

THE USE OF HOUSING RECEIVERSHIPS  
AS A TOOL FOR NEIGHBORHOOD REVITALIZATION

by  
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## Thesis Abstract

This paper examines the feasibility of using housing receiverships as an instrument for community development. It examines the institutional and financial constraints within which properties in receivership operate. The development of the receivership concept is examined in detail. Receivership laws in New York and Massachusetts are described. Three case studies of properties in receivership in Boston provide a basis for an analysis of the generalizability of the receivership instrument. The characteristics of the actors involved in the receivership process is described. An interim receivership strategy for community organizations is proposed. The paper concludes with a discussion of policy issues and an acknowledgement that legislated reforms would have to be made to the State Sanitary Code before receiverships could become widely applicable.

Thesis Adviser: Phillip L. Clay

Para Elba, por su carino y apoyo

To Phil Clay, for his guidance and support

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## CHAPTER 1: INTRODUCTION

Housing receivership is a rarely used remedy for sanitary code violations. It takes control of a property away from an owner and invests it in an expert in housing management, or in some cases, in the tenants. The subject of this paper is the feasibility of converting this legal remedy, which currently has limited applicability, into the foundation of a strategy for community development. In this chapter we will develop a rationale for doing so.

A brief analysis of sections of two neighborhoods, Dorchester and Roxbury, will reveal the seriousness of housing problems in certain areas of Boston. In the Upham's Corner section of Dorchester, which comprises the neighborhoods Columbia-Point, Columbia-Savin-Hill, Brunswick-King, Uphams Corner-Jones Hill, and Dudley, 929 properties were built between 1970-1978. However, in the same period, 2302 properties were demolished, for a net loss of 1373 units. In addition, there were 170 vacant units in the neighborhood in 1978. The loss in the number of units represents 10% of the housing stock in the area in 1970. (1) In the Fields Corner section of Dorchester, the situation was not quite as bad. Between 1970 and 1978, the housing stock diminished by only 1,285 units, which left 25,383

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(1) Boston Redevelopment Authority, Dorchester, Uphams Corner District Profile and Proposed 1979-1981 Neighborhood Improvement Program, 1979  
9, p.11

standing in 1978. (1) In Roxbury, in the areas known as Sav-Mor and Lower Roxbury, 1,012 units were demolished while only 187 new units were built. Thus, there was a net loss of 825 dwelling units. This figure represents 25% of the available units in 1970 in the area. It is interesting to note that during the same period, the number of housing units in Boston as a whole increased from 232,406 to 241,897. (2) The meaning of the above figures for the two neighborhoods is clear enough; housing is being lost through deterioration and it is not being replaced by new housing.

The need for a different approach to housing problems, especially now that subsidies to create new housing are fast disappearing, is clearly evident. The obvious answer is to improve the housing stock that currently exists. The problem is that owners of multi-family housing are not able to, or are not interested in improving their properties. Much of the problem stems from the fact that multi-family housing and owner occupied housing respond to different dynamics. Because owner-occupied housing is meant for personal use, it does not obey market laws in the same way as multi-family housing does. Owners invest in housing they occupy because it may provide non-economic benefits, such as a better living space. In multi-family housing, most owners are interested almost exclusively in their rate of return.

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(1) Boston Redevelopment Authority, Dorchester, Fields Corner District Profile and Proposed 1979-1981 Neighborhood Improvement Program, 1979, p.5

(2) *ibid.*

An owner will usually not invest if the market conditions in a particular neighborhood will not allow the value of the property to appreciate. Furthermore, there is usually very little incentive to improve a property if the rents cannot be raised. The rents usually cannot be raised significantly unless there is a strong demand for the housing in question in that neighborhood. These market forces are likely to exist precisely where housing problems are most severe.

Thus, the problem with improving housing which is already occupied is not just one of money but of incentive as well. Receiverships offer one opportunity to combat the problem of incentive. If the person with effective control of the property also lives in the property, in the case of tenant receivers, it is less likely that they will be concerned with the market impacts of improvements. It is more likely that they will wish to improve their living space. This is even more so if control is seen to lead to eventual ownership.

From the point of view of the communities trying to drive out slumlords, receiverships offer an opportunity to capture rental income, which would never be reinvested in the property, and which would probably leave the neighborhood. A carefully fashioned receivership strategy would allow the community to intervene in a property before it becomes so deteriorated that it must be abandoned. Abandonment would drive out tenants from the community and reinforce the process of decline in a neighborhood. Receivership gives the community some control over neighborhood dynamics.

A great advantage of a receivership strategy is that it is people oriented. Housing programs usually concentrate on the physical aspects of development. Structures are created or restored and rented to tenants according to some prescribed plan. Invariably, the tenants are carefully selected so that they are "safe". The main emphasis of a receivership strategy is on helping tenants who are already in a property, even if they are problem tenants.

Our examination into the issue of receivership demands that we develop some criteria to judge the relative success of each case. It should be noted that the purpose of receivership is to bring a property up to code. In the first instance, success must be measured by the ability to develop a property without evicting tenants. Based on our discussion in this chapter, we develop a further criteria. Development of a property would do little good if exploitative owners or incompetent managers were allowed to regain control. Thus, success should also be measured by the ability to transfer ownership of the property to a community group or to a group of tenants.

In chapter two we will discuss receiverships from a legal standpoint. Chapter three will present three case studies on properties currently in receivership in Boston. In chapter four we will discuss some of the financial problems encountered by properties in receivership and describe in general terms the process of development. In chapter five we will propose a receivership strategy to be implemented by community organizations. The last chapter, chapter six, will include a discussion of poli-



cy issues regarding the generalizability of the receivership instrument.

## CHAPTER TWO: LEGAL ASPECTS OF RECEIVERSHIPS

In this chapter we will examine receiverships in detail. We will begin with an examination of the statute which enables the appointment of a receiver and the characteristics, rights, duties, and responsibilities of the receiver. The second section will describe the receivership process. The third section will trace the development of receiverships and examine the different types of cases in which it has been applied. The fourth section will discuss general considerations including liability of the receiver and the use of a Master. The fifth section will treat the generalizability of the receivership instrument from a legal point of view.

### I. The Statute

A tenant who feels that he or she lives in unsanitary conditions has the recourse of taking legal action against the owner of the property. This is provided for in the Massachusetts General Laws chapter 111 section 127, which charges the State Department of Public Health with drawing up a State Sanitary Code and sets forth the jurisdiction and enforcement of that code. The Sanitary Code, adopted by the Massachusetts Department of Public Health on September 13, 1960 and amended on July 15, 1969,

sets forth "Minimum Standards of Fitness For Human Habitation."

(1) They prescribe tenant and landlord responsibility in several areas, including: kitchen facilities, bathroom facilities, water supply, heat and hot water facilities, lighting and electrical facilities, ventilation, curtailment of services, space and use, exits, installation and maintenance of structural elements, insects and rodents, and garbage and rubbish. For example, regulation six, heating facilities provides:

The owner shall supply heat in every habitable room, bathroom, and toilet compartment to a temperature of at least 70 Farenheit between 7:00 am and 11:00 pm, and at least 65 Farenheit between 11:01 pm and 6:59 am every day other than during the period from June fifteen to September 15, both inclusive.... (2)

Articles B to H of chapter 111 section 127 of the Massachusetts General Laws outline procedures and penalties for violations of this code.

A tenant in Boston has several options open when faced with a violation. He/she can contact the Department of Housing Inspections and let that department make a determination of the extent of the violations and recommend an appropriate remedy. Alternatively, a tenant can file a complaint against the owner in Housing Court, a District, or Superior Court. If a petition is filed in a district court under GL c 111 section 127C, and if the violation "may endanger or materially impair the

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(1) Department of Public Health, State Sanitary Code

(2) *ibid.*

health, safety, or well-being of such tenant" (1) the court can order the tenant to pay rent to the court. The money thus secured can then be used for the specific purpose of correcting the violations. For reasons which will be discussed in the fifth section of this chapter, tenant initiated actions are more likely to be filed in the Boston Housing Court. Because it can exercise equitable powers, the Housing Court can enforce the provisions of section 127H.

Section 127H of chapter 111 of the Massachusetts General Laws is broader in its remedial scope than section 127 C, E, and F. A copy of 127H is included in Appendix A. This section of chapter 111 sets forth essentially the same conditions as section 127C and 127E. It allows a tenant to file a petition in court for a serious violation of the Sanitary Code. The petition should state that the violations have been verified by the local board of health, or in Boston, by the Department of Housing Inspections. If such an inspection has not been made, the tenant must show that an inspection was requested at least 24 hours before the petition was filed. The section also sets forth procedures for the issuing and serving of process. (2) The main difference between 127H and 127 C and E is that 127H allows a tenant to file a petition in superior court rather than in district court. Thus, it provides for equitable relief. The remedies available to the court are:

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(1) Massachusetts General Laws chapter 111 section 127C

(2) GL c111 op cit, section 127H

- a. issue appropriate restraining orders, preliminary injunctions and injunctions
- b. authorize any and all tenants in the respondent's building wherein the violation exists to pay the fair value of the use and occupation of the premises or such installments thereof from time to time as the court may direct to the clerk of the court in the same manner and subject to the same provisions as contained in section one hundred and twenty seven F.
- c. order all tenant in the respondent's building wherein the violation exists to vacate the premises and order the Board of Health to close up said premise; or
- d. appoint a receiver (1)

Sections 127I and 127J elaborate on the receivership remedy. Section 127I reads as follows:

Upon appointment, such receiver shall post such bond as may be deemed sufficient by the court, shall forthwith collect all rents and profits of the property as the court shall direct and use all or any of such funds or funds received from the Commonwealth as hereinafter provided, to enable such property to meet the standards of fitness for human habitation. A receiver shall have such powers and duties as the court shall determine including the right to evict for nonpayment of rent. A receiver may be a person partnership, or corporation. (2)

This sets forth, within broad limits, the rights and responsibilities of the receiver. It requires the receiver to post a bond in order to limit his/her liability. It enables the receiver to collect rents and "profits of the property" in order to bring the property up to code. It empowers the receiver to evict tenants. The reference order which appoints the receiver allows the court great flexibility in setting forth limits or further rights and responsibilities for the receiver. A typical

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(1) *ibid*

(2) GL c111 section 127I

court order is included in Appendix A. This is the court order issued in the Ornsteen case, which will be discussed in chapter three.

The court order may appoint a temporary receiver and direct that receiver to seek a permanent receiver, as illustrated in paragraph three of the court order in the Ornsteen case. This order also requires the receiver to report to the court every thirty days. In addition, the court order protects the officers of the temporary receiver from being held liable "in a civil or criminal action for failure to repair or maintain the buildings in compliance with all applicable laws and regulations." (1) In addition, the court order enables the receiver to enter into contracts with HUD, utility companies, and "a company, person, or organization which gives such entity the power and duty to manage the premises and/or seek funds from public and private sources for the repair and maintenance of the premises." (2) In the Dixwell case, another property which will be discussed in chapter three, the court order mandated the creation of a committee of technical advisors, and it identified the organizations from which these advisers were to be drawn. Thus, it is evident that when naming a receiver, a judge can set forth very specific provisions for the receiver, including tasks to be accomplished. This makes the receivership remedy a very flexible one.

Section 127J makes provisions for obtaining financial

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(1) Court order in Ornsteen case, included in Appendix B

(2) *ibid.*

assistance from the State Department of Health, if the receiver determines that the rents will not be sufficient to correct the violation of the Sanitary Code. The law makes reference to an account which was to be set up for the purpose of effecting repairs. The money used for repairs would be treated as a loan with an interest rate of 6%. It would be the obligation of the owner of the property. (1) This section of the law, which if implemented could have put real force into the provisions for receivership, was never funded by the legislature. (2) Thus, it will exist only in the books until an appropriation is made by the state.

Because the powers granted to receivers are so broad, receivership is conceived of as a remedy of last resort. If the court finds for the plaintiff in a petition initiated under section 127H, the court will usually apply remedies a, b, or c, before going to receivership. If no results are forthcoming, then the court will consider receivership. In the cases which will be discussed in chapter three, the Housing Court first issued restraining orders and injunctions, two equitable remedies provided for in the Sanitary Code. When these did not produce desired result, the court was forced to consider petitioner's request for receivership. On this subject, the notes to Section 127H make reference to the decision in Perez vs. the Boston Hous-

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(1) GL c111 section 127I

(2) Boston Urban Observatory, Impact of Housing Inspectional Services on Housing Maintenance in the City of Boston: A Preliminary Evaluation, 1971, p33

ing Authority, the case which placed the BHA in receivership:

As injunctions meet with indifference or violation on the part of the defendant public officials, there is justification for more detailed directions further confining or eliminating discretion, and rule of thumb may be that the more indurated violations of law and remedial injunction, the more imperative and controlling the superseding injunction. (1)

The notes make further use of Perez vs. BHA:

Receivership must be thoroughly justified on facts and is always to be considered remedy of last resort, but it is not beyond the powers of an equity court. (2)

Minimally, two conditions must be met before a property is placed in receivership; violations must be so serious as to impair the health or well-being of the tenant or the public, and other remedies must be found ineffective. There are only six properties in receivership in Boston currently, not counting the BHA. This attests to the seriousness in which receivership as a remedy is held and the infrequency with which it is applied.

In essence, receivership takes the rental income and control of a property away from an owner and gives it to a person or group appointed by the court. While this control may be very broad, ultimately it can only be exercised for one purpose; to fix up a property so that it complies with the Sanitary Code. Ownership is not affected by receivership. Technically, control of a property can revert to its owner once the court is satisfied

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(1) notes to 127H, taken from Perez vs. BHA, 400 N.E. 2d 1231, 1980 MA Advance Sheets 325

(2) *ibid.*



that repairs have been made which have brought the property up to code. The statute cannot affect the basic property rights of the owner. It does not provide for transfer of ownership, despite a recognition by the courts that a property which needs to be placed in receivership must be administered by an unwilling or incapable owner. Theoretically, receivership could actually benefit the owner in that it frees him or her from the responsibility, financial and otherwise, of doing needed repairs.

The statute makes the owner liable only for those funds that are obtained from the specific state account referred to in section 127J. Any funds obtained otherwise are the responsibility of those who applied for them. If obtained, these funds could be used to fix up the property, which once fixed up might go back to the owner. Those that assumed financial responsibility would not share in the ownership and the owner would not assume any financial obligations.

In the practice of the Housing Court, this has yet to be tested. Judge Daher has stated publicly that he resists the notion that the owner should regain control, if it is clear that mismanagement was the factor which led to finding for receivership. The court can conceivably prevent an owner from regaining control of the property by exercising its equitable powers. Usually, injunctions and restraining orders have been issued before a property goes into receivership. An owner who fails to comply with these orders can be found in contempt of court and fined substantially. The fine can be adjusted according to the court's purposes. Other methods to resolve the problem of ownership will

be discussed in chapter 4.

## II. The Process

There are certain elements that are common to all receivership cases in Boston. They comprise a sequence of events which we call the receivership process. This is an abstraction from reality so it should be noted that not every property goes through each stage in the same order.

1. The owner of a property fails to provide some essential service, such as heat, hot water, or electricity. One or more tenants go to a social service agency or church to ask for help. The church or social service agency puts them in contact with a lawyer from Greater Boston Legal Services. The lawyer and the social service worker might organize tenants.
2. The lawyer helps the tenants file a petition in Housing Court. The court issues a temporary restraining order or an injunction. The owner fails to comply and is found in contempt.
3. The tenants petition for receivership. They look for a receiver. The court finds that receivership is the only way a property can be saved. The judge appoints a receiver. The court order is tailored to the facts of a given case.
4. A community organization which has gotten involved in steps 1, 2, or 3 initiates efforts to develop a property. Organization performs financial analyses, contacts funding sources, and applies to housing programs.
5. Property comes out of receivership. So far this step is hypothetical.

### III. Receiverships In General

The appointment of a receiver is an application of the equity powers of a court. These equitable powers derive from the Courts of Chancery which operated in England. Equity, which originated in ecclesiastic law, found expression as a full judicial system in the 14th and 15th centuries. (1) Courts of equity were more flexible than traditional courts of law: "Equity itself developed as an antidote to the recognized shortcomings, particularly the rigidity, of the English Common Law. It was characterized by looser procedures, more supple dispositive powers, and the infusion of lay personnel and lay perspectives into the working of the system of justice. Its principles and powers lay within the province of the Office of Chancery (the Chancellor) and were executive in derivation and substance." (2) The issues which came up before equity courts often involved complex property disputes. Usually, there was either uncertainty in deciding how to comply with a law court judgement or there existed no "established legal resolution for a dispute." (3) The Chancellor could order some form of action taken and apply a coercive remedy if the defendant did not comply with the order. Remedies available to the Chancellor included the injunction, receivership, and specific performance orders. As these

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(1) Samuel Jan Brakel, "Special Masters in Institutional Litigation", American Bar Foundation Research Journal, 1979, p. 546

(2) J. Smith, The Law of Receiverships, found in footnote 22, Brakel, op. cit.

(3) Wisconsin Law Review, "Equitable Remedies: An Analysis of Judicial Utilization of Neoreceiverships to Implement Large Scale Institutional Change", 1976

constituted severe penalties, the judge was circumspect in applying them. (1) A Chancellor could appoint a monitor, master, or receiver, "to assist the court in litigation processes in particular cases or classes of cases." (2) The distinguishing feature of equity courts was their flexibility and their ability to apply coercive measures.

Although the adoption of a separate system of equity courts did not become widespread in the United States, the equitable concepts were generally adopted by the end of the 18th century. (3) The use of officers to assist in the litigation process, common in equity jurisprudence, has been codified at the federal level in the Federal Rules of Civil Procedure. These rules define the receiver as, "an officer appointed by the court to assume the custody and control of property, and to preserve and sequester the same, pending litigation concerning its disposal. In many cases, the receiver, to preserve the property, must carry on the business pending court orders for its disposal." (4) The historic distinction between the office of the receiver and the office of the master is reflected in the federal rules; "The master has and shall exercise the powers to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient perfor-

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(1) *ibid.*

(2) Brakel, *op. cit.*, p. 549

(3) Brakel, *op. cit.*

(4) Moore, *Federal Practice*, section 66.03

mance of his duties under the order." (1) In essence, a master served as a fact-finder for the judge, especially in matters which were complex or time-consuming. (2) As distinguished from the receiver, whose functions were more administrative, the master made determinations of fact and reported findings to the court without implementing. A master was also seen to be attached to the court whereas the receiver was less closely associated to the court.

As the Federal Rules of Procedure illustrate, use of a receiver is appropriate only when there is a property in dispute. Receivers have traditionally been used in bankruptcy and non-insolvency disputes. In bankruptcy use, the receiver made arrangements to liquidate a property and distributed the proceeds among the creditors. In a non-insolvency case, the role of the receiver was to protect the property during litigation. A receiver was appointed when there was evidence of fraud, dissension, gross mismanagement (3) or incapacity to manage (eg. infants). Receivership was not an end in itself but an unusual and transitory state.

A request for receivership could be made only by those who had a property interest. This protected property owners from the claims of debtors who did not have a mortgage or lien on

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(1) *ibid.* Rule 53-2

(2) Brakel, *op. cit.*, p. 553

(3) Yale Law Journal, "Implementation of a Judicial Decree", volume 84, 1975, p. 10

their properties. (1) Furthermore, a property was placed in receivership only for the benefit of those who had an interest in it.

While receivers are still used in the same ways and for the same purposes in the United States, their roles have taken on added dimensions. As the concept of property has evolved so has the role of the receiver. Originally, a receiver dealt only with real property. The growth of the corporation and the concomittant complication in property concepts necessitated more than ever, the utilization of experts to disentangle claims made by stockholders and other intrested parties. The role of the receiver was expanded in the nineteenth century to allow for its use in work with bankrupt railroad. The traditional use of receivership in bankruptcy was the dissolution of property. However, liquidating a railroad would not have been a practical step; the railroads performed a vital function to the towns they served. Courts of equity responded to this problem by using the receiver to protect the property from claims, sell it intact, and arrange for the new company to deal with the creditors. (2) What is unique in this use is that it is not protecting the rights of those who have an interest in the property. By rebuilding a company, it is instead being used to protect a public interest. It is a socially useful application of the traditional powers of equity.

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(1) Moore, Federal Practice, Rule 66

(2) Wisconsin, op. cit.

A sense of social responsibility was inherent in courts of equity. Their authority supposedly derived from a higher moral plane than ordinary law. The more flexible instruments at their disposal could be used to distribute social justice. There was also a sense that a judge had to consider the implications of judicial remedy on the community at large. (1)

Receivers were first used in public matters during the municipal bond cases which took place between 1864 and 1888. A typical example would find an eastern financial establishment experiencing difficulty in collecting on a bond issue. The bond issue was to be used to pay for railroad construction which never materialized. Municipalities refused to levy taxes to pay for the issue. Federal courts used the coercive element of receivership to force the municipalities to pay. (2) Here, the question of jurisdiction became central. Was it appropriate for the federal judiciary to intervene in the affairs of a local government to enforce compliance. The rationale for intervention used at the time was the diversity of the parties involved. The Supreme Court has since abandoned its supremacy in cases which involve diversity of parties and is using other approaches.

In the last twenty years receiverships have been used in new ways which draw on past uses. They have been applied in institutional litigation. The foundation for this use was the expansion of property rights to include personal, or civil

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(1) *ibid.*

(2) *ibid.*

rights. Thus, in 1939, in *Joyner vs. Browning*, the right to vote was converted into a property right through a legal fiction created to impose federal authority on individual states. (1) The decision in *Brown vs. the Board of Education* called for the use of equitable principles in formulating decrees designed to protect constitutional rights. (2)

The first equitable remedies used to protect civil right were injunctions and consent decrees. The court, "limited its judgements in order to avoid prolonged involvement in institutional change." (3) Typical cases involved treatment in prisons and mental hospitals. Change was not always forthcoming, which led courts to formulate progressively intrusive remedies. Courts began to make increasing use of receivers and masters to protect constitutional rights. Again, it was the flexibility of equitable relief which allowed an enhanced court presence in implementation and monitoring.

Judicial involvement in institutional change has greatly expanded the traditional functions of receiver and master. The master has stepped beyond the traditional role. Not only does the master hear a case or help formulate a remedy, he or she might also assume implementation functions, while still retaining the title. However, the critical difference remains. The master does not supplant the administrators. Rather, he or

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(1) *Joyner vs. Browning* 30F supp., 512, 517 (W. D. Tenn. 1939), found in *Wisconsin*, op. cit., footnote 94

(2) *Wisconsin*, op. cit.

(3) *ibid.*



she works with them and in some cases monitors their performance.

(1) The receiver is now often asked to go beyond simple administration and implement institutional change. (2) The powers granted to a receiver are generally broader and more open-ended than with previous applications. The reference order is usually complex. In fact, a strong case has been made that the distinction between master and receiver is no longer valid. This argument groups all of the court appointed actors under the rubric neoreceivers. (3)

The use of a receiver to implement institutional change has been made with increasing frequency. One example in Boston is South Boston High School, placed in receivership in 1975. A more recent use of a receiver in the housing area, *Perez vs. BHA*, revealed yet another application for the use of receivers. Receivers have been used by federal courts to protect constitutional rights. *Perez vs. BHA* was a unique instance in which a state court appointed a master, and then a receiver, to achieve compliance with a state statute. It is one of the few instances in which a non-federal court has intruded in the administration of a quasi-public body in order to enforce a statute, rather than to protect constitutional rights. Judge Garrity imposed receivership with great reluctance, first fashioning a consent decree

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(1) Columbia Law Review, "The Remedial Reform Process in Institutional Reform Litigation", volume 78, 1978 p. 827

(2) Wisconsin, *op. cit.*

(3) *ibid.*

and naming Bob Whittlesey Master. (1) However, problems were too deep-rooted. "A combination of conditions existed here... that looked finally to a receivership remedy. There had been massive trouble with eliciting performance of injunctive orders and finally, of a comprehensive decree. There could be little doubt that to persist in that course, -retention of the consent decree or reversion to a regime of injunction without consent- could end only in frustration. True leadership of BHA had in fact lapsed."

(2) After five years of litigation Judge Garrity appointed Lewis H. Spence receiver. There was much public interest in this case although its applicability to the private housing market was limited.

Private housing receiverships date back to the formulation and articulation of the state Sanitary Code in 1965. This was the culmination of efforts to protect tenants from unsafe housing. (3) To some degree, it reflects measures taken in other states in this area. New York, for instance, had a general body of housing law, and a receivership law, which dates back to 1962. However, the New York laws flowed from a recognition of the housing crisis in New York whereas the Massachusetts legislation was meant to protect tenants. The thrust of the New York law was action. We will look at the New York law in more detail in the

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(1) Perez vs. BHA, MA Advance Sheets, (1980,

(2) *ibid.* pp. 358-359

(3) James H. Angevine and Gerald Taube, "Enforcement of Public Health Laws", Massachusetts Law Quarterly, volume 52 number 3, 1967

next section of this chapter.

The use of a receiver to enforce the Sanitary Code carries elements of the use of receivers in litigation against public bodies which distinguish its use from the use of receivers in private property cases. The elements of similarity to use in private property cases is clear; a property is in trouble because of mismanagement or incapacity. The owner might be poor, the property in tax and mortgage arrearage. However, a suit can be initiated by affected parties with a non-property interest, the tenants or the Department of Housing Inspection in Boston. This is closer to the use of receivers in institutions. Also, in private property cases, a receiver is appointed either to liquidate a property or to protect it until the outcome of litigation. In housing cases the receivership is applied as a remedy, a final outcome of litigation. Use of a receiver in private property cases is supposed to benefit parties with a property interest. In housing cases, the prime benefactor is the tenant. Of course, the critical distinction between housing receiverships and institutional receiverships is the fact that real property is involved.

However, there are strong similarities in all applications of the receivership remedy. Its use is made attractive by its flexibility and its coercive potential. In each case it is used to supplant the function of the administrator. It is applied because the court feels it lacks expertise or time. In a sense, receivership carries with it a sense of a court administering a property, although the receiver is not an officer

of the court but a para-judicial agent.

### Receivership Laws in New York

Several states have adopted receivership statutes, including New York, and Connecticut. (1) The New York legislation is especially relevant because it gave rise to several programs in New York City designed to deal with the housing crisis. In this section we will look at the state receivership law and at other receivership laws which have been passed in the city.

In 1962 the state legislature of New York adopted a bill, the New York Multiple Dwelling Law, section 309(5). The drafting of this bill was actually the result of a joint effort between the city of New York and a committee of the New York Bar Association. It applies only to cities with a population over 400,000, which means Buffalo and New York City. (2) The law was designed to remedy a "nuisance". The term "nuisance" encompasses, "Whatever is dangerous to human life or detrimental to health, and whatever dwelling is overcrowded with occupants or is not provided with adequate ingress and egress or is not sufficiently supported, ventilated, sewerred, drained, cleaned, or

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(1) Fordham Urban Law Journal, "The New York City Housing Receivership and Community Management Programs", volume 3, 1974-75, p. 41 footnote 24

(2) Columbia Journal of Law and Social Problems, "Receivership in Problem Buildings in New York", volume 9, 1973, p.330

lighted in reference to its intended or actual use, and whatever renders the air or human food or drink unwholesome." (1) The law applies to properties with three or more units. Under section 309(5) an action is initiated by the New York City Housing and Development Administration (HDA) after an inspection has determined the existence of a nuisance. After service of process, the owner has 21 days to remedy a nuisance. (2) Otherwise, a hearing is held where the owner must give a reason as to why his or her property should not go into receivership. If the court denies the owner's challenge, the HDA is appointed receiver and empowered to collect rents and other proceeds from a property. The receiver is empowered to remove nuisances and to enter into contracts to do so. In addition, the receiver can make other improvements on a property. The receiver is reimbursed for work performed out of the security posted by the owner. (3)

From this brief description it should be clear that the New York law is much more forceful than the Massachusetts statute. It invests considerable power and discretion in the HDA. It also modifies the meaning of "last resort". In the New York law, last resort no longer implies an exhaustion of other judicial remedies. Rather, it is taken to mean "last chance" for the property involved. The process is therefore streamlined so that initiative is not lost through the leisurely deliberations of the

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(1) Fordham, op. cit. note 25

(2) Fordham, op. cit., p. 646

(3) *ibid.* p. 648

judicial system. The owner of the property is fully protected by due process, however, the law makes him or her fully liable for negligence.

There are two other receiver-type laws which operate in New York City. Article 7A is New York City's statutory rent strike law, similar in some respects to the appointment of a receiver under the Massachusetts Sanitary Code. This was enacted in 1965 as a response to the housing crisis in New York, which it refers to as an "emergency". (1) It is intended to apply to multiple dwellings where the safety of the occupants is endangered. Tenants can initiate a suit requesting that the court appoint an administrator. If the court finds for the plaintiffs, an administrator is appointed who collects the rents and applies them to the rehabilitation of the property. The administrator can be an attorney, CPA, or real estate broker. (2) Each of these professions is state licensed. A petition signed by at least one third of the tenants stating that the violations have existed for more than five days must be filed in court. An inspection is not required, however, the court requires the testimony of an architect to verify the conditions and the cost of repairs. The administrator is actually a receiver as he or she is granted all the relevant powers. As with the Massachusetts program, financing repairs remains a problem.

An interesting fact surfaces when analyzing statistics

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(1) Columbia Journal of Law and Social Problems, "Article 7-A Revisited", volume 8, 1972, law is referred to in p. 523

(2) *ibid.*

on disposition of cases brought to court under Article 7A. About 75% of the 99 cases brought to Manhattan Civil Court between 1970 and 1975 were settled before trial or by stipulation --where the owner agrees to perform needed repairs--. This indicates that the coerciveness implied in taking rents away from the owner was enough to ensure compliance. (1)

Another New York City statute which makes use of receivership is Article 110-A. It is designed to recover municipal costs of emergency repairs. It enables the city to be appointed receiver of a building which owes \$5,000 or more in emergency repair liens. (2) Article 110-A provides for a nonjudicial appointment of a receiver and is meant to allow the city to recover its costs. The receiver can only repair code violations and correct emergency conditions. (3) Because of the limitation, the HDA stopped taking building under 110-A receiverships in the early 70's to concentrate on the more flexible 309(5). It should be noted that a non-judicial appointment of a receiver is rare. This fact explains the limitations imposed on the 110-A receiver.

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(1) *ibid.*, p. 533

(2) *Fordham Urban Law Journal*, *op. cit.*, p644

(3) *ibid.*, p649

#### IV. GENERAL CONSIDERATIONS

##### Liability of the Receiver

The question of liability is one of the most important ones to consider. When a receiver takes control of a property, he or she is responsible for his or her actions while in the office of receiver. Otherwise, receivership would effectively take away the tenants' rights, including the very rights protected by the Sanitary Code. Generally, receivers are considered liable in other contexts as well. The federal judicial system has codified the use, rights, and responsibilities of receivers in federal cases. Rule 66 of the federal Civil Rules of Procedures supports the principle that it is proper "...to place receivers on the same plane as the owner of the property with regard to their liability to be sued for acts done during management or operation of the property." (1) Similarly, Judge Daher has stated in an interview that the liability of a receiver cannot be removed by court order. Although the receiver is appointed by court order and is acting in an official capacity, the court cannot immunize him or her from responsibility for actions taken as a receiver. It is for this reason that a receiver cannot properly be considered an officer of the court. As is evident in the Ornsteen case, however, the officers of the tenant group can be immunized by court order from personal liability.

It must be presumed that a judge, in naming a receiver, understands the limitations inherent in the instrument, as well

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(1) C.A. Wright and A.R. Miller Federal Practice and Procedure Rule 66, 1973



as the characteristics of the property. In the case of a suit against the receiver, those limitations must be taken into consideration by the court. This constitutes some protection for the receiver as far as code violations which existed prior to receivership are concerned. It is not meant to shield the receiver from acts of negligence.

Section 127J requires the receiver to post a bond, the amount of which is to be set by the court. The intent of this provision is to provide protection for the receiver in the event of legal action. The judge occasionally waives this requirement when the receiver cannot afford the expense. This is usually the case in tenant receiverships. Unfortunately, when this happens, an important protection has been lost.

The tenant group in a tenant receivership is liable in the same way that an owner or an individual receiver would be. However, the officers of the tenant receivership can be immunized from personal liability, as was done in the Ornsteen case. This raises questions as to the tenant groups' liability. A tenant receiver can be sued by an individual tenant or by a debtor. However, if the receiver has no assets, the effect of the suit will be mitigated. The shared liability of the tenant group is somehow not quite as threatening as the liability of an individual receiver.

The other area of liability involves debts owed by a property. Those debts which are of special concern are the ones owed to utility companies. A utility company which wishes to cut off the services to a building must first seek a warrant from the

housing court under chapter 164 of the Massachusetts General Laws. If the utility company discovers that the property is in litigation, or in receivership, it will usually not shut off service, even if the debt reaches into the thousands of dollars. There is goodwill between the courts and the utility companies. Some arrangement can usually be made to pay up a current balance and hold off on debts incurred when the owner was in control.

### Who Is The Receiver

To be named a receiver, a person must be an expert in the particular function which he or she will be carrying out. A receiver in a housing case should be an expert in some aspect of the management of housing. The receiver should arrange for remuneration for services rendered by deducting from the rent an appropriate fee. However, the rental income may not be enough to support this type of an expense. A receiver may have to work on a pro bono basis. Also, as explained in the previous section, being a receiver carries with it liability. Add to this the amount of time which must be devoted to making a receivership work and one can begin to appreciate the difficulty in finding people to be receivers.

In Boston, there are two individuals who serve as receivers, Mr. Harry Gottschalk and Mr. Rafael Rodriguez. Mr. Gottschalk worked as an officer of the Housing Court, a housing specialist, for several years. Mr. Rodriguez works as a plumber in the South End. In the Geneva-Josephine property the tenants

were named receivers. In the Dudley-Dampden property the tenants were named temporary receivers and instructed to look for a permanent receiver.

While a collective group of tenants may not have management expertise, at least they understand the type of work needed to keep their buildings running and the specific needs of the building. In addition, the tenants are able to communicate among themselves and can exert peer pressure on each other. Also, they do not need to be remunerated for their services in cash. These advantages may make up for a lack of management expertise.

#### Short of a Receivership; A Master

Appointing a receiver is a drastic step. It wrests control of a property away from an owner. Might a less intrusive remedy, such as that of appointing a master, prove more effective. This might seem appealing because it allows the owner to retain some control and it limits the liability of the court appointed official. It should be remembered that the proper functions of a master are: to conduct hearings; to serve as a fact-finder; and to design decrees or orders that the defendant must comply with. A master may also monitor performance

--although the monitor is properly a different court official--.

(1) It is not the function of the master to supplant the administration or management of a property.

As we will see in the last section of this chapter, the housing court employs several housing specialists. Thus the master would not need to perform a fact-finding function. The rationale for having a master conduct hearings is that the facts presented in the hearing are too complex or that the presentation is too time-consuming. This is not true in Housing Court, the cases are very straightforward. Housing Court judges are very familiar with housing problems so it is not clear that a master would add to their understanding. Court orders are generally not complex or very detailed, nor need they be for this type of case. The only place where there might be a role for the master is in monitoring. This function can be performed by the housing specialists or by the judges themselves.

Another factor to consider is that appointing a master is usually the outcome of an adversarial process, not a compromise achieved through negotiation or mediation. The owner would be ill-disposed to cooperate with the master. (2) However, the master must rely on the owner to administer. In order to enforce an order, a master would have to go through the courts. This has the effect of causing unnecessary delays. However, the appointment of a master in a large case, such as the BHA, might be con-

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(1) Yale Law Journal, "Monitors, A New Equitable Remedy", volume 70, 1963, pp. 107-113

(2) Columbia Law Review, op. cit.,

sidered appropriate in that the court would want to give the public officials as much of an opportunity as possible to correct violations through their own efforts. There is a reluctance to usurp the authority granted by public mandate. In the case of a small property, appointing a master to perform monitoring functions would be a waste of the court's resources.

Allowing a master to administer is merely playing with nomenclature. Whether this person is called a master or a receiver, the effect is to take control of a property away from an owner. This increases the "master's" liability to the point where he or she should simply be called a receiver.

#### V. Generalizability

In terms of objective factors, the generalizability of the receivership instrument depends on three factors; applicability, or percentage of the housing stock in code trouble, legal limitations, and financial limitations. The financial limitations will be the subject of chapter four. In the remainder of this chapter we will discuss the first two factors.

There are no current figures for the number of housing units in violation of the housing code in Boston. However, in 1973, The Boston Redevelopment Agency (BRA) and the Housing Inspection Department classified the housing stock in Boston according to the amount of money needed to bring the properties

up to code. Categories A and B consisted of properties which required from \$0 to \$1000 to bring them up to code. We are not concerned with these properties because the owner can easily make the investment to bring the property up to code. There is no reason to believe that these properties are in a state of deterioration, where the owner is cutting back on repairs in order to "milk" the cash flow of these properties. The last category represents abandoned properties, about 1% of the housing stock. We are interested in the middle two categories.

Properties in category C require between \$1000 and \$3500 to bring them up to code. Category D is comprised of properties which require \$3500 to \$10,000 (in 1973 dollars) to bring them up to code. We will present figures for Boston and for two neighborhoods in Boston, Dorchester, and Roxbury. We selected these two neighborhoods because little significant improvement is likely to have taken place in their housing stock in the last 9 years. Thus, the only substantial difference we expect to see between 1973 and 1982 is the number of units which go from the second category to the third and from the fourth category to the fifth. The other reason we selected these two neighborhoods is that areas within the neighborhoods have severe housing problems.

In Boston, 55,276, or 24% of the housing units were in category C and 11286, or 5% of the units were in category D. The comparable figures for Dorchester were 12,085, or 25% in category C, and 1702, or 4% in category D. In Roxbury, 7626, or 30% of the housing units were in category C and 4653, or 19% of the housing units were in category D. Roxbury actually had more than

one third of the properties in category D in Boston. The gravity of the housing problem in each neighborhood is readily apparent. In Dorchester, fully one third of the housing stock was in serious violation of the Sanitary Code in 1973. In certain areas of Dorchester the percentage was much higher. In Roxbury, almost half of the units were in serious code violation. Clearly, code violation is not an isolated phenomenon. --However, this should not be taken to mean that a property with code violations would automatically be better off if placed in receivership. The broad outlines of a classification scheme which could be used to determine in which areas receivership might be appropriate is set forth in chapter 5.--

We highlight these figures because we wish to discuss the concept of "last resort". As we pointed out, the judicial meaning of "last resort" in terms of receivership use refers to the exhaustion of less intrusive remedies. It should be noted, however, that there are many properties in Boston which are in severe violation of the Sanitary Code. More active enforcement of the Sanitary code would probably have resulted in injunctions and restraining orders. Of course, the housing code must be enforced selectively or it might lead to abandonment. In neighborhoods in decline, such as Roxbury, receivership should be used more vigorously. A property in category D is barely alive. It would be better to get a property in category C. Properties in category C may require systems work, but not gut rehabilitation, which is the characteristic of properties in category D.

In order for this to happen, the courts would have to

redefine the concept of "last resort". As in New York, the legislature would have to recognize the severity of the housing crisis in areas of Boston. It would have to identify areas where receivership could be exercised without recourse to less intrusive remedies. This could be tied to funding to finance property rehabilitation.

From the legal point of view, it is clear why receivership is not used more often. Judges are constrained by legal tradition to use other measures before going to receivership, even if they recognize that a situation is not going to work. There are other legal limitations that must be considered. The Massachusetts law sets forth minimum standards for compliance. It is not meant to be used as a housing policy. The process is thus designed to give the owner full benefit of the doubt. While the rights of all the affected parties are well protected, the rights of the owner are especially well protected in law and in practice. An owner would have to curtail provision of a critical service before being enjoined by the court. He would have to disappear before receivership could be used as a first recourse.

The key is that the burden of proof is on the tenant in Massachusetts. The tenant usually must initiate the action. The tenants, or their representatives, must ensure that an inspection is made or requested. The New York state receivership law, on the other hand, which is the expression of a housing policy, puts the burden of proof on the owner. Suits are initiated by the HDA, which has already determined the existence of a violation. Once in court, the owner must prove why a property should not go



into receivership. If the owner fails to prove this, the first recourse for the court is receivership.

There are other limitations related to the protection given the owner. The process of putting a property into receivership is very long and often-times perplexing for the plaintiffs. Many actors must become involved in a typical receivership process, as will be demonstrated in chapter four. The properties in receivership vary in size, some of them have as little as 6 units. Thus, a great expenditure of effort is required to make a receivership work while the outcome in total units of housing may not be significant from the point of view of the total effort required to impact a neighborhood.

Another limitation is the availability of lawyers. All of the receivership cases in Boston have been represented by Greater Boston Legal Services. Unfortunately, federal budget cuts have severely reduced the staff of this agency. This presents two problems. Tenants may not be able to afford their own lawyer. Also, the lawyers provided by GBLS are willing to do a fair amount of social work to get the tenants ready for a case. A lawyer in private practice may not be willing to do this.

The final limitation is that receiverships require case by case attention. An agency cannot formulate a policy on receiverships and expect it to be self-regulating. Each case demands a significant amount of time and effort. In order to cause any significant neighborhood change, a good number of properties would have to be placed in receivership. The amount of work needed to prepare one property would have to be multiplied

over a number of properties. It is not clear that working on a number of properties instead of just one would create economies of scale.

There is one important factor which enhances the generalizability of receiverships. This is the existence of the Boston Housing Court, which started operations in 1972. The creation of the court was a reaction to pressures from landlord and tenant groups who complained of congestion and delays in the existing system. A judge familiar with housing problems and tenant-landlord disputes could develop a special sensitivity and expertise which would facilitate adjudication of housing cases. It was felt that the housing judge should be assisted by a staff with skills germane to housing problems, and experience in estimating cost and duration of repair work. The creation of the court was funded by the city of Boston. (1)

The geographical jurisdiction of the court is limited to the city of Boston. Otherwise, the jurisdiction of the court is very broad. The court can try cases, civil or criminal, which involve tenants and landlords. The jurisdiction of the court extends to all "places of human habitation", including dormitories and public housing. The court can hear cases on housing code violations, evictions, small claims involving landlords and tenants, decisions made by the Boston Rent Control Board, termination and restoration of housing services, and so

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(1) Paul G. Garrity, "The Boston Housing Court: An Encouraging Response to Complex Issues", Urban Law Annual, volume 17, 1979 pp. 15-25

forth. (1)

One advantage that the Housing Court offers in terms of code enforcement is that it is the trial court of last resort. Decisions must be appealed directly to the Massachusetts Appeals Court or the Supreme Judicial Court, not to a higher trial court. Trial by jury is the defendant's right in criminal cases and can be requested in civil cases. As a court of general jurisdiction, it has broad remedial powers. In civil cases it can employ its equitable powers, in criminal cases it can suspend all or part of a statutory penalty. (2)

The court has two judges. There is a Housing Specialist Department which provides needed expertise in maintenance, repair, rehabilitation, and funding sources. The specialist can provide a cost estimate of needed repairs and support inexpensive ways to conduct them, or identify inexpensive government financing. Specialists can also help fill out applications for relief. (3)

Housing courts represent a distinct improvement over district courts in housing matters. Housing courts exercise equitable powers whereas the equitable powers of the district courts are limited to a very small number of statutes. Also, the knowledgeability and enlightenment of district court judges have

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(1) *ibid.*

(2) *ibid.*, p. 19

(3) *ibid.*, p. 20

been called into question. (1) Superior court judges travel a great deal and see many different types of cases. They may not understand the characteristics of a particular area. Housing Court judges, on the other hand, know the housing situation in the city well. The housing specialists provide the court expertise in analyzing the strength of a particular property. Another advantage housing courts offer is quicker hearings. One of the complaints made of the previous system was that a whole heating system season could pass while a case waited to be heard. The Housing Court can respond much faster. "Arrestment for a criminal prosecution for failure to provide heat, immediately followed by a trial where both parties are agreeable, can proceed after service of process, usually requiring three to four days after filing the criminal complaint." (2)

Although the remedy of placing a property in receivership has been used infrequently, lawyers who have worked on receivership cases agree that the Housing Court is more likely to use this remedy than superior courts. The mobility of the superior court judge is one factor which helps explain this. Another factor is the Housing Court's recognition of the gravity of the housing problems in different areas in Boston. They realize that there are some situations where an owner just will not do or cannot do what he or she is ordered to do. Generally, they will agree that receivership is the only way to save the tenants much

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(1) Urban Observatory, op. cit., p. 26

(2) Garrity, op. cit., p. 19

pain in these situations.

Judge Daher has set forth several criteria which must be met before he will place a property in receivership. These are:

- (1)
1. Exhaustion of other remedies. A property will usually go into receivership only when an owner has been found in contempt of court.
2. Feasibility. This involves an analysis of the property, including some estimate for the cost of needed repairs. Also required is an analysis of the property's assets and liabilities. Finally, some determination is needed as to whether a property should be condemned.
3. Availability of a receiver.
4. Possibility of the tenants gaining control of the property.
5. commitment of the tenants and/or the surrounding community to save the building.

Interviews with both judges in the Housing Court reveal that they have differing opinions as to the viability of receiverships as a remedy in housing disputes. Judge E. George Daher feels that if appropriate legislation is passed, receiverships will be the "wave of the future". His opinion is based on an understanding of the housing problems in such areas as Roxbury. Judge Daher feels that grass roots mobilization is essential. If there is community support, judicial intervention can save a property, especially if it is applied quickly and energetically. He supports the view that community groups should

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(1) interview with Harvey Chopp, Assistant to Judge Daher

select properties to take to court with a view towards saving the properties before they become so deteriorated as to necessitate unusual investments in time and money, and before they are abandoned. Once in receivership, development of the property should provide for cooperative ownership by the tenants, after the owner has been fairly compensated. A carefully designed receivership strategy could be an affirmative step towards stabilizing neighborhoods and family life. Judge Daher has reactivated a community advisory board to the housing court. This board will discuss and make recommendations on several areas, including how to coordinate efforts between the courts and city so that the ownership in receivership cases question can be more easily resolved. (The ownership question will be more fully discussed in chapter 4).

According to Judge Daher, several measures can be taken to improve the viability of the receivership solution. Community education is essential so that tenants become aware of their rights. Also, the legislature should appropriate money to be used for repairs. The money could be used to subsidize low interest bank loans. Finally, a fund should be set aside to pay for the receiver's insurance. This will give the receiver some protection from suits. Money for the fund could be appropriated by the legislature. Alternatively, a kitty could be established which would receive 1% of rental receipts.

Judge Patrick King is not convinced that receivership is a viable remedy. The main limitation he sees is financial. The properties have been abused to such an extent that they re-

quire much work. Rent levels of at least \$300 are needed to support this type of work. He also feels that tenants are not motivated to do the maintenance work that needs to be done, such as taking care of the disposal of rubbish. Finally, he feels that there are not enough financial rewards for the receiver to enable him or her to post a bond. It should be noted that the only receivership that Judge King has been involved with the group of properties managed by Mr. Gottschalk, which have been problematic. In Judge Daher's receiverships, there has been much more tenant and community involvement.

Among both judges, and probably among most of the people involved in receiverships, there is probably a consensus that the potential of the receivership remedy is limited unless the state takes steps to address the housing problems in the cities. Although the legal problems are significant, the main thrust of legislation should be financial. Money is needed to put teeth into existing receivership laws. The financial situation of three properties in receivership in Boston will be discussed in the next two chapters.

### CHAPTER 3: CASE STUDIES (1)

In this section we will list all of the properties in receivership in Boston and examine three of them in detail. The three are; Geneva-Josephine, Dudley-Hampden, and Dixwell. Each of these properties is in a different stage of development. According to Housing Court officials, the Dixwell building is almost out of receivership. The Dudley-Hampden building has secured a commitment from the BHA for Section 8 moderate rehab funds. The next step in the development process for this building is to secure financing commitments. the Geneva-Josephine property is in the worst situation of the three. The long range feasibility of this building depends on the acquisition of public subsidies. This comes at a time when such subsidies have an uncertain future, given the current reduction of social programs in the federal budget.

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(1) Information for this chapter and the next was obtained in interviews and from documents provided by: Luis Beato, Urban Edge; Nelson Merced Alianza Hispana; Sherry Fleishman and Pablo Calderon, Office of Just Housing, Roxbury Community College; Vince Pisegna, Geoffrey Beatty, Dan Manning, Greater Boston Legal Services; Maria Lopez, State Attorney General's Office; Harry Gottschalk; Harvey Chopp, Boston Housing Court; Bob Engler, Stockard and Engler.



## 1. Incidence

There are currently six private properties in receivership in Boston. Three of them, mentioned above, will be the subject of our case studies in this chapter. Mr. Harry Gottschalk is the receiver for two properties in Dorchester. One is located on Arbutus street and the other one is located on Whitman street. The two properties are each six unit buildings. Mr. Gottschalk worked as a housing specialist in the Housing Court from 1974 to 1979. In February of 1981 he was named receiver of five properties, the two named above and three other properties. Two of the three properties were on Spencer street and the third one was on Ashden street. The three were dropped from the receivership in May because the tenants would not cooperate with Mr. Gottschalk. There is another receivership on Dixwell street. This property has 18 units. It was placed in receivership in March 25 1981. The receiver is the Dixwell-Columbus Tenants Union. This brings the number of units currently in receivership in Boston to about 78.

There have been other properties in receivership in Boston. However, it is difficult to tell exactly how many there have been. When the Sanitary Code was first passed, legal service lawyers decided to try to see if receiverships might be a useful remedy. At least four properties were placed in receivership. Fair Housing Inc., a community organization which worked on code enforcement issues, was also involved in this effort. (1) When the Housing Court was established in 1972, legal service

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(1) Boston Urban Observatory, op. cit., p. 27

lawyers tried receiverships again. They placed approximately ten properties in receivership before deciding that injunctions were a better solution. (1) In 1975 there was a receivership on Green street in Dorchester which lasted several months. The receiver was Mr. Richard Badillo, who is now a housing specialist in the Housing Court.

## II. Case Studies

### GENEVA-JOSEPHINE

This property is located in the Fields Corner section of Dorchester. It is a ten unit brick structure with four commercial spaces at street level. There is 1 one bedroom unit, 7 two bedroom units, and 2 three bedroom units. The tenants are all Hispanic. Most of the households are headed by women. Many of the tenants are on assistance.

The bulding is owned by John MacNeil. Mr. MacNeil disappeared three years ago. After Mr. MacNeil disappeared the tenants collected money to purchase heating oil. This arrangement worked for about a year and a half until one winter month when the tenants failed to buy oil. The pipes froze as a result. The tenants decided to stop working collectively. Each tenant would provide heat for themselves as best they could. Most of

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(1) interview with Mr. Dan Manning from Greater Boston Legal Services

the tenants bought space heaters. Many of these appliances were installed incorrectly, creating a safety hazard which remains to this day.

The tenants were not paying any of the bills which the property, and the owner, were accumulating, including, real estate taxes, electricity, and water. This resulted in the water to the building being shut off. The tenants sought help from a nearby community organization, Dorchester Neighbors Organizing Neighbors (DNON). DNON worked with the tenants and put them in contact with Fields Corner Legal Services. In November of 1980, the tenants formed the Josephine-Geneva Tenants Corporation, a non-profit charitable corporation. The long term goal of this organization is to save the building through maintenance and rehabilitation. In January 1981, the corporation filed a complaint in the Boston Housing Court, requesting that the court appoint them receivers of the building. On March 5, 1981 Judge Daher issued an order appointing the corporation temporary receiver of the property. The tenants thus became the first such group to be named receivers in Massachusetts.

Of course, receivership has not solved all of the tenants' problems. Several of the buildings' major systems are in serious need of repair, including the heating and hot water systems, and the electrical system. The plumbing system may need to be repaired. Many lesser code violations remain. A preliminary architectural study conducted by City Design estimated that full rehabilitation of the building would cost \$312,000, or some \$31,000 per unit.

The main problem facing the tenants has to do with their limited resources. The tenants have set themselves rents which range from \$50 to \$75, representing approximately 45% (1) of the rent paid to Mr. MacNeil. They are far below the \$140 average rent that Mr. MacNeil was receiving before he left. The tenants feel that this is justified because they provide their own heat and they invest work in their apartments. However, these rents are barely enough to meet operating costs, such as periodic payment of the water bill. The rents are not high enough to finance the repair of any of the major systems, and certainly not high enough to support debt service on a rehabilitation loan.

In December of 1981, the Office of Just Housing at Roxbury Community College became involved with the tenants of Geneva-Josephine. By this time the tenants were having some problems; they had stopped meeting regularly and were not paying rent. The main concern of Pablo Calderon and Sherry Fleishman, the staff of Just Housing, was to get the tenants to start working together again. They have been successful in getting the tenants to meet regularly. The tenants have started paying their rents again. They have also formed work crews to do repair work in common areas of the property. Current efforts are being directed towards getting the tenants to raise their rents.

Sherry and Pablo are also exploring development possibilities. The lawyers at Fields Corner Legal Services did

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(1) Information obtained from a document prepared by Fields Corner Legal Services

much preliminary work in this area, however the funds of the programs that they were investigating were in the process of being frozen. The Section 8 moderate rehab program administered by the BHA is one of the few programs left and its future is in some doubt. The BHA is not accepting any more applications for the current year. Exploring one of the few remaining possibilities, Just Housing has applied to the Community Economic Development Assistance Corporation (CEDAC) for a grant to contract someone to do the technical work needed to put together a development package.

PRO FORMA FOR GENEVA-JOSEPHINE PROPERTY

A. Total number of units		10
B. Total cost of rehabilitation	<sup>1</sup>	\$312,000
C. Rental income	<sup>2</sup>	8,400
D. Operating expenses	<sup>3</sup>	46,149
management		\$3,055
utilities		22,185
maintenance		9,985
insurance		3,147
taxes		6,415
replacement reserve		1,360
E. Debt service, 15 years at 15%		53,357
F. Total gap (D+E-C)	<sup>4</sup>	91,106
G. Gap per apartment per month (F/A)/12	<sup>5</sup>	759

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1. These figures, prepared by City Life, were obtained from the Office of Just Housing at Roxbury Community College.
  2. Approximate figure. Based on average rents of \$70.
  3. These are the figures which apply in MHFA projects. They are very high. They reflect costs in a rehabbed property.
  4. This represents the amount of subsidy needed to supplement rents so that operating costs and debt service can be covered.
  5. The gap is exaggerated because of high rehab costs and operating expenses.

### Dudley-Hampden

The Dudley-Hampden properties comprise 26 residential and four commercial units in four buildings. The tenants are mostly Hispanic, although some whites, including Mr. Ornsteen live in the building. Mr. Ornsteen, who is over 70 years old, became incapable of managing the property. He had failed to pay real estate taxes for several years. For a period during the winter of 80-81, he failed to provide heat. Several illnesses occurred as a result, including one elderly woman who suffered frostbite. A few of the tenants began seeking help from nearby community organizations, including We Are In This Together (WAITT), and Alianza Hispana. Sister Mary Rogers, from WAITT --and nearby St. Patricks-- took a particular interest in the plight of the tenants. She helped some of the tenants file a complaint against Mr. Ornsteen in the Housing Court. In January of 1981, the Court issued a restraining order against Mr. Ornsteen. Subsequently, the Court found him in contempt for failing to provide heat and fined him \$2500.

In February, a fire damaged six apartments in one of the Dudley buildings. These units are currently unoccupied. By now, it had become clear that the property would not survive for very long under Mr. Ornsteen's control. Sister Mary Rogers took the tenants to Roxbury Legal Services. Mr. Vincent Pisegna was assigned to their case. A group of the tenants together with Mr. Pisegna and representatives from Alianza Hispana, explored ways of saving the property, which was still under litigation.

Alianza considered the feasibility of becoming receiver but decided against it when it was realized that the process for obtaining ownership would be long and complicated. The tenants filed for receivership anyway, and in May, Judge Daher issued an order naming the Dudley-Hampden street Tenants Association temporary receivers of the property. The court order charged them to seek a permanent receiver.

With the help of Sister Mary Rogers, Mr. Pisegna, and Alianza Hispana, the tenants have been managing the property successfully. They have overcome several critical situations, including malfunctioning of the heating system in one building and the electrical system in another building. The problem with the heating system was solved with a loan of \$2,000 from the Catholic Diocese. Alianza was able to obtain the services of a group of trainee electricians to work on the problem in the electrical system.

Alianza remains interested in the development of the property, especially because of its close proximity. Alianza secured a technical assistance grant from CEDAC to hire the consulting firm of Stockard and Engler. Mr. Engler had Mr. David Conover, an architect, walk through the property with him to determine how much work needed to be done. The cost of needed repairs, which included work on the roof, back stairs of one building, heating, plumbing, and the electrical system in one building was estimated at \$330,000, or approximately \$12,000 per unit. Although the tenants in Dudley-Hampden pay more in rent --an average of \$150 per unit-- than the tenants in



Geneva-Josephine, the rental income from the property is still not sufficient to do rehabilitation without some form of subsidy.

Stockard and Engler helped Alianza negotiate a purchase/sale agreement with Mr. Ornstein to buy the building outright for \$20,000, with provisions for assuming up to \$90,000 of the owner's liability, including water and sewer lien, mortgage arrearage and principal owed, and back taxes. Although these terms seem excessively generous, agreeing to them was thought to be a necessary evil if Alianza was to approach financial institutions for a mortgage. Stockard and Engler also helped Alianza prepare an application to the BHA for Section 8 moderate rehab funds. Alianza received a preliminary commitment for funding from the BHA.

Currently, Stockard and Engler are investigating financing possibilities. They have contacted the Land Bank and several commercial lenders. In order to meet the equity requirements, the Community Development Finance Corporation (CDFC) is being approached. Alianza has applied to CEDAC so that they can retain the services of Stockard and Engler to structure what is sure to be a complex development package.

PRO FORMA FOR DUDLEY-HAMPDEN PROPERTY

A. Total number of units		26 residential
	1	4 commercial
B. Total cost of rehabilitation		\$445,000
	2	
C. Rental income		54,000
	3	
D. Operating expenses		80,600
management	6,500	
utilities	27,300	
maintenance	20,000	
insurance	4,000	
taxes	19,500	
replacement reserve	3,300	
E. Debt service, 15 years at 15%		60,883
(based on a mortgage loan of \$356,000)		
	4	
F. Total gap (D+E-C)		87,842
G. Gap per apartment per month		243

- 
1. Figures obtained from Stockard and Engler.
  2. This figure is an estimate based on average rents of \$150
  3. Obtained from Stockard and Engler. Assumes rehabilitation.
  4. This represents the amount of subsidy needed to supplement rents so that operating costs and debt service can be covered.

## Dixwell

The Dixwell property comprises 12 units in 2 brick buildings in Jamaica Plain. All of the tenants are Hispanic. All are low income. Each building has 4 two bedroom units and two three bedroom units.

The owner, Mr David Gonzalez, who lived in the building, did not have the wherewithal to manage the building properly. The previous owner had failed to pay taxes since 1973. He unloaded the property on Mr. David Gonzalez, who was lured by the rental income. Mr. David Gonzalez soon learned the harsh reality of managing distressed properties in Boston. For a period in 1978 he failed to provide heat. Health problem occurred as a result. He kept his tenants at bay by intimidating them. However, some tenants sought help from Brookside Family Life Center. They were referred to Legal Services where Ms. Maria Lopez took their case.

The tenants, represented by Legal Services, filed a complaint against Mr. David Gonzalez. The court ordered a temporary restraining order against Mr. David Gonzalez to make all needed repairs in 45 days. When he failed to do so, the court found him in contempt. The tenants petitioned for receivership, as it had become clear the owner was unable to manage the property safely. The court issued an order naming Mr. Jim Lindsay receiver of the property. Mr. Lindsay worked with a nearby Catholic church which had been helping the tenants. In the court or-

der, the judge called for the formation of a group of technical advisers which included four tenants, Urban Edge, a nearby organization involved in housing development, a social worker from Brookside Family Life Center, and a lawyer from legal services.

Problems soon developed between the tenants and Mr. Lindsay, the receiver. To begin with, Mr. Lindsay did not speak Spanish, which meant that he could not communicate with many of the tenants. Also, Mr. Lindsay decided that he wanted to give the tenants some responsibility in the building. He assigned two tenants, one in each building, to collect rents. This arrangement caused friction between tenants in both building. One of the collectors attempted to separate the buildings, claiming that the tenants in her building were subsidizing the tenants in the other building. Part of the problem was that the heating system in one building used gas heat where the other heating system used oil heat, which was more expensive. Finally, the situation became untenable and Mr. Lindsay vacated the position of receivership. The current receiver is Mr. Rafael Rodriguez, a plumber from the South End, who is trying to preserve a more formal relationship with the tenants.

The Dixwell property is expected to be the first one to come out of receivership. Urban Edge has been working to develop the property for several years. The agency is ideally suited for this task. It possesses all the required skills to do development work except for social service skills. The main problem confronted by Urban Edge is the high cost of rehabilitation vis a vis the rent levels in the building. Urban Edge has estimated

that it will cost about \$165,000-\$180,000 to rehabilitate the property, or between \$13,750 \$15,000 per unit. Most of the tenants pay between \$140-\$160 per month.

Urban Edge has been able to secure a commitment from the BHA for moderate rehab funds. Thus, the property will receive guaranteed rents of \$390 per month per unit, which is enough to support a mortgage for rehab work. Urban Edge is currently negotiating with several banks to obtain the lowest cost financing.

Two problems still face Urban Edge. One is the question of equity. The agency does not have money to invest in the property. This might later complicate the ownership question. At present, Urban Edge hopes to obtain the property from the city when the city takes it over for tax arrearage, fix it, and then turn it over to the tenants. Financing will be complicated by the method used by banks to determine the worth of the property. More about this in the next chapter.

PRO FORMA FOR DIXWELL PROPERTY

A. Total number of units		12
B. Total cost of rehabilitation	<sup>1</sup>	\$180,000
C. Rental income	<sup>2</sup>	23,040
D. Operating expenses	<sup>3</sup>	17,196
management		1,390
utilities		5,844
maintenance		2,930
insurance		750
taxes		5,250
replacement reserve		1,032
E. Debt service, 15 years at 15%		30,783
F. Total gap (D+E-C)	<sup>4</sup>	24,939
G. Gap per apartment per month		173

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1. Figures obtained from Urban Edge.
  2. This is an estimate based on average rents of \$160
  3. Obtained from Urban Edge. Assumes rehabilitation.
  4. This represents the amount of subsidy needed to supplement rents so that operating costs and debt service can be covered.

## CHAPTER 4: ANALYSIS OF CASE STUDIES

The preceding case studies highlight several issues concerning receiverships which will be discussed in detail. This section will be divided into two parts. The first part treats the characteristics of the individuals and institutions involved in the receivership process. The second part treats development issues by subject.

### I. SET OF ACTORS

A similar set of actors and potential actors operate in all receiver cases. Potential actors are institutions, such as banks, which are presently in the background but which ideally will be drawn into the process. What follows is a brief description of each of these actors: owner, tenants, social worker/organizer, lawyer, community agency, BHA, the city, and banks.

#### OWNER

The typical owner in a receivership case is a person of

limited financial resources who is, or has become, incapable of managing a property. In all three cases, the owners had stopped paying taxes several years before being brought to court. Rolf Goetze has created a typology of owners and applied it to neighborhood types. (1) Neighborhoods are classified by market perception and physical condition of the housing stock. The properties in our case studies are located in neighborhoods characterized by an unstable market and poor housing conditions. According to Goetze, the "operator" is one of the few owners active in this type of neighborhood. The characteristics of the "operator" are as follow:

- Derive profits from operation in weak market areas where no one else will supply housing -the low end of the housing spectrum
- Stereotyped as the slumlord, around since at least 1960's
- Can't be dislodged because of problems of relocating tenants
- Objective: high annual returns (attendant high risks)
- will pay taxes only as advantageous but counting on "end game" (4-5 years before City forecloses)
- Accept and pocket whatever they can of rents obtained
- Minimize taxes and maintenance outlays
- Acquire without conventional mortgage, perhaps take over existing mortgage or obtains mortgage from owner
- Properties may be encumbered with second mortgages, liens, etc.
- Virtually no tenant selection exercised, more likely than most to take welfare referrals to avoid vacancies
- Often own "worst" housing in neighborhood, causing abutters to despise them, seek their removal
- Tenant-landlord polarization
- Likely to be in or get into into tax delinquency (2)

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(1) Rolf Goetze, Kent W. Colton, and Vincent F. O'Donnell, Stabilizing Neighborhoods: A Fresh Approach To Housing Dynamics and Perceptions, Boston Redevelopment Authority, 1977

(2) *ibid.*, p. 33



Mr. John MacNeil, owner of the Geneva-Josephine property, is a good example of an operator who has milked his property for as much as he can and decides to get out. According to Mr. Goetze's typology, the next step for this property is abandonment, which always has a negative impact in the neighborhood where it occurs.

The two other owners fall into the cracks of Mr. Goetze's typology, and as such represent the dynamic nature of a city's neighborhoods. Mr. Ornsteen has become incapable of managing his property safely. Perhaps he attempted to sell his property during the period of neighborhood transition and was unable to do so. His inability to manage properly reflects a physical incapacity. It is difficult to distinguish between someone who is unable to manage and someone who is unwilling. The mere fact of age is not necessarily indicative of capacity. At any rate, regardless of intention, nothing can be done with an owner who is unable to manage. Thus, although the owner who is unable to manage may have different motives from the "operator", from the point of view of the community they must both be removed from control over property.

Mr. Gonzalez, thinking of the rent rolls, and not fully realizing the liability he was accepting, allowed a property to be dumped on him. This is a fairly common occurrence. Many owners who accept a property in this way are also incapable of managing them properly, although for a different reason than age. The reason they cannot manage the property is lack of expertise. It is conceivable that an owner who has a property dumped on him or her could be trained to take care of it safely, as long as he

or she is willing to make a sincere effort. However, if the owner decides to impose a rule of terror, as Mr. Gonzalez did, then it is clear that they will not cooperate.

Our look at these three owners provides us with an insight into where a receivership might be appropriate. The rents provided by properties located in declining neighborhoods will usually not be sufficient to keep a building in perfect repair. However, if it is clear that the owner is willing to make an effort, and that the problem is mainly financial, then it would make more sense to help the owner than it would to take the property away. The question of motivation is critical. Receivership seems appropriate in cases where an owner has disappeared, is unwilling to manage properly, or is physically unable to do so.

### Tenants

Perhaps by coincidence, the majority of the tenants in properties under receivership in Boston are Hispanic, mostly Puerto Rican. This might also be due to the fact that Puerto Ricans usually occupy the worst housing in eastern urban centers. The tenants in our three cases are lower income. Many are single female heads of households on AFDC. Many of the tenants do not speak English and are not familiar with institutions or agencies that could provide services in times of crises. Most, if not all of the tenants are eligible for Section 8.

### Church Workers/Social Workers/Community Organizers

I group these together because they perform a similar function in our case studies, not because their professions are similar. A salient characteristic of the three cases is that the tenants seek help only out of desperation. They do not understand the system well enough to seek help as soon as something goes wrong. Individually, many of the tenants feel a sense of powerlessness. A catalyst is needed to make them act. In each case, this catalyst was a social worker or a community organizer. The social worker or organizer takes whatever emergency steps are needed to deal with a crisis, organize the tenants so that they start working as a unit, and put the tenants in contact with the legal system. Many times he or she translates for the tenants. The services of the social worker or organizer are needed throughout the process, not just in the initial stages. Even after receivership is granted the social worker is needed to keep the tenants working together. The role of the social worker or organizer in the receivership process is critical and should not be underestimated.

### Lawyer

All of the lawyers in our cases were provided by different branches of the Greater Boston Legal Services (GBLS).

GBLS was also involved in the BHA case. These lawyers work with low income clients primarily on civil suits. Tenant-landlord cases are an area of particular concern. The work needed to prepare a case for receivership is not particularly complex. The major issue is evidenciary, proving that violations exist. This is usually not difficult. The work becomes much more complicated when the owner decides to fight a case. Finding a receiver is difficult but it is not a task unique to the lawyer. The other areas of concern for the lawyer are, communicating with the tenants, and getting the tenants to show up in court.

Greater Boston Legal Services has been involved with most, if not all, of the housing receivership cases in Boston. When the sanitary code was passed in 1965, the Boston Legal Assistance Project, a precursor to GBLS, became interested in testing the receivership remedy. The reluctance of judges to impose receiverships, and the financial problems encountered by properties that made it to receivership, greatly reduced interest in this remedy. The creation of the Housing Court in 1972 marked the resurgence of a new interest in receiverships as a possible solution to tenant landlord disputes. At the time, GBLS became involved in about ten such cases. However, the agency decided that injunctions and restraining orders were a more direct way to deal with housing problems. One reason for this decision was the difficulty in finding people who would agree to be receivers. After years of working with these remedies, around the mid to late seventies, there came a realization that in some cases, enjoining an owner was not effective if the owner did not have

the money needed to make repairs. In such extreme cases, receivership was made use of again. In 1981, GBLs decided to see if a tenant receivership would work. This was how the Geneva-Josephine receivership came about.

### Receiver

The receiver is usually an individual or group with a commitment to community development. It could not be otherwise because there are not enough resources in receivership properties to provide the receiver with adequate rewards. The receiver must function in two capacities, a management capacity to keep the building afloat, and a development capacity to comply with the court order. Of the two, the most important for the individual receiver is management capacity. If the building fails in its daily management, it will not survive. It is also important for the individual receiver to have some measure of social work skills. He or she must convince the tenants that he/she is not a surrogate owner. Otherwise, the tenants may not sense a real change in their situation. One advantage that the receiver has and the owner lacks is increased capacity to organize. If the tenants trust the receiver, he/she can mobilize them to form groups to do needed work.

There are only two individual receivers in Boston, Mr. Gottschalk and Mr. Rodriguez. Mr. Rodriguez is receiving substantial development assistance from Urban Edge. In general,

individual receivers are hard to find. Usually, the tenants set out to locate a receiver and are unable to find someone with the right combination of experience and interest. Rather than let the situation continue indefinitely, the tenants decide that they will be receivers. However, because they lack management expertise, they must work closely with a community organization.

### Organizations

Community organizations of one type or another have been involved in each of our three case studies. The organizations most closely involved with the cases are: Alianza Hispana, which actually provided the impetus for this study, Urban Edge, the Office of Just Housing at Roxbury Community College, and Dorchester Neighbors Organizing Neighbors.

Organizations serve several essential functions. The first one is crisis intervention. An owner who neglects his/her property can cause serious health hazards for the tenants. A situation may arise which may require immediate assistance. Community organizations such, as Alianza Hispana, provide the social workers to cope with these crises. The second function is technical assistance, without which the tenants would have a much harder time keeping the properties in operation. Lastly, community organizations provide continuity. They orchestrate, as it were, the efforts of tenants, lawyers, receivers, and other organizers.

Community organizations are important to the resolution of a receivership situation. Tenants, lawyers, and organizers invariably lack the skills or the time to do development work. They must rely on the experience and the political contacts of organizations.

Community organizations are usually motivated by a desire to save the housing in their neighborhoods. The principal example of this is Urban Edge, which is involved extensively with housing development in Jamaica Plain. Alianza is attempting to gain experience in housing development. Because they lacked the experience to do the necessary analysis, they applied to CEDAC to obtain the services of Stockard and Engler. Just Housing is not geared to make a long range commitment to housing development. In the long run another agency will probably need to get involved.

To date, none of the organizations involved in receiverships have been reimbursed for their work. Organizations view their work either as community service or as an opportunity to gain housing experience. In the future, these organizations will probably make other arrangements for reimbursement.

#### BHA

The BHA, which is also in receivership, manages its own properties and serves as a conduit for federal funds, such as HUD's Section 8 program. The Section 8 moderate rehab program is

one of the few programs which can be adapted to receiverships without major upheavals because it allows for private financing without necessitating relocation of the tenants. The Section 8 moderate rehab program is designed to provide housing to low income families. It provides the owner guaranteed rents. These rents can be set at 110% of prevailing market rents for a specific type of unit in a particular area. The government pays the difference between this market rate and whatever it determines that the tenant can pay. The guarantee is used to obtain financing. It provides security for a lender who might not otherwise invest in certain areas. The subsidy can be used to close the gaps which we saw in the pro formas in chapter 3, between rental income and the cost of operations and debt service. However, like most city bureaucracies, the BHA is slow. A year can elapse between submissions of a proposal and final approval. During this period the proposal goes through several review processes.

### The City

The city will play an important role in the final resolution of current receivership cases. The city, especially the tax department, holds the key to ownership. This is because the properties in receivership currently are in deep tax arrearage. The city is reluctant to foreclose on these because it would then be liable for the safety of the tenants. However, at the point



that a financial deal can be structured and funding commitments secured, arrangements can be made to have the city use its powers to take over a property or transfer it to the tenants, a developer, or a community organization. The city, in an effort to address the housing problems that plague some neighborhoods, recently streamlined the abatement procedure to facilitate the rehabilitation of low income housing (see chapter 5). In return, the city gets back portion of the tax money, in the case of an abatement, or the proceedings from an auction, in the case of foreclosure.

### Banks

Unless a financing tool is developed specifically for receiverships, banks will inevitably be drawn into the development process. Banks are conservative institutions and they must be convinced that their money will be safe. In addition, bankers are loath to invest in declining neighborhoods without substantial guarantees that debt service payments will be met. Of course, banks can only provide mortgages to those who will be owners, so that the ownership question becomes critical at the point of securing financing.

## II. DEVELOPMENT ISSUES

### NEED FOR SUBSTANTIAL REHABILITATION

Each of the three properties examined in the case studies requires substantial rehab work. Required work ranges from broken stair cases, to fire damage, to heating systems which are not functioning. This reflects the accumulation of years of neglect. Architectural estimates for needed work range from a low of \$12,000 per unit for the Dixwell property, to a high of \$31,000 for the Geneva-Josephine property. Admittedly, some of these estimates are high, however, they reveal the magnitude of the resources which must be devoted to bringing the buildings up to code.

These figures could be lowered through the use of sweat equity. An incentive system to accomplish this is discussed in chapter 5. The tenants could absorb some of the labor costs by performing some of the work themselves. Of course, the major systems work must still be contracted to outsiders. In the Dudley-Hampden building, major systems work, including heating, electrical, and plumbing, represented 60% of the preliminary rehab cost of \$301,000. In this case, sweat equity would represent a savings of no more than 20%, given that equipment, such as stoves, refrigerators, and construction equipment, must be purchased.

Furthermore, the use of sweat equity in rehab projects requires expert coordination. There are few contractors equipped

to do this type of work. Properties which have more than three or four units require even more coordination and discipline than smaller properties. Tenants must be convinced to work on other tenants' apartments while they await work on their own. This demands excellent relations among tenants. It requires the developer to have some social work skills.

With current high interest rates, it is clear that mortgages will not be large enough to cover all of the needed work. Some work will just not get done. This points to a need to prioritize carefully, distinguishing between those things that need to get done for safety's sake, and those that are merely cosmetic.

#### Low Rent Levels

The rents in each of the three properties are fairly low. They range from a low of \$50 to \$75 in Geneva-Josephine, to \$165 in Dixwell. The total rent receipts at Geneva-Josephine over the past year have actually been lower since the tenants have not paid during some months.

Any development to be done in the properties depends in large part on the rental income that they receive. In order to support the development work, it is clear that the rents may need to be raised, even if rent subsidies are obtained. However, there is a point beyond which they cannot be raised, given the characteristics of the tenants, many of whom are on assistance.

The tenants cannot pay much more than \$175 per month, including heat. Even this represents a healthy chunk of a \$400 income.

The maximum rent which the tenants can afford, probably about \$200 if they are on assistance, would not even be enough to cover operating expenses once a building has been fully rehabbed. According to the pro formas submitted by Urban Edge and Alianza Hispana to the BHA --see chapter 3--, operating costs per unit per month are in the \$250-\$275 range. Operating expenses include maintenance, management, water and sewer, real estate taxes, heat, and electricity for common areas. Debt service is not considered an operating expense. When debt service is added, the cost to run an apartment per month begins to exceed \$300. Clearly, the rental income per apartment does not begin to cover this.

#### Importance of Tenant Unity

There are few success stories in public housing. An important factor in the success of the lucky few has been the characteristics of the tenants who reside in them. Thus, the tenant selection process is critical to making a project work. Receivers do not have the luxury of selecting tenants. They must work with the tenants who reside in the property, unless extraordinary circumstances force them to evict tenants. Not only is receivership a judicial remedy of last resort, it also represents a sort of a last chance for the tenants who live in these properties. A property in receivership can provide housing to

those who would find it difficult to find housing elsewhere. The key point to remember is that the receiver has to work with the tenants that are there. It thus becomes critical that the tenants be able to work cooperatively with each other, for their real strength lies in their numbers. Conversely, if the tenants are riddled with dissension, the receivership will not work. In the cases where the tenants are receivers, a mechanism to resolve disputes must be created at the outset.

In concrete terms, unity means a tenant organization which represents at least half the tenants. This organization must meet regularly and should have elected officers. In addition, members of the organization must be willing to attend meetings. The organization should have mechanisms for resolving disputes and should be able to impose and enforce sanctions against individual tenants.

In every stage of the receivership process, there is a reason for tenant unity. To begin with, before and during litigation, the tenants must be able to agree on a desired course of action. One or more of the tenants must agree to take charge, or to be a plaintiff if need be. Minimally, the tenants must show up in court. Judge Daher stated in an interview that one of the most important considerations in deciding whether to appoint a receiver is the commitment of the tenants to the property.

During the receivership stage, tenant unity becomes imperative for two reasons. The first one is that the margin of error for properties in receivership is slender. Once one or two tenants decide to stop paying rents, or to throw out their gar-

bage in ways not prescribed, dissension is created among the other tenants, who begin to feel they are carrying a disproportionate burden. Furthermore, rental income from these properties is low and if tenants decide to stop paying, or if an outside management firm must be brought in to do maintenance work, the receiver may be hard pressed to provide essential services, such as heat.

The second reason is that the tenants must start learning to prepare themselves for the final stage, when a property comes out of receivership. There is an expectation now that the tenants will become at least part owners of the buildings where they live. As owners, the tenants will be individually liable for their actions. By this stage they must have a clear understanding of their responsibility to the property and to the other tenants. From a financial point of view it is also very important for tenants to agree to take increasing responsibility for management functions. Here, management is meant to refer generally to maintenance, management --in the strict sense of the word--, and administration. In this sense, management functions include rent collection, routine maintenance, garbage collection, and the purchase of heating oil. If properly trained, the tenants could assume these functions. This is important because it is commonly agreed that management costs, loosely defined, are especially high in publicly subsidized housing units. This has to do with government regulations, which mandate that things be done according to very demanding criteria. It also has to do with the need to dedicate time to providing social work for the

tenants. Figures from the MHFA, which average out the costs for administration, maintenance, and management, in 10 properties similar to the ones we are discussing, show that as much as 33% of the operating expenses of a property can be devoted to these categories of expenditures. By assuming these functions, the tenants can realize a substantial cost savings. Furthermore, it is not easy to find management firms which will work with small, isolated publicly subsidized housing units.

There have been instances where tenants failed to cooperate. Mr. Gottschalk had one such experience on Spencer st. The tenants would not pay their rents regularly. Worse yet, they would not dispose of their garbage in a sanitary way. They would throw it out windows to an adjoining lot, or leave it lying around. This caused a severe health hazard. For several months Mr. Gottschalk worked to get the tenants to follow the rules he had set forth. Finally, seeing no results for his efforts, he dropped the property from receivership.

The tenants must also be willing to make some sacrifices. It seems that when the properties enter the development stage, some rents will need to be raised. There are two reasons for raising rents. The first one is that increased rents will allow for an increase in repair work while development is being arranged. The second reason has to do more with symbolism. By raising their own rents, the tenants are expressing a commitment to the property. This sign of good faith will go a long way in convincing city officials, funding agencies, and banks, to work with them. It denotes a seriousness of purpose. It is sym-

bolic because under Section 8, the setting of rent levels will be out of the tenants hands.

In terms of the three case studies, the property which is in the least enviable position is also the one in which the tenants are more inclined to work individually. This is the Geneva-Josephine property, where the tenants have been providing their own heat for over a year. For a period after they were named receivers, they did not collect rents. It was only after considerable effort by the staff of Just Housing that the tenants agreed to pay rent. Indeed, receivership must seem a mixed blessing to these tenants. When the landlord disappeared so did the obligation to pay rent. The new status they have embraced has forced them to pay rent despite the fact that they provide their own heat.

It is very possible that their period of independence could poison the tenants chances of making their receivership a success. The acid test will come in the near future, when they are asked to collect more in rents. If they resist this, it will certainly dampen any funding agency's desire to help them, unless the tenants make a strong case for the numerous in-kind contributions that they are making.

### Financing

The low rent levels in the three properties illustrate the need for rent subsidies in order to bring a property up to



code. Tenants could probably not pay more than \$175-\$200 per month in rent. This would be the bare minimum needed to cover operating expenses in a rehabbed property, assuming tenants perform management and maintenance functions, which would otherwise drive the operating expenses upwards of \$250 per month per apartment. This does not leave room for a mortgage to support the repairs needed to comply with the sanitary code.

In order to illustrate the additional monthly cost of financing rehabilitation, we will look at the property with the lowest per unit rehab cost, the Dudley-Hampden property. Assuming the mortgage will be spread over the four commercial properties, as well as the 26 apartments, we have determined the debt service per apartment per month at various interest rates, assuming a 15 year mortgage, the duration of the Section 8 subsidy.

\$330,000 at	3%	9%	12%	15%
	\$76.78	113.72	134.58	156.76

As can be seen, the lowest per unit per month figure for debt service, assuming an unrealistic interest rate of 3%, is \$76.78. Employing a more realistic assumption of 15%, the per unit monthly debt service would be \$156.76. We should remember that these figures apply only to the Dudley-Hampden property, as the other properties require substantially more rehab work.

However, even the lowest cost loan would not solve all of the financial problems in our three cases. Higher rents are needed and this means rent subsidies. It is at this point that

our characterization of receivership as a way of providing housing of last resort to tenants who have no other recourse becomes critically important. Attracting tenants who can pay higher rents to enjoy the benefits of rehabbed properties is obviously not the answer. The only answer, then, is to obtain rent subsidies.

Unfortunately, there are very few housing programs currently in operation. Let us examine a sample of housing programs which have been in operation until recently. There are two basic types of programs in Boston which enable moderate rehab, interest reduction programs and rent subsidy programs. The BHA and the Mayor's Office of Housing jointly administer HUD's 312 program, which provides low cost rehab loans. According to a source in the Mayor's Office of Housing, this program is in a state of "suspended animation" due to a lack of funding. The Mayor's Office of Housing also administers an interest reduction program. It uses CDBG funds to lower the interest on FHA loans to 3% for a limited amount of money. The tenants in the Geneva-Josephine property could get up to \$80,000 through this program. Of course, it is the limit on the loan which dulls this program's usefulness. It is meant to be used in smaller properties.

The State Office of Communities and Development administers the 707 rehab program, which uses state funds to subsidize rents and is structured in much the same way as HUD's Section 8 program. However, there is a freeze on this program. Up to now, HUD's Section 8 moderate rehab program has been the only

widely available rent subsidy. However, with further federal budget cuts in housing, the future of this program is in question.

Securing Section 8 has not resolved all of the problems confronted in development. As a matter of fact, Section 8 has created a problem, albeit a minor one. The Section 8 guidelines rigidly define how many people can live in an apartment of a given size. However, some of the tenants in the three receivership properties are probably living in overcrowded conditions. This creates a potential for displacement. Other problems, which cannot be solved by Section 8 are: finding a lender, method of valuation, equity, definition of rental income, take-out, and ownership. Each of these will be discussed briefly. (1)

#### High interest rates/Finding a lender-

Not all banks will lend to properties in neighborhoods where the receiverships are located, even with guaranteed rents. This is not an insurmountable obstacle since there are banks that will lend, such as the Shawmut, which has developed a close relationship with Urban Edge through the years. The real obstacle to getting a commercial loan is current high interest rates. In effect, the interest rates actually reduce the amount of work that can be done on a property. Because of its impact on debt ser-

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(1) Much of what follows is based on a discussion with Luis Beato, from Urban Edge, and Bob Engler, from Stockard and Engler

vice, a 15% loan for \$330,000 will cost the same in mortgage payments as a 5% loan for \$585,782. Of course, the 5% loan will buy \$255,782 more of rehab work.

There are current efforts in Massachusetts to get quasi-public agencies to provide low interest loans for housing development. There is much interest in getting the MHFA to invest a portion of its interest income to develop low income housing. The Government Land Bank is also considering getting involved in lending for the development of low income housing. They have agreed to finance a pilot project developed by Living In Dorchester, Inc. to rehab several properties in Dorchester.

#### Definition of Rental Income-

One of the issues that Urban Edge is trying to resolve with the banks is the definition of rental income. The banks are willing to consider as rental income only the part that is provided by HUD. Of course this is not a firm figure, as it depends on whatever HUD asks the tenant to pay. The importance of this is that the traditional method of valuing a property to determine how large a mortgage loan is appropriate is the capitalization method. This calls for the division of net operating income by some capitalization factor --Net Operating Income is gross rental income minus an allowance for vacancies--. The smaller the figure for NOI, the lower the computed value of the property, and the lower the mortgage that will be provided. Of

course, a smaller mortgage means less rehab work that can be done on a property. Urban Edge is attempting to convince the banks to use the full rent to compute NOI. Method of Valuation-

As noted above, the traditional method of valuation is the capitalization method. However, Urban Edge is experiencing some difficulty in getting banks to accept it. From the bank's point of view, use of the capitalization method may overstate the value of a property. This is because it may raise the value of a property far above the market value of similar properties in the same neighborhood. An alternative is to use the cost of rehabilitation as the value of a property. This may also raise the value of the property above the market value of similar properties. Urban Edge is currently working with bank policy makers to convince them to use the traditional capitalization method to determine the value of the property.

#### Take-out-

In conversations with banks, Luis Beato and Bob Engler have been told that they would like provisions for a (Federal Home Loan Mortgage Co.) take-out after five years. (FHLMC) is a quasi-governmental agency which buys blocks of mortgages from banks and sells them on the secondary mortgage market. Securing such a commitment is not easy. Bob Engler telephoned (FHLMC) and was told that they only get involved in finished projects. Urban Edge has had a different experience. They report that (FHLMC)

will commit itself if the bank approves the mortgage loan.

### Equity-

Equity is closely related to the question of method of valuation. The amount of a mortgage loan is usually around 80% of the market value of a property. The 20% is the responsibility of the person gaining ownership, and associated parties. However, in our case studies, the principal use of the mortgage is not the acquisition of the property but its rehabilitation. Thus, it is quite possible to get a loan for 80% of the market value which can cover the full cost of rehabbing the property, depending of course, on how the market value of the property is defined and on how much repair work needs to be done.

However, there is a fundamental issue at stake. It is commonly felt that in order to acquire something of value, one must give up something of value. Unfortunately, the parties most interested in gaining eventual ownership, the tenants or a community organization, do not have the monetary resources to contribute to ownership.

There are two ways that a tenant group or a community organization can contribute equity to a project. The first one involves recognition of the work contributed by tenants and community organizations as something of value. This work includes the management and maintenance work done by tenants and community organizations, the physical work of doing needed repairs, the so-

cial work needed to keep the tenants together, and the development work needed to bring the property up to code. If monetized, this effort would represent a substantial amount of financial resources.

The second manner in which equity can be contributed is by selling the syndication rights of a property to investors looking for a tax break. This is a very common way of making large projects profitable. However, its use in smaller projects, roughly below \$500,000 is not widespread. There are expenses involved in syndication which make it less profitable for its use in smaller projects. The effort/return ratio is lower in smaller projects and this keeps the relatively small number of firms which do syndication away from them. There are several attempts afoot now to create a public agency which will do syndication for smaller projects. One idea is to pool smaller projects, however, the complications in ownership of the properties involved have yet to be worked out.

Finding a willing syndicator does not solve the problem of ownership in a syndication project. The limited partners in a deal, the investors, may end up as owners whether they want to or not. A syndication deal is highly complex, and much time and thought must be devoted to structuring it.

Urban Edge and Stockard and Engler are seeking to resolve the equity problem in similar ways. They will both try to syndicate their projects. Urban Edge has a slight advantage in this respect since they have developed good relations with willing investors. They will also try to get lenders to recognize

the work that has been invested in the projects as a kind of in-kind equity. In addition, Stockard and Engler will explore the possibility of obtaining funds from the Community Development Finance Corporation (CDFC) which would serve as equity. If this is the case, the question becomes who will be the owner of the Dudley-Hampden property, the tenants, CDFC, or Alianza in conjunction with Nuestra Comunidad Community Corporation, which is working with Alianza on the development of the property, and which can legally receive CDFC funds.

It is the issue of ownership which makes development complex. Rather than follow the ins and outs of a typical development deal, let us instead concentrate on this issue.

#### Ownership -

This is the critical question in development; who will have ultimate control of a property. Ideally, the owner would be an individual or organization that has a stake in the survival of the neighborhood.

The ownership problem emerges when an application is made to a funding agency for support. Typically, funding agencies will not support a project unless the ownership question is clear. Thus, this is an issue which must be addressed at the earliest possible time. Since properties in receivership are usually in tax arrearage, the city holds the key to the ownership question. If the city could guarantee that it will transfer ownership early in the abatement process, and if a bank would accept



this guarantee, the development of the property could be made much easier. A program which provides this service will be discussed in chapter 6. The only real guarantee currently available is the one that Alianza obtained, an expensive purchase-sale agreement. The Geneva-Josephine property is further burdened by the disappearance of the landlord, without whom a purchase-sale agreement cannot be negotiated, nor an abatement deal with the city worked out. Urban Edge enjoys good relations with the city and is assuming that the city will transfer the property to them.

Once the current ownership question is resolved, then the future ownership must be dealt with. As we have seen, through the structuring of the development deal, any number of parties may become owners, or part owners of a property; the tenants, a funding agency, a community organization, or a group of limited partners. However, long-term ownership is not a goal shared by everyone in this process. Neither the limited partners nor a public funding agency would be interested in ownership for more than a few years --at least not in the neighborhoods where the properties are located.-- Thus, provision for ownership succession can be written into a development deal which can guarantee the tenants eventual part or full ownership.

These issues involve the development of properties. However, development funds may not exist in the near future. Furthermore, we have not discussed other issues, such as which properties should be placed in receivership and who should do the selection. The next chapter deals with the design of a receivership strategy, even when there are no funds.

## CHAPTER 5: THE ROLE OF COMMUNITY ORGANIZATIONS IN A RECEIVERSHIP STRATEGY

In the previous chapter we introduced the subject of the role of the community organization. Because this role is so important, we will expand on it in this chapter. Community organizations are essential in the receivership process because they provide continuity. They can be the glue that makes the process a contributor to community development. Housing in poor neighborhoods is characterized by rapid turnover. Community organizations provide stability by the sheer force of their continuing presence in a particular neighborhood. What we are proposing in this chapter is a receivership strategy. Receiverships, as we mentioned in chapter 2, require case by case attention. Community organizations function at exactly the level appropriate for the implementation of a receivership strategy. At the neighborhood level, an organization can inventory the housing stock in its area without massive outlays of time and money. More importantly, the staff of community agencies are usually more sensitive to the needs of the neighborhood and the characteristics of the residents than agencies which function at a city or state-wide level. Community organizations are supported by the community. Finally, the other actors in the process need to know that some actor at the neighborhood level will be around in the future.

When we talk about community organizations we are not

referring to a particular type of agency. Minimally, we are talking about a non-profit with a commitment (or mandate) to serve the residents of a particular area. This could be a CDC, a multi-service agency, a cultural agency, or even a health and education agency. Any organization which can see that each problem in a community, whether it be housing, employment, health, or education, is organically linked to the other problems, and can establish these links coherently, qualifies as a suitable community organization. This criteria also implies a commitment to the long term. It would be useful if the organization had a skillfull program development staff, as it is likely that new personnel would have to be added to the organization.

There are many incentives for an organization to become involved in receiverships. A successful receivership strategy can be a step towards reducing housing abandonment and improving the quality of housing in a neighborhood. As Judge Daher pointed out, this can lead to neighborhood stability, even family stability. The alternative is to wait until abandonment and displacement rend a community.

Receivership is a form of code enforcement that will not lead to abandonment. Furthermore, if current legal practice is reformed, receiverships can be used to rescue properties before they slip into irreversible decay. Even under current laws, receiverships can still be used to buy time. While the rental income from a property may not be enough to do rehab work, at least it should be enough to prevent the elimination of essential services at critical times. Another advantage is that receiver-

ship allows an organization or a group of tenants to mitigate the control over property exerted by exploitative owners. Once in control, the tenants and/or the community organization can take steps to remedy their situation.

The community organization faces significant problems which must be overcome if a receivership is to be successful. Ownership is one such problem. Ownership can be conveyed to a group of tenants or a community organization in several ways. There is the purchase-sale agreement discussed in chapter 4. This is the costliest way to acquire a promise of ownership. There is also foreclosure for tax delinquency. This is actually the only way to gain control of a property when the owner disappears. However, foreclosure is a slow process, it takes a year or more. Although this may change, there is no guarantee that at the end of the process the property will go to the tenants or to an organization. The property could be sold at auction and may go instead to a speculator. Whatever preliminary work went into development would have been wasted.

The streamlined abatement process for properties in tax delinquency seems like an effective method to address the ownership issue when the whereabouts of the owner are known. The process was designed for abandoned properties, however, it can be adapted to properties which are still occupied. Eligible properties are one to six unit buildings occupied by the owner. The abatement procedure is based on chapter 58, section 8 of the Massachusetts General Laws. Tax delinquent properties can be conveyed to community groups or homebuyers once an application

has been reviewed and approved by the City and State Tax Appellate Board. Payment of some portion of the back taxes transfers title to the interested party. The advantage that this offers over foreclosure is that the process is faster and it does not involve auction. The city claims the process should take a month. In the last chapter we will discuss the efforts of a city-wide coalition which has designed a concurrent process where a lender will make a commitment before actual ownership is transferred by the city. This commitment could assuage an organization's fears that it will make a significant effort in time and money to no avail.

Another problem faced by organizations is liability. Most organizations do not have the resources to pay for a bond. They cannot be shielded from the financial impact of a suit. A suit can divert the organization's attention from its usual business. It would be wiser for a community organization to encourage the creation of tenant receiverships, where the organization provides management resources and training. The problem of liability would be minimized. Also, tenant receiverships allow the tenants to practice control over their properties, and it prepares them for the possibility of ownership.

The final problem is perhaps the most important; lack of funding. In the previous chapter we saw that several housing programs were being dismantled. Without public subsidies, properties in receivership cannot be developed. What is an organization to do? Without subsidized low interest loans, new housing cannot be built, nor abandoned shells restored.

Ironically, the same lack of funding that makes receiverships risky also makes them attractive. Lack of funding signifies an absence of resources to devote to other alternatives. Receivership is a last resort for the community organization in the sense that it has no other options. It is possible to develop an interim receivership strategy without public subsidies. We propose a receivership strategy predicated on the land-banking model. Briefly, this model encourages community groups to gain control of abandoned housing and vacant land in their neighborhoods. These properties are made safe by boarding them up, or by demolishing them and perhaps landscaping. They are placed in a trust controlled by community groups, protected from speculators. They are held in trust until the group feels that a particular development strategy is feasible and desirable. Land-banking gives community groups some control over the dynamics in their neighborhood. It affords them the luxury of time; it enables them to wait until an opportunity presents itself.

This model can be applied to occupied housing. If a method could be found of saving properties before they become vacant it would constitute an even more important investment in the future of the community than the conservation of land. We believe that receivership as an interim strategy is the method which will allow tenants to stay in their communities. We will present the broad outline of a receivership strategy.

The formulation and implementation of the receivership strategy should be carried out by a community organization for

the reasons presented above. The first step for the organization to take is to consider whether a receivership strategy would be appropriate in their neighborhood. It would be appropriate if there is a sense of the existence of unsafe housing in a neighborhood, and if there is evidence of increasing abandonment. It would be totally inappropriate if the neighborhood is characterized by a high percentage of owner-occupied housing. Applications of a receivership strategy in this latter instance may actually harm a neighborhood by scaring off owners, or by placing unreasonable demands on them.

Once an organization has decided to get involved the next step is to develop some classification system to separate properties which already suffer major systems problems from properties which are overrun by rodents and need replastering. An organization with substantial resources can attempt to use an updated version of the BRA-Housing Inspection Department's typology (see chapter two), however, this would require professional architectural estimates. A rough and ready method would be much easier to apply, and it would be just as useful. Similarly, a system for classifying owners must be established. It is important to distinguish between a blue collar owner who is suffering a temporary setback, and an "operator", who is neither paying taxes nor putting any money back into the property. Once these classification systems have been established, a modest housing inventory should be undertaken.

The key element in a receivership strategy is timing. Intervention must occur before a property falls apart. This

increases the chances of success because the costs of rehabilitation will be lower. Using the BRA-HID classification system, intervention should occur at stage C if possible.

Properties in category C have substantial code violations. It must be assumed that the owners have not been brought to court because the tenants are ignorant of the fact that they have rights which are protected by the Sanitary Code. Once properties for intervention have been identified, the next step is outreach and tenant education. Leadership among the tenants should be identified and developed. The tenants should be taught how to fill out housing inspection forms.

Unless state legislation is passed to facilitate receiverships, it must be expected that only a small portion of the properties which make it to housing court will end up in receivership. However, at least the tenants will learn their rights and the owner will be more concerned about the property. Also, the owner will have established some record, favorable or unfavorable, which will be considered the next time a complaint is filed against him or her.

The main thrust of a receivership strategy consists of serving those properties which make it to receivership. The organization would serve in the role of technical adviser in much the same way that Urban Edge works with the Dixwell property. Initially, the organization would perform the management functions. This must be integrated into an educational program so that the tenants learn how to manage their property. The tenants must assume increasing responsibility for management



functions. A system should be worked out where the rents are lowered as the tenants increase their management functions. The rent savings would serve as an incentive for involvement. Actually, an incentive system might be the thing to get all tenants to do some pre-determined minimum of work. The tenants could agree to review work done every six months. Those tenants that did their share during the period would get a rebate. Self-management is important for the long-run survival of these properties because, as was pointed out in the last chapter, it represents a cost savings over private management, and because it prepares the tenants for future cooperative ownership.

The initial classification of the property was conducted to determine which properties were suitable for intervention. Before going into receivership, a more thorough examination of the property would have to be conducted. The financial analysis would start with a pro forma. It would also detail and cost out work needed to bring the property up to code. It would also prioritize needed work. The prioritized list is important because it serves as the basis for the waiting aspect of the strategy. Based on the analysis, the tenants and the community organization should decide whether rents should be raised slightly. Rental income should be sufficient to cover vital operating expenses with a little extra to place into a fund to pay for work on prioritized items. This fund should represent 10% to 15% of the rental income.

This seems to contradict our position in chapter 4, where it was stated that minimum operating expenses per unit per

month would be no less than \$175, and probably more like \$250. However, there is a difference between a rehabbed property and one placed in receivership as an interim strategy. The term "vital" operating costs is meant to distinguish between both types of properties. "Vital" operating costs are essentially utility costs. Management is subsidized by the organization. Real estate taxes are still the responsibility of the owner. These taxes represent a substantial burden. Maintenance costs are really part of the 10%-15% that is set aside. The work of taking out the trash, and similar tasks, can be contributed by the tenants under an incentive plan. Rents set at a reasonable level (eg. \$150-\$200) should cover the utilities and provide a little extra money. Of course, it could be said that tenants are merely postponing the payment of real estate taxes. This is true. However, there are two responses to this. If eventual disposition of the property is made through abatement, then the tenants will have saved a significant portion of the taxes --the abatement plus the discounted value of the taxes, which are paid in the future--. Also, neither the tenants nor the organization should worry about an expense that is coming in the unforeseen future. The present is the pressing problem. The tenants and the organization must adopt an optimistic attitude.

A receivership strategy, as it is outlined here, would require investment in at least two new staff members, unless the organization already has a housing component. There are four basic skills that are needed to manage and develop a property in receivership, and no one person should be required to have more

than two of these. The four skills are; social work and organizing skills, para-legal skills, housing management skills, and housing development skills. If an organization is lucky it may find a rare, talented individual who can combine social work ability and legal expertise. Finding people with development expertise is not difficult, however, finding people who are familiar with housing management is not easy. The search is even harder if the management person must be bilingual.

An organization that would even consider making investment in staff would first have to ask itself what it expects to get out of the effort in terms of actual number of units saved. Unfortunately, this is not a question that can be answered directly. It depends on several factors.

If the organization finds that tenants are fairly independent, and that they can work with a minimum of supervision, then the potential for a receivership program is very great. The organization need not worry about whether the number of units in a particular property justifies the effort to organize the tenants and place it in receivership. The process will become self-regulating.

However, if the organization finds that receivership is a painstaking process, and this will surely be the case in the beginning, as it learns the system, then it must place a receivership strategy within the context of an overall neighborhood plan. The attributes of the property become very important, especially the number of units, the location, and the capacity of the tenants to organize. The tenants' income might also become

an important consideration. To put it crassly, the organization must worry about getting the biggest bang for its buck. Placing one or two large properties in receivership might be just part of an overall housing or land management strategy. Unfortunately, this involves making severe judgements about a property. An organization may decide not to involve itself in the plight of very needy tenants because their building is too small. It may decide a building is beyond saving. The classification scheme used to group the properties retains many of the negative characteristics of the triage concept so popular in neighborhood theory. Triage, which originated in the Korean war as a system of prioritizing emergency medical service to wounded soldiers, would dismiss whole neighborhoods as beyond saving. This is usually the policy outcome of classification, whether at the neighborhood level or at the federal level. In order to avoid the stigma which comes from classification, the first few attempts must be viewed as "pilot" projects.

It is difficult to say how many units can be "saved" by placing them in receivership. However, the organization can do some form of cost-benefit analysis to determine how many units should be saved.

Another question that the organization should ask itself is how it can recover its costs. Essentially, the organization has three options. It can get its money back in the development deal, and/or it can charge a management fee consisting of some percentage of the rent. If the organization retains ownership, it can also charge the tenants for return on equity. The

first and the last options assume subsidization of rents. The second option is possible even while a property is still in receivership.

The final factor to consider in this chapter is the ripple effect that a successful receivership strategy might cause. We must remember that the key characteristics of a receivership strategy are its flexibility and its potential for coerciveness. So far we have concentrated on flexibility. It would be appropriate to conclude with a few remarks about the coercive potential of receiverships. Essentially, an organization or community group that becomes involved in receiverships is serving notice to owners to maintain their housing in safe condition. Owners who allow substantial code violations and who stop paying real estate taxes exist only because of inertia, because of a paralysis of policy. The city won't take action because it would then be responsible for the tenants. The tenants won't get involved because they don't know what remedies are available by law or equity. A receivership in one property tells the owners of adjoining properties that it is very easy for tenants to learn their rights.

## CHAPTER 6: POLICY ISSUES

Several issues have been raised in the previous chapters which touch on the central question concerning receiverships. Is it worth investing the effort into developing them? In this chapter we will address two criticisms which have been levelled at the receivership remedy. We will then examine several policy issues which affect the generalizability of the receivership instrument.

### 1. Criticisms

It may be thought that receivership is too radical a measure. It attacks private property by removing control from an owner. Even worse, it is applied with the intention of taking ownership away permanently. This view flows from the notion that a person's right to abuse property is more important than another person's right to safe housing. It is merely one of the perversions of the capitalist system we live in. In Massachusetts tenant-landlord relations are based on property law, not on contract law. Thus, until relatively recently, payment of rent was not conditional on the provision of housing services. A landlord could maintain a property in disrepair and still expect payment of rent. Contract law, on the other hand would consider this a breach of contract and would give the tenant appropriate protections. Efforts to legislate sanitary codes were a response to this problem. In outlining the rights and

responsibilities of tenants and landlords, sanitary codes enable the courts to take measures against landlords. Thus, even a basic property concept can change if enough pressure is exerted.

The other major criticism is the lack of money. This view holds that the reason owners cannot maintain properties up to code is because the rental income is so low. When the properties are rehabbed there is a basic per unit per month money gap of anywhere from \$100 to \$200. This is correct. However, the alternatives must be considered. The per unit cost of rehabbing a property in receivership is lower than the cost of rebuilding abandoned housing, and much lower than the cost of building new housing. Either of these two alternatives require a greater expenditure of public funds, if they are to be of any use to the type of tenant who now lives in a property in receivership. Another advantage is that receivership applies the limited rental income there is directly to the property. There is no construction or rehab period where expenditures are made and income is not flowing.

## II. Issues

### Ownership

Ownership is the critical issue in considering receiverships. Receivership is merely a transitory state directed towards only one end, righting code violations. The law

sets forth only one method for effectuating repairs and recovering the costs. It does not stipulate what is to happen after the conditions which led to receivership have been removed. Conceivably, ownership could be retained by the person responsible for the existence of the violations. It is this uncertainty that limits the receivership's usefulness. If funding existed, neither funding agencies nor banks would want to be in a position where they would possibly be involved with a slumlord. The ideal situation would be for ownership to stay in a community, with the tenants, a community group, or a non-profit community organization. These actors view the properties as shelter, or in terms of their contribution to a community, not as sources of profit.

Several steps can be taken to address the problem of ownership. The most direct step, changing the legislation, will be discussed later in the chapter. A less direct method involving a number of actors will now be discussed. A coalition of groups, called the Corporation for the Conveyance of Abandoned Property, is developing a program which would work in conjunction with the streamlined abatement process. The group is composed of representatives from such organizations as; The Shawmut Bank, Neighborhood Housing Services, Living in Dorchester, and the Archdiocese. The program is designed to address the problem of timing so that the financing process and the abatement/ownership process can take place simultaneously. When an application is made for abatement, a concurrent application can be made to a commercial bank. The bank can issue a letter of credit to the applicant. If there is a gap between the time the abatement



comes through and the need for a mortgage to cover the purchase of a property, that gap will be covered by the letter of credit. The letter would provide security for the savings bank that agrees to process an application for a mortgage. It is based on faith that an abatement will be granted. Under normal circumstances, the applicant would have to wait until the application was approved before going to a bank. It is also possible that the applicant would confront an apparent absurdity; the city would not grant abatement until there was a firm financing plan.

#### Tenant Receiverships vs. Individual Receiverships

Tenant receiverships offer several advantages over individual receiverships. The sense of control that goes with tenant receivership is very important, especially for tenants who have felt powerless to change their lot. If there is a possibility of ownership, the tenants will be motivated to take care of their properties. An outside receiver, on the other hand, is always in danger of being perceived as a new sort of landlord, one who makes greater demands on the tenants than the owner. Under an individual receivership, it may not be obvious to the tenants that an important change has taken place. It may be difficult to make the tenants believe that they will eventually share in ownership.

A receiver who relinquishes such tasks as rent collection to the tenants may be inadvertently planting the seeds for

conflict. This was the case with Mr. Lindsay, the first receiver of the Dixwell property featured in the case studies. If the tenants are Hispanic, and the receiver does not speak Spanish, a great deal of communication could be lost. Yet, it has been very difficult to find Spanish-speaking receivers.

The other advantages and disadvantages have already been mentioned and will only be listed here:

Advantages-

1. Tenant receiverships represent a cost savings. The fee which would normally be paid to the receiver would instead be used to lower the cost tenants' rents or support more rehab work.
2. Tenant receiverships prepare the tenants for eventual ownership.
3. The liability of an individual receiver is greater than the liability of a group of tenants. A group of tenants would be liable for their assets as an organization. The financial impact of a suit would be spread over a larger group.

Disadvantages-

1. Banks may not be as willing to deal with tenant receivers as they would with an individual or a community organization which served as receiver.
2. An individual could settle disputes between tenants more efficiently. Under a tenant receivership, serious conflicts between tenants may have to be settled in court.

The advantages and the disadvantages would have to be considered. However, it seems that tenant receiverships are a more viable solution for the long-range.

In the Boston experience, the uniqueness of each case makes it difficult to compare the effectiveness of tenant receiverships versus the situations in which individuals serve as receivers. In the most successful receivership, Dixwell, it is not clear that it was the receiver's efforts which made it a viable property. The first receiver did not work out. The current

state of the property can be attributed to the organizations that are working with the tenants. The property which is in the worst shape is one in which the tenants are the receivers. However, this is also a property which is receiving the help of only one organization at a time. At the beginning, DNON was involved. Then, GBLS started working with the property, and finally, Just Housing became involved. The main problem has been the lack of consistency. Consistency is a major factor in determining whether a receivership is going to work out or not. Mr. Gottschalk has been able to keep his properties going through the winter. However, the long-range development possibilities of the property do not look promising. It should be remembered that he is not getting much help in his work with these properties. In general, a receivership will only be as successful as the quality and consistency of the help it obtains. As was pointed out in chapter one, success depends on the ability to create a long-term development package where the tenants and the community can exercise some control over the property.

One of the innovations of the New York receivership law was its provisions for tenant management. Under the Community Management Program, The Housing Development Administration (HDA) could contract a community group to manage a property. The HDA would provide the community group with a budget to operate the property and extensive training in property management. The HDA would also advise the community group on obtaining ownership. The community group would collect a fee of between \$10 and \$12.50 per month per unit for their efforts. This process was to take

place over two years, with the tenants assuming increasing responsibility in phases. At the end of the second year, the HDA would transfer ownership to the community group. There were plans to link this program with a tenant co-op program, so that the tenants would gain eventual ownership of their property. (1)

### Liability

For the receiver, the question of liability is one of the most important issues to consider in deciding whether to take on a receivership. This has already been covered in some detail in chapter two so we will merely restate what was said earlier. Judge Daher's suggestions seem very good. Receivers should be able to make full use of the protection offered by the bonding procedure. Those receivers who will not be remunerated, or who cannot afford a bond, have even more need for insurance. A fund should be set up to pay for the receiver's bond. Money for the fund might be appropriated by the government, or taken out as a percentage of rents.

The other major step that should be taken in terms of liability is closing the loophole in 127J. The way the law is written now it is not clear whether the owner is liable for any repairs made to his or her property. The law must specify that any repair conducted by a receiver will be the financial respon-

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(1) Fordham Urban Law Journal, op. cit.

sibility of the owner. If the owner refuses to pay, a mechanism for conveyance of the property should be established.

### Outreach

Receivership is merely one method of code enforcement. Just as there are varying degrees of violations, so are there varying degrees of enforcement. However, these will be useless unless the tenants know their rights. An effort should be made to reach tenants who live in neighborhoods where there is likely to be major violations of the sanitary code.

### Need For Selectivity In Application

Receivership, like any housing policy, must be applied selectively. Neighborhoods are stages where complex political, economic, and social forces are played out. Harnessing these forces is no easy task. A policy applied blindly might do more harm than good. A receivership policy, applied too strenuously, might actually scare off homeowners in a particular area. The usefulness of the receivership remedy consists in its ability to get at a particular type of owner; the slumlord or the incompetent. One of the prime benefits of the receivership instrument is its ability to remove what may be called the slumlord's "negative" incentive, the incentive to exploit.

A property in receivership cannot be self-supporting unless the tenants who live there are expelled and higher income

tenants are brought in. Because of this need for public support, receivership must take its place within a broader program of housing subsidies for low-income tenants, side by side with other code enforcement programs. Use of any of these housing tools must be tempered with a clear understanding of each tool's appropriateness in a given situation. Thus, great care must be taken in deciding where a receivership might be useful. Once the decision to apply receivership has been made, further selectivity is essential. The decision to place a property in receivership should be informed by a consideration of several factors, including the characteristics of the owner and the tenants and the general condition of the property.

#### Greater Boston Legal Services

Greater Boston Legal Services has had a hand in most, if not all, of the housing receivership cases in Massachusetts. It is doubtful that tenants could get help otherwise. Without the lawyers provided by GBLS, the feasibility of a receivership program would diminish considerably. Unfortunately, legal services is one of the services the Reagan administration would like to eliminate completely. GBLS is already feeling the impact of severe budget cuts. At its height, GBLS employed 90 lawyers. This year, there was a 35% reduction in the federal funds received by the Boston office. Currently, GBLS has 50 lawyers. It is feared that the size of the staff may need to be further

reduced to between 35 and 40 lawyers. GBLS cannot be expected to function at the same level as it has in the past. It will need to consider whether it wants to get involved with particular receivership cases if it seems that the cases will require a great deal of tenant organizing.

GBLS does not have a formal receivership policy. This despite the fact that the decision to place a property in receivership is essentially theirs to make. Recently, realizing that some owners just don't have the money to repair properties, they decided to explore the possibilities of tenant receiverships. There is a feeling now that tenant receiverships offer only a short-range solution. A long-range solution would involve obtaining public subsidies, which seem to be scarce. However, GBLS is still willing to try receivership if there is no other way out for the tenants. GBLS has close ties to the Office of Just Housing at Roxbury Community College, which is working with the Geneva-Josephine receivership. This should be taken as an indication that GBLS is willing to work with another group on the issue of receiverships, but that it does not have the resources to go it alone.

### Last Resort

The issue of last resort is not one of whether the Housing Court is willing to impose receiverships, but of whether it is able to do so. Understandably, a court would be hesitant

to create a receivership unless there is some infrastructure to support it. Currently, this infrastructure consists of an organization's willingness to work with the tenants. It takes a great deal of effort and coordination to make a receivership successful. This is one reason receivership is resorted to almost as an emergency measure. Greater applicability would demand a more solid legal and financial infrastructure.

However, it must be assumed that when the Sanitary Code was passed, receivership was not meant to be used only as an emergency measure. Otherwise, the statute would not have been spelled out in such detail. There would have been no provisions for state funding of repairs. Apparently, the state legislature has lost some of the fervor which led it to write the Code.

What gives receivership this aspect of being a remedy of last resort was the fact that it was not framed as a housing policy but as a way of providing tenants with protection. Thus, the burden of proof is on the tenants. As we saw with the New York law, a receivership policy would provide for affirmative action against exploitative landlords by placing the burden of proof on the owner.

### Legislation

Some of the modifications mentioned above would merely improve what would still remain a very clumsy tool. The Massachusetts legislature could start us off with a fresh new approach. There have been several legislative efforts in



Massachusetts to amend the Sanitary Code. The thrust of these efforts is to increase the effectiveness of the receivership remedy. Pressure for these reforms comes from groups concerned with housing problems in urban areas of Massachusetts. The particular piece of legislation that we will look at was proposed in 1980 by Senators Sisitsky, Pollard, and Harold.

The first section of the bill calls for appropriating \$25 million dollars to provide funds for repairs. This money would be available to owners or receivers to bring a property up to code. The bill stipulates that only five million dollars will be spent in any given year. The Department of Public Health would be responsible for distributing the money. The second section of the bill enables the court to name the Commissioner of Housing as receiver when a property is in violation of the Sanitary Code under chapter 111 section 127. The owner is liable for any repairs done to the property. If the owner does not pay, the receiver is empowered to sell the property. The bill does not specify a means for conveying the property to the tenants.

Framed as an anti-displacement policy, the bill is a frank attempt to put teeth into the Sanitary Code. It provides funds for the Department of Health to do what it is supposed to do by statute and it addresses the issue of the owner's liability for repairs done to his/her property. It seems the framers of the bill had the New York law in mind when they allowed the court to name the Commissioner of Housing Inspections as receiver. This seems to be the bedrock for a full-fledged receivership program. The bill has been modified several times. However,

prospects for its passing are dim, now that 2 1/2 has necessitated reductions in state programs in order to provide revenues to municipalities.

### Implementation

In this paper, we have identified several programs and situations in which receiverships have been used or might be used. These range from current use, to receivership as an interim strategy, to enforcing receivership as it exists in the statutes, to the New York receivership programs, to the proposed legislation in Massachusetts. In an ideal situation, that is given a choice, we would choose from among these using the criteria; ease of implementation.

The major implementation problem in receivership actions is the multiplicity of actors involved. Each individual actor must make decisions which affect the overall effort. The greater the number of decisions which must be made, the greater the likelihood that something will go wrong. Using this criteria, the worst situation would be the status quo, and the best would be the New York program, where the city functions as inspector, receiver, developer, and lender. However, there is much to be said in favor of community involvement. It seems more likely that receivership will have a positive impact on a neighborhood if the community is involved in making decisions. This was the idea behind the community Management Program in New York.

Thus, considerations of implementation ease must be tempered by considerations of potential impact.

### III. Conclusions

The central issue in this paper has been the feasibility of using the receivership instrument as the foundation of a strategy of community development. In our examination we have determined that there are two main categories of limitations which affect the instrument, legal and financial. The legal limits involve several issues; the willingness of the courts to apply the remedy, the liability of the receiver, the availability of lawyers and receivers, ownership, and the liability of the owner for repairs made without state funds.

As we have seen, some of these limits are more constraining than others. The availability of lawyers and receivers is not the most important constraint. As to lawyers, the law as it exists is straightforward as is the court process. It is conceivable that the tenants or a community organization could make the preliminary motions in court. Also, although GBLS is being reduced, it is not planning on being eliminated. As to the receiver, we have seen three instances where the tenants have served as receivers with approximately the same success as individual receivers.

The question of the court's willingness resolves itself into the question of whether the court would be willing to apply

receivership as a first recourse rather than a last resort. Presently, the court will do so only in the case of an owner's disappearance. Until legislation is written to change this, placing a property in receivership will be the result of a fairly long process. The time and resources needed to create a receivership would make it impractical other than as an emergency solution. Legislation is also needed to address the other legal issues.

The financial limitations are also significant. The main limitation concerns the gap between rental income and the money needed to cover operating expenses and debt service. The solution does not consist in merely obtaining low interest financing. Some kind of rent subsidy is also needed unless the city or the state is willing to assume the burden for financing repairs and receiving reimbursement for them at a more leisurely pace than private lenders would require. However, there are still some subsidies available, although their future availability is in question. Even if subsidies are obtained, the development process under current institutional arrangements is complicated and confusing, requiring a great deal of coordination.

We proposed an interim receivership strategy. Based on the land-banking model, this interim strategy would enable a community organization to wait for development possibilities while taking advantage of control over the property and of rental income. The value of doing this is that it would give the community a weapon to fight the problem of "negative" incentive. It would give the community some control over neighborhood dynamics.

However, it would be unwise to embark on such a strategy without some change in the laws which govern receivership because the court might feel constrained in how it can apply the remedy and because there is still uncertainty over the question of ownership. As things stand now, receiver could best be used as an esoteric remedy, or as a way of getting at the larger slumlords. It cannot be used as a way to significantly improve neighborhoods.

This is unfortunate. Potentially, receivership could fill a need that few housing policies or programs could even address. Subsidies might be available, but if an owner is unwilling or unable to exert the time and effort to take advantage of them, the property under the control of the owner is beyond help. Simple code enforcement might help but it might also lead the owner to disappear. Administrative intervention on the part of the court could remove this problem of "negative" incentive in the neighborhoods.

The potential usefulness of receiverships is recognized by many actors involved in housing issues. Outwardly, it seems the issue is one of who will act first. The courts would probably create more receiverships if GBLS asked for them and if there were obvious community interest. It seems GBLS would press for more receiverships if it felt that some community organization would make a commitment to particular properties. Conceivably, community organizations would take more initiative if funding support were available and some of the institutional constraints were removed. However, on closer inspection, the problem is more

fundamental. No one actor, or even a combination of actors, can take the initiative needed to make a receivership program successful, including the writing of the appropriate legislation and the creation financing mechanisms. Changes must be legislated at the municipal level or at the state level. For a receivership program to have neighborhood, rather than random impact, it must be the expression of a legislated housing policy. Like the New York laws, it must be based on a recognition of the housing problems in the city.

For receiverships to be made widely available, a legal reform is needed. At the simplest level, this reform would address the issue of the owner's liability, and would permit the court to make more frequent use of the remedy. This type of legislation could support an interim strategy by providing security for a community organization. The organization can then apply for whatever funds may be made available at any given time. More comprehensive legislation could be written which would give fuller support to a full-scale receivership program. This could include provisions for money to develop a property. Alternatively, rather than writing new legislations, the current laws can be implemented by funding the State Department of Public Health to fund the repair work it was mandated to do in chapter 111 section 127J.

An even more complete program with even greater power would be provided by the proposed legislation which we outlined briefly in this chapter. A program based on this legislation could overcome some implementation problems because the number of

actors who need to get involved is reduced. However, as we emphasized in chapter 5, we feel that community organizations must be drawn into the process because they function at a level where they can be more sensitive to the needs and characteristics of a community.

In short, the viability of receivership is very limited unless some institutional change takes place. The closer receivership is tied to some overall state-wide or city-wide housing policy, the greater the impact it can be expected to have. The financial problems are important in the sense that receivership cannot be a self-sustaining policy, at least not in the short run. It will usually involve some form of public investment. Thus, a receivership program should be viewed not as a program which would supplant other housing efforts, but as a supplement to existing housing programs, one which enables the community to intervene in properties it could not touch otherwise.

It must be remembered that there are no panaceas for the housing problems which afflict the urban centers in the United States. The dynamics in any neighborhood are too complex to respond to a single tool. Our attempt in this paper has been to add to the arsenal that we currently possess. As with all housing tools, it must be applied carefully, selectively.

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss:

HOUSING COURT DEPARTMENT  
CITY OF BOSTON DIVISION  
No. 12157

APPENDIX A

SYLVIA ALICEA, ANA BERMUDEZ, ELIZABETH  
BRICKLEY, MARY DOLAN, SOFIA HERNANDEZ,  
EULOGIA LOPEZ, JUANA PEREZ, ANA RODRI-  
GUEZ, ANA D. RODRIGUEZ, EILEEN RUSSELL,  
ANTONIA SANTOS, DOLORES SENICES, AND  
MARGARET WARWICK,  
Petitioners

v.

JOSEPH ORNSTEEN,  
Respondent

ORDER

Petitioners in the above-captioned action have filed a Petition To Enforce The State Sanitary Code. Pursuant to M.G.L. c.111 §127H, I make the following order:

1. The Dudley/Hampden Street Tenants Association is appointed temporary receiver of the buildings and grounds located at 389-397 Dudley Street, 204-210 Hampden Street, and 2-4 Dunmore Street (hereafter "the premises") to manage the premises so as to eliminate the violations of the State Sanitary Code therein and to seek the appointment of a permanent receiver.
2. The temporary receiver is authorized to exer-

cize such powers as are necessary to manage the premises in furtherance of the purposes of the temporary receivership set forth in ¶1 of this Order, including, but not limited to, the following:

- a. take such actions as are necessary to locate and retain an appropriate company, person or organization to present to this court for appointment as permanent receiver;
- b. open, maintain, and make withdrawals from a savings, checking or N.O.W. account in the name of the temporary receiver in any bank in Boston;
- c. collect rents from tenants residing in the premises;
- d. expend money to maintain and repair the premises;
- e. expend money to provide necessary utilities and services to the premises;
- f. select tenants and enter into tenancy agreements in order to fill vacancies, if and when vacancies arise;
- g. evict tenants if and when eviction standards and procedures adopted by the Dudley/Hampden Street Tenants Association are approved by this court;

- h. subject to ¶2(i), enter into contracts, including, but not limited to, contracts with the U. S. Department of Housing and Urban Development and contracts with utility companies; and
- i. with the approval of the court, enter into a contract with a company, person or organization which gives such entity the power and duty to manage the premises and/or seek funds from public and private sources for the repair and maintenance of the premises.

3. The temporary receiver shall report to the court every thirty days, or at such other time interval as the court shall order, regarding the status of the condition of the premises and the search for a permanent receiver.

4. The officers of the temporary receiver shall not be held liable in a civil or criminal action for failure to repair or maintain the buildings in compliance with all applicable laws and regulations.

5. Joseph Ornsteen shall cooperate fully with the temporary receiver.

APPENDIX B.

**111 § 127G PUBLIC HEALTH**

In the housing court of the county of Hampden" at the end of the last sentence.

Cross References  
Housing courts.

City of Boston, see c. 185A, § 1 et seq.  
County of Hampden, see c. 185B, § 1 et seq.

**§ 127H. Petition by tenant to enforce sanitary code; contents; process; orders of court**

Any tenant who rents space in a building for residential purposes wherein a condition exists which is in violation of the standards of fitness for human habitation established under the state sanitary code or in violation of any board of health standards, which condition may endanger or materially impair his health or well-being or the health or well-being of the public, may file a petition against the owner of said building to enforce the provisions of the said code in the superior court. Such petition shall set forth the violation of the state sanitary code or the rules and regulations of the board of health shall state that such condition may endanger or materially impair the health or well-being of any tenant therein; and that said condition was not substantially caused by the tenant or any other person acting under his control. The petition shall also state that the violation has been determined to exist by inspection of a board of health or, in the cities of Boston and Worcester, of the commissioner of housing inspection, or shall state that such inspection had been requested at least twenty-four hours prior to the filing of the petition and that there has been no inspection. Upon filing such petition, process shall issue and be served, and a hearing shall be held as provided in section one hundred and twenty-seven D. At least seven days prior to any hearing the petitioner shall send by certified or registered mail a copy of the petition to all mortgagees and lienors of record, and shall notify them of the time and place of the hearing.

The provisions of section one hundred and twenty-seven E shall apply in any such hearing.

The court may:

- (a) issue appropriate restraining orders, preliminary injunctions and injunctions;
- (b) authorize any or all tenants in the respondent's building wherein the violation exists to pay the fair value of the use and occupation of the premises or such installments thereof from time to time as the court may direct to the clerk of the court in the same manner and subject to the same provisions as contained in section one hundred and twenty-seven F;
- (c) order all the tenants in the respondent's building wherein the violation exists to vacate the premises, and order the board of health to close up said premises; or
- (d) appoint a receiver.

A copy of any order, finding or decree made by the court hereunder shall be forthwith sent by the clerk of the court to any mortgagee and lienor of record.  
Amended by St.1972, c. 201; St.1975, c. 467, § 2; St.1978, c. 104, § 6.

1972 Amendment. St.1972, c. 201, approved April 20, 1972, in the third sentence of the first paragraph, inserted "or shall state that such inspection had been requested at least twenty-four hours prior to the filing of the petition and that there has been no inspection".

1975 Amendment. St.1975, c. 467, § 2, approved July 11, 1975, in cl. (b) of the third paragraph, substituted "pay the fair value of the use and occupation of the premises or such installments thereof from time to time as the court may direct" for "make rental payments then due or thereafter becoming due".

1978 Amendment. St.1978, c. 104, § 6, approved April 25, 1978, substituted "cities of Boston and Worcester" for "city of Boston" in the third sentence.

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