one member was unrelated to anyone else. The basis for this decision was a denial of equal protection. Following the same reasoning, the question is whether there is a rational basis for denying a group of unrelated individuals the opportunity to homestead? Why are not groups as capable of rehabilitating property and turning it back to the tax rolls. The classification will probably withstand the equal protection attack, but it will be surprising if the argument is not raised.

113. Tax incentive program was introduced in Wilmington, Delaware last year.

to create a Homestead Board to administer the program.¹¹⁴ This Board considers the soundness and location of buildings, reviews the applications, and, in the case of a number of equally qualified applicants for a particular piece of property, determines the recipient through a lottery. Family size, financial situation, experience as tenants and owners, and building skills are basic considerations in the selection process.

On July 20, 1973, Wilmington's neighbor, Philadelphia, became the second city to enact an Urban Homestead Plan.¹¹⁵ Only one week later over a thousand applications had been received. The provisions of the Philadelphia and Wilmington programs are similar. Minor differences include: the age of responsibility which is shifted from eighteen to twenty-one years of age; the homesteader has two years to bring the property within code standards and must covenant to occupy the structure for a period of not less than five years as compared to eighteen months and three years respectively in Wilmington.¹¹⁶ Although applicants are aided in applying for financial assistance, Philadelphia's program has an additional economic barrier. The potential purchasers must bid on the properties in an amount not less than one dollar¹¹⁷ and, if the highest bid is chosen, poorer applicants may not be considered. This result depends on how "best bid" is defined.¹¹⁸ The taxes on property improvements are abated for five years as an additional incentive.¹¹⁹ Joseph E. Coleman, the sponsor of the homesteading act, recognized that all levels of government and private institutions must be involved in the decision-making process.¹²⁰ Therefore the Philadelphia program authorized the establishment of Community Homesteading Areas.¹²¹

The homesteading program enacted in Baltimore is run by the City Owned Property Management Unit. Similar to the previously discussed plans, structural soundness and location are the criteria utilized in selecting homes for the program. A homesteader in Baltimore must be a United States citizen or registered alien, eighteen years of age or older, and the head of a household. In order to receive full title, the applicant must live in the house for eighteen months while bringing it up to code

114. WILMINGTON, DEL., CODE ch. 33A, § 7 (1973).

115. PHILADELPHIA, PA., HOMESTEAD ORDINANCES § 1, July 20, 1973.

116. *Id.* § 6E; WILMINGTON, DEL. CODE ch. 33A, § 4 (1973).

117. PHILADELPHIA, PA., HOMESTEAD ORDINANCE § 6F(c), July 20, 1973.

118. *Id.* § 6G.

119. *Id.* § 6J.

120. Address by Joseph E. Coleman, Common Council of Detroit, August 21, 1973.

121. PHILADELPHIA, PA., HOMESTEAD ORDINANCES § 1, July 20, 1973).

standards. As in Wilmington, a lottery is utilized for selection among equally qualified applicants.

Financial assistance is available through city, state, federal and private programs.¹²² During the first eighteen months, the homesteader pays no rent or property taxes. The rental and business restrictions are the same as those found in Wilmington's ordinance.

Due to the tremendous initial response to homesteading in Baltimore, the city has begun a policy of "Open Houses" for property inspection prior to purchase. This method allows prospective homesteaders to better understand the type of property they are buying.¹²³

Problems Inherent in the Homesteading Concept

On paper the homesteading ordinances of Wilmington, Philadelphia, and Baltimore appear to be useful tools to meet the housing shortage. But as attractive as the idea of homesteading might appear, there are certain problems inherent in the concept. One of the most basic is that the city must own the dwellings it distributes. Such a requirement is complicated by state statutes permitting a delinquent taxpayer to redeem his house for a two-year period after foreclosure.¹²⁴ Thus a house, commercially feasible for rehabilitation at the beginning of the two years, may not be in such a condition at the termination of the redemption period. The redemption period on mortgages poses HUD with a similar problem¹²⁵ in its disposition program. Changing the time frames may facilitate greater success in the city's attempt to obtain title, but this must be balanced against the knowledge that these same time frames are a protection to the innocent property owner. Somewhere a happy medium must be struck.

A second area of concern is that homes under this program must be in areas "suitable for rehabilitation." The recipient of a "free home" presumably is concerned with the schools, the safety, the transportation and the neighborhood itself. The homes may have been abandoned because the neighborhoods were too dangerous and neither the land nor the house were of much economic value. Improving one home on such a block would not be much of a solution to the housing dilemma.

122. A city bond program has already provided two million dollars for rehabilitation loans. See U.S. NEWS AND WORLD REPORT, Nov. 5, 1973, at 44.

123. Appendix B is a sample of a preliminary application.

124. In Illinois, ILL. REV. STAT. ch. 120, § 734 (1971).

125. 28 U.S.C. § 2410(c) (1970); ILL. REV. STAT. ch. 77, § 18 (1971). See discussion accompanying notes 101-107 *supra*.

Financing is another major problem. Rehabilitating a slum building can be a rather costly proposition. Contractor estimates in Wilmington have ranged from \$5,000 to \$20,000; renovation estimates in Baltimore have been as high as \$15,000 to \$20,000 for a contract job and \$7,000 to \$8,000 for an individual using his own skills. How many individuals are capable of repairing their own homes? Balancing limited low interest loans against prohibitive contract costs is a difficult proposition. Because the costs of repairs may be very high, homesteading may develop into a vehicle only for those with means. Unfortunately, financing problems are considerable for those who need housing the most—the very poor.¹²⁶ If everyone could afford decent housing, homesteading would not even be necessary. Urban homesteading should be directed against the housing shortage. Phrases such as “equally qualified” applicants and the “best bids” are only too indicative of the overwhelming economic factors involved. How will these determinations be made and how can one insure that they will be made fairly? An individual will not be motivated to rehabilitate when his costs exceed the selling price of houses in the area. And in any event, a high percentage of abandoned housing is off the market because it is beyond repair at any reasonable cost.

Urban homesteading is promoted as the attack on urban blight. Although the initial response has been overwhelming, public officials have no assurance that this response will continue. A great many homesteaders are needed to make a dent into urban decay. One method of assuring continual progress in renovation is by providing for periodic inspections by city agencies;¹²⁷ however, these tours may be subject to attack as an invasion of privacy.¹²⁸ There are vagueness problems within the ordinances themselves. What does “reasonable, satisfactory progress” in rehabilitating mean?¹²⁹ What standards are used and to whom is the decision appealable? Or is it? Although there is not complete vesting of title until the conditions precedent are met, the potential owner should still not be deprived of the property without due process of law.¹³⁰

126. In mid-January, Wilmington disclosed that many poor individuals have been unable to obtain loans for rehabilitation. Banks are reluctant to lend money to homeowners who will not actually own their homes for three years. William Henry Ceaser, a fifty-two year old longshoreman, returned his homestead to the city because of his concern about renovation expenses. 40 *PLANNING*, Feb., 1974, at 3.

127. WILMINGTON, DEL., CODE ch. 33A, § 4(4)(b) (1973); see Appendix A *infra*.

128. U.S. CONST. amend. IV. See generally A. Westlin, *Privacy and Freedom* (1967).

129. WILMINGTON, DEL., CODE ch. 33A, § 4(4)(b) (1973); see Appendix A *infra*.

130. U.S. CONST. amend. V.

An area which homesteading overlooks is abandoned multi-unit dwellings. The programs enacted are concerned with houses as potential residences for single family and individual ownership. In many metropolitan areas such as Chicago, abandoned apartment buildings are quite prevalent. Perhaps a program could be developed to homestead these buildings by the use of a resident landlord: allowing a qualified individual to move into the building with the stipulation that he bring it up to code standards within a specified period of time. After meeting certain minimal standards, the homesteader could rent out the apartments. By requiring the lessor to live in the building, some of the problems of absentee landlordism would be avoided. However if low-income individuals may not even be able to afford to homestead a single-family unit, what success will they have with an apartment building? It may only be the rich who prosper under this concept. A better alternative might be to homestead the individual apartments, thus approaching the concept of low-income cooperatives or condominiums.¹³¹ After meeting code standards and residency requirements, the homesteader would own his particular unit. At the least, the idea of homesteading urban apartment buildings should be given consideration.

Homesteading is not a miracle cure. The success or failure of the program depends upon both the homes and the homesteaders selected. The ideal situation is to encourage purchasers who are realistic about the opportunities of the venture. Although the "free" house and the tax incentives provide financial "breaks" for the city settler, he is still not receiving the absolute bargain the idea first connotes.

Houses are abandoned because cities are declining. The success or failure of the urban homesteading idea, in the long run, probably depends upon what happens with center-city employment. In cities where it remains stable, or rises, it will work. Where there are no jobs, it will fail.¹³²

Despite the problems inherent in homesteading, the initial effort is commendable. To allow the decay of abandoned buildings beyond repair is no solution. Although in some situations demolition may be more practical, it should not be a policy indiscriminately applied.¹³³ No one expects the overnight transformation of neighborhoods. With the current housing shortage, the cities cannot afford *not* to rehabilitate these areas. By presenting individuals with ambition and desire the opportunity to own property, some small "miracles" may occur. Homesteading in the 1860's

131. For an excellent discussion of low-income cooperatives *see* Note, *Low-Income Coops: A Solution to Abandonment*, 17 N.Y.L.F. 148 (1971).

132. Chicago Sun-Times, Nov. 18, 1973, at 80, col. 1. Quote by George Sternlieb.

133. Experience has shown that more housing is demolished than is rebuilt.

had a profound effect on this country and certainly deserves another chance. What better alternatives are there? The development in Wilmington and elsewhere will be watched closely. In the battle against urban blight, homesteading may indeed prove to be one of the key weapons.

Homesteading in Chicago?

Cities across the nation have been experimenting with urban homesteading as a remedy to the abandoned housing problem; Chicago also might well consider such an approach. Recent developments indicate a promising future. The United States Department of Housing and Urban Development has made 200 acquired homes available to the city at \$1.00 each for possible use in a homesteading program. HUD officers have discussed the proposal with city officials who must take the next step. The city has not bought any of these properties as of yet; and further negotiations are necessary.¹³⁴ Unfortunately, this program would be subject to the economic problems experienced elsewhere: the commercial feasibility of rehabilitation and the availability of low interest home improvement loans. By studying the experiences in other cities, Chicago may learn how to overcome these problems.

In addition to purchasing HUD houses, Chicago can acquire homes through other means.¹³⁵ An individual may be willing to deed the prop-

134. Interview with Mr. Robert Goldstaff, Director of Property Disposition Branch—HUD, in Chicago, March 6, 1974.

135. Eminent domain is one such means which can be used. It is comprehensively covered in several treatises, I. LEVEY, CONDEMNATION IN U.S.A (1969); J. LEWIS, A TREATISE ON THE LAW OF EMINENT DOMAIN IN THE UNITED STATES (2d ed. 1900); P. NICHOLS, THE LAW OF EMINENT DOMAIN (rev. 3d ed. J. Sackman & P. Rohan 1970) [hereinafter cited as NICHOLS, EMINENT DOMAIN].

Several other statutory powers are available in Illinois which can be used for both the elimination and prevention of slums and blighted areas. They bear mentioning, particularly because it is through challenges to these laws that the concept of "public use" has expanded in Illinois. The statutes include: the Neighborhood Redevelopment Corporations Law, ILL. REV. STAT. ch. 67½, §§ 251-294 (1971), which grants neighborhood corporations the power of eminent domain; the Blighted Areas Redevelopment Act of 1947, ILL. REV. STAT. ch. 67½, §§ 63-91 (1971), the statute under which the Chicago Land Clearance Commission operates; the Urban Community Conservation Act, ILL. REV. STAT. ch. 67½, §§ 91.8-91.16 (1971), especially § 91.13 which grants the power to acquire by purchase, condemnation or otherwise any improved or unimproved property; and, the Urban Renewal Conservation Act of 1961, ILL. REV. STAT. ch. 67½, §§ 91.101-91.136 (1971). Eminent domain is a power inherent in all sovereigns and is regulated in Illinois by art. I, § 15 of the state constitution and the Eminent Domain Act which begins, "Private property shall not be taken or damaged for public use without just compensation. . . ." ILL. REV. STAT. ch. 47, §§ 1 *et seq.* (1971). The legislature, in turn, may confer this power on municipalities or "public" corporations. *City of Edwardsville v. County of Madison*, 251 Ill. 265, 96 N.E. 238 (1911).

erty over to the city rather than having a unit demolished. The municipality, however, is often not a willing recipient.¹³⁶

Undoubtedly, the most important and most widely litigated aspect of eminent domain in relation to the abandonment problem is the general principle that private property can only be taken by this power when needed for *public use*. 2A NICHOLS, EMINENT DOMAIN § 7.1. Definitions of the term "public use" have varied greatly. The most limited one is that property taken by eminent domain must literally be taken for "use by the public" or for use in common (e.g., public highways, parks, schools), and not for use by a particular individual. Early Illinois cases followed this limited view.

It is also the settled doctrine of this court that to constitute a public use, something more than a mere benefit to the public must flow from the contemplated improvement. The public must be to some extent entitled to use or enjoy the property, not as a mere favor or by permission of the owner, but by right.

Gaylord v. Sanitary Dist. of Chicago, 204 Ill. 576, 584, 68 N.E. 522, 524 (1903). See also Litchfield & M. Ry. Co. v. Alton & S. R.R., 305 Ill. 388, 137 N.E. 248 (1922); Sholl v. German Coal Co., 118 Ill. 427, 10 N.E. 199 (1887).

Some later cases enlarged the definition of public use to encompass public purpose, specifically, the purpose of *eliminating* slums and blighted areas. See, e.g., Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945). This expansion has been based on the idea that the legislature defines public use or purpose, Berman v. Parker, 348 U.S. 26, 33 (1954); Zurn v. City of Chicago, 389 Ill. 114, 59 N.E.2d 18 (1945), and the courts decide whether the "use" is in fact within the legislative discretion. Dept. of Public Works & Bldgs. v. Farina, 29 Ill. 2d 474, 477, 194 N.E.2d 209, 211 (1963); Poole v. City of Kankakee, 406 Ill. 521, 94 N.E.2d 416 (1950). In 1958, the Illinois Supreme Court stated that, "Public purpose" is not a static concept. It is flexible, and is capable of expansion to meet conditions of a complex society that were not within the contemplation of the framers of our constitution." People *ex rel.* Adamowski v. Chicago R.R. Terminal Authority, 14 Ill. 2d 230, 236, 151 N.E.2d 311, 314 (1958).

This flexible, expansive concept can be of great value to any municipality desirous of condemning abandoned property to permit redevelopment of an area to alleviate the housing shortage. Indeed, it is in this area of law that the greatest expansion of "public use" has occurred. The Illinois Supreme Court has often held not only that the taking of property for the *elimination* of slums and blighted areas is a valid public purpose, People *ex rel.* Adamowski v. Chicago Land Clearance Comm'n, 14 Ill. 2d 74, 150 N.E.2d 792 (1958); People *ex rel.* Gutknecht v. City of Chicago, 414 Ill. 600, 111 N.E.2d 626 (1953); Chicago Land Clearance Comm'n v. White, 411 Ill. 310, 104 N.E.2d 236 (1952); Cremer v. Peoria Housing Authority, 399 Ill. 579, 78 N.E.2d 276 (1948), but also that the taking of property for the *prevention* of slums and blighted areas is valid as well. People *ex rel.* Gutknecht v. City of Chicago, 3 Ill. 2d 539, 543, 121 N.E.2d 791, 798 (1954); Zisook v. Maryland-Drexel Neighborhood Redevelopment Corp., 3 Ill. 2d 570, 121 N.E.2d 804 (1954).

136. Any county with a population of over 1,000,000 may conduct a sale of real property for delinquent taxes. ILL. REV. STAT. ch. 120, §§ 719 *et seq.* (1971). The delinquent taxpayer has a two year redemption period from the date of the sale. *Id.* § 734. Property not bid upon is forfeited to the state. *Id.* § 727. Although the city may be the purchaser at such a sale, *id.* § 725, it is not anxious to become a landlord. If the new owner of a building fails to repair or demolish it, the Department of Law has authority to do so. CHICAGO, ILL. MUNICIPAL CODE § 39-12 (1973). In actuality, the city's policy has been one of *carte blanche* demolition

Other Remedies

Whether or not the city decides on homesteading, other techniques could be used to bring property back onto the tax rolls. The city loses a substantial amount of tax revenue yearly because the real estate taxes on many inner-city properties are not paid. The properties often do not generate enough income to meet the tax costs; yet improved property usually means an increase in assessments. Mr. Stanley Gore, a Chicago attorney, has proposed a program of tax incentives to overcome this problem.¹³⁷

Under this program a tax moratorium would be declared on properties being improved in depressed areas for five years. The owner would be required to post a surety bond in order to qualify for the tax abatement. The property would continue to be assessed annually during the tax freeze, but there would be no increase in valuation because of the capital improvements. At the end of the five year period, assuming the improvements were made, the accrued taxes would either be abated in proportion to the cost of refurbishing or a tax credit allowed for the same amount. In either case the individual receives a tax break. This program would place properties back on the tax rolls and "generate a positive cash flow."¹³⁸

While admitting that there might be opposition to such a program, Mr. Gore explained that rather than considering this program a subsidy, one could view it as relief for those already burdened by an inequitable amount of taxes. Through use of a tax incentive, this burden would ultimately be reduced because of the increased tax revenue.

Tax incentive legislation should withstand a constitutional attack under the same rationale used in *Schreiber v. Cook County*.¹³⁹ In that case, the Illinois Scavenger Act's¹⁴⁰ constitutionality was challenged under the

rather than rehabilitation. A demolition order, *id*, may be entered against a building deemed a public nuisance. *Id.* § 99-4; ILL. REV. STAT. ch. 24, §§ 11-60-2 and 21-20 (1971). If the city pays for the demolition, it acquires a lien on the property. CHICAGO, ILL., MUNICIPAL CODE § 39-12 (1973). Although the municipality can exchange the lien for title to the property, it usually does not initiate these proceedings.

137. New York has already enacted this type of legislation whereby an increase in assessments from improvements to blighted areas is exempt from taxation for no more than twelve years. N.Y. REAL PROPERTY TAX LAW § 489 (McKinney 1972).

138. Interview with Mr. Stanley Gore, in Chicago, Ill., Dec. 3, 1973.

139. 388 Ill. 297, 58 N.E.2d 40 (1944).

140. Under the Illinois Scavenger Act, ILL. REV. STAT. ch. 120, § 716(a) (1971), the county collector has the authority to sell the property on which taxes

theory that there must be equality and uniformity in the levying of taxes. In rejecting the challenge, the court said:

Property on which taxes have been paid in full are relieved of some of the burdens of taxation by the realization of a part, rather than none, of the delinquent taxes, and by restoring the delinquent properties to the tax rolls so that they may share their proportion of the burden of taxation in the future . . . The purpose of section 235a, being to relieve other properties from these inequities and to confer an advantage, cannot be held invalid on the ground of violating the uniformity rule, when the very purpose of it is to obviate any want of uniformity in the future by restoring properties to the tax rolls through a process which necessity requires and expediency permits.¹⁴¹

A tax incentive program supported by this rationale could be utilized either to prevent or to end abandonment.

At present a tax moratorium in Chicago may be a more practical remedy to abandonment than homesteading because it would be easier to implement. Such legislation could be passed under the home rule power.¹⁴² If homesteading, however, were enacted in Chicago, the tax program could easily be incorporated within it. The benefits the moratorium offers would eventually be reaped by all property owners.

CONCLUSION

This study has made it clear that abandonment is a complex process which includes the inflow and outflow of residents, property exploitation, disinvestment, desertion of premises by tenants, as well as other accelerating social and economic factors. With this in mind, the analysis of key present and proposed remedies has indicated a diligent attempt at both federal and local levels to deal with abandonment.

On the federal level, property disposition programs under HUD supervision appear to have been mildly effective. On the local level, homesteading appears to be a viable remedy with unique problems. City cooperation is crucial, and there must be adequate funds available for rehabilitating the homes. Despite the problems inherent in homesteading, it is a remedy for abandonment which should not be ignored. Although it is too soon to determine the success of the program, the potential of homesteading is already apparent. In conclusion, none of the obstacles confronting abandonment remedies appear to be insurmountable provided

have been delinquent for ten or more years to the highest bidder for cash. A confirmation of the sale extinguishes any tax lien.

141. 388 Ill. at 304, 58 N.E.2d at 43-44.

142. ILL. CONST. art. VII, 6(a).

that energies and priorities are channeled toward the elimination of problems early in the abandonment process.

Roslyn Corenzwit Lieb
Richard A. Merel
Alice S. Perlin
Michael B. Sadoff
Neal Taslitz

APPENDIX A

WILMINGTON, DELAWARE—HOMESTEADING ORDINANCE

SECTION 4. Homestead Program property will be offered to qualified applicants at no initial cost on a conditional deed basis provided that the applicant:

- (1) Is eighteen years of age and is the head of a family.
- (2) Is a citizen of the United States or a registered alien.
- (3) Prove financial and know-how ability to rehabilitate an existing dwelling or construct a new dwelling, as the case might be.
- (4) Has contractually agreed to rehabilitate or construct on, as the case might be, the parcel assigned to him and further agrees to:
 - (a) Bring the assigned parcel up to Wilmington City Code standards within eighteen months after assignment of the parcels to him; and
 - (b) Permit periodic inspections by the Department of Licenses and Inspections, but not more often than once during any three month period, for a determination by that Department of whether reasonable, satisfactory progress is being made by the applicant in rehabilitating or constructing on the parcel assigned to him; and
 - (c) Surrender and quit the assigned parcel in a condition at least equal to that when first assigned upon 30 days notice by the Department of Licenses and Inspection when, as a result of a periodic inspection, that Department determines that the applicant has become unable or unwilling to proceed reasonably or satisfactorily toward fulfilling the objectives and conditions of this Section; and
 - (d) Live in, occupy, and maintain as a single family dwelling to City Code standards the parcel assigned to him for a period of not less than three years.

WILMINGTON, DEL., CODE ch. 33A, § 4 (1973).

APPENDIX B

BALTIMORE, MARYLAND

APPLICATION TO PURCHASE HOMESTEAD PROPERTY

INSTRUCTIONS: Please fill out this application. More information will be taken at an interview where you can clarify the answers you give here.

Name: _____
 Address: _____ Rent _____ Own _____
 City: _____ State: _____ Zip: _____
 Previous Address: _____
 Home Phone: _____ Business Phone: _____
 Age: _____ No. in Household (Include Self) _____
 Spouse's Name _____ No. of Dependents _____
 Your Employer: _____ How Long: _____ Salary _____
 Address: _____ City: _____ State _____
 Spouse's Name _____ How Long: _____ Salary _____
 Address: _____ City: _____ State: _____

List source and amount of other income:

Monthly Installments	Amt. Per Month	Remaining Mos.
_____	_____	_____
_____	_____	_____
_____	_____	_____

Bank References:

BANK	ACCOUNT NUMBER	TYPE	BALANCE
_____	_____	_____	_____
_____	_____	_____	_____

List Choice of Houses: 1)
 2)
 3)