

THE LOW INCOME CONDOMINIUM
A NEW APPROACH TO HOUSING

In 1934 Congress passed the National Housing Act.¹ Part of the New Deal legislation, it was intended to alleviate sub standard housing and better the living conditions of all Americans. Today such a commitment has taken on a much greater significance; for in the failure to live up to such promises we have sown seeds which have grown into our current winter of discontent. As stated by the Kerner Commission in its 1968 report, for residents of the decaying slums of our central cities, "the goal of a decent home and suitable environment is as far distant as ever."²

This paper will examine one of the most significant of the new proposals in the field of public housing -- the application of the condominium concept to low and moderate income housing, with the result of homeownership by the lower economic classes. The New Jersey Commission on Civil Disorders made such homeownership its first recommendation in the housing section of its report.³

Until recent years, the ready answer to every housing

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1. 12 U.S.C. 1701 et seq.
 2. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968) at 257; New York Times edition at 467.
 3. REPORT FOR ACTION, Governor's Select Commission on Civil Disorders, State of New Jersey (1968) at 167.

problem for low and moderate income classes has been low rent public housing. The result has been to tightly confine poor and substandard housing in particular areas and to greatly restrict the development of anything other than the familiar brick apartment building with a minimum of attractiveness and a maximum of standardization. The social implications of such confinement have been all too painfully made known to us in the past few summers.

Over the past decade, however, various programs have emerged which have attacked these limitations. As a result of such programs as turnkey housing⁴ and rent supplements,⁵ for example, much greater imagination is being used in building residences for lower income families, and the depressing atmosphere of standardized housing has been avoided.

Emerging as one of the principle ways of providing more housing is the rehabilitation of existing substandard and deteriorated housing. Widely publicized was the New York City experiment in which prefabricated units were installed

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4. Under the turnkey concept, a private builder acquires the land and erects the building, whereupon he sells it to the governmental agency involved (usually a local housing authority) under a contract signed before acquisition and construction began.
 5. Rent supplements are payments by the government to the lessor of the difference between the rent and what the tenant (usually relocated to that apartment) is able to pay. By providing for leasing from private owners at rents they require, this program affords an opportunity to avoid the separation of races which ordinarily accompanied public housing.

in the "shell" of a building which had been left standing.

Rehabilitation of existing buildings is one of the most promising ways to provide needed housing. For example, a Rutgers University sampling estimate found 4,700 vacant housing units in the city of Newark. Of these approximately half were considered available for renting, although two-thirds of the available units were in poor condition.⁶ Since 1940 the Housing Authority of the City of Newark has built 10,721 apartment units in 17 projects.⁷ Thus it can be seen, that if rehabilitation could make all of these vacant units available, this would provide almost half the total number of units constructed in the past thirty years. Comparative costs will be subsequently considered.

The commitment made in 1934 and renewed periodically was to provide housing for all Americans. Homeownership is one of the most basic and essential elements of such a policy. In testimony before the House Committee on Banking and Currency, Secretary of Housing and Urban Development Robert C. Weaver said:

Today, homeownership is out of reach for most low and moderate income families. Yet, it remains the goal toward which many American families strive. To own one's home is to have a sense of place and purpose. Homeownership creates a pride of possession, engenders responsibility and stability. Until now,

6. REPORT FOR ACTION, supra note 3, at 58.

7. 1968 ANNUAL REPORT, Housing Authority, City of Newark, at 22.

however, Federal help to low and moderate income families to achieve home ownership has been very limited.⁸

This pride of possession and responsibility of ownership are the most important psychological factors in the concept. What is being attempted, in effect, is to take the basic human values implicit in ownership and transfer them from chattels to the real property of a home. Thus will be blunted, it is thought, the deterioration which seems almost inherent in low rent public housing.

There are two basic formulas to accomplish such home-ownership in multiple dwellings: the stock cooperative and the condominium. In the stock cooperative, a corporation holds title and each tenant is a shareholder with a proprietary lease. The corporation is the mortgagor and is directly responsible for taxes. Monthly payments are made to the corporation, which include cost of maintenance, etc. Approval of the board of directors is required for any sale of the stock (or apartment).

Every state has now enacted a statute which establishes the right of ownership of horizontal property, i.e., a condominium.⁹ These statutes are directed to allow individual

8. Hearings on H.R. 15624 before the Committee on Banking and Currency, 90th Cong., 2nd Sess., pt. 1, at 62.

9. See, e.g., N.J.S.A. Sec. 46:8A-4. For a general history of the condominium, see Cribbet, Condominium - Home Ownership for Megalopolis, 61 Mich. L. Rev. 1207 (1963).

ownership of a single unit in an apartment building. In such individual ownership lies the primary advantage over the cooperative: the responsibility is the owner's alone. Thus is avoided the problem of possible loss if the other stockholders of the corporation default in their payments. Since the condominium is a more attractive security to a lending institution than stock in a cooperative, a mortgage will be more readily available.

Title I of the Housing and Urban Development Act of 1968¹⁰ is specifically directed to the broad initiation of a homeownership program for the lower income levels.¹¹ Sections 101 and 105 of the Act are the provisions most directly involved.

Briefly summarized, Section 101 adds a new section to Title II of the National Housing Act, establishing a homeownership assistance program. It provides for periodic payments to mortgagees on behalf of homeowners where the mortgage is insured under certain other sections of the Act or on behalf of cooperative members in a new or rehabilitated project. Assistance payments under the new program are to be equal to the difference between the required monthly mortgage

10. P.L. 90-448, 82 Stat. 476.

11. Many other areas in housing are covered by the Act. For instance, Title II deals with rental housing, Title III with F.H.A. insurance modifications, Title V with urban renewal, Title VII with mass transportation, and Title X with rural housing.

payments (including insurance and taxes) and twenty percent of the homeowner's monthly income. The maximum assistance payment is the difference between the required monthly payment and a monthly payment at one percent interest. The amount of the subsidy would vary with income. For the most part, families with incomes in the general range of \$3,000 to \$7,000 will benefit, with income recertified every two years. The minority report of the House Committee had recommended that only those families with incomes below \$5,000 be helped initially since seventy-five percent of the country's substandard housing in 1960 was occupied by families with incomes of \$4,000 or less.¹² The mortgage could not exceed \$15,000, or \$17,500 in high cost areas (\$17,500 and \$20,000 for larger families). The Department of Housing and Urban Development estimates an average subsidy in the area of \$50 per month.¹³

Section 105 of the 1968 Act adds two new subsections to Section 221 of the National Housing Act. Generally, it permits below-market interest rate rental projects¹⁴ to be

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12. Supplemental Statement of the Mortgage Bankers Association of America, reprinted in Hearings on H.R. 15624, supra note 7 at 293.
 13. For a comparative chart on the estimated monthly assistance payments, see House Report No. 1585, reprinted in 1968 U.S. Code, Congressional and Administrative News at 2880.
 14. Most current public housing projects are built under section 221(d)(3) which allows money to be borrowed for construction mortgages at interest rates below the going market rate.

converted to condominium or cooperative ownership.

Title I also provides for such related areas as credit assistance,¹⁵ relaxation of mortgage insurance requirements in certain urban neighborhoods,¹⁶ and the information and advice necessary for these families to assume hitherto unknown responsibilities of ownership.¹⁷ By thus easing the transition to a new life, the Act seeks to guarantee some measure of success in the program.

Cost is, of course, a most critical factor. A rehabilitation experiment in the slums of New York City resulted in a total cost of \$9,320 per unit, including acquisition and complete rehabilitation of three buildings.¹⁸ The New York City Housing and Redevelopment Board has projected a cost of \$5,400 per unit for radically rehabilitating 5,000 units in a two unit building; \$6,000 per unit for a five unit, three story masonry structure; and \$7,600 per unit for a twenty-five unit, six story building including installation of an elevator.¹⁹ The actual acquisition and rehabilitation would

15. Section 102.

16. Section 103.

17. Section 106.

18. All of the figures of the New York City experiment are found in Quirk, Wein and Gomberg, A Draft Program of Housing Reform - The Tenant Condominium, 53 Cornell L. Rev. 361 (1968). The first two authors were officials in the New York City Housing Authority.

19. These estimates are exclusive of acquisition cost.

be done by a nonprofit corporation created for that purpose; such a corporation could be organized under local, state, or federal law.²⁰ Rehabilitation of existing housing is more advantageous than the construction of new housing in that it is less expensive, may be completed faster, and can more widely distribute low income housing rather than concentrating it in a single neighborhood.

The cost of new construction under Newark's general urban renewal program, for example, has averaged from approximately \$11,500 per unit to \$17,000 per unit.²¹ This includes the cost of apartments occupied by middle and upper-middle income classes. An advantage of new construction is that it allows building according to recent sociological findings and recommendations, such as that high-rise apartments, which are extremely suitable for childless or retired persons, have a harmful effect on children brought up in such buildings.

Whether by new or rehabilitated housing, it should be noted that homeownership puts valuable property back on the

20. The National Home Ownership Act, popularly known as the proposal of Senator Charles Percy, Illinois, would have set up a national nonprofit corporation with authority to issue two billion dollars in federally guaranteed debentures which would be loaned to a local nonprofit corporation for actual rehabilitation. Its defeat is commonly attributed to political pressures.

21. These figures are based on the number of units in a project, regardless of the size of the unit, and the total cost of the entire project.

tax roles of a city. It has been estimated that up to one-third of the property in Newark, for example, is tax exempt for various reasons. The benefit of such added revenues need not be explained.

If, indeed, decent housing for every American is a national goal, as has been repeatedly stated since 1934, we must realize that present programs have proven inadequate and that bold initiative must be provided. The low-income condominium should not be considered a panacea. However, the promise it provides not only for added tax revenues, and a needed increase in available housing, but also for participation in our society by the poor and disadvantaged presents an opportunity which cannot be passed up. Immediate action by state and local governments to implement and carry through such programs is required. The starting point must be commitment to the ideal of the best possible housing being made available to all Americans.

William C. Carey