Code Enforcement, Tax Delinquency, and Strategic Management of Problematic Properties

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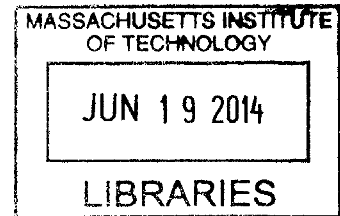
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ABSTRACT

This thesis considers two interrelated sources of blight in cities: so-called "problem properties" (PP), or properties in poor physical condition where owners have stopped performing basic maintenance, and tax-delinquent properties (TDP), where owners have stopped paying their property taxes. It focuses on how cities can be more effective in addressing PP and TDP both "before" (through proactive prevention) and "after" (through correction/collection) they emerge. Fundamentally, it argues that cities should recognize the relationship between PP and TDP, which often constitute the same properties, but, more importantly, both can be "liened up" and taken through foreclosure if their owners are truly unresponsive. These liens can be established through unpaid code violation fines and receivership liens, as well as unpaid taxes. This approach is based on the premise that cities want to receive as few properties as possible through foreclosure, because of the costs associated with holding excess land and buildings, but also want to avoid the "worst of the worst" PP and TDP becoming a blight on neighborhoods. Thus, if owners are going to refuse to correct severe code violations and/or delinquency, cities want to transfer properties to responsible owners as quickly as possible. Recognizing the links between PP and TDP enables cities to switch from a reactive to proactive approach in treating blight.

This thesis also discusses barriers to addressing PP and TDP. It suggests that cities treat them through comprehensive "enforcement pathways" targeted to specific property and owner types. In particular, owners are divided into three groups: cooperative, non-cooperative, and "missing in action." This segmentation methodology recognizes that different properties present different enforcement challenges and require different strategies to return them to productive use. In addition, this thesis examines the three collection methods available to cities: public collection, contracted third-party servicing, and privatized collection (tax lien sales), and addresses a major limiting factor on tax lien sales: their dependence on private market demand. Finally, it examines how cities can be more effective in managing and disposing of their property inventories. To guide property usage and disposition timing, it suggests that cities establish a central property inventory that includes critical land and building characteristics, a property potential reuse scoring system, and a market model that segments neighborhoods and identifies spatial and temporal "inflection points." It also recommends that cities not take a "one size fits all" approach to their entire inventory, but rather select the disposition method, -- sheriff's sale/auction, RFP, third-party transfer, or land banking, -- that is most appropriate for the property type, (sub)market condition, and desired outcome(s). Finally, it outlines strategies to overcome under-management of public assets, weak markets, and financing challenges. To support the discussion about how to best manage delinquency and disposition, it includes detailed case studies of Philadelphia, New York City, and Boston.

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INTRODUCTION

This thesis considers two interrelated sources of blight in cities: so-called "problem properties" (PP), or properties in poor physical condition where owners have stopped performing basic maintenance, and tax-delinquent properties (TDP), where owners have stopped paying their property taxes. It focuses on how cities can be more effective in addressing PP and TDP, both "before" (through proactive prevention) and "after" (through correction/collection and disposition). Fundamentally, it argues that cities should recognize the relationship between PP and TDP, and treat them through comprehensive "enforcement pathways" targeted to different property and owner types. This approach recognizes that different property types present different enforcement challenges, and require different strategies to return them to productive use.

Chapter 1 explores the links between PP and TDP, traditionally viewed as separate problems and handled by different departments/agencies. First, PP, -- by definition, physically distressed, -- and TDP, -- by definition, financially distressed, -- often constitute the same properties. Second, both impose significant direct and indirect costs on their communities, including decreasing the values of surrounding properties. Third, and most importantly, cities' power to lien and take properties through the foreclosure process for unpaid liens can be used as a "strategic lever" to return both PP and TDP to productive use. These liens can come from unpaid taxes, but also unpaid code violation fines and receivership liens. Recognizing the link between PP and TDP enables cities to switch from a reactive to proactive approach in treating blight, letting them act quickly to force owners to correct violations or risk having their properties transferred to more responsible owners.

Chapter 2 focuses on how cities can be more effective in addressing PP. It defines two major barriers to treating PP: identifying them and developing effective "enforcement pathways" for different property and owner types. For identification, it recommends that cities take a predictive, data-driven approach, combining disinvestment indicator data from a range of internal and external sources. For prioritization and enforcement, it identifies five critical property characteristics (occupied vs. unoccupied; type of distress – physical and/or financial; code violations severity; level of disruption to the neighborhood; and contribution to the "tipping point" of disinvestment), and three owner groups (cooperative, non-cooperative, and "missing in action"). It then outlines "enforcement pathways" for the three owner groups. Cooperative owners receive assistance meeting the "funding gap" and bringing their properties into compliance, while non-cooperative owners are exposed to escalating financial and legal incentives to motivate action, with foreclosure at the top. "Missing in action" owners are located under a "case management" approach, and sorted into the cooperative or non-cooperative pathways.

Building on Chapter 2, **Chapter 3** examines how cities can effectively treat TDP. It identifies three major barriers to doing so: meeting legal requirements for enforcement, prioritizing properties for enforcement, and developing effective "enforcement pathways" for different property and owner types. To guide prioritization, it defines 4 goals for enforcement: 1- Maximize revenue collection; 2- Return properties to productive use; 3- Protect low-income owner-occupants; and 4- Discourage delinquency among "repeat offenders." For property types, it defines four categories relevant to these goals: absolute property and lien value; delinquency severity; level of disruption to the surrounding neighborhood and contribution to the "tipping point" of disinvestment; and ownership status and occupancy. As with PP, it breaks owners into three groups: cooperative, non-cooperative, and "missing in action." It then outlines "enforcement pathways" for the three owner groups. For cooperative owners, it explores direct property tax relief programs (homestead exemptions or credits, "circuit breaker" programs, and/or tax freezes), payment plan and deferral programs, extended redemption periods and redemption assistance, and innovative third party "work-outs" (future discounted sale, reverse mortgage, and lien sales to housing nonprofits). For on-cooperative owners, especially "repeat offenders," it recommends that cities vigorously pursue enforcement, by instituting substantive penalties and interest, limiting the time to foreclosure, and implementing strict payment plan and redemption rules.

Chapter 4 considers the three collection methods available to cities: public collection, contracted third party servicing, and privatized collection (tax lien sales). It evaluates the advantages and disadvantages of the three main tax lien sale types: auctions, negotiated bulk lien sales, and securitization. It then discusses

the major challenges with tax lien sales, in both theory and practice. In particular, it focuses on the potential for misaligned incentives, namely that the lien buyer, seeking profit maximization, will either foreclose too slowly (in order to accumulate extra interest and fees) or too quickly (in order to take a property with significant equity, before the owner is able to redeem it or find a buyer to do so). It then makes suggestions for correcting tax lien sale defects, recognizing that cities may turn to them to get receivables upfront and reduce their direct enforcement burden. Finally, it addresses a major limiting factor on tax lien sales: the fact that, even if cities want to privatize all collections, they may not be able to do so, because lien sales depend on demand from the private market. Thus, even if cities were to commit fully to tax lien sales, they need to be prepared to assume responsibility for the "worst of the worst" properties, in terms of physical and financial distress and market prospects.

Chapter 5 considers how cities can be more effective in managing and disposing of their property inventories, especially properties "taken" through foreclosure. It is based on the premise that cities want to receive as few properties as possible through foreclosure, because of the expense and liability associated with holding excess land and buildings. However, at the same time, they want to de-incentivize "strategic defaults" and avoid "worst of the worst" PP and TDP becoming a blight on neighborhoods. Thus, if owners are going to be intractable and not correct severe code violations and/or delinquency, cities want to transfer properties to responsible owners as quickly as possible. It suggests that cities approach their inventory with three goals: 1- Minimize costs and invest just enough to "tip the balance" to productive reuse; 2- Minimize holding time, and return properties to the private sector as soon as possible; and 3- Promote long-term positive outcomes that serve city needs, whether the provision of housing (affordable and/or market-rate), commercial space, green space, or revenue generation. To aid in property- and neighborhood-level decision-making, it suggests that cities establish a central property inventory that includes critical land and building characteristics, a property potential reuse scoring system, and a market model that segments neighborhoods and identifies spatial and temporal "inflection points." Cities can use these three tools to determine property usage and disposition timing. In addition, it recommends that cities not take a "one size fits all" approach to disposition, but select the disposition method, -- whether sheriff's sale/auction, RFP, third party transfer, or land banking, -- that is most appropriate for the property type, (sub)market condition, and desired outcome(s).

To support the discussion about how to best manage delinquency and disposition challenges, **Chapter 6** includes detailed case studies of how Philadelphia, New York, and Boston have tackled their collections and disposition challenges. To some extent, these three cities were chosen for "Goldilocks" reasons. New York holds relatively little tax-foreclosed property, Boston holds some, and Philadelphia, facing massive delinquency, has the capacity to hold a lot. In the last year, Philadelphia has passed substantial delinquency reform, and it is currently involved in establishing the U.S.'s largest land bank. **Chapter 7** expands on Chapter 6, and encompasses a descriptive statistics analysis of Boston's tax foreclosure and disposition landscape, using inventory data from the Department of Neighborhood Development. Finally, **Chapter 8** develops an action plan for cities in general, and Philadelphia, New York City, and Boston specifically, to address their PP and TDP moving forward.

This thesis is important for several reasons. First, it recognizes the link between code and tax delinquency enforcement, which cities have been slow to acknowledge and pursue. Second, by suggesting that cities lien PP up and take them through foreclosure, it offers them a solution for the most intractable owners, who are not motivated by anything less than the risk of losing their properties – and potentially, not even that. Third, it seeks to build a comprehensive enforcement system for PP and TDP that segments by property and owner type, recognizing that different types present different enforcement challenges and require different strategies to return them to productive use. Other works have taken on individual components of enforcement. Fourth, it recognizes the opportunity for cities to be more aggressive in managing and monetizing their inventories. Finally, code and tax delinquency enforcement are major issues for cities, that create significant costs in terms of service calls, inspection demands, emergency repairs, tenant relocation, legal proceedings, and/or maintenance and disposition. They have become even more pressing in the wake of the recent mortgage foreclosure crisis and recession. PP and TDP have increased, as unemployment rose and property values fell. This phenomenon has been enhanced by the fact that, unlike

conventional mortgage loans, the majority of subprime loans issued before 2008 did not include an escrow account to cover property taxes and insurance, making it more likely that their owners would fail to fulfill tax obligations. In addition, banks and trusts have contributed to PP by failing to maintain real estate owned (REO) assets (Rao, 2012).

CHAPTER 1:
THE RELATIONSHIP BETWEEN PROBLEM PROPERTIES AND TAX-DELINQUENT PROPERTIES

This chapter considers the relationship between two sources of blight in cities: so-called "problem properties" (PP), or properties in poor physical condition where the owners have stopped performing basic maintenance, and tax-delinquent properties (TPD), where the owners have failed to pay property taxes on time. Traditionally, PP and TDP have been regarded as separate problems. Partially, this is because code and tax delinquency enforcement typically have been managed by separate city departments, with the Inspectional Services Department assuming responsibility for the former, and the Assessing, Law, and the Sheriff's Office or Real Property Departments for the latter. Generally, Inspectional Services identifies and directs owners to take corrective action in regard to code violations. Meanwhile, the Assessing Department defines and notifies the Law Department about tax-delinquent properties. Once a statutorily defined period of time has passed, the Law Department then pursues foreclosure against them. The Sheriff's Office, Real Property Department, or some variant thereof receives the properties once foreclosure is complete. Furthermore, the disjunction between PP and TDP likely exists because tax foreclosure has been viewed narrowly, from a legal standpoint, as an instrument to address nonpayment of taxes, and nothing more. However, PP and TPD are linked for three crucial reasons.

Reason 1: They often constitute the same properties.

While not all properties in poor condition are tax-delinquent, many of them are, and vice versa. Both economic theory and empirical evidence support this idea. In the realm of economic theory, a number of researchers have examined the connection between PP and TPD by considering how property abandonment functions as a "strategic" decision for some owners, so-called "slum landlords" and "speculators."

<u>Slum landlords</u>

Early researchers focused on the phenomenon of "slum landlords," owners operating in low-income neighborhoods, where they faced narrow profit margins, increasing operating costs, limited ability to raise rents, and challenges securing conventional financing and selling their properties. For these owners, **Sternlieb and Burchell** suggested that property abandonment is a planned decision that follows a specific sequence of steps. First, the landlord delays or fails to make non-essential repairs. Second, the landlord defaults on his mortgage obligations, an action that has the potential to result in foreclosure by the lender, but does not if the lender does not wish to own the building. Finally, the landlord stops property tax payments, an action that represents the decision to relinquish ownership, because the city will take the property through foreclosure once it is delinquent for a certain amount of time. In this model, then, PP tend to precede TDP (Sternlieb & Burchell 1973).

Building on this concept, **White** used aggregate neighborhood-level data from New York City in the 1970s to estimate a model of housing abandonment, focusing on the role of property taxes in the abandonment decision, in contrast to other factors such as building type or neighborhood household characteristics. White defined abandoned properties as those in tax arrears for 18 months to 3 years. She found that "property taxes are an important and significant determinant of abandonment rates" (312). In her model, tax delinquency represents the last part of the abandonment process, "the voluntary relinquishing of ownership by private landlords of rental property" (312). Each period, the landlord chooses whether to continue owning and operating his building or abandon it, depending on which choice leaves him better off. At a high level, the landlord will choose to abandon his building if neighborhood quality has declined since it was built, and, at current rent levels, it is not worthwhile to renovate or rebuild the building at any quality or density level, or pay the cost to maintain the building indefinitely at its current quality and density level. In this situation, the timing of the planned abandonment is the major decision to be made by the landlord. The landlord chooses when to abandon the building so as to maximize the discounted present value of rents minus property taxes during the remaining period over which the building is held. He will initiate abandonment when the gain from retaining ownership of building one period longer, which means that one more period of rent is received g periods in the future, is just offset by the fact that one more period of taxes

must be paid immediately.

In **White's** model, two factors are especially important in controlling the timing of abandonment: the length of the "grace period," defined as the time between when the landlord stops paying taxes and when the city actually seizes the property, and the tax burden amount. With a positive "grace period," the landlord optimally abandons the building when current rents exceed current taxes, setting the date of abandonment g periods before the intersection of the tax and rent curves, so the grace period ends exactly at the intersection. The landlord profits from the grace period because, while it occurs, he collects rents, but does not pay taxes. Moreover, since rents decrease over time, as the building deteriorates, the landlord receives greater profit from the grace period the earlier it starts and the longer it lasts. In regard to the tax burden, White found that lower tax burdens are associated with later optimal abandonment dates. In particular, she discovered the mean ratio of property tax payments to rent revenues in a neighborhood has a significant positive effect on the neighborhood's abandonment rate. Holding rent revenues constant, the elasticity of abandonment with respect to property tax payments is between 1.65 and 2.10 (White, 1986).

Building on this idea, **Arsen** also used aggregate neighborhood-level data for NYC to examine the impact of property taxes on abandonment. Rather than the property tax payment, he focused on the property tax assessment rate, the ratio of a property's assessed value to its market value, which determines its effective property tax rate when combined with the statutory tax rate; given a uniform statutory tax rate, variations in effective tax rates come from assessment rate inequalities. Constructing a model of abandonment using assessment rates, building conditions, tenant characteristics, and neighborhood housing market conditions as factors, he found that assessment rates had a "large and significant" effect on abandonment. "For each property type, the assessment rate elasticity is high, ranging from 2.0 for walk-up apartments to 3.7 for single-family homes. This implies, for example, in the case of apartment buildings, that 1 percent increase in the assessment rate generates a 2 percent increase in the abandonment rate" (370). Pointing to the policy implications of this finding, Arsen noted that properties in lower-income neighborhoods, where market values are typically flat or declining, tend to be relatively over-assessed, even though all properties in a single jurisdiction are supposed to be taxed at a uniform percentage of market value under state law. He highlighted a number of studies that found average assessment rates in low-income neighborhoods to be 2-4 times the rates of those of higher-income areas in the same city. Moreover, in lower-income neighborhoods, tax burdens, relative to rent revenues, are high, because landlords cannot shift them forward to tenants, whose incomes are not sufficient to support rent increases. Thus, the over-assessment of properties in low-income neighborhoods intensifies landlords' cash flows problems and furthers abandonment (Arsen, 1992). However, it is worth noting that, in contrast to White and Arsen, **Olson and Lachman (1976)** found property tax rates to be uncorrelated with property tax delinquency rates in Cleveland, OH (Olson & Lachman, 1976).

Scafidi et al. modeled the owner's decision to abandon his property as being similar to an investor's decision to exercise a put option on a financial instrument. When making the decision whether to abandon his property, the owner considers both its true market value and the value of all outstanding municipal liens against it. Confronted with the choice to pay the delinquent taxes (redeem the property) or cede it to the city, the wealth-maximizing landlord has an incentive to relinquish ownership when the property's market value is less than the value of the liens. If the market value is greater than the liens, even if the owner does not have the cash flow to pay the liens himself, he will sell the property, pay off all the lienholders, and take the difference, as long as transaction costs are relatively low. The presence of a mortgage on the property complicates matters, but not much. If the sum of the outstanding mortgage balance and the outstanding municipal liens is greater than the market value, the owner will not redeem. However, as long as the market value is greater than the liens, the wealth-maximizing mortgagee will foreclose on the loan, purchase the property at the foreclosure sale, pay the liens, and then sell the property, because the mortgage balance is a consideration for the owner, but a sunk cost for the mortgagee. Scafidi et al. tested their option theory using residential property data from NYC, and found that whether a property's lien-to-value ratio exceeds one is a highly significant explanatory variable (Scafidi, Schill, Wachter, & Culhane, 1998).

Hillier et al. made several key refinements to the abandonment model. First, they emphasized the difference between vacancy and abandonment, where vacancy is the result of normal market turnover, and

can be of varying duration. Second, they suggested that housing abandonment has three aspects: functional, financial, and physical abandonment. Functional abandonment occurs when a property is no longer being used, and is indicated by vacancy, utility terminations, and the sealing of doors and windows. Financial abandonment takes place when the owner disinvests from the property, as evidenced by mortgage defaults and tax delinquency. Physical abandonment occurs when the owner does not maintain the interior or exterior of the property. In contrast to Sternlieb and Burchell, Hillier et al. argued that abandonment is better understood as a cycle than a linear sequence of events, based on the fact that abandonment can be reversible, if the owner "redeems" the property or reinvestment takes place after the property is demolished. In addition, complicating the idea that PP always precede TDP, they suggested that "indicators of financial and functional abandonment [be viewed] as predictors of physical abandonment. While occupied properties where all financial obligations are being met can still experience physical abandonment, it is much more likely that these financial and functional indicators will precede physical abandonment" (94). In addition, Hillier et al. pointed out that, while the owner may make the decision to abandon the property, other actors are involved. For example, cities can contribute to abandonment by not enforcing housing codes or property taxes; police by not enforcing criminal and civil laws; and lenders by refusing to make loans. Using Philadelphia property data combined in the Neighborhood Information System, they tried to develop a predictive model, or early warning system, for abandonment in Philadelphia, to promote intervention that could arrest abandonment. The model relied on logistic regression to identify which properties were most likely to become imminently dangerous. They found that whether the property was vacant, had significant housing code violations, and was tax-delinquent were significant predictors (Hillier, Culhane, Smith, & Tomlin, 2003).

Speculators

Other researchers have considered the role of "speculators" in abandonment. As discussed by **Kraut**, in contrast to "slum landlords," who may be located in areas where property values are declining, investors falling into the "speculator" profile purchase properties in areas where property values are rising or expected to rise in the future. For them, disinvestment is also a strategic decision. However, they differentiate between land value and building value. They hope that future development, where public or private, will increase the value of their land. Thus, they pay their mortgages and property taxes to retain claim to it. However, they may not spend money maintaining their structure, if they believe that it will not serve the highest and best use of the site once the land value increases. Therefore, under this scenario, in contrast to the "slum landlord" model, PP and TPD remain distinct (Kraut, 1999).

As noted by **Harriss**, if the property tax system is based on the value of structures and/or improvements, and not on the value of land, it may actually incentivize this type of disinvestment. When cities tax structures, owners of new, high-quality buildings pay higher taxes than owners of old, deteriorated buildings on the same amount of land, despite the fact that their high-quality, high-tax structures receive the same services and create positive externalities. If an owner rehabilitates or repairs his building, its assessed value, and tax liability, may increase. If the owner keeps the property in poor condition, its assessed value, and tax liability, remain low, even if the underlying land value is high. Furthermore, if the owner keeps the building vacant, he not only keeps the assessed value low, but also does not have to deal with tenants. Moreover, when the property value increases, because of land appreciation associated with outside factors, it makes it easier for him to move in new, higher-paying tenants. Thus, by making building investments more costly, and therefore less desirable, through a structure-focused tax system, cities actually discourage new construction, maintenance, and renovation. If cities switch to taxing land instead of buildings, the owners who will experience the largest drop are those with the best buildings, increasing the attractiveness of improvements. For this reason, economists, most notably, Henry George, have long supported a land tax, whether a "single tax" on just land or a "split tax" that splits the assessment into two parts, land value and structure value, and places more weight on land value and less on structure value, for both theoretical and pragmatic reasons (Harriss, 1974).

From a theoretical standpoint, relative to other taxes that cities could use to fund services, the land tax is economically efficient in allocating resources. Since the amount of land is fixed, taxing it cannot distort

supply in the way that taxing employment and/or income could discourage work and/or saving (Free Exchange Blog, 2013, June 19). In addition, the land tax is equitable, in that it promotes value recapture from public investments. By taxing land, which increases in value because of cities' spending on sewers, schools, and other infrastructure and facilities, cities are able to get some of this money back, rather than having this "unearned increment" go to private owners (Harriss, 1974). This value recapture is particularly important in regard to the "speculators" discussed above, who hold onto properties to benefit from land value increases, without making any investments to bring the properties up to code. In addition, in terms of pragmatic benefits, the land tax is a stable source of revenue, relative to employment and income taxes. Land is immobile, unlike individuals or firms, which can relocate if the tax burden becomes unfavorable. Furthermore, relative to property (structure) values, land values are less affected by "boom and bust" real estate cycles. The land tax also promotes efficient land use. By increasing the cost of holding land, it discourages speculators from accumulating and holding vacant parcels for long periods of time in anticipation of future price increases, which can force growth further outward (Free Exchange Blog, 2013, June 19). Finally, the land tax overcomes negative incentives associated with taxing structures. For example, **Oates and Schwab** found that after Pittsburgh instituted a "split rate" tax in 1979, which increased the land rate to more than five times the structure rate, it experienced a greater increase in building activity than other cities in its region during the 1980s, not only because it had a shortage of commercial space, but also because the land tax helped the city avoid rate increases in other taxes that could have discouraged development (Oates & Schwab, 1997). Currently, the "split rate" tax is used in Harrisburg, PA, and 20 other Pennsylvania cities. Pittsburgh and Scranton have been using this tax structure since 1913 and Harrisburg instituted it in 1975 (Bradley, 2013, August 5).

The distinction between short- and long-term delinquency

Miller adds an interesting dimension to the "slum landlord"/"speculator" divide by differentiating between short-term and long-term delinquency. He links short-term delinquency with "lack of money" and long-term delinquency with "declining property value," and suggests that taxpayers choose between short-term and long-term delinquency based on their assessment of ongoing property value. According to Miller, "Short-term delinquents view the net benefits of property ownership to be positive, but strategically choose delinquency or are unable to pay the tax bill on time due to liquidity constraints" (58). These owners go delinquent when their personal rate (opportunity cost) of borrowing is greater than delinquency costs (penalties and interest). If they really cannot afford to pay their bills because of a liquidity constraint, their personal borrowing rate is infinite. In contrast, long-term delinquents go delinquent when they perceive the net benefits of property ownership to be negative, or the costs of property ownership to be greater than the benefits of continued ownership and the expected equity position at the time of sale. In this situation, costs are defined as maintenance, mortgage payments, and tax payments, and benefits as the rental payments that an owner-occupant would otherwise have to make or an investor-owner receives on his investment. Drawing on Miller's formulation, the "speculator" profile is more tied to short-term delinquency, because the speculator has an interest in holding onto the property, and the "slum landlord" profile to long-term delinquency, because the slum landlord is willing to relinquish it (Miller, 2012).

Empirical evidence of the link between PP and TDP

In terms of empirical evidence of the link between PP and TDP, in a joint investigation, Plan Philly and Philadelphia Inquirer staff examined code violations issued by the City of Philadelphia's Department of Licenses and Inspections from August 22, 2011 to August 16, 2012. They found that tax-delinquent properties amassed disproportionate code violations, especially those owned by investors, and not owner-occupants. For example, during that time, L&I issued 20,854 quality-of-life violations (including demolitions, property maintenance and vacancy license violations) to 3,461 properties, which meant that slightly more than one-half of 1 percent of all properties in Philadelphia received 38 percent of the total quality-of-life violations. Nearly half of these "super-blighters" were tax-delinquent. In regard to demolitions, Philadelphia demolished 1,008 "imminently dangerous" properties, at an average cost of $13,000 per property, for a total cost of $9.5 million. Of these, 729 properties (72%) were tax-delinquent, and 491 of that tax-delinquent

group were investor-owned. The demolished structures had been tax-delinquent for a mean of 15.6 years before they were taken down. Investor-owned tax-delinquent property was almost seven times more likely to receive a vacancy violation than tax-compliant property, and three times more likely to receive a property maintenance violation. From 2007-2011, there were more than 7,000 tax-delinquent properties that received 5 or more L&I violations, and 555 tax-delinquent properties that received 20 or more violations (Kerkstra, 2013, March 9).

Reason 2: Both impose significant costs (externalities) on their communities.

Both PP and TPD impose significant direct and indirect costs on their communities. Demonstrating their negative effect, in a 1997 survey by **Accordino and Johnson,** decision-makers in the 200 most populous U.S. central cities, decision-makers ranked vacant and abandoned property a "significant problem," with a mean score of 3.1 on a scale of 1, or "not a problem, to 5, or "the greatest problem" (Accordino & Johnson, 2000, 305). In terms of direct costs, PP generate expenditures associated with responding to increased police and fire calls and inspection demands; bringing occupied properties up to code, if owners refuse to do so themselves, and/or rehousing tenants in viable buildings; and securing and/or demoing vacant buildings. For example, reviewing 88 liens placed on 86 properties from 2007-2011, a **Harvard Legal Aid Bureau study** estimated that the City of Boston spends on average of $2,007 to secure each vacant building (Simon, 2011). PP also decrease tax revenue, because buildings in poor condition have low assessed values. By definition, TPD also reduce tax revenue, via nonpayment of taxes. In addition, if cities take TDP through foreclosure, they spend money pursuing the legal process, as well as operating and disposing of the properties.

In terms of indirect costs, PP also generate significant externalities. Vacant and abandoned structures can foster crime, reducing residents' safety and increasing the cost of business and personal insurance. For example, based on a comparison of neighborhoods in Austin, TX, **Spelman** found that city blocks with unsecured vacant buildings had crime rates that were almost twice as high as those on blocks without vacant structures. In particular, theft and drug crimes occurred 2 times as often, and violent crimes 1.3 times as often (Spelman, 1993). However, as Simon noted, this ratio actually may be understated, because the blocks without vacant structures present may have been affected by nearby vacant structures, resulting in higher crime rates that might have been present if the blocks were truly unaffected by vacancy (Simon, 2011).

In addition, PP lower nearby properties' market values, reducing their owners' equity and wealth and making it difficult for them to resell their properties. Numerous researchers have considered the effects of vacant, abandoned, and foreclosed and/or tax delinquent properties, often vacant and abandoned, on nearby property values. Relevant to the discussion of PP, **Harding, Rosenblatt, and Yao** discussed several mechanisms through which a foreclosed property could affect the values of nearby properties, including a negative visual externality, as the physical condition of the property declines; social interaction, as individuals' valuations of their properties are influenced by those of their neighbors; an increase in supply, with a highly-motivated seller, putting downward pressure on prices; and reluctance of the owner facing foreclosure to make socially beneficial investments that could increase the attractiveness of the neighborhood (Harding, Rosenblatt, & Yao, 2009). **Mikelbank** found that each vacant property produces a 3.5% reduction in values for properties within 250 feet and a .6% reduction in values for properties 250-500 feet away (Mikelbank, 2008). **Hartley** found a "disamenity" effect, defined as the reduction that can be attributed to a structure's deterioration due to neglect, in census tracts with more than 5.6% vacancy, where every neglected building reduces the value of buildings within 250 feet by 2% (Hartley, 2010). **Immergluck and Smith (2006)** and **Lin, Rosenblatt, and Yao (2009)** also found that foreclosed properties are associated with lower sales prices for nearby non-distressed properties. Examining the effects of foreclosed properties on nearby property values, using data from 7 MSAs, **Harding, Rosenblatt, and Yao** found a significant negative contagion effect, with a single foreclosure reducing the value of a house located within 300 feet of the foreclosure by approximately 1% at the time of the foreclosure sale, but the effect decreases quickly with the distance between the subject property and the foreclosed property (Harding, Rosenblatt, & Yao, 2009).

Considering the effect of TPD on adjacent property values, **Gillen** found that the decrease in value depends on the number of delinquent properties within 500 feet of the house. For example, for a house with a market value of $230,000, the median value of Philadelphia houses on blocks where delinquency has no effect, the presence of five delinquent properties within 500 feet decrease its value by $2,500, ten delinquencies by $14,600, and fifteen by $24,800. Each additional delinquency further reduces the house's value, but the effect becomes less as delinquency takes over (Kerkstra, 2013, March 9).

Philadelphia provides a vivid illustration of the direct and indirect costs of TDP. As of April 2012, delinquent taxpayers owed the city and school district $292.3 million in unpaid taxes on 102,789 properties, or $515.4 million with interest and penalties included. Approximately one-quarter of those properties had been delinquent for more than a decade (Pew Charitable Trusts, 2013, June). Moreover, by using hybrid hedonic regression to examine the impact of tax delinquency on the property values of single-family homes, accounting for other factors that affect pricing, including square footage, lot size and proximity to amenities such as transit, parks and Center City, **Gillen** found that delinquency decreases the overall property tax base in Philadelphia by at least $9.5 billion, almost 10% of the city's $98.5 billion in taxable real estate. The average single-family house in Philadelphia is worth 22.8% less on the open market than it would be if it had no delinquent neighbors. 96% of all single-family homes have lost property value because of nearby delinquent properties. If delinquency was eliminated, a stronger, higher-value tax base could produce an extra $298 million in revenue each year (Kerkstra, 2013, March 9).

Reinforcing the link between PP and TPD, as nearby properties lose value, cities either have to raise the property tax rate or accept less tax revenue. The loss in tax revenue from a given loss in property value is the value multiplied by the tax rate. There are trade-offs associated with both approaches. If cities raise tax rates, they may struggle to attract and retain residents and compete with other locations that have lower tax rates. For example, Irvington and West Orange, NJ have significantly higher property taxes than surrounding communities, which discourage people from living there (Martin, 2010, June 25). Cities also may experience higher tax delinquency rates, as residents become demotivated to pay in response to higher tax rates, especially if they perceive that other people are not doing so. However, if cities accept less tax revenue, they have less money to spend on services and capital improvements, including addressing code violations associated with PP, which can also harm their ability to attract and retain residents (Accordino & Johnson, 2000).

It is important to note that both PP and TPD can be modeled through "epidemic" theory, which suggests that certain social phenomena spread at a faster rate and to a larger group when they reach a certain threshold or "tipping point." In other words, for both PP and TPD, the relative amount (percentage) seems to matter, in terms of their effect. Once a certain number of PP and/or TPD exist in an area, residents lose confidence and stop investing, in terms of maintaining their properties and/or paying taxes. For example, a **Department of Housing and Urban Development study** identified the "tipping point" for abandoned buildings as being 3-6% of the structures in a neighborhood (US Department of Housing and Urban Development, 1973). **Wallace (1989)** also modeled abandonment as a contagious process, examining how protracted and ongoing reductions in critical housing-related city services, particularly fire-fighting, produced episodes of combined contagious destruction of low-income housing and forced migration of population within African-American and Hispanic communities in New York City (Wallace, 1989). **Green and White** used data from the 1989 and 1993 American Housing Surveys (AHS) to investigate the extent to which the presence of abandoned buildings in a neighborhood affects the likelihood of further abandonment, with residents being asked whether their neighborhoods had no abandoned buildings, one abandoned building, or more than one abandoned building. Green and White found that dwellings in neighborhoods with one abandoned dwelling in 1989 were more likely to experience an increase in abandoned buildings in 1993 than dwellings in neighborhoods with no abandoned dwellings in 1989 (Green & White, 1997).

From an economic theory perspective, there are two approaches to resolving the contagious negative externalities associated with PP and TDP. The first is collective action, or getting all property owners to agree to reinvest, by maintaining their properties and/or paying taxes. However, collective action is difficult to coordinate, especially among a large, disconnected group of property owners. There is also the

free rider challenge. Under this scenario, owners will delay investment because they are concerned that other owners will not do so ("free ride), and therefore reduce the value of their own investment, or they want to "free ride" themselves. If every owner does this, no investment will occur. The second approach to addressing the contagious negative externalities associated with PP and TDP is intervention to correct the market failure, which raises the third crucial link between PP and TDP.

Reason 3: Cities' power to tax, place liens on properties, and to take property for non-payment of taxes and liens through the foreclosure process can be used as a "strategic lever" to return both PP and TDP to productive use.

In contrast to the traditional strategy, where foreclosure is reserved for tax-delinquent properties, cities can use their ability to foreclose on both unpaid taxes and liens to treat PP and TPD. For PP that are not tax-delinquent, but where the owners have repeatedly refused to correct code violations and pay related fines, cities can attach liens to the properties and take them through foreclosure, with the intent of transferring them to more responsible owners. For TDP, cities can proceed with tax delinquency as standard.

Some brief background on code and delinquency enforcement via foreclosure

In regard to code enforcement, cities draw their powers from the state. States have the power to regulate property and abate nuisances through the police power, which enables them to protect the health, safety, morals, and general welfare of the public. As discussed by **Eagle**, in *Mugler vs. Kansas* (1887), the U.S. Supreme Court ruled that "all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community." Under due process requirements, when a local government identifies a nuisance, it must inform the owner of the need to correct it, and the owner must be able to obtain judicial review of the order. If the owner is unwilling or unable to abate the nuisance within a reasonable period of time, the government can take action itself. Because when the government corrects the nuisance, it eliminates conditions that might make the property unusable and/or expose the owner to penalties, thereby increasing the land's value, it can place a "betterment assessment," or lien, on the property for the cost of doing so. If the owner fails to pay this lien, the government can collect through foreclosure (Eagle, 2007).

In regard to tax delinquency, as outlined by **Poindexter et al.**, there are three systems that give cities the power to collect property taxes: the state statutory system, the home rule regime, and a third system that is based on a combination of the two. Under the state statutory system, laws regarding property taxes, tax collection, and tax lien disposition are made at the state level. Under the home rule system, the state delegates the power to decide the amount to tax, the collection method, and the tax lien disposition method to the local level. Under the combination of the statutory system and the home rule system, both the state and local governments make decisions about tax amounts, collection methods, and tax lien disposition methods. Cities have the power to take property for unpaid taxes through foreclosure after the owner fails to pay for a certain amount of time. If the owner does not pay the taxes by the due date, the taxes go into default, and the municipality can file a judgment with the appropriate county official (often in the County Clerk's Office) to reduce the taxes in default to a valid, perfected lien on the property. Tax liens are "statutorily created assets collateralized by real property" (167). They are senior to all other liens, except those imposed by the federal or state government. The "seasoning period" is the time between the event of tax default and the time in which the outstanding taxes are reduced to a judgment. In some jurisdictions, such as Pennsylvania, a lien automatically attaches to the property upon the assessment of the tax; however, to perfect the lien, the municipality has to file a claim with the county (court). Once a municipality adds a lien to a property, a "redemption period" starts, during which the owner has the right to pay off all taxes, interest, and penalties and have the municipality remove the lien. Once the lien is in place, the jurisdiction can pursue foreclosure. The time that it takes to complete the foreclosure process depends on the extent of judicial involvement (whether it is a judicial or non-judicial foreclosure), whether the jurisdiction can initiate foreclosure proceedings in bulk, and the duration and time of the redemption period (Poindexter, Rogovoy, & Wachter, 1997). As described by **Marchiony**, in regard to the redemption period and foreclosure, there are three possible scenarios:

a pre-foreclosure redemption period and a single foreclosure process; a post-sale redemption period and a single foreclosure process; and two foreclosure processes, one before the tax sale of [the] property and one after expiration of the redemption period (Marchiony, 2012, 224).

The advantages of this approach

Why take this approach and use foreclosure to address both PP and TDP? First, this approach recognizes the link between physical (code violations) and financial (tax delinquency) distress, and allows cities to shift from a reactive to proactive approach in treating distress. In addition, it forces owners to act quickly to correct violations or risk having their properties transferred to more responsible owners, which prevents structures from undergoing further deterioration while cities wait for owners to respond. Finally, this strategy enables cities to contend with a particularly intractable group of PP, where the owners are physically neglecting the property, but continuing to pay minimal taxes, the "speculator" profile (Kraut, 1999).

However, there are pragmatic and theoretical challenges associated with this approach. From a practical standpoint, there are four major issues. First, if cities are going to use their ability to place liens for unpaid code violations on PP and take them through foreclosure if nonpayment persists, they need a clear and detailed set of codes, and staff that is qualified to determine whether these are being met. Second, the teams responsible for code enforcement and delinquency enforcement (foreclosure) must be well-coordinated, so the latter is aware of and can proceed upon liens produced by the former in a timely fashion. Currently, this coordination may be lacking because of internal silos, a failure to recognize the strategic importance of liens in allowing PP to be taken through foreclosure, and/or staff and resource issues. In Boston, for example, according to the **Harvard Legal Aid Bureau study**, the Inspectional Services Department failed to file the full number of liens associated with cleaning and sealing properties through Project Pride at the Registry of Deeds during the foreclosure crisis. ISD filed 38 liens in 2007, 34 in 2008, 15 in 2009, and just 1 in 2010, which seems low (Simon, 2011). Third, if more properties are going to become eligible for foreclosure, cities need an effective foreclosure process, so properties are received quickly and do not deteriorate in the interim. In addition, cities need a functional system for managing and disposing of foreclosed properties. In the past, cities have experienced financial and operational difficulties administering their property inventories. As soon as cities take properties, they become responsible for maintaining them up to code, as well as rehabilitation costs. If cities become aggressive in code (and tax delinquency) enforcement, to reduce the number of PP (and TDP), they need to be prepared for the impacts of receiving them, or risk making the situation worse. As **Bell** notes, describing the potential for this trade-off in Indianapolis, "Essentially, Indianapolis becomes a victim of its own stepped-up code enforcement costs" (Bell, 2011, 562).

From a theoretical standpoint, there are two major issues with using foreclosure to address both PP and TDP. First, cities need to be cautious with the use of tax foreclosure to treat PP, because its formal, intended purpose is to address the non-payment of taxes. Depending on state laws and local ordinances, cities may not be able to foreclose on liens for code violations unless taxes are also delinquent. For example, as discussed in **UT Law's "Building Hope" report**, in Texas, under Chapter 214.004 of the Local Government Code, it appears that a city cannot foreclose on a substandard building lien under the chapter unless ad valorem taxes also are delinquent. In contrast, Chapter 27 of the Dallas Code states that the City may foreclose on a substandard building lien unless the structure is occupied as a residential homestead by an individual 65 years of age or older. In situations such as this one, cities may need to clarify and/or modify the law before moving forward (University of Texas School of Law Community Development Clinic, 2007).

In addition, there is the consideration of foreclosure's "comparative advantage" relative to eminent domain, as another strategy that has been used to treat PP. Under eminent domain, controlled by the Fifth and Fourteenth Amendments of the U.S. Constitution, governments can take property for "public use" if they pay "just compensation" for it, defined as fair market value. The Takings Clause of the Fifth Amendment grants the federal government this power, and the Due Process Clause of the Fourteenth Amendment extends it to state and local governments. Cities have a track record of using eminent domain, in the form of condemnation, to address distressed properties. As discussed by **Pritchett,** from the early

1920s to the 1940s, urban renewal advocates formulated the concept of blight, which separated productive and unproductive uses of land, to justify using eminent domain to take properties for redevelopment. In Pritchett's words,

> Blight was a rhetorical device that enabled renewal advocates to reorganize property ownership by declaring certain real estate dangerous to the future of the city... By elevating blight into a disease that would destroy the city, renewal advocates broadened the application of the Public Use Clause and at the same time brought about a reconceptualization of property rights. One influential understanding of property defines it as a bundle of rights, the most important being the rights to occupy, exclude, use, and transfer. In the urban renewal regime, blighted properties were considered less worthy of the full bundle of rights recognized by American law (3).

During the 1940s, following this reconceptualization of property rights, many states passed urban renewal legislation. By 1948, 25 states had urban renewal laws. Under this legislation, cities were able to use eminent domain to take properties in "blighted" areas and transfer them to a new private owner, often the urban redevelopment corporation, for redevelopment. In several key cases, including *Berman vs. Parker*, *Hawaii Housing Authority vs. Midkiff*, and *Kelo vs. City of New London*, the U.S. Supreme Court upheld cities' right to do so. In *Berman vs. Parker*, where two private owners challenged the District of Columbia Redevelopment Land Agency's right to take their non-distressed department store as part of a redevelopment plan for a "blighted" area, the Court ruled that private property could be taken for a "public purpose," not just a "public use," and that conveying land from one private owner to another in order to address blight under a comprehensive redevelopment plan constituted a legitimate "public purpose." Through this ruling, the Court combined eminent domain and the police power. In *Hawaii Housing Authority vs. Midkiff*, the Court ruled that eminent domain could be used to transfer land from one private owner to another to serve the police power. In *Kelo vs. New London*, the Court extended the *Berman* ruling to allow cities to convey unblighted property from one private owner to another not just for blight removal, but also for economic development.

However, despite these precedents, the use of eminent domain to address blight remains legally contested for several reasons. Critics have challenged whether governments should be able to use eminent domain to enforce the police power; whether transferring property from one private owner to another violates the Public Use Clause of the Fifth Amendment (the "public use" versus "public purpose" debate); whether the courts have given governments too much power to use eminent domain for blight, without sufficient judicial scrutiny of public benefit claims; and whether "blight" is defined too broadly, so that it includes uses that are viable, but not maximally profitable (Pritchett, 2003). For example, **Eagle** argues "blight condemnation is inconsistent with the fundamental distinction between eminent domain, which arrogates private goods for public use, and the police power, which protects the public from harm" (1). In taking this position, he follows Justice Thomas, who asserted in his *Kelo* dissent that the police and eminent domain powers are separate, and that nuisance law, not eminent domain, should be used to remediate PP. As cited in **Eagle**, Thomas stated,

> Traditional uses of that regulatory power, such as the power to abate a nuisance, required no compensation whatsoever, in sharp contrast to the takings power, which has always required compensation. The question whether the State can take property using the power of eminent domain is therefore distinct from the question whether it can regulate property pursuant to the police power. In Berman, for example, if the slums at issue were truly 'blighted,' then state nuisance law, not the power of eminent domain, would provide the appropriate remedy. To construe the Public Use Clause to overlap with the States' police power conflates these two categories (3).

Following the *Kelo vs. City of New London* case, concerned that local governments might overuse eminent domain, states have placed statutory restrictions on their definitions of both "blight" and "public use." For example, the California Legislature amended the "Existence of Blighted Area: Declaration and Description" section of its Health and Safety Code to limit the definition of blight and require local officials to provide more extensive rationale for properties condemned as blighted. The Kentucky and Utah legislatures have also changed state laws to restrict blight definitions. As cited in **Eagle**, the Florida Legislature actually barred the use of eminent domain in the "eliminat[ion] of nuisance, slum, or blight conditions," while not "diminish[ing] the power of [localities] to adopt and enforce . . . ordinances related to

code enforcement or the elimination of public nuisances [not involving] eminent domain" (Eagle, 2007, 4). In regard to "public use," the Indiana Legislature basically eliminated "economic development" from the state's definition of a public use, as well as increases in the tax base, tax revenues, or general economic health (Bell, 2011).

Eminent domain also has several practical disadvantages. It is time-consuming, especially if there is owner resistance to the taking. In addition, it is expensive, because of the obligation to pay fair market value. Payment of fair market value is problematic if much of the value comes from factors outside the owner's control, with land appreciation occurring while he has allowed the structure to degrade. Furthermore, estimating the fair market value of PP is difficult using traditional valuation methods. The comparable sales method, which bases the price on what comparable properties in the area have been sold for, assumes a normal market, but the market in areas with significant PP may be abnormal. For example, PP in one neighborhood may be worth very little, but PP in another neighborhood targeted for redevelopment may be worth significantly more. Meanwhile, the reproduction cost method, which bases the price on the estimated reproduction cost of the property, adjusted for depreciation, is challenging, because the housing code violations have to be factored into the reproduction cost, even though they would not be built into the property. In an effort to address the fair market value issue and prevent speculators from realizing a large profit from land appreciation while allowing structures to deteriorate and inflicting negative externalities on their communities, **Kraut** put forward a modified form of eminent domain. He suggested that cities use eminent domain to seize properties with a significant number of code violations, but discount the fair market value by the amount it costs to bring the property up to code. For properties where the cost of correcting the code violations exceeds the fair market value, cities would not compensate the owner at all. This approach resembles that taken by cities towards properties with environmental contamination, in which the fair market value is reduced by the amount of the cleanup costs. By forcing owners to pay the costs of distress, it reduces their speculative profits. The U.S. Supreme Court has ruled that speculative profit is not protected in takings cases (Kraut, 1999).

However, while Kraut's approach is innovative, foreclosure represents a superior approach to eminent domain for several reasons. First, even under Kraut's system, cities are required to pay fair market value minus liens associated with the cost of correcting the code violations for the property. Under foreclosure, cities are required to pay only the liens associated with the cost of correcting the code violations for the property. Therefore, by eliminating any increment in fair market value associated with land appreciation, foreclosure more effectively prevents speculators from realizing speculative gain in the property, and thus provides an even stronger incentive to correct violations to avoid property loss. Second, as discussed by **Eagle**, it avoids some of the legally contested aspects of eminent domain, because foreclosure is a straightforward exercise of the police power. Eagle takes the position that "abatement, foreclosure, and private revitalization... is more in accord with Constitutional requirements and more likely to produce transparent and efficacious outcomes" (2). In regard to the second point, Eagle argues that if liens are attached to a property, and the property is worth more than the value of the liens, the owner, or nearby third parties, such as neighbors or developers, will be motivated to abate. In addition, if the property goes through foreclosure, the redeveloper will be selected through a competitive bidding process (auction) that is open to everyone, not just government entities and their chosen redevelopers, and that quickly returns the property to the market. Eagle asserts that this will "likely reduce unjustified blight condemnation resulting from rent seeking manifested through political favoritism toward selected redevelopers" and will encourage "feasible redevelopment schemes" (Eagle, 2007, 1).

Nonetheless, as raised by **Bell**, there is one critical barrier to redevelopment through foreclosure that must be addressed for it to be a viable strategy. As Bell notes,

> It is conceivable that any prospective real estate owners who may desire to purchase and bring the properties back to good standing may have less economic incentive to take on properties [with] accumulated unpaid city fines, which are a lien on the real estate... Future purchasers of any government-owned real estate will most likely be deterred by any delinquent penalties and unpaid costs, plus interest, which are added as special assessments on the property's tax bill. Additionally, it is plausible that investors – or all homeowners for that matter – may be discouraged from ownership

> or renovation in fear of falling victim to enhanced code enforcement. Huge levels of back taxes, along with the poor condition of many houses, leave little economic incentive for private parties to purchase these parcels when the total costs of purchase, rehabilitation, and maintenance far exceed the market value of the property (560-561).

If the city were to transfer a property to a third party after foreclosure, ideally the new owner would purchase the property for the cost of its liens, so the city ultimately expends no money on the property. However, if the property is truly underwater (liens are greater than the market value), the city may have to accept only partial recovery of the liens to return the property to productive use (Bell, 2011).

Summary

This chapter considers the relationship between PP and TDP, which have typically been viewed as separate problems and handled by separate departments, with Inspectional Services/Code Enforcement taking responsibility for the former and the Assessing, Law, and Real Property Departments for the latter. It argues that cities should treat PP and TDP together, and not in isolation, for three reasons. First, they often constitute the same properties. Second, both impose significant direct and indirect costs on their communities, in somewhat similar ways. Third, and most importantly, cities' power to lien and foreclose on liens can be used as a "strategic lever" to return both PP and TDP to productive use, taking advantage of liens associated with unpaid taxes, code violation fines, and receivership actions. Recognizing the link between PP and TDP enables cities to shift from a reactive to proactive approach in treating blight, letting them act quickly to force owners to correct violations or risk having their properties transferred to more responsible owners.

CHAPTER 2:
THE CODE ENFORCEMENT CHALLENGE

This chapter examines how cities can be more effective in addressing code violations by prioritizing properties for enforcement, based on differences in property characteristics (occupied vs. vacant, severity of violations) and owner motives (maintenance failures induced by genuine hardship versus "strategic defaults" to maximize gains), and developing distinct "enforcement toolkits" for specific property types. These toolkits consist of escalating legal and financial incentives.

Background

State and local laws control code enforcement, the process through which cities ensure compliance with property and land use regulations, including building, fire, health, and housing codes and zoning. These laws establish minimum health and safety standards for buildings and procedures for repairing and/or demolishing substandard buildings. These standards differ from place to place, but are generally consistent. Building code standards are developed by three large model code groups, and then modified and implemented by states and local governments (Burby, Malizia, & May, 1999). The Code Enforcement Department, Inspectional Services Department, or some variant thereof usually supervises code enforcement. The department has teams of inspectors who visit properties. Inspectors have the authority to inspect the exterior of properties, but not the interior, unless they receive permission from the owner or occupant (tenant) or obtain a warrant (UT School of Law Community Development Clinic, 2007). When inspectors find violations, they issue a notice of violation to the owner, defining the ordinance being violated, and provide them with a certain amount of time to correct or "cure" the violation, unless there is an immediate threat to public safety. Code enforcement departments are required to provide this time to correct, under the Due Process clause of the Fourteenth Amendment (Schilling & Schilling, 2007). Once the correction period has expired, the inspector will re-inspect, to make sure the violation was corrected. If the owner is not in compliance, the inspector writes a citation. There are two basic types of citations: civil and criminal. Civil citations are handled through an administrative proceeding. Criminal citations are processed through municipal courts, which have stricter procedural requirements and burdens of proof. Cities also can file nuisance abatement suits against owners when their property is the site of repeated criminal activity and they have failed to take reasonable steps to stop the activity. Individuals; district, county, or city attorneys; and state Attorney Generals can bring nuisance suits (UT School of Law Community Development Clinic, 2007).

Barriers to Effectively Addressing Problem Properties

There are two major barriers to addressing PP. The first is effectively identifying PP. Traditionally, cities have taken a reactive approach to locating PP, relying on complaints from neighbors or community groups and inspectors conducting general drive-through or walk-through inspections to find them. Some cities also have launched periodic vacant and abandoned properties surveys. Cities' efforts to identify PP are constrained by several factors. Tenants may not report violations because the owner promises to fix conditions at the property, instructs them not to call 311 or put their tenancy at risk, or the tenants do not know who to contact about violations (Velsey, 2012, May 8). In addition, code enforcement departments have scarce time and resources. Furthermore, there may be incomplete coordination both between internal city departments, such the police and fire departments, and animal control and public works departments, and with external agencies, such as utility companies or the U.S. Postal Service, which could have relevant property information. Members of the public, who could assist in initially identifying properties for enforcement and monitoring if violations have been corrected, may have limited access to information about complaints already filed and city enforcement actions in progress (UT School of Law Community Development Clinic, 2007). For example, to incentivize people to report problematic properties, the City of New Orleans, in collaboration with Code for America, developed a searchable mapping tool called Blight Status that helps residents track properties through the code enforcement process, from inspection, to court hearing, judgment, and resolution, whether the owner corrects, the property is foreclosed and auctioned off,

or the property is demolished (Badger, 2012, October 19).

The second is effectively enforcing code violations. Cities have experienced challenges enforcing code violations for several reasons. First, owners are often difficult to locate and/or unresponsive. "Missing in action" owners may be out-of-town investors, holding companies with difficult-to-trace ownership, or deceased individuals, with nonexistent or unclear heirs. This is problematic because most code enforcement involves in personam procedures. Under an in personam procedure, the city must perform personal service to notify the owner of the violation, which is difficult if the owner is deliberately hiding or just hard to find. In contrast, under in rem procedures, the city can just notify the owner through certified mail to the listed address and posted notice on the property, after a reasonable initial effort to execute personal service. Tax foreclosure is an in rem process. Thus, in personam procedures place the burden of finding the owner on the city, while in rem procedures actually bring the owner out of hiding to avoid enforcement consequences (Samsa, 2008). To have the court find an owner in contempt for failure to obey a correction order, the city must prove that the owner knew that the order had been made (Kelly, 2003). Second, there is the access issue. It can be difficult for inspectors to get into property interiors to issue violations and confirm they have been corrected. If the property is occupied, a tenant can provide access. However, if it unoccupied, the owner or owner's agent (management company) must grant permission. If they refuse, the inspector must submit an affadavit to court requesting a search warrant. This affadavit must outline the code violations for which the inspector is searching in the building interior. The officer is authorized only to look for those violations that are stated in the affadavit unless other obvious code violations present themselves (Massachusetts Housing Partnership, 2009). Third, there is the "repeat offender" problem, with individuals who commit repeated code violations, but repair their properties and bring them into basic compliance with city codes as soon as the city takes enforcement action, thus "resetting the clock." Third, cities often fail to pursue enforcement as fully as they can, due to the cost, staff time, and coordination issues discussed above. In particular, cities may attach liens for essential repairs, but not foreclose, giving owners little incentive to pay (UT School of Law Community Development Clinic, 2007). Code enforcement is particularly problematic in cities with large numbers of PP because of the scope of the problem relative to financial and operational resources. Based on a survey of building code enforcement agencies in 155 central cities, **Burby et al.** conceptualized three enforcement strategies: strict, creative, and accommodative. Burby found that 43% of cities use an accommodative strategy, 29% use a creative strategy, and 28% use a strict strategy, and that cities using accommodative strategies tend to have higher poverty rates, slower growth rates, and weaker economies than cities using strict or creative enforcement strategies (Burby, Malizia, & May, 1999).

Overcoming Barrier 1: Effectively Identifying PPs

To become better in identifying PP and pursuing code enforcement, cities should take a more proactive, data-driven approach. To locate PP, they can combine information from a number of city departments and external agencies and sources (Schilling & Schilling, 2007).

Department/Agency	Data
Internal	
Police	Service calls, verified crime incidents
Fire	Service calls, Fire Violations
Code Enforcement/Inspectional Services	Code violations, Emergency Repair Funds, Clean/Seal actions, neighborhood complaints, Vacancy survey
Housing Authority, Department of Neighborhood Development	Tenant complaints
Health	Code violations
Water and Sewer	Missed payments, service cancellations
Assessing Department	Building age, tax delinquency
Mayor's Office/General Services	311 calls
Law Department, Housing Court	Court orders

External	
Community groups, Community Development Corporations	Complaints
Utility companies	Heat and hot water shut-offs, no service for 6 months
Mortgage Bankers' Association, Sheriff's Department	Foreclosure filings and sales
U.S. Postal Services	On-the-ground reports from mail carriers, service cancellations
Google Earth, Pictometry	Detailed, street-level views of properties that can complement on-the-ground inspections

As far as aerial images, Frank Cassidy, President of the Florida Association of Code Enforcement, indicated that statewide agencies have started using Google Earth's aerial mapping to investigate potential code violations, especially illegal additions to homes. To be useful, these aerial images must be up-to-date (Gulliksen, 2010, September 15). In 2003, Philadelphia commissioned Pictometry International Corporation, a private service, to provide low-altitude images of every building in the city. Assessors use the database's "change detection" feature to track home improvements and cellphone tower additions (Bernstein, 2006, August 20). It is crucial to draw on a wide range of data sources, and not just rely on tenant and neighborhood complaints when identifying PP, because they may be underreported for the reasons previously discussed. In this regard, requiring regular rental inspections can be helpful. Boston launched a regular rental inspection program, requiring all private rental units to be registered with the Inspectional Services Department each year and inspected every 5 years, in January 2014, under Code Ordinance CBC 9-1.3. Under the ordinance, if owners live outside of Massachusetts, they must contract with a Boston-based agent for property management. They must also commit to abiding by all state and local codes. Owners who fail to register their units are subject to a fine of $300 per month and receive 1 point in the "Chronic Offender" point system (City of Boston, 2014, Rental registration and inspection program). New York City requires owners of all multi-family buildings (three or more units) and one- and two-family buildings where the owner or owner's family does not live in the building to register their buildings with the Department of Housing Preservation and Development each year (City of New York, 2014, March, The ABCS of housing). This rich pool of data can be used not only for identification of existing PP, but prediction of future PP, shifting to a "preemptive government" approach (Goldsmith, 2011, September 21). NYC, Boston, and Philadelphia have launched initiatives in this area.

New York City: In January 2011, NYC launched the Proactive Preservation Initiative under the Department of Housing Preservation and Development (DPH) to identify multi-family buildings "at risk" of continued physical decline, with the goal of stopping bad buildings before they got worse (Avila, 2012, March 20). The Proactive Prevention Program uses city data (housing code violations, unpaid fees and fines) and referrals from community groups, elected officials, and housing advocates to identify potentially distressed buildings. Once a building is identified, HPD sends a team from the Division of Neighborhood Preservation (DNP) to perform a preliminary assessment of its conditions. Based on the building's level and type of distress (severe physical distress; non-emergency physical distress; little to no distress; and financial distress), DNP assigns it to different enforcement pathways. For buildings in severe physical distress, with immediately hazardous conditions, DNP either refers them to the Proactive Enforcement Bureau (PEB) for a complete, basement-to-roof inspection during which Housing Maintenance Code Violations can be issued and enforced after a 45-day compliance period or refers them directly to the Housing Litigation Division (HLD), to pursue court-ordered repairs and civil penalties. If they are tax-delinquent, HPD may also pursue lien sales. For buildings with non-emergency physical distress, HPD acts differently, depending on the level of owner cooperation. It connects cooperative owners who want to maintain their buildings but are experiencing difficulty doing so with low-cost repair loans and management counseling. It contacts the Proactive Enforcement Bureau or Housing Litigation about uncooperative or absent owners. For buildings with little to no distress, HPD adds them to a watch list, so it can monitor if conditions get worse and intervention is needed. For buildings in financial distress, HPD may work with the owner and/or bank to

negotiate a transfer to a responsible developer. Since the Proactive Preservation Program began, HPD has investigated approximately 500 buildings per year. Twice a year, HPD publishes a list of "at risk" buildings (the At-Risk Building List) that warrant action from PEB or HLD (City of New York, Dept. of Housing Preservation and Development, 2014, Proactive preservation initiative – PPI).

In 2007, as a precursor to the Proactive Prevention Program, NYC launched the Alternative Enforcement Program (AEP) under HPD. AEP was established by Local Law No. 29, which went into effect on November 11, 2007. Instead of focusing on treating buildings that could go from bad to worse, AEP concentrated on identifying the "worst of the worst" properties in the most extreme physical distress. The program was motivated by the fact that in FY 2006, HPD spent $17 million in Emergency Repair Program funds at 8,934 properties, with 573 buildings (6.4% of the total) accounting for 50% of the spending, and in FY 2007, HPD spent $17 million in Emergency Repair Program funds at 9,181 properties, with 532 buildings (5.8% of the total) accounting for 50%. Each year, AEP identifies the 200 worst multi-family buildings, based on the number of Class B ("hazardous") and Class C ("immediately hazardous") code violations and the total amount of Emergency Repair Charges (ERC) incurred. Owners of buildings selected for AEP have 4 months after their building is first identified to correct code violations, formally certify the violations as corrected, pay outstanding ERP charges, and register their buildings. If they fail to do so, HPD refers their building for a complete, basement-to-roof inspection, and imposes fees to cover the costs of monitoring it through AEP. If the owners fail to correct the Housing Code Maintenance Violations issued during the inspection, Local Law No. 29 gives HPD the authority to do so, and bill the repair costs back to the owner. As of January 31, 2012, 800 buildings with 7,945 units had gone through at least one full year of AEP. Of those 800 buildings, 424, with 5,278 residential units, had met the criteria to be discharged from the program. Overall, HPD had spent $23.5 million making repairs and providing basic utility services for these 800 properties. The City had collected $20 million in ERP and AEP charges and fees. Based on the percentage of ERP spending on multi-family buildings, AEP does seem to be impacting ERP spending. In FY 2011, HPD spent $17 million in ERP funds on 9,190 buildings, about the same as the ERP spending from FY 2007, not unexpected given the likely continued deterioration of the stock associated with the economic recession. However, about 650 buildings (7.1% of the total) now account for 50% of the spending, meaning that it is spread over a larger number of buildings. In addition, almost 33% of the top 50% of buildings are 1- and 2-family buildings, versus 10% in FY 2006. 1- and 2-family buildings are not eligible for AEP or the City's Tax Lien Sales program.

Based on a 5-year assessment of AEP conducted by HPD, the program has been most effective in addressing larger buildings where owners are able to respond quickly to the threat of fees and Orders to Correct, than smaller buildings (under 6 units). Smaller buildings have a higher incidence of foreclosure, indicating financial distress; smaller profit margins and lower reserves; and less professional ownership and management, which means they are less able to respond. As the assessment noted, "The economic penalties, which are the 'big stick' of AEP, only serve to further burden smaller buildings and make discharge more difficult." In Rounds 1 and 2 of AEP, the selection criteria (27 or more open Class B and/or Class C violations issued in the past 2 years; a ratio of 5 or more open Class B and/or Class C violations per DU issued in the past 2 years; and unpaid ERP charges in a ratio of $100 per DU incurred in the past 2 years) brought in a majority of smaller buildings from Brooklyn and the Bronx. Despite action from HPD, at the end of the 4-month period for Round 3 (March 2010), only 55 Round 1 buildings and 49 Round 2 buildings had been discharged pre- or post-Order to Correct, leaving 143 Round 1 buildings and 151 Round 2 buildings active. Since AEP was tracking the active buildings and responding to tenant complaints, it essentially became the de facto property manager for them. Concerned about assuming this role, which was not the intent of AEP, HPD requested a change to the selection criteria, via Local Law of 2011, to bring in larger buildings. The selection criteria for Rounds 4 and 5 (a ratio of 5 or more open Class B and/or Class C violations per DU issued in the past 2 years and at least $2,500 in paid or unpaid ERP charges incurred in the past 2 years for buildings with 3-19 units; a ratio of 3 or more open Class B and/or Class C violations per DU issued in the past two years and $5,000 in paid or unpaid ERP charges incurred in the past 2 years for buildings with 20 or more units), with the top 200 buildings with the highest paid or unpaid ERP charges incurred in the past 2 years being selected, resulted in more buildings from Manhattan and the Bronx being included, and a significant increase in the size of buildings selected, especially for Round 4. In Round 4, the number of buildings

discharged pre-Order to Correct increased significantly, with almost as many buildings (88 buildings with 2,529 units) complying in Round 4 as in Rounds 1, 2, and 3 combined (119 buildings with 1,317 units) (City of New York, Dept. of Housing Preservation and Development, 2012, The Alternative Enforcement Program: 5-year report).

In 2011, NYC also launched a pilot project, led by Chief Policy Advisor John Feinblatt and Mike Flowers, to prioritize high-risk properties for fire inspections, after a lethal April 2011 fire occurred in an illegally subdivided building. Through data analysis, the team found that buildings with 4 characteristics, -- owners in financial distress, facing mortgage foreclosure and/or tax liens; multiple illegal-conversion complaints; multi-family buildings constructed before 1938, the year the building code was revised; in low-income, high-immigrant, low-employment neighborhoods, -- were 40 times more likely to have a fire than the average building. The team identified 225 high-risk properties, which were then visited by a joint inspection team from the Building and Fire Departments, that issued vacate orders where necessary (Goldsmith, 2011).

Boston: In July 2011, Mayor Thomas Menino created the Problem Properties Task Force by executive order to identify and correct the buildings with the most serious code violations and crime issues. The PPTF uses data from the Police, Fire, and Inspectional Services Departments, Housing Authority, Department of Neighborhood Development, and Office of Neighborhood Services (Mayor's Office) to locate the "worst of the worst" properties. The PPTF considers the number of police and fire service calls in the past 12 months, the number of code violations in the past 12 months, the value of outstanding liens (tax, water and sewer, and Project Pride cleanup funds), and the number of tenant and neighborhood complaints to the BHA, DND, and ONS. Under the Problem Properties Ordinance (Ordinance 16-55.2), if the Police Department receives at least "for any incident involving an arrestable offense, including but not limited to disturbing the peace, trespassing, underage drinking, or assault," the Air Pollution Control Commission receives at least 4 noise complaints, and/or the Inspectional Services Department or Public Health Commission receive at least 4 complaints for "noxious, noisome, or unsanitary conditions" within the past 12 months for a property, the PPTF places it on the PP Designated List (City of Boston, 2012, Rental inspection ordinance). Once a property is on the Designated List, the owner is eligible to be fined $300 per code violation, as well as $300 per day that the violation remains open. In addition, once the building has received 8 or more police or fire service calls in the past 12 months, the City can assign a police detail to monitor the property and bill the owner for the cost (Nanos, 2011, October). As of Oct. 2012, the PPTF had completed investigations of 144 properties, and was in the process of investigating 46 more. From July 2011 to Oct. 2012, the properties investigated experienced a 55% reduction in police calls (Adams, 2012, October 7). Under the new Rental Inspection Ordinance, Ordinance CBC 9-1.3, the City has made two critical changes to the PP system. First, under the ordinance, properties on the PP Designated List must be inspected annually by ISD. In addition, within 30 days of designation, they must submit a management plan, explaining how they plan to correct any outstanding code violations, identifying the consultants or contractors who will perform the work, and providing a timeline for doing so (City of Boston, 2012, Rental inspection ordinance).

Like NYC's Alternative Enforcement Program, the PPTF initiative has highlighted the effects of "super blighters." The PPTF has investigated many properties belonging to the same owners. Some of these owners operate under different holding companies, but use the same mailing address to register all of their holding companies, which allows them to be linked. Because of its focus not just on code violations, but on crime issues, the PPTF has also raised the issue of differentiating problematic tenants from problematic owners. The PPTF holds owners accountable for crime committed on their properties, on the premise that the owners should have screened tenants more carefully; taken action to work with the police; and/or evict tenants. Housing Court will generally support landlords seeking expedited evictions of tenants who commit serious crimes (Editorial Board, 2012, November 27). The PPTF also has experienced challenges with enforcement follow-up, because it involves coordination between multiple departments, including Police, Fire, Inspectional Services, and Law. To facilitate, the PPTF holds bi-weekly meetings among stakeholders, both to determine if new properties should be added to the PP Designated List and to discuss further enforcement actions required for properties already on the list.

To help identify problematic owners, under its new Rental Inspection Ordinance, Boston has also

established a Chronic Offender List, based on a point system, for individuals who fail to register their properties, correct code violations, or pay fines. For example, individuals are assessed 2 points for having their property included on the PP Designated List; 1 point for each failure to correct an ISD notice of violation under the state Sanitary Code, state Building Code, or city Zoning Code within a reasonable amount of time; 2 points for each failure to correct an emergency violation after 2 inspections; and 1 point for failing to register their property or complete the inspection requirements. Once individuals accumulate a certain number of points in a 12-month period, they are classified as a Chronic Offender. Owners have 14 days to contest each point assessment or their classification as a Chronic Offender after being first notified. Once classified as a Chronic Offender, they are subject to fines of $300, or the maximum allowed, for each additional point received in a 12-month rolling period, as well as civil and criminal court prosecution for any outstanding violations. They also are required to request an inspection of each rental unit every 3 years, instead of every 5 years as is standard, and ISD must perform the inspection. If they accumulate less than 2 points in the 12-month period following their classification, they can be removed from the Chronic Offenders List (City of Boston, 2012, Rental inspection ordinance).

Philadelphia: In 2001, the City of Philadelphia and the University of Pennsylvania launched the Philadelphia Neighborhood Information System (NIS) to combine property-level and aggregate (neighborhood) data into an online application and function as a predictive "early warning system" for housing abandonment. The team used logistic regression to identify significant predictors of properties becoming "imminently dangerous": vacant, with outstanding code violations, with tax liens, and characteristics of nearby properties. The NIS revealed challenges with obtaining and integrating data from multiple sources; meeting data confidentiality requirements; maintaining data quality and keeping time-sensitive data up to date; determining which factors were most effective in predicting abandonment; and performing space-sensitive and time-sensitive modeling, because of potential "clustering" of abandoned properties and causal processes. With time-sensitive and space-sensitive model, the scale of the temporal (e.g., How much of a warning does a particular factor provide? Is abandonment immediate or long-term?) and spatial (e.g., If the presence of vacant buildings is a significant predictor of abandonment, how close do the vacant buildings need to be?) relationships is important (Hillier, Culhane, Smith, & Tomlin, 2003).

Overcoming Barrier 2: Developing Effective Enforcement Pathways

In addition to taking a more proactive, data-driven approach to identifying and predicting PP, cities should differentiate between property and owner types to prioritize properties for enforcement. For property types, five characteristics are key, in terms of determining the urgency of the problem and the enforcement actions that can be taken.

Property Characteristic	Implications for Urgency and Enforcement
Occupied vs. unoccupied properties	Occupied properties in poor condition may be more pressing because they pose an immediate threat to tenants' health and safety, although unoccupied properties also can have a negative impact on the neighborhood. Within unoccupied properties, it is critical to separate properties that are vacant from those that are abandoned (functionally, financially, and physically).
Type of distress (physical vs. financial)	Properties in financial distress may be in mortgage default or tax-delinquent, and therefore eligible for mortgage or tax foreclosure.
Severity of code violations	The severity of the code violations should be considered, both in terms of the total number and level of violations (Class B and Class C). If the property is unoccupied, whether it is secured (boarded up, with utility service discontinued to avoid problems like freezing pipes) or unsecured should be considered.
Level of disruption to the neighborhood (crime impacts)	The level of disruption to the neighborhood, in terms of public safety incidents (police and fire service calls) and neighborhood complaints should be considered. As discussed above, neighborhood complaints may

	be relatively underreported, if residents are concerned about registering and/or feel that doing so will produce no action.
Contribution to the "tipping point" of disinvestment	Properties' contribution to the "tipping point" of disinvestment should be considered, in terms of the total percentage of PP on the block and/or in the neighborhood, the trend in percentage increase of PP over time, and the trend in percentage decrease of property values over time.

For owner types, it is critical to distinguish between three types: cooperative owners, non-cooperative owners, and "missing in action" owners.

Cooperative Owners consist of individuals who want to maintain their properties, but are experiencing financial or operational challenges doing so. This group is likely to include low-income and/or elderly owner-occupants, as well as "good faith" investors not prepared for the challenges of managing their properties.

Non-Cooperative Owners consist of individuals who are "strategically defaulting" on their maintenance responsibilities. These individuals are not investing in their properties because they believe the neighborhood has declined, the property will continue to lose value over time, and they will not recover their investment ("slum landlords"); they believe the current use is not the "highest and best" use and they want to maximize their gains from land appreciation; and/or the cost of the fines is less than the cost of repairs. This group is likely to consist strictly of investors, and not owner-occupants. Non-cooperative owners may include lenders pursuing properties through the foreclosure process, a particular issue after the 2008 crisis. Under federal law, lenders are not obligated to work with owners to modify mortgage loans to prevent foreclosure. Generally, lenders will not take any action on vacant, defaulted property until the foreclosure process is complete, which can take months or even years. Most lenders have an "Abandonment and Waste" clause within their mortgage contract, which gives them the authority to enter vacant property in which they hold a beneficial interest and secure and maintain the property. Most lenders agree that this clause provides them with the right to maintain the property, but not the obligation to do so (City Policy Associates, 2008).

"Missing in Action" Owners consist of individuals who do not know about, did not willingly assume, or are unable to perform their maintenance responsibilities. These individuals may include deceased individuals; mentally ill individuals; individuals affected by a language barrier that prevents them from understanding their maintenance responsibilities; heirs who received property unknowingly and/or without their permission; and/or bankrupt or defunct holding companies. In contrast to cooperative owners, who want to keep their property for productive use, or non-cooperative owners, who want to hold onto their property, at least in the short term, to maximize their gains and have made the decision to "strategically default," MIA owners, once informed of their responsibilities, may want to just "walk away" from the property without incurring debt. They could also fall into either of the two groups. For example, the prototypical MIA owner was Thomasina Tucker, a woman who inherited a property in West Philadelphia from a relative who died in a house fire without leaving a will. The property was appraised for $32,000, but had $68,000 of unpaid code violations, back taxes, and two unpaid mortgages attached to it. To claim and manage the property, the woman would have needed to pay the Registry of Wills a maximum inheritance tax because she was an out-of-state resident. The woman wanted to exit her involvement with the property without realizing any gains, but also without becoming responsible for its liabilities (Henry, 2013, April 30). Lenders (banks, trusts, etc.) can also fall into this category, if they do not realize that they own a property. This can occur when mortgage loans are issued and then sold, and the transfer is not recorded. Without a recorded transfer or substitution of beneficiary, cities can experience difficulty finding the individual or corporation with authority over the property (City Policy Associates, 2008).

Cities can use the following characteristics to differentiate between the three groups of owners.

Group	Characteristics
Cooperative Owners	Have a track record of maintaining their properties and/or correcting code violations within a reasonable time

	Are able to demonstrate financial hardship (low income, operating costs to rent ratio greater than 1, have requested tax abatement) Have met with the city to develop an action plan to correct violations Are conforming to the requirements of the action plan on time Have paid outstanding liens or are following a payment plan Have licensed their property Have secured their property, if unoccupied
Non-Cooperative Owners	Have a track record of not maintaining their properties Are not able to demonstrate financial hardship Have multiple properties with code violations Have discouraged tenants or neighbors from reporting code violations Refused or failed to meet with the city to develop an action plan to correct code violations Have not conformed to the requirements of the action plan on time Have not paid outstanding liens or are not following a payment plan Have not licensed their property Have not secured their property
"Missing in Action" Owners	Are deceased Are mentally ill Property is attached to an estate or trust

Cities can then use property and owner types to prioritize properties for enforcement. The basic prioritization should be to start with "worst of the worst" properties.

Priority	Property Type	Owner Type
1	Occupied Most severe violations Physical distress	Cooperative Non-cooperative MIA
2	Unoccupied Physical and financial distress High level of disruption to neighborhood	Non-cooperative (especially if holds multiple properties in this category) MIA
3	Unoccupied Physical and financial distress High contribution to "tipping point"	Non-cooperative (especially if holds multiple properties in this category) MIA

In addition, cities can then develop distinct enforcement pathways, or systems of financial and legal incentives, for these properties. To facilitate the success of this approach, cities should put two protocols in place. First, they should take a "case management" approach, seeking to understand the property type, owner type, and specific challenges that are preventing the owner from bringing the property into compliance, as well as tracking properties the entire way through the enforcement process. Second, as suggested by the model of the PPTF in Boston, cities should enable coordination between departments for the purpose not only of information-sharing, but also of enforcement. This coordination can be formalized in a multi-department task force, or left more informal, but it must be ongoing. For enforcement, as compared to information-sharing, the critical departments are Code Enforcement or Inspectional Services, Police, and Law, because they have "comparative advantages" in terms of handling PP. The Code Enforcement Department can inspect properties for evidence of code violations based on reasonable cause; issue code violations; and pursue administrative or civil enforcement actions against owners if the condition of their property constitutes a public nuisance. The Police Department can search individuals and their property for evidence of crime based on probable cause; issue citations for criminal violations; pursue eviction of tenants

for criminal activity; and cite or arrest individuals whose criminal activities constitute a public nuisance. The Code Enforcement and Police Departments can work together to do joint inspections, which is helpful because CE inspectors operate under a lesser legal standard (reasonable vs. probable cause). The Law Department can assist with identifying ownership, especially in the case of estates, foreclosures, and bankruptcies; represent the Code Enforcement and Police Departments; advise them on their powers to inspect properties and investigate owners; and pursue civil and criminal code enforcement cases on their behalf. Collectively, the three departments can work together to ensure comprehensive enforcement follow-up. In addition to Boston's PPTF, initiatives in Albuquerque, Providence, and St. Louis provide three helpful models of inter-departmental coordination to address PP.

Albuquerque, NM: The Mayor launched the Safe City Strike Force by executive order in March 2002. The Strike Force consists of representatives from the Police, Fire, Planning and Zoning, Family Community Services, and Legal Departments. The SCSF reviews 125 to 150 residential and commercial properties with serious code violations or crime issues each week, and focuses on enforcing the Uniform Housing Code and the Criminal Nuisance Abatement Ordinance, through actions including boarding up deteriorated or vacant buildings City Policy Associates, 2008).

Providence, RI: Providence established the Nuisance Abatement Task Force in August 2012 as a joint effort between the city and the state Attorney General to address PP in a collaborative, comprehensive way. The Task Force includes members from the city's Fire, Police, Inspections and Standards, Public Works Departments; the Office of Neighborhood Services; the Planning and Development, and Tax Collection Departments; the Mayor's Office; and the City Solicitors' Office, as well as a Deputy Attorney General. The NATF meets twice a month to develop action plans for the 20 "worst of the worst" properties on a continuously updated list. The NATF follows properties on the list for at least 6 months after correction occurs to ensure problems do not return (Schilling & Schilling, 2007).

St Louis, MO: St. Louis created the Problem Properties Unit in June 2002 to resolve PP. The PPU is housed within the Law Department, and has a full-time staff of attorney and officers directly assigned from the Police Department. The PPU works closely with Code Enforcement. The attorneys investigate property ownership, and the police officers accompany attorneys or inspectors who are visiting and monitoring properties; help locate PP owners; serve warrants on them; and bring them to court by consent or arrest. Since the PPU was established, it has cleared over 9,600 old warrants on properties where there were still outstanding violations. In conjunction with the PPU, St. Louis also created a special Problem Property Court, with a judge who works exclusively on PP issues. The PPC focuses on bringing properties into compliance, as opposed to assessing penalties, with the intent of returning them to productive use through rehabilitation or sale. The PPC meets several times per week. From mid-2002 through the end of 2007, over 8,900 properties were brought into compliance through Court action and more than $993,000 in fines were paid on Court cases (City Policy Associates, 2008).

Enforcement Pathways for Cooperative Owners

Cities should work with cooperative owners to help them bring their properties up to code, with emphasis on low-income owner-occupants and "good faith" investors who are providing needed low-income housing in areas where there is a shortage. For cooperative owners, the goals of intervention should be to (1) bring properties into compliance, (2) keep low-income owner-occupants in their houses and/or preserving low-income housing, (3) minimize the need for ongoing financial support. When providing financial assistance to maintain properties up to code, cities need to consider the duration and scope of this assistance. They may have the capacity to offer only one-time or short-term assistance, and may need to cap the total amount available. For individuals who do not have the resources to cope with ongoing maintenance, cities may want to encourage them to pursue alternative arrangements. For owner-occupants, this may involve relocation to less costly housing; for investors, this may involve selling their property to others with greater financial or management capacity, who are able to make the capital improvements necessary to bring operating costs down and into greater alignment with rents, can achieve economies of scale, and/or have experiencing accessing other funding sources and housing subsidies. For this effort, coordination is critical between the Code Enforcement and Housing, Planning, and/or Community

Development Departments, who oversee affordable housing, administer grant programs, and assist with foreclosure "workouts," as many of these houses are likely to be in foreclosure. For example, in New York City, the Department of Housing Preservation and Development runs the Mortgage Assistance Program (MAP) to assist the approximately 750 to 1000 owner-occupants most impacted by the foreclosure crisis. MAP helps owner-occupants repay debts, reduce principal, extinguish secondary liens, and perform other actions to remain in their homes (City of New York, 2014, March, The ABCS of housing).

For owners who just need temporary financial assistance to bring their properties up to code, cities should work to address the "funding gap." Currently, this gap exists at two levels: first, the money may not be available at all, and second, it may not be available to the people who need it, because of restrictions on whom can receive it. For example, the City of Boston currently does not offer loans or grants to correct code violations to people who are tax-delinquent and/or owe other money to the City, such as water and sewer charges and liens for unpaid code violations. While the city should avoid providing additional resources to people who are not meeting their obligations, it also should balance that with the policy objective of assisting low-income owner-occupants who are not doing so because of hardship reasons. In this realm, the City of Toledo administers two programs to help low-income owner-occupants who are not financially able to make improvements to their homes address outstanding code violations: the Code Violation Assistance Program (CVAP) and the Homeownership Options Preserving Equity Program (HOPE). For CVAP grants, Housing Specialists in the Toledo Municipal Housing Court identify defendants brought to court for code violations who might qualify (at or below 50% of area median income, adjusted for family size), and invite them to apply. For HOPE grants, General Inspectors in the Code Enforcement Division perform this role. In both cases, the Department of Neighborhoods reviews applications. CVAP receives Community Development Block Grant funding. HOPE is supported by the City's Nuisance Abatement Trust Fund, which holds money collected from nuisance tickets and nuisance re-inspection fees. Prior to the creation of CVAP and HOPE, the City relied on HUD's HOME funds to address code violations. However, HOME funds require that the whole house be brought up to code, unlike CDBG and NATF funds, which can be used to address major code violations short of total compliance. If CVAP and HOPE are not enough, City staff members identify other resources, and help owners apply (City Policy Associates, 2008).

Owner-occupants are not the only cooperative owners who may struggle with financing, as cooperative investor-owners may also need assistance. It can be difficult for them to obtain traditional financing for deteriorated multi-family housing, especially if they have weak credit histories, for two reasons. First, lenders do not want the potential negative publicity associated with lending to problematic investor-owners. Second, if the building is the collateral, and has major code violations, structural issues, and low-income tenants, it is not much of an asset to secure a loan. There is a need for a mechanism for these individuals to get financing to bring their properties up to code, as it is preferable to them becoming abandoned. One potential model is Chicago's Community Investment Corporation (CIC). The CIC was established in 1987 as a non-profit mortgage lender. As of September 2005, it had approved 1,288 loans totaling $720 million to rehabilitate 35,000 rental units. In 2003, it started the Troubled Buildings Program to address buildings in extreme distress, with criminal activity, discontinued utility service, and major repair needs. The TBP is run through a subsidiary, Community Initiatives, Inc., in collaboration with 8 departments of the City of Chicago and some nonprofit partners. As of September 2005, 221 buildings with 3,085 units had participated in the program. Of these, 42 buildings with 877 units had been brought into full code compliance, and 20 buildings with 246 units had been placed into receivership. The TBP used 2 Cook County tax incentive programs to assist with the major rehabilitation of affordable multifamily buildings and the preservation of Section 8 multifamily rental housing (Keating, 2007).

Enforcement Pathways for Non-Cooperative Owners

For non-cooperative owners, cities should progressively move through a system of escalating financial and legal remedies. The goals of intervention should be to (1) force owners to take action (repair, demolish, or redevelop) themselves or sell to another individual who will by making it so expensive for them not to do so and (2) get owners to pay the true costs of the negative externalities they are inflicting. As previously discussed, these negative externalities involve both direct and indirect costs. For this approach to

be effective for one subset of PP, REO properties, it is critical for local governments to pass an ordinance requiring lenders to act on the "Abandonment and Waste" clause of their mortgage contracts, so they can be held responsible for any costs incurred in maintaining their properties. Chula Vista, CA has passed a model ordinance in this regard (City Policy Associates, 2008).

The first component of this enforcement pathway can be special fines, above those normally imposed for code violations, for properties that meet certain criteria, in terms of number of outstanding code violations, duration of outstanding code violations, and/or amount of outstanding liens. Ideally, to conform to the second stated goal of intervention above, these fines will be linked to the true costs that owners are generating through their failure to maintain their properties. To this end, they can take several forms.

"Blight penalties": In 2003, Indianapolis, IN began applying "blight penalties," fines that are typically $2,500 per violation, but can go as high as $7,500, on properties where owners failed to correct code violations (City of Indianapolis, 2003, December 2). In 2012, Hartford, CT approved a new set of fines for blighted properties. Previously, the City issued a $99 fine for each violation of Hartford's Municipal Code. However, the new fine is calculated by dividing the total cost the City pays each year to respond to blight issues (police, fire, trespassing, etc.) by the total number of blighted housing units. For example, in the 2011-12 fiscal year, the Blight Assessment Committee estimated that the city spent about $2 million responding to blight issues, and there were about 1,600 blighted housing units, so the special assessment would be about $1,250 for each blighted unit (Carlesso, 2012, October 19).

"Windows and Doors" ordinances targeted at otherwise strong blocks: In 2011, recognizing the disproportionately negative effect that a property in poor condition has on a block that is otherwise thriving, Philadelphia instituted the "Windows and Doors" ordinance as part of its Vacant Property Strategy efforts. The ordinance requires owners of vacant properties on blocks that are at least 80% occupied to have actual doors and windows (frames and glazing) where there should be such. Sealing such properties with plywood boards, masonry, or other materials is not acceptable. For owners who do not comply, the Department of Licenses and Inspections (L&I) can ask the court to fine them $300 per day per opening that is not covered with a functional door or window (City of Philadelphia, 2014, Windows and Doors Ordinance).

Vacant building licensing programs, with the cost of the license increasing with the duration of vacancy: In 1998, Cincinnati established its Vacated Building Maintenance License (VBML) program. The program applies only to buildings with vacate orders attached to them because of code violations. Owners must apply for the license within 30 days of the vacate order being issued, and also obtain general liability insurance on the building. Non-compliance is a first-degree misdemeanor. Owners of buildings with no code violations are not required to obtain the license. Upon completing the license application, the owner has 60 days to meet a 13-point list of maintenance criteria, including a water-tight roof and gutters, painted and weather-protected exterior, secured windows, clean yard, and interior safe for entry by police and firefighters in time of emergency. Once the owner does so, the city issues the VBML. The license expires one year after the filing of the initial vacate order. Originally, the VBML license fee was flat, but in 2006, it became linked to the duration of vacancy. For buildings vacant for less than one year, it is $900; for buildings vacant 1-2 years, $1800; for 2-5 years, $2700; and for 5+ years, $3500. The fee continues to rise as long as the building stays vacant, even if the owner changes, to prevent transfers of ownership between related parties to avoid the fee. The ordinance includes a refund clause if a building is reoccupied within one year of paying the fee. There is also a waiver for owners with a viable development plan. If the owner does not pay the license fee, the City places a lien against the property, and the Law Department pursues a case in court (City of Cincinnati, 2014, Vacant Building Maintenance License). The goals of the ordinance are to generate funds to compensate the city for the costs of distressed vacant buildings, including inspections, police and fire calls, and repairs and/or demolitions and increase holding costs for distressed vacant buildings to reduce their numbers and promote proper maintenance. The Vacant Building Task Force, which consists of one supervisor and five inspectors, enforces the ordinance. Since 2006, they have collected over $627,600 in fees, demolished 30 buildings, and secured over 100 buildings (City Policy Associates, 2008). Similarly, Philadelphia requires owners of vacant commercial property to obtain a license. In order to do so, they must post a bond to cover the city's potential cost of correcting code violations or abating unsafe or imminently

dangerous conditions. The bond amount is determined by the total square footage of the vacant building, with buildings less than 50,000 square feet requiring a $50,000 bond; buildings 50,000 to 200,000 square feet requiring a $100,000 bond; and buildings greater than 200,000 square feet requiring a $500,000 bond (City of Philadelphia, Dept. of Business Services, 2014).

Schilling divides vacant property registration ordinances into two types: "Classic," or Wilmington, DE-style, VPR ordinances, and "Home Foreclosure," or Chula Vista, CA-style, VPR ordinances. Classic VPR ordinances focus on multiple types of vacant properties, whereas home foreclosure VPR ordinances focus on mortgage lenders or servicers' responsibilities during the foreclosure process after the previous owners or tenants leave the property. Both establish vacancy thresholds: for classic ordinances, the minimum is 6 months of continuous vacancy, and for home foreclosure ordinances, it depends on specific foreclosure actions. The Wilmington, DE ordinance, which is effectively the same model as the Cincinnati and Philadelphia ordinances, was passed in 2003. Prior to that time, the vacant property registration fee was just $25. Under the Wilmington ordinance, as in Cincinnati, the fee is linked to the duration of vacancy, with properties vacant for at least 1 year charged $500; for 2 years, $1000; for 3-4 years, $2000; for 5-9 years, $3500; and for 10+ years, $5000, with $500 added for each year over 10 years, regardless of ownership changes. Critically, Wilmington's Mayor and City Council were able to convince the Delaware State Legislature to amend the State Code to permit unpaid fees to be added as liens against real estate. From 2003-2007, Wilmington experienced a 22% decrease in vacant properties, from 1,455 to 1,135 vacant properties. The Chula Vista Abandoned Property Ordinance became effective in October 2007. The ordinance requires mortgage lenders to inspect property in default to ascertain whether it is occupied or vacant. If the latter, the lender must conform to the "waste and abandonment" clause in their mortgage contract, register the property for a $70 fee, and secure and maintain the property to "neighborhood standards." The lender is required to hire a local management firm to inspect the property on a weekly basis, and post the name and 24-hour contact number of the firm on the property. For failure to comply with the provisions of the ordinance, the city can issue civil penalties of up to $1000 per violation per day and criminal penalties of up to $1000 and 6 months in jail. From October 2007-2008, the city $77,000 in registration fees and assessed almost $850,000 in citations (Schilling, 2009).

<u>Charges for increased police presence:</u> Boston has used this strategy with the Problem Properties Task Force. The PPTF charged Dorchester property owner Wendy Rist $24,000 for posting a police detail outside her multi-family Bakerfield Street building, which had been the site of drug-dealing and a stabbing, for 45 days (*Boston Globe* Editorial Board, 2012, November 27). While Rist argued that her tenants were the source of the problem and she should not be held responsible for their actions, the PP Appeals Board upheld the costs to Rist, for not working "diligently" with police to resolve the issues (Editorial Opinion, 2013, April 13).

The second component of the enforcement pathway can be denial of city services to owners with significant code violations, to stop them from acquiring other properties and/or receiving financial benefits from their existing properties with city assistance and signal city commitment to enforcement. In particular, these owners should not be able to:

1. Purchase city-owned property at auction or through a Request-for-Proposal process
2. Receive Section 8 housing vouchers administered by the local housing authority
3. Receive permits or approvals for other sites

In Boston, the Inspectional Services Department, Boston Redevelopment Authority, and Department of Neighborhood Development check all applicants to make sure they have no significant outstanding code violations, are not tax-delinquent, and are not on the Problem Properties Designated List or Rental Housing Ordinance Chronic Offenders List before issuing permits or selling property.

The third, and most serious, component of the enforcement pathway can be liening up the properties and taking them through foreclosure to transfer them to more responsible owners. There are three basic ways that cities can add liens to PP, which are then eligible for foreclosure: unpaid code violation fines and Emergency Repair Charges; receivership; and higher taxes for PP. The pathway that cities choose

to pursue depends on their pipeline of qualified receivers and tax policy.

Lines associated with unpaid code violation fines and Emergency Repair Charges: Cities can add liens to properties when the owners do not pay certain costs and fines associated with code enforcement. For example, in New York City, under the Emergency Repair Program, the Department of Housing Preservation and Development has the authority to perform or contract for repairs in buildings that have immediately hazardous (Class C) violations if the owner fails to correct them within the allotted time (Class C Heat and Hot Water violations – immediately; Lead-based paint or window guard violations – 21 days; All others – 24 hours). HPD bills the owner for the ERP costs through the Department of Finance, and then files a tax lien against the property, which bears interest, if the owner does not pay (City of New York, Dept. of Housing Preservation and Development, 2014, Emergency Repair Program). In Boston, the City can attach liens to properties from Project Pride and the "Clean It or Lien It" programs. Project Pride is a joint program run by the Inspectional Services Department and the Department of Neighborhood Development that uses Community Development Block Grants to board and secure drug-related buildings citywide and fence vacant lots in targeted drug control areas. The "Clean It or Lien It" program, operated by the Inspectional Services Department, addresses community sanitation ("green ticket") violations on properties where the owners refuse to do so. Chapter 40U of the Massachusetts General Law, referred to the "Green Ticket Law," is the ordinance that allows the Assessing Department to establish liens for doing so (City of Boston, Inspectional Services Dept., 2014, Green Ticket Law). In Philadelphia, under State Act 90 (the Neighborhood Blight Reclamation and Revitalization Act), Licenses & Inspections can ask the court to attach unpaid code violation fines as liens on properties, and use them to bring the properties to sheriff's sale (City of Philadelphia, Licenses & Inspections Dept., 2014). Finally, in St. Louis, the PPU can attach liens to properties for basic maintenance expenses incurred by the city, including board-up, partial or full demolition, trash and debris removal, and weed and grass mowing. The PPU has placed liens on 990 vacant properties, representing $2,705,824 in unpaid city costs; 72 of these properties have been sold at foreclosure sales, for a bid amount totaling $976,947. Properties not purchased by others or redeemed by the owners paying the full amount of the costs incurred are automatically transferred to the entity that holds non-tax-producing property in St. Louis (City Policy Associates, 2008).

Liens associated with receivership: Receivership is effectively a third party transfer program. Under a receivership program, a city or its agent can ask a court to appoint a third party receiver (for-profit or nonprofit) for a property that does not meet minimum code standards. Once appointed, the receiver makes any repairs necessary to bring the property up to code, paying for them with rents or other proceeds from the property, and potentially his own funds. The receiver has the authority to collect rents, enter into leases, or exercise any other authority that the owner of the property would have, with the exception of selling it. Generally, once the receiver brings the property up to code, he provides the court with a summary of all income and expenses, including a receivership fee, which may be capped at a certain percentage of costs. If there is net income, it goes to the owner. Otherwise, the receiver obtains a senior lien, with priority over all other creditors' liens, on the property for the amount of the outstanding expenses. The receiver retains control of the property until the owner pays the lien (UT School of Law Community Development Clinic, 2007). As **Samsa** notes, it is appropriate for the receiver's lien to be senior, because the receiver is protecting the creditors' asset and functioning as an agent of the court. To meet due process requirements, the court must notify the property owner and the other lienholders of their risk of losing the property if they do not "redeem" it, by performing the repairs themselves (before rehab) or compensating the receiver for doing so (after rehab). Receivership falls within the nuisance exception of the Fifth and Fourteenth Amendments, which allows the government to take property without "just compensation" if it injures the public welfare, to eliminate a specific harm (Samsa, 2008). If the receiver has been in control of the property for a long time (over 12 months), the owner has not paid the receiver's costs, and no other lienholders have stepped forward to do so, the court may order a foreclosure sale of the property. The receiver can bid on the property at the foreclosure sale, and use his lien as credit towards the purchase. If the property is sold for no more than this lien, all other liens are extinguished (UT School of Law Community Development Clinic, 2007).

Receivership has specific advantages and disadvantages, which mean that it is not appropriate for all situations. It tends to be a relatively quick, effective way to deal with abandoned properties. Partially, this

is because it is an in rem, not an in personam, action, focused on fixing the property and/or terminating the owner's rights, not establishing his or her culpability and punishing him or her. Consequently, the city must follow due process, and try to notify the owner via personal service, but if this fails, it becomes the owner's responsibility to follow up to maintain their interest in the property. In addition, like tax foreclosure, it clears the title of the property of all other liens, which assists in transferring low-value properties, where the buyer might otherwise be unwilling to negotiate releases from all lienholders (Kelly, 2003). In addition, unlike condemnation, it tends to keep properties operational, rather than boarded-up (Massachusetts Housing Partnership, 2009). However, there are some pragmatic challenges associated with receivership. First, the property has to be in a neighborhood capable of attracting private investment (Samsa, 2008). In addition, the receiver needs the financial and operational capacity to handle the property. The receiver may need significant funds upfront if short-term rents are not sufficient to cover rehabilitation costs (UT School of Law Community Development Clinic, 2007). Unless the city is willing to provide financing, the receiver must be able to able to secure his or her own loans. The receiver must also understand landlord-tenant law, code enforcement responsibilities, the structure of the local real estate market, general contracting and construction bidding, and financing procedures. Receivers can be property management firms, construction companies, nonprofits, and lawyers. In 2009, the Massachusetts Housing Partnership identified the characteristics of properties that were strong candidates for receivership. They had a combination of urgent need, having a track record of code violations and/or posing a health and safety threat to their tenants or neighbors, and financial viability, with "tenants willing and able to pay rent," structural soundness, and estimated improvement costs below 50% of total property value or 100% of the recoverable land value. When it comes to receivership, municipalities can practice two models: the program administrator model, where a centralized entity defines the scope of work, coordinates lending, and monitors construction, and the private partnership model, where potential receivers apply directly to the court (Massachusetts Housing Partnership, 2009).

Kelly recommends that cities enable nonprofits, especially CDCs, to request the appointment of receivers by filing public nuisance suits against the owners of abandoned properties that threaten public health, safety, or morals, as well as act as receivers. Under a public nuisance suit, the plaintiff does not have to prove that the nuisance affects his or her private property, as with a private nuisance suit, but just that it affects the public. Kelly also suggests that CDCs should be able to receive a super-priority lien consisting of the court cost of the suit, and therefore foreclose on property before rehab, so they can then find a private developer to buy the property and perform rehabilitation. Effectively, to some extent, this privatizes code enforcement. According to Kelly, the benefit of relying on CDCs in this way is that they can fill in code enforcement "gaps," especially in areas with significant numbers of PP, and provide long-term supervision of the receivers, to enhance accountability. Some cities may need statutory authority from the state to allow CDCs to bring public nuisance suits and petition for the appointment of receivers; many state statutes only allow municipal corporations and counties to do so.

Kelly points to Baltimore, MD as a model. Currently, Baltimore has one of the most expansive receivership statutes. Passed in 1991, it allows "the Building Official or an established community association or nonprofit housing corporation authorized by the Building Official to act as the Building Official's agent" to request the appointment of a receiver for any property with an outstanding building violation. To establish the case for the receiver, the petitioner just has to show that the violation was properly issued and has not been corrected. To avoid the appointment of a receiver, the owner and/or another party with an interest in the property (i.e., mortgagee or other lienholder) has to demonstrate the capacity to correct the violation within a reasonable amount of time and post completion bond to guarantee performance. What makes Baltimore's receivership statute unique, however, is that, unlike most other statutes, it does not establish a long waiting period before the receiver can foreclose on his or her lien to give the owner time to correct. Instead, Baltimore lets the receiver foreclose on the lien before rehabilitation work has even started, based on the potential costs, and auction the property off to a developer with the demonstrated capacity to rehabilitate it immediately. Thus, the auction serves the purpose not of recovering rehabilitation costs, but of abating the nuisance. This approach is constitutionally possible under the nuisance exception of the Fifth and Fourteenth Amendment. Interestingly, the Baltimore ordinance provides

the owner with a strong incentive to settle before the receivership action is completed, in a way that benefits the community. When the initial receivership suit is filed, the Bureau of Liens places a notice on lien certificate, generally part of the title search. If the owner does not want to rehabilitate the property himself, but also does not want to lose it to the receiver, he can try to sell it. However, because of the fact that the potential lien makes it difficult for other buyers to get title insurance, the owner will likely end up going with a qualified bidder. If the owner and the bidder settle before the auction, both receive some of the money that would otherwise have gone to auction costs. If the owner refuses to sell at a reasonable price, the receivership action proceeds to the next stage (Kelly, 2003). From 1993-2003, receivership actions were initiated against owners of more than 300 properties, with approximately half of the owners starting rehabilitation as a result (UT School of Law Community Development Clinic, 2007).

Liens associated with taxing vacant and abandoned properties at a higher rate: Recently, cities have started to explore taxing vacant or abandoned properties at a higher rate with two goals: first, prompt owners to return these properties to productive use by increasing the holding costs of not doing so, and second, move properties to tax foreclosure more quickly if owners do not take action. Depending on the location, cities have varied between taxing all vacant land, or just vacant land that is distressed (abandoned).

In New York City, in an effort to reduce the number of poorly-maintained vacant lots and support housing production, Mayor Bill de Blasio is seeking to increase the assessed value of vacant lots to push owners to use them or sell. Currently, all vacant lots in Brooklyn, the Bronx, Queens, and Staten Island, regardless of their size or use potential, are zoned residential and assessed under the single-family home rate at 6% of the market value of the land. de Blasio wants to rezone all vacant lots in the 4 boroughs, excluding those in flood zones, as commercial and increase the assessment rate to 45% of market value over 5 years. The plan would affect more than 10,500 lots, with the largest amount on Staten Island, and produce a mean increase in tax bills of $15,300 after the 5-year phase-in period, according to the Independent Budget Office. Borough President Scott Stringer led a successful initiative to make this change to all vacant lots north of 110th Street in Manhattan in 2007, bringing them into alignment with the rest of Manhattan (Anuta, 2013, November 24). Interestingly, putting forward the "carrot" as well as the "stick," the New York State Assembly is now considering a bill that would offer a tax abatement to the owners of vacant parcels in NYC who make their land available for public benefit. The owners would receive tax relief for the part of the property that was open to the public, for the length of its participation, with the area required to be open at least 20-25 hours per week, depending on the season. The bill does not require the public use to be permanent, but just seeks to provide an incentive to do something productive with the land (Dale, 2013, August 13).

In Philadelphia, City Council President Darrell L. Clarke is sponsoring a bill to establish a "non-utilization" tax for vacant properties, where owners would be charged 10% of a property's assessed value if vacant for at least 1 year, with the percentage to increase in Years 2, 3, 5, and 10, and the money to go to Licenses & Inspections (Graham, 2013, June 8). Currently, while Philadelphia charges a Business Use and Occupancy Tax on used, occupied commercial real estate in Philadelphia, based on its assessed value, vacant commercial properties are exempt (City of Philadelphia, Dept. of Revenue, 2014, Use and occupancy tax). In Louisville, under the Abandoned Urban Property Tax program, owners of buildings that have been vacant for at least 1 year, that have outstanding code violations, and/or that have been tax-delinquent for at least 3 years are required to pay much higher property taxes, generally three times the normal tax rate (City of Louisville, 2014). Washington, DC also taxes "Vacant Real Property" at a rate nearly 6 times that of residential property, and 12 times if it has significant code violations (Dale, 2013, August 13). Borrowing a model from another continent, in Dublin, Ireland, the government is now seeking to tax vacant land, to incentivize site use in an environment of high demand and low supply. Previously, there was no tax on vacant land that was not distressed (no code violations), and a 3% tax on vacant land that was distressed, or so-called "nuisance properties" (O'Sullivan, 2014, January 6).

Enforcement Pathways for "Missing in Action" Owners

For the final sub-group of "missing in action" owners, cities first need to locate them and/or their agents and apprise them of their responsibilities. Depending on their situation, these owners can follow the

cooperative or non-cooperative owner pathways above. Alternatively, if they just want to exit their involvement with the property, a deed in lieu of foreclosure transaction may be suitable. In this process, the owner surrenders all claim to the property to the lienholder, which in this case is likely to be the city or a third party entity (receiver). The lienholder does not foreclose, thereby avoiding the time and cost associated with doing so, and instead just accepts the property in exchange for forgiving the owner's debts (Spahn, 2010). Deed in lieu of foreclosure is appropriate when the owner is not in a position to pay the liens, not necessarily "at fault," and just seeks to "walk away" from the property.

The "case management" approach is particularly important for "missing in action" owners, who may require customized solutions because of their complex and unique situations. Project Rehab is an excellent model for how to work with "missing in action" owners. PR is a partnership between the University City District and Philadelphia's Department of Licenses & Inspections. The premise of PR is that, while the City of Philadelphia ideally wants to collect on everything it is owed, it also is deeply concerned with returning properties to productive use, especially if their owners are not in a position (i.e., there is "no one home") to pay the liens and correct the violations. PR works with "missing in action" owners or their agents to rehabilitate or sell distressed properties. It focuses on 4 key categories: vacant lots, lots with dormant construction, uninhabitable structures, and structures that pose a danger to neighboring structures or are in danger of collapse themselves (Naked Philly, 2012, March 28). Generally, PR uses obituaries, funeral documents, mortgage deeds, conversations with neighbors, and Internet searches to locate owners. Once it has done so, it sends them a letter describing the role of PR, the condition of the property, and a potential action plan. It then talks or meets with them directly, and asks them how they would like to handle the property. It helps owners reach "work-out" agreements with city agencies and banks, file injunctions to hold off demolition, negotiate extensions on lien payments with Licenses & Inspections, restructure mortgage loans, get construction financing for rehabilitation, and connect with realtors or building contractors if they want to sell or redevelop. Since PR started in February 2010, it has assisted with 99 properties, and helped return 15 properties to the market (Henry, 2013, April 30).

For example, PR facilitated the rehabilitation of 716 South 49th Street, a house in West Philadelphia that was in extremely poor condition. The house was appraised for $32,000, but had liabilities of $68,000 in unpaid code violations, back taxes, and two unpaid mortgages, and would have cost $20,000 to demolish. The original owner, Beth Showell, died in a house fire without a will. PR was able to locate the new default owner, Showell's younger sister, Thomasina Tucker, using funeral documents. Tucker told PR that she wanted to sell. However, to take control of the property, she would have needed to pay a Registry of Wills maximum inheritance tax because she was an out-of-state resident. PR assisted Tucker in creating an escrow account establishing an estate, convinced the neighbors to fund it, and identified a friend of Tucker's to act as an executor. PR negotiated the L&I violation fines down, got the subsidiary lender to eliminate the second mortgage, and got Chase Manhattan to reappraise the property, so it recognized that it was worth very little (Henry, 2013, April 30). RR reveals the role that non-profit organizations can play when cities have limited resources to expend on "case management." To guide PR's efforts, UCD formed a task force that included representatives from neighborhood associations (Naked Philly, 2012, March 28).

Performing a function similar to Project Rehab, the City of San Diego Code Enforcement Department has a Vacant Property Coordinator, who creates and maintains a vacant properties database and is the first responder to complaints of an unsecured building. This individual serves as a liaison between the city, PP owners, and the public. The VPC helps clarify building code and zoning requirements; secure financing through economic development programs, community grants, and Housing Commission and nonprofit agency loans; and find pro bono legal assistance for title issues. For example, for a vacant house in Golen Hills, the VPC located the niece who had inherited the property, and helped her get it processed through probate court and locate a developer with the funds and experience to perform historical preservation. The VPC also worked with the local preservation groups and community. Demonstrating the range of problems that can attend "missing in action" owners and inhibit reuse, the VPC has dealt with sentimental attachments; conflicts between heirs about disposition; mental illness; title disputes; zoning changes that affected commercial property potential; litigation over insurance proceeds; and reluctance to rebuild after a fire because of concerns that doing so would cause the owner to lose a previously conforming

right (Leonard & Mallach, 2010).

Summary

This chapter considers how cities can more successfully address PP. It defines two major barriers to treating PP: identifying them and developing effective "enforcement pathways" for different property and owner types. In regard to identification, it suggests that cities take a more proactive, data-driven approach, combining disinvestment indicator data from a range of internal and external sources, and highlights three models in New York, Boston, and Philadelphia. As far as enforcement, it recommends that cities prioritize properties based on property and owner types. For property types, there are five critical characteristics: occupied vs. unoccupied; type of distress – physical and/or financial; code violations severity; level of disruption to the neighborhood; and contribution to the "tipping point" of disinvestment. Owners fall into three groups: cooperative, non-cooperative, and "missing in action." It then outlines "enforcement pathways" for the three owner groups. For cooperative owners, it suggests that cities address the "funding gap" that prevents struggling owner-occupants and small investor-owners from fulfilling their maintenance obligations. For non-cooperative owners, it puts forward a system of escalating legal and financial incentives, from instituting special fines ("blight penalties," "Windows and Doors" ordinances, vacant building licenses, and charges for increased police presence), to denying city services to owners with significant code violations, to liening up the properties and taking them through foreclosure. For "missing in action" owners, reflecting the complexity and uniqueness of each situation, it recommends that cities take a "case management" approach. Once the city or its agent, -- potentially a contracted nonprofit servicer like Project Rehab, -- is in contact with the responsible party, it can determine whether the party falls into the cooperative or non-cooperative group. If the party just wants to exit its involvement with the property, a deed in lieu of foreclosure transaction may be appropriate.

CHAPTER 3:
THE TAX DELINQUENCY CHALLENGE

Building on the approach suggested for strategic code enforcement in the previous chapter, this chapter considers how cities can be more effective in resolving tax delinquency by differentiating between property and owner types to prioritize properties for enforcement and establishing distinct "enforcement pathways" for each. To enable prioritization, there should be 4 goals: 1- Maximize revenue collection; 2- Return properties to productive use; 3- Protect low-income owner-occupants; and 4- Discourage delinquency among "repeat offenders." In developing these goals, this thesis considers Miller, who put forward 3 criteria for an ideal delinquent tax collection system: equity, efficiency, and simplicity. According to **Miller**, "The preferred set of [collection] policies is equitable in the distribution of tax burden, efficient as measured by economic growth, and simple in taxpayer compliance and government administration" ((Miller, 2012, 16).

Background

Before launching into a discussion of enforcement strategy, it is important to consider the underlying causes of delinquency. On an individual level, as discussed in Chapter 1, delinquency may represent a "strategic decision" by an owner to disinvest from and relinquish ownership of a property, or a straightforward inability to pay. However, taking a more macro perspective, the occurrence of tax delinquency varies widely from city to city. A **Pew Charitable Trusts** study examining the delinquency problem in Philadelphia identified two major groups of factors that can contribute to high delinquency rates. The first group is local demographic and economic factors, including poverty rates, homeownership rates, mortgage rates, and real estate market conditions. Cities with high poverty rates tend to have higher delinquency rates, because there is likely a greater percentage of low-income people who cannot pay their taxes because they have minimal other assets besides their properties. This situation is compounded in high-poverty cities that also have high homeownership rates, like Philadelphia, increasing the number of low-income owner-occupants. Delinquency rates also are affected by mortgage rates, or the percentage of occupied homes with mortgages, for two reasons. First, property taxes are generally escrowed and paid through mortgages, so mortgaged houses do not go into tax delinquency. Second, if homeowners with mortgages fail to pay their taxes, their lenders have a strong incentive to do so on their behalf, because the city's lien on the property for unpaid taxes is senior, and lenders do not want to lose their ability to foreclose on the property. Finally, in the realm of demographic and economic factors, local real estate market conditions are important. If there is weak demand in the market for property, especially if it is exacerbated by excess supply, it is more difficult for cities to recover back taxes by foreclosing on properties and/or selling liens, because no one wants to buy. In this event, cities are likely to be less aggressive in pursuing delinquents, which creates less incentive for owners to pay their taxes (Pew Charitable Trusts, 2013, June). Using selected Indiana counties from 1970 to 1984, DeBoer and Conrad estimated that a 5 percentage-point increase in the unemployment rate increases the property tax delinquency rate by 0.5 percentage points (DeBoer & Conrad, 1988). The second group is local tax factors. Tax increases can produce higher delinquency, even if it is only temporary, as owners adjust to higher tax bills. As discussed in Chapter 1, both White and Arsen found that property tax burdens (in the form of tax payment to rent ratios and assessment rates, respectively) had a significant effect on housing abandonment. In addition, cities' commitment to enforcement, in the form of procedures and timelines for carrying out foreclosures and/or lien sales can affect delinquency rates (Pew Charitable Trusts, 2013, June).

Barriers to Effectively Addressing Tax-Delinquent Properties

As with PP, there are significant barriers to successfully addressing TDP. However, unlike with PP, the challenge is not identifying these properties, because cities' Tax Departments (also called their Revenue or Finance Departments) have good records of which owners have paid and which have not. With publicly accessible datasets, both local governments and third parties can link non-spatial and spatial data and easily build maps of tax-delinquent parcels. For example, LOVELAND Technologies has built an interactive map

showing every property in the city suffering "tax distress," defined as being delinquent, available for foreclosure because a set period of delinquency had elapsed, or foreclosed, using Wayne County's online tax portal (Metcalfe, 2013, January 29). The *Philadelphia Inquirer* and Plan Philly built a comparable interactive map and searchable database for Philadelphia, displaying all tax-delinquent parcels, defined as those where the owner had not paid 9 months after the March 31 payment deadline, as of April 30, 2011. The map excluded properties that owed $125 or less or had been subdivided or combined with other lots. It was based on the Department of Revenue's online database (*Philadelphia Inquirer*/Plan Philly, 2011). Instead, for TDP, the challenges exist in meeting legal requirements for enforcement, prioritizing properties for enforcement, and developing distinct "enforcement pathways" for different property types and owner types.

Overcoming Barrier 1: Meeting Legal Requirements

In regard to legal requirements around enforcement for TDP, there are two major issues: the Uniformity Clause and Due Process Clause.

The Uniformity Clause: Both the federal constitution and state constitutions impose the Uniformity Clause. Generally, it requires that all taxable real estate be assessed according to the same standard of value, taxed at the same rate by the unit of government imposing the tax, and collected under the same procedures (NJ State Legislature Office of Legislative Services, 2000). For example, the Uniformity Clause in Section 1 of the Pennsylvania Constitution states, "All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws" (PA State Bar Association, 2011). The goal of the Uniformity Clause is to ensure equality of treatment. It affects enforcement in two ways. First, it complicates prioritization, because local governments are supposed to be pursuing enforcement uniformly. Second, it can hinder efforts to offer different "enforcement pathways" to different property and owner types, without constitutional amendments. For example, while New Jersey has a Uniformity Clause, the NJ Supreme Court has ruled that the state can provide tax advantages to certain taxpayers or properties, as long as it passes a constitutional amendment to do so. NJ has passed 9 constitutional amendments related to uniformity, including tax exemptions for property owned by nonprofits and used for charitable or public purposes; property tax deductions and/or exemptions for seniors, disabled individuals, and veterans; homestead rebate programs; 5-year exemptions or abatements for properties located in areas in need of rehabilitation; and long-term exemptions for redevelopment in blighted areas (NJ State Legislature Office of Legislative Services, 2000).

Due Process requirements: In regard to Due Process, delinquency enforcement, and especially tax foreclosure, are subject to the Fifth and Fourteenth Amendments, which prohibit actions that deprive individuals of "life, liberty, or property, without due process of law." Since foreclosure can deprive owners of property, local governments must give owners adequate notice and opportunity to "cure" the default before taking action. As discussed by **Alexander**, in the *Mennonite Board of Missions vs. Adams* case, the US Supreme Court established basic constitutional minimum requirements of notice. In *Mennonite*, Elkhart County, Indiana foreclosed on a property and then held a tax sale, after publishing notice of the upcoming sale once a week for 3 weeks in accordance with state law. Following the sale, the purchaser tried to take title. At that time, the mortgagee, which faced the loss of its interest in the property due to the foreclosure and subsequent sale, challenged the adequacy of the notice. The Supreme Court ruled that the Fourteenth Amendment required the local government (taxing authority) to provide notice to the mortgagee, and not just the owner. The SC established minimum due process requirements for delinquency enforcement efforts, stating that any party holding a "legally protected property interest," whose name and address are "reasonably ascertainable" based on "reasonably diligent efforts," was entitled to notice "reasonably calculated" to inform it of the efforts. However, as Alexander notes, this ruling has left unresolved major due process questions, which the SC has not yet definitively addressed:

> "This open textured rule of law has left for further debate four subsidiary questions: (1) What events, or stages, in a property tax enforcement proceeding give rise to the requirement of adequate notice? (2) What property interests are entitled to more than notice by publication? (3) How is the existence of the interests to be ascertained? (4) What efforts are required in order to identify accurate addresses of the interested parties?" (749-750).

Exacerbating the challenges of meeting legal requirements, there are over 150 different collection systems in the US. According to Alexander, "The multiplicity of different approaches to the enforcement of property tax liens exceeds that of virtually any other aspect of state and local government law" (771). There are no uniform enforcement laws across the US, and no two states have the exact same procedure.

At the most basic level, there are three enforcement procedures. In some jurisdictions, there is one enforcement event, such as a tax sale or government seizure of the property, with no redemption period following the event. In other jurisdictions, there is one enforcement event, but it is followed by a redemption event. This redemption period starts at the event of sale or transfer, lasts for a fixed amount of time, and then expires automatically if redemption does not occur during this time period. Finally, in most jurisdictions, there is a two-event process. The first event is the initial sale of the property or tax lien, which is followed by a fixed redemption period. The second event is the termination of the redemption right. The second event has to follow the first, in order to "foreclose" the rights of all interested parties, but is independent of it.

However, within the framework of these basic procedures, there are multiple sources of variation. First, states can permit judicial and non-judicial foreclosure. Slightly less than half of states allow non-judicial foreclosure. Approximately the same amount require court involvement, either at the sale or transfer (if there is only one event) or the termination of the redemption right. At least nine states permit either non-judicial or judicial procedures. In addition, the timing of the redemption period also varies. All states provide a redemption period, or a period of time to make the tax payment after it becomes delinquent, reflecting the fact that failure to redeem can result in property loss, the amount due may be a small fraction of the property value, and the owner may be experiencing a temporary liquidity crisis. The redemption period can be pre- or post- sale or transfer to the government. More jurisdictions offer post-sale redemption, granting the owner a right of redemption for a specified period of time after the foreclosure sale, typically 1 to 3 years, although some jurisdictions have shorter redemption periods for judicial foreclosures. Other jurisdictions have pre-sale redemption, with little or no redemption period after the sale. As another source of variation, there is also the issue of lien priority, both in terms of the priority of the lien for a specific year, versus prior or subsequent years, and the priority of liens incurred by different state agencies (Alexander, 2000). The priority of liens from year to year is usually a policy decision by the municipality or state legislature, and has implications for tax lien sales. If priority is given to subsequent liens, then the purchaser of the current year's lien has only one year in which his claim to payment comes first (Poindexter, Rogovoy, & Wachter, 1997). Inconsistent tax enforcement systems create inconsistent constitutional due process requirements (Alexander, 2000).

Overcoming Barrier 2: Prioritizing Properties for Enforcement

For effective enforcement of TDP, as with PP, it is critical to differentiate between property and owner types and develop different "enforcement pathways" for each.

Property types

To meet the 4 stated goals (1- Maximizing revenue collection; 2- Returning properties to productive use; 3- Protecting low-income owner-occupants; and 4- Discouraging delinquency among "repeat offenders"), it is important to consider the following categories of property type characteristics:

Category of Property Type Characteristics	Relevant To
1. Absolute property and lien value	Goal 1
2. Delinquency severity	Goals 1 and 2
3. Level of disruption to the surrounding neighborhood and contribution to the "tipping point" of disinvestment	Goal 2
4. Ownership status and occupancy	Goals 3 and 4

These four categories of property type characteristics all impact collectability. At the most basic level, collectability refers to how difficult it is to get the owner to pay. However, it also affects, if the owner

will not pay, whether another party will buy and redevelop the property ("redeem" the liens) or whether it will come to the city and how long that process will take. In a collectability analysis of Philadelphia's outstanding lien pool performed for the Pew Charitable Trusts and the City of Philadelphia, Gillen found that collectability is affected by both property and owner characteristics, especially property condition and value and owner economic status. More specifically, he discovered that the most collectable properties had low lien-to-value ratios (25% or less); were in "superior" or "above average" condition or represented "new construction"; were less than 3 years delinquent; were located in neighborhoods where the average assessed value was greater than $120,000; and were owner-occupied. In contrast, the least collectable properties had high lien-to-value ratios (85% or more); were in "below average" or "inferior" condition or were "abandoned/sealed/condemned"; were located in neighborhoods where the average assessed value was less than $50,000; and were investor-owned. Drawing on Gillen's analysis, the following chart lays out the important property type characteristics, with collectability and enforcement implications (Pew Charitable Trusts, 2013, June).

Characteristic	Collectability and Enforcement Implications
Property and Lien Value	
Assessed value	Properties with high assessed values, especially relative to their liens, are likely to be redeemed by their owners/outside buyers.
Lien amount	Owners/buyers may be more able to pay lower lien amounts, which have not accumulated significant interest and fees over time.
Delinquency Severity	
Lien-to-value ratio	Owners/buyers are less likely to redeem properties with a high lien-to-value ratio. It is economically inefficient for them to redeem properties with a lien-to-value ratio greater than 1, because the property is "underwater" from a tax standpoint. Practically, it may be economically inefficient for them to redeem properties with a lien-to-value ratio even close to 1, because of the transaction costs associated with doing so (i.e., finding an outside buyer).
Length of delinquency	Cities are likely to experience difficulty collecting long-outstanding liens, for three reasons. First, the properties are likely to be in poor condition, because the owners stopped investing in them a long time ago. Second, with back taxes, interest, and fees accruing, the properties are likely to have high lien amounts and high lien-to-value ratios. Third, the owners or responsible parties may have died, gone bankrupt or defunct, or otherwise become difficult to trace (e.g., become MIA owners). In Philadelphia, Gillen found that delinquencies of up to 3 years are easy to collect, and 10 years or more are very challenging.
Level of Disruption to Surrounding Neighborhood and Contribution to Tipping Point of Disinvestment	
Property condition (investment level)	Owners/buyers are more likely to redeem properties in good condition, with minimal or no code violations. Because of their condition, these properties are likely to be higher value. If cities do foreclose on them or sell their liens, they are more likely to find bidders.
Neighborhood condition (investment level)	Owners/buyers are more likely to redeem properties in stable or improving neighborhoods (e.g., upward trend in prices and rents, increased construction activity). However, cities may want to pursue delinquency enforcement in struggling neighborhoods, to ensure that a "tipping point" of disinvestment is not reached (Pew Charitable Trusts, 2013, June). As discussed in Chapter 1, Gillen's delinquency impacts analysis suggested that less than 5 TDP on a block has only a moderate effect on surrounding property values. However, 5 or more TDP properties on a block create sharp decreases in value. As Gillen notes, "additional delinquencies often amplify and accelerate the rate of economic and physical decline of these same neighborhoods" (Kerkstra, 2013, March 9).
Ownership Status and Occupancy	

Ownership status	As discussed, cities may want to provide special assistance to low-income owner-occupants. In addition, in regard to enforcement, owner-occupants may be more eligible for payment plans.
Occupied vs. vacant	Cities may have more difficulty foreclosing on or selling the liens of properties that are occupied by owners or tenants, because they may have to assist with relocation.
Multiple-delinquency owners	Owners with multiple delinquent properties are less likely to redeem. In addition, cities may want to target these properties for enforcement to discourage "repeat offenders" (Goal 4) (Pew Charitable Trusts, 2013, June).

Taking a slightly different approach to collectability analysis, the thesis author worked with the Department of Neighborhood Development to develop an online dashboard using Assessing and Law Department data to track and prioritize properties through the foreclosure process. In addition to some of the factors discussed above, the author focused on variables that could speed up or slow down the foreclosure process legally. The dashboard was based on the assumption that the city might want to "clear" properties that were either close to completing or could quickly progress through the foreclosure process. "Slow-down" variables included Probate, Bankruptcy, and Payment Plans. "Speed-up" variables were Defaulted Payment Plans.

Owner types

To meet the goals of maximizing protecting low-income owner-occupants (Goal 3) and discouraging delinquency among "repeat offenders" (Goal 4), it is crucial to differentiate among owner types. For owner types, as with PP, there are three key groups: cooperative, non-cooperative, and "missing in action" owners. Cooperative owners are those who want to pay their taxes, but are experiencing hardship doing so. Non-cooperative owners are those who are "strategically defaulting" to maximize their gains. "Missing in action" owners are those who are not aware of or in a position to assume their tax responsibilities. They resemble the profile developed for "missing in action" PP owners.

As with PP, cooperative owners are likely to be struggling owner-occupants, such as low-income individuals and/or seniors. These individuals may be experiencing having difficulty keeping up with tax payments because of personal factors (personal emergencies, illness), or larger economic factors: recession and gentrification. During recessions, with taxes, a "negative feedback" loop can occur. Individuals can become tax-delinquent if property taxes increase at a higher rate than personal income. During boom periods, personal income usually grows at a faster rate than property taxes, so homeowners can easily make their payments. In addition, with rising personal incomes, state income and sales tax revenue also increases, so states are able to offer local governments more aid, which allows the local governments to give more property tax rebates. In contrast, during recessions, income growth slows, which not only makes it harder for homeowners to pay taxes, but also causes states to receive less income and sales tax revenue, decreasing the amount of aid they can give local governments. Consequently, local governments have to raise property tax rates to make up the difference (Fessenden, 2006, August 7). Making matters worse, if housing vales drop during the recession, local governments may have to increase rates even more to offset the loss in value (Hu, 2011, February 20). To meet higher property taxes, low-income individuals may have to tap into savings. Seniors are particularly vulnerable to property tax increases, because they are living in fixed incomes, and may have to relocate to avoid higher tax burdens. For example, using household-level panel data from the Health and Retirement Study and a dataset on state-provided property tax relief programs, **Shan** found that

> higher property taxes raise mobility rates among elderly homeowners, [with] eligibility for relief programs lower[ing] mobility rates, and the impact of these programs appear[ing] to vary with program types, program generosity, and implementation strategy (Shan, 2008, 3).

On the other end of the spectrum, gentrification can also hurt low-income owners, as the assessed values of their homes rise because of an influx of redevelopment and investments made by others. To this point, Boston, Philadelphia, Washington, Pittsburgh, and other cities have recently launched initiatives to control property tax increases for such owners, to promote neighborhood stability and enable them to experience a

return on investment for staying during periods of disinvestment, associated with high crime, population loss, and decreasing property values. Detroit has started a comprehensive reassessment, to bring assessments into alignment with actual values in the city and reduce tax burdens by up to 20%. In Boston, the City Council passed legislation allowing residents who have owned their homes for at least 10 years and whose property taxes have increased by at least 10% to defer property tax payments until they sell their home. The city is now waiting for the bill to be approved by the state legislature. Philadelphia has launched the Longtime Owner-Occupants Program (LOOP), which allows residents who have lived in their homes for at least 10 years, whose household income is less than $110,000 annually, to cap and freeze their assessments for 10 years if their assessments increased by 300% or more as part of the city's new Actual Value Initiative (Williams, 2014, March 3). In response to strong gentrification pressures, the Washington, D.C. City Council gave unanimous preliminary approval to a bill, introduced by Councilmember Anita Bonds, granting a sweeping homestead exemption to homeowners over the age of 75; who have lived in the District of Columbia for at least 15 years; and who have an income of $60,000 or less annually. The bill must go to a final vote. Councilmember Jack Evans has proposed a separate bill capping the yearly increase of the homeowners' property tax at 5%, regardless of any large increases in property value (Bradley, 2014, January 20).

In contrast, non-cooperative owners are likely to be "strategically defaulting," in an effort to maximize their gains. These individuals may be "repeat offenders," owning multiple tax-delinquent properties, repeatedly accumulating property tax debt, defaulting on payment plans, and/or redeeming properties late in the foreclosure process or after foreclosure has actually occurred, using their statutory "right of redemption." The most basic, albeit imperfect, way to separate cooperative and non-cooperative owners may be by distinguishing owner-occupants and investors. While not all owner-occupants are cooperative and not all investors are non-cooperative, as evidenced by previous research, these rough distinctions can be helpful. Based on 158 interviews with a random sample of delinquent property owners in Pittsburgh in 1974, **Sternlieb and Lake** documented behavioral and attitudinal differences between tax-delinquent investors and owner-occupants, with the investors more likely to pursue "strategic default." Sternlieb and Lake found that for investors, the leading causes of tax delinquency were reduced cash flow because of vacancy or expectations about property value decreases, whereas for owner-occupants, they were lack of funds due to personal emergencies, illness, low income or old age. More than 20% of the investors stated their reason for stopping tax payments as being their conclusion that the property was of no economic value, and therefore was not worth additional spending, while none of the owner-occupants stated this reasons. Investors are more likely to plan no future tax payments and less to intend to pay back taxes. For example, 34.1% of investors (versus 7.2% of owner-occupants) expected to make no payments on delinquent taxes; 26% of investors (versus 1% of owner-occupants) expressed their intention to let their property pass to the city (Sternlieb & Lake, 1976).

Demonstrating how the delinquency universe breaks down, Plan Philly and the Philadelphia Inquirer examined owner characteristics of delinquents in Philadelphia. They found that, of the roughly 100,000 tax-delinquent properties there, investors owned at least 57,500 of them (59%), and owner-occupants owned only about 21,600 (21%). Based on a close analysis of 380 tax-delinquent properties, "missing in action" owners, either deceased individuals or defunct firms, own the rest (20%). Collectively, investors owe the City of Philadelphia and the Philadelphia School District at least $316 million in unpaid taxes, penalties, and interest, compared to owner-occupants, who owe $200 million. Of the 500 delinquents who owe the largest amounts, for a total of $62.9 million, 391 are investors are investors, and 109 owner-occupants. Many investors own multiple tax-delinquent properties; approximately one-third of all tax-delinquent properties in Philadelphia are owned by individuals or entities with more than one delinquency. For example, Antoine Gardner, owner of Biznuss as Usual property holding company, owes $471,000 in back taxes on 58 properties. In terms of length of delinquency, the average investor-owned delinquent property is 8.6 years behind on taxes, versus 5.4 years for the average owner-occupied property. Of the 8,641 properties that are at least 20 years delinquent, more than 80% are investor-owned. Many are out-of-town; individuals and firms with billing addresses outside Philadelphia, in adjacent suburban counties and across the U.S, own at least 11,000 tax-delinquent properties (Kerkstra, 2013, March 11).

Similar to PP, cities can use the following characteristics to separate the three groups of owners.

Group	Characteristics
Cooperative Owners	Have a track record of paying taxes Recently entered delinquency Delinquency can be traced to recession or gentrification pressures Able to demonstrate financial hardship (low to moderate median HHI; have requested tax relief or abatement) Have enrolled in a payment plan, and have met the requirements of the payment plan ***Owner-occupant (likely senior or low-income)
Non-Cooperative Owners	Own multiple tax-delinquent properties "Repeat offenders" or "just-in-time" redeemers: Have a track record of accumulating tax debt; enrolling in and defaulting on payment plans; and/or redeeming properties late in the foreclosure process (immediately before foreclosure happens or after foreclosure has occurred, during the post-foreclosure "right of redemption" period) ***Investor, especially if they are out-of-town (billing address registered outside the city)
"Missing in Action" Owners	Deceased individual (listed in the Social Security Death Index) Defunct firm with no forwarding address

Cities should then use property and owner types to prioritize properties for enforcement, considering the 4 enforcement goals defined above. Specifically, in regard to Goals 1 and 2, they may want to focus on the following:

Goal	Property Type	Owner Type	Rationale
Maximize revenue (1)	**Properties that are high value and/or highly collectable, ideally both** Low lien-to-value ratios, delinquent for a short period of time, in good condition (have minimal or no code violations)	Cooperative Non-cooperative MIA	Cities want to return these properties to the tax rolls for revenue generation.
Return properties to productive use (2)	**Properties that are low value and difficult to collect**	Non-cooperative	Cities want to intervene in regard to these properties, because the private market will not take care of them. These properties likely are having a significant negative effect on their neighborhood, and will continue to do so, because their owners are not in a position to pay their debts, redevelop, or sell.

Most fundamentally, as with PP, cities should focus their enforcement efforts on the "worst of the worst": "worst" in terms of lost revenue and "worst" in terms of owner misbehavior. The immediate enforcement "sweet spot" is non-cooperative owners who own large numbers of tax-delinquent properties; owe large amounts of money across their portfolios; and control the properties causing the greatest negative impact, in terms of increased code enforcement costs and crime and decreased property values. As will be discussed further in Chapter 5, albeit in a slightly different context, cities should also consider targeting enforcement in neighborhoods "on the edge." Based on Gillen's analysis of the effects of tax-

delinquent properties on neighboring property values in Philadelphia, cities could benefit substantially from addressing delinquency in struggling neighborhoods that have not yet reached mass delinquency. Discussing prioritization, Gillen states,

> [The city] does not need to solve the delinquency problem everywhere at once... The city can get big gains by targeting those working-class to lower-middle-class neighborhoods that are on that fine line between becoming revitalized, strong neighborhoods or slipping into very-low-income neighborhoods with very distressed housing stocks (Kerkstra, 2013, March 9, Ravaged by neglect: Part 1).

Traditionally, Philadelphia has focused primarily on Goal 1, trying to get the "biggest bang for its buck" by targeting high value, highly collectable properties, under the assumption that either the owners will pay or the properties will easily sell at auction. However, as several of the delinquency experts interviewed by Kerkstra pointed out, this approach considers only the direct revenue impacts, in the form of the money that will be collected from these high value, highly collectable properties, and not indirect revenue impacts, in the form of the money that is lost via decreases in neighboring property values in low-income neighborhoods Kerkstra, 2013, March 12, Ravaged by neglect: Part 3).

Overcoming Barrier 3: Developing Effective Enforcement Pathways

As with PP, cities need to develop distinct "enforcement pathways" for owner and property types, keeping these goals in mind. For cooperative owners, especially low-income owner-occupants, cities want to provide them with the assistance they need to bring the properties back into compliance. For non-cooperative owners, especially "repeat offenders," cities want to vigorously pursue collection and enforcement, to return properties to productive use and discourage delinquency. However, it is important to establish different pathways within the non-cooperative segment for occupied and unoccupied properties, to protect tenants during enforcement action. For unoccupied properties with non-cooperative owners, if the liens are collectable, cities should consider selling them. For occupied properties with non-cooperative owners, cities should foreclose and/or transfer them to a third party as soon as possible, so the properties can be brought under responsible management. For "missing in action" owners, cities need to locate them or their agents, determine if they are in a position to pay, and whether they are going to behave as cooperative or non-cooperative owners once notified of their responsibilities. Cities cannot get blood from a stone, but they need to signal that owners cannot just "walk away" from delinquency without attempting to remedy the situation. Through their actions, cities should send the message to owners that they will do everything in their power to help owners acting in good faith, but will not tolerate owners taking advantage of the system.

Currently, cities may be focused on addressing their current group of tax-delinquent properties, especially if they have a large number of them. However, in the long term, because of the benefits of intervening before properties have the chance to accumulate significant arrears, which could make it difficult for both cooperative and non-cooperative owners to pay, it might be helpful to take a more "predictive" approach. Cities could do this for both cooperative and non-cooperative owners using what is known about the factors that contribute to delinquency. This is similar to initiatives, discussed in Chapter 2, to identify households that are tenuous from a code enforcement perspective. For cooperative owners, specifically struggling owner-occupants, this would involve monitoring mean tax burden as a percentage of median HHI; sharp percentage increases in tax burden associated with gentrification; unemployment; and senior residents living on fixed incomes. For non-cooperative owners, this would involving tracking code violations, unpaid utility bills and/or discontinued services, and mortgage defaults, as indicators of deliberate disinvestment from the property.

Enforcement Pathways for Cooperative Owners

For cooperative owners who want to pay their taxes but are experiencing difficulty doing so, cities should work with these owners to bring their properties into compliance, with special focus on low-income owner-occupants. As with PP, cities should take a "case management" approach with owners, to understand the challenges that are preventing them from paying and connect them with appropriate financial aid or

other services, such as assistance resolving a complicated title. For example, Richard Kane tried to establish a payment plan with the City of Philadelphia for a tax-delinquent house on the 1200 block of South 53rd Street. The house was owned by his stepfather's estate; after his stepfather died, his mother paid the taxes on the property, although she never received the deed to it, until she passed away in 2000, at which point Kane and his brothers became the unofficial property holders. While Kane's claim to the property is undisputed, the City will not allow him into a formal payment plan until the title issues are resolved (Kerkstra, 2013, March 11, Ravaged by neglect: Part 2).

Cities could model this property tax "case management" approach for struggling owner-occupants after the mortgage foreclosure intervention process. For example, in Boston, when a mortgage holder reaches a specified threshold of delinquency on their payments, the Boston Home Center, a division of the Department of Neighborhood Development, contacts them offering assistance. BHC has contracts with 4 local nonprofits to provide financial counseling services and help distressed owners with paperwork. BHC and the nonprofit assigned stay with the homeowner throughout the entire aversion process (City of Boston, Dept. of Neighborhood Development, 2014, Foreclosure prevention initiative). The procedure established under Rhode Island's Madeline Walker Act, an amendment to its state tax sale statute, also provides a model for how this intervention process might work. The act requires the local taxing authority to notify both the delinquent taxpayer and Rhode Island Housing (RIH), the public corporation that administers housing programs in the state, 90 days before a potential tax sale. In addition, the taxing authority must send a second notice by certified mail to both parties at least 40 days before the tax sale. Furthermore, if the delinquent taxpayer is listed in the tax records as having received or applied for an age-based property tax exemption, the taxing authority also must notify the Department of Elderly Affairs. Once it receives the 40-day notice, RIH sends a "can we help" letter to owner-occupants of properties containing 3 or fewer units. If the owner responds, RIH seeks to understand why he is experiencing difficulty paying, provide guidance, and make referrals to appropriate financial, legal, and social service providers. It examines the owner's tax bills to see if he is eligible for abatements he is not currently receiving or RIH loan products or mortgage assistance programs that could help them meet the outstanding payment. If the owner does not respond, RIH sends staff to make an in-person visit. If RIH is unable to help the owner "redeem" the property in time, but believes the property should not go to tax sale, the Madeline Walker Act gives RIH the right to exercise a "right of first refusal" to purchase the lien on the property, provided that it notifies the taxing authority of its intention to do this at least 10 days before the sale date. Following its purchase of the lien, RIH tries to get in touch with the owner, provided that they have not already succeeded in this goal, and set up a payment plan. If RIH cannot find a way to bring the owner into compliance, RIH can request a foreclosure from the court (Rao, 2012).

Cities can offer direct property tax relief programs, payment plan and deferral programs, extended redemption periods and redemption assistance, and innovative third party "work-outs." However, as cities consider how best to help low-income owner-occupants, it is critical that they remain conscious of the revenue "trade-off." While cities benefit from keeping low-income owner-occupants in their homes, they do not want to relinquish too much tax revenue in the process, because it is critical to funding other services for vulnerable populations without having to raise taxes. Ultimately, cities should consider how to balance this trade-off. Cities may want to encourage individuals who consistently cannot make their payments to seek alternate housing, and switch from owning to renting (Geeting, 2013, September 10).

Direct property tax relief programs can take several forms, including homestead exemptions or credits, "circuit breaker" programs, and/or tax freezes.

1. Homestead exemptions and credits: In a homestead exemption, local governments subtract a set amount from the assessed value of the property. Generally, this amount is defined an absolute number, as compared to a percentage, which enables a larger percentage of lower-value property to be exempt. In a homestead credit, local governments subtract a set amount from the tax bill after the liability has been calculated. Generally, this amount is defined as a percentage of the gross tax.
2. "Circuit-breaker" rebate programs: "Circuit-breaker" rebate programs come in two forms. Under the "sliding scale" approach, the rebate is set as either a fixed amount or percentage of tax paid. The allowable percentage decreases as income increases, until the rebate is phased out at a certain

income level. Under the "threshold" approach, the rebate is set so the tax payment does not exceed a specified percentage of income.

3. Tax freezes: Tax freezes stop property tax increases once a homeowner reaches the age of 65 (Mikaillov, 1998).

The advantage of direct property tax relief programs is that they bring owners' tax burdens into alignment with what people can pay. However, for the reason discussed above, local governments should be cautious with them, because, while they create no immediate costs, they do leave local governments with less revenue, so they have to reduce services or increase taxes (Kennedy, 1991, December 1).

Cities also can offer payment plans and deferral programs.

1. Deferral programs: Under deferral programs, owners use the equity in their properties to guarantee payment on deferred taxes. The unpaid taxes become a lien on the property that is paid when the property is sold or the owner's estate is settled, with the heirs responsible for payment. Two critical issues for deferral are the amount of deferral to be permitted and the amount of interest to be added to the deferred payment. The local government wants to make sure that the property is not "underwater" (negative equity, with lien value greater than property value) by the time that payments are finally made, while also making sure that it is fully compensated for the discounted value of the future payments. As an example of deferral, owner-occupants over 65 years of age can request deferral of all or part of the property taxes on their residence. The deferral amount, plus interest, cannot be greater than 80% of the owner's equity. At this maximum deferral threshold, the owner pays 6% interest each year. The taxes and interest accumulate, and are paid either upon the sale of the property or the owner's death, unless the owner's heir is the surviving spouse. If it is the surviving spouse, the deferral can be continued until the spouse's death, when the new heirs settle it. If they fail to pay fully, the local government can foreclose. Utah has a more expansive hardship deferral program that extends beyond just older adults. In Utah, owner-occupants can request a hardship deferral from the county, which can grant a full or partial deferral. The deferred amount accumulates interest each year at a rate equal to the lesser of 6% or the federal funds target established on the January 1 immediately preceding the date of deferral.
2. Income-based payment plans to address delinquency: Cities can grant income-based payment plans to owners who meet specified criteria (certain hardship thresholds). For example, in Philadelphia, under new tax delinquency legislation, the Revenue Department guarantees a payment plan to owner-occupants. Individuals who are not owner-occupants are not guaranteed a payment plan, but can be granted one at the discretion of the Revenue Department (Kerkstra, 2013, March 11, Ravaged by neglect: Part 2).

The advantage of payment plans or deferral programs is that they allow owners to meet their tax obligations over time. However, they also cut into revenue, at least in the short term, because cities are not receiving their money up front. Payment plans are likely to deliver revenue on a much shorter timeframe than deferral programs, depending on the owner's plans to sell.

Cities can also offer extended redemption periods and redemption assistance programs.

1. Extended redemption periods: Cities can grant owner-occupants at least one year to redeem their property. Cities can grant owner-occupants at least one year to redeem their property. As discussed later in this section, they may want to establish shorter redemption periods for "non-cooperative" investor-owners.
2. Redemption assistance (temporary loan) programs: Cities can establish redemption assistance (temporary loan) programs, modeled after those for mortgage foreclosure. Currently, a number of states (Connecticut, Delaware, Maryland, Michigan, Minnesota, New Jersey, Pennsylvania, Vermont, and Washington), as well as some municipalities (St. Louis, WA; Syracuse, NY; Waco, TX; and New York City) have small emergency loan funds for owner-occupants experiencing short-term financial challenges (unemployment, illness, disability, death, divorce or legal separation) that places them at risk of mortgage foreclosure. Through these funds, they provide short-term loans that are either interest free or at rates below 6%, in two forms: continuing loans, which pay the owner's delinquent balance and provide ongoing assistance with monthly payments for 12-24

months, and non-continuing loans, which offer the owner a one-time infusion of cash to allow the owner to pay off the delinquent balance. States could establish similar loan programs for tax foreclosure. For example, **Rao** suggested a revolving fund that could be used to provide interest-free or below-market-rate loans, capitalized by both a small fee ($50-100) on tax lien sale transactions and loan repayments. The fund could be administered by the city housing agency (Rao, 2012).

Finally, cities can support innovative third party "work-outs," to connect people who want to stay in their homes but cannot pay now or in the future, with third party financial resources. There are three potential "work-outs" that might be useful in this situation.

1. Future discounted sale: The original owner contracts with a new owner to sell the property at a given price. The price is fair market value, minus the outstanding tax obligations, at the time that the agreement is made. The original owner remains in the property, with the new owner paying all ongoing tax obligations, for a specified amount of time. The new owner then acquires the property for the agreed-upon price, minus all additional taxes paid since then. This approach is suitable for situations where the original owner just wants to remain in the property, and the new owner is willing to take a bet that the property will appreciate. The ongoing tax payments are the cost of keeping his option to purchase the property at the given price, which becomes increasingly discounted as time passes. It may be extremely difficult to find buyers in situations where the property is not expected to appreciate, because the value of being able to purchase it at a discounted price is less.
2. Reverse mortgage: Through federally insured reverse mortgages, issued as part of the Home Equity Conversion Mortgage program, owners 62 years or older are able to borrow money using their home equity as collateral, which they could then use to make tax payments. Before they can use the funds for any other purpose, owners are required to pay off the balance from their first mortgage, to ensure that the reverse mortgage becomes the senior lien on the property (Prevost, 2014, February 13). The owners pay interest and monthly insurance payments throughout the life of the loan, and are also responsible for meeting property tax and maintenance obligations. The amount of money that owners receive depends on age, interest rates, and the amount of equity in the home. It is also affected by whether they choose a lump sum, line of credit, regular payment for as long as they live, or regular payment for a fixed number of years (Lieber, 2011, June 24). The total balance of the loan becomes due when the owner dies or permanently moves out of the home. When the owner dies, the heirs have 30 days to agree on a plan for the property, specifically whether they want to keep the property or sell. If they want to retain the property, they may need to obtain a separate mortgage to refinance the property and "take out" (pay off) the reverse mortgage. Following this 30-day window, they then have up to 6 months to sell the property or arrange financing to "take out" the reverse mortgage, with two potential 90-day extensions allowed if they are actively trying to find a buyer. Based on federal regulations administered by the Department of Housing and Urban Development, whether they refinance or sell, heirs are supposed to be able to settle the reverse mortgage for 95% of the appraised value, even if the loan balance exceeds the appraised value of the property (i.e., the property is "underwater"). The federal insurance fund that all reverse mortgage borrowers are required to pay into each month covers the rest (Prevost, 2014, February 13). This approach is suitable for situations where the owner is willing to borrow against the equity in the property. However, if the owner is using loan payments to cover tax payments, he needs to be sure that they are sufficient to do so, as well as meet interest payments, maintenance costs, and monthly insurance. Otherwise, the owner is at risk of defaulting on the reverse mortgage, and having the property taken through foreclosure. Reverse mortgage lenders are just as concerned as the borrower about his ability to make tax payments, because they do not want any tax liens on the property that could compromise their senior lien. To increase their ability to grant reverse mortgages to vulnerable borrowers, lenders could take two actions. If they give a lump sum to the borrower, they could set aside part in an emergency fund to cover taxes and insurance if the borrower cannot. They also could require the borrower to take monthly payments, and put part of

the payments in an escrow account for taxes and insurance (Lieber, 2011, June 24).

3. Lien sales to housing nonprofits: Similar to the protocol in Rhode Island with Rhode Island Housing, states could allow housing nonprofits to acquire property tax liens before private, for-profit investors, and work with the owner-occupants to avoid foreclosure (Rao, 2012).

The benefit of these third party "workouts" is that they keep owner-occupants in their homes, but also allow cities to get their money up front. In this regard, they stand in contrast to direct property tax relief programs, where cities do not collect all of the money they are owed, and payment plans and deferral programs, where cities do, but do, but later. However, there are a few disadvantages. With the exception of the lien sales to nonprofits, they only work in areas where property values are stable or appreciating, and, in the case of reverse mortgages, for owners who can access enough equity to cover their obligations. The three largest players, Wells Fargo, Bank of America, and MetLife, all exited the reverse mortgage market in 2011-2012 because of concerns about their ability to evaluate how much equity to offer borrowers with falling home prices and to assess borrowers' ability to repay the loans. They wanted to avoid the image consequences of foreclosing on elderly homeowners. There also have been abuses within the reverse mortgage market. For example, some lenders have aggressively offered loans to seniors who cannot afford the origination fees or the ongoing property tax and maintenance costs, even with the money they have received. Lenders have not fully explained the risk of foreclosure if owners do not pay interest, insurance, property taxes, and maintenance. In addition, some spouses are facing foreclosure and eviction because after their partners' deaths, because their names were not on the reverse mortgage deed (Silver-Greenberg, 2012, October 14). Lenders also have threatened to foreclose on properties unless heirs paid the loan balances in full, instead of the required 95% of appraised value (Silver-Greenberg, 2014, March 26).

Some of these options (exemptions, abatements, deferrals) are more preventative, focused on avoiding delinquency by reducing immediate property tax obligations, while others (installment plans, extended redemption periods, redemption assistance, and innovative "work-outs") are more corrective, focused on remedying existing delinquency. Because of the time-sensitive nature of some of these options, the inherent complexity of the delinquency enforcement process, and the important and long-lasting consequences of ultimate failure to act (foreclosure and property loss), it is critical for cities to provide clear, comprehensive throughout the assessment, collection, and enforcement process. For example, most states require that owners apply for and submit proof of their eligibility for exemptions and abatements in a short window before or after the tax bill is issued. Generally, this timeframe is not extendable, so if owners do not know to apply at the right time, they may lose their right to the exemptions and abatements. States could consider legislation to apply these abatements or exemptions retrospectively, but if they are not willing or able to do that, even if abatements or exemptions could not help with current outstanding tax bills, could help with future bills. The old bills could be treated with affordable, income-based payment plans. Leveraging the "case management" approach, cities should ensure that owners understanding their choices, especially their right to redeem, how to exercise it, and when it expires (Rao, 2012).

Beyond this set of options, however, there are three broad actions that cities to assist individuals who are struggling to make their tax payments. The first is to follow prompt reassessment procedures, especially if property values are declining, as typically occurs during a recession. This protects low-income owners from overly high assessments, and makes residency more affordable, although it does mean less tax revenue for the city. Following the 2008 housing crisis, many cities decreased assessments. However, in Detroit, for example, values remained over-assessed. As discussed in **MacDonald**, Skidmore and Sands examined the sales of nearly 8,000 houses in 2009, and compared them with their assessed values in 2010. They found that houses selling for $2,300 were assessed at $42,000; houses selling for $12,500 were assessed at $62,000; and houses selling for less than $100 were assessed at nearly $46,000. Collectively, Detroit's residential assessed value decreased by 46% from 2007 to 2012, but adjacent suburbs saw even greater decreases, 57% in Southfield and 63% in both Hazel Park and Pontiac over the same period of time. Moreover, some of the decrease in Detroit's value was due to the increase in government-owned properties, which pay no taxes; 66,000 parcels are owned by the city and school district (MacDonald, 2013, February 21). In 2013, Detroit launched a citywide reassessment to bring assessed values into line with true values (Bradley, 2013, September 5). The City of Philadelphia, which has experienced similar assessment

challenges, also recently conducted a mass reassessment, the Actual Value Initiative. Cities can take advantage of improved technology and data sources to produce quick and accurate assessments through mass appraisal procedures. Drawing on a dataset similar to that being assembled for code enforcement, they can combine digitized property information (assessing records, building permits) with aerial photographs from Google Earth or Pictometry to track improvements. They can calculate operating costs from property tax and utility data. For comparables, they can use hedonic regression to correct for timing and location of sales, as well as property characteristics. In addition, they can compare their mass appraisals against those generated by Trulia, Redfin, and Zillow.

The second is to facilitate payment and the appeals process. For example, cities should consider splitting tax bills up into multiple installments, so that individuals can pay on an ongoing basis, as opposed to a single large lump sum. Examining property tax administration in Wisconsin, Reschovsky and Waldhart (2012) found that increasing the number of property tax installments from two to three annually produced a large reduction in property tax delinquency rates (Waldhart & Reschovsky, 2012). To help owners pay, the taxing authorities in York County, PA and Newport News, VA have established online systems that allow individuals to have monthly payments debited directly from their bank accounts. However, for these automatic payment systems to be useful, individuals must allocate enough money to avoid bank overdraft fees. These systems perform a similar function to mortgage escrow accounts that hold funds for taxes and insurance. During the mortgage crisis, the fact that, in contrast in contrast to conventional mortgage loans, the majority of subprime mortgage loans made prior to 2008 did not include an escrow account, to enable a lower monthly mortgage payment and make the loans seem more "affordable," contributed to property tax delinquency (Rao, 2012). Cities also can enable online appeals. In 2011, Cook County, IL introduced an online portal to allow owners of the 1.83 million real estate parcels there to file online appeals of their tax bills (Mihalopoulos, 2011, September 3).

The third action is to be selective about offering tax incentives and exemptions. Cities that are experiencing high delinquency rates urgently need tax revenue, and will be willing to offer incentives to attract residential and commercial reinvestment. However, they want to be cautious to avoid a "race to the bottom," by giving away too much or putting in place counterproductive policies. For example, in 1997, Philadelphia launched a tax abatement program for commercial-to-residential conversions, later expanded to new construction in 2000, which held assessments at predevelopment levels for 10 years. The program was successful in bringing new residents to Center City. From 2000 to end of 2005, the population of Center City increased from 78,000 to 88,000, and the number of households increased by 24%. However, the program impacted older residents of Philadelphia, who continued to be responsible for full property taxes while new owners paid minimal taxes. In addition, rising property values associated with increased demand put more pressure on them (Chamberlain, 2006, January 8). **Kromer and Tam** analyzed the 1,876 10-year residential property abatements granted by the Board of Revision of Taxes (BRT) between 1997 and mid-2005, with a total of $12,124,819 in abated 2005 property taxes. Not surprisingly, they found that the abatements were most often used in stronger real estate markets, not in weaker real estate markets with a need for reinvestment, except in the case of development ventures receiving financing through government subsidy programs. In stronger markets, the market value (and therefore assessed value) of improvements was higher, offering a greater tax reduction, with largest investments leading to larger abatements. The individuals who benefitted most directly from the abatements were private developers and investors with access to large amounts of capital and upper-income residents; they "produced relatively little benefit for smaller private developers, nonprofit developers, and low-, moderate-, and middle- income residents." For a developer seeking to maximize the direct benefits of the abatement, the best opportunity was construction of new luxury rental housing in or near Center City; townhouse or condominium construction offered equal or greater indirect benefits, if the developer could capture the abatement passed onto buyers, via pricing of these units. According to Kromer and Tam,

> Because real estate investment and development decisions are influenced by multiple factors that can vary from case to case, it is not possible to determine how many of the property improvements that received abatement approvals would have been completed anyway, without this incentive. If it is assumed that the abatement decisively influenced all of the activities summarized in this report,

> then one could conclude that the City succeeded in using an estimated commitment of $121.2 million (i.e., $ 12,124,819 x ten years) to leverage $458.5 million in new market value (i.e., $12,124,819 divided by the City's .08264 millage rate, divided by BRT's .32 assessment ratio). If, however, it is assumed that the abatements decisively influenced none of these activities, then one could conclude that the City unnecessarily gave up $121.2 million in tax revenues. The truth lies somewhere between these two extremes (3).

However, they recommend that if the city continues to use multi-year abatements, it includes a "sunset" provision limiting the number of years that they remain in effect before they must achieve legislative approval for renewal or extension (Kromer & Tam, 2005).

Enforcement Pathways for Non-Cooperative Owners

Cities should aggressively pursue collection and enforcement action against non-cooperative owners, to collect on money owed, return properties to productive use, and send a clear message that delinquency will not be tolerated. Similar to the approach to code enforcement for non-cooperative owners, cities' goal should be to make it so costly for non-cooperative owners to remain delinquent that they are compelled to take action to pay their debts. Of course, if cities make it very costly, some non-cooperative owners may complete the abandonment of their property and never take action to pay their debts; as White and Arsen discussed (Chapter 1), the property tax burden has an impact on abandonment. However, if they are going to do so, it may be better to have them do so sooner, so the property does not degrade and can be returned to productive use. According to Miller, "There are four important state government policies that affect the cost of property tax delinquency for taxpayers: penalties, interest fees, tax lien sales, and time to tax foreclosure." Cities can use all of these to establish a motivating "enforcement pathway" for non-cooperative owners.

Cities should add substantive penalties and interest to push non-cooperative owners to pay. Penalties are a one-time fee applied to a tax bill when it becomes overdue, and typically constitute a percentage of the bill. They are charged in 29 states and the District of Columbia. Interest fees are reoccurring fees applied to the tax bill based on the length of delinquency. All states impose interest fees. With the exception of Alaska (compounds interest monthly) and Alabama (compounds interest daily), they are based on a simple interest rate calculation applied to the annual tax bill, and not the interest accrued. Five states, - Alaska, Colorado, Kansas, Ohio, and Utah, - and New York City set the interest rate yearly, generally based on the federal funds rate. In the U.S., penalties and interest fees are set by state governments. Tax lien sales also impact penalties and interest rates, because the private lienholders may institute additional interest and fees. In setting delinquency interest rates, at the most basic level, it is critical to keep them above market interest rates, or owners will be slow to pay because it costs less to "borrow" from the local government than from the bank. In addition, ideally, the interest rates should reflect the "true" cost of borrowing for local governments to cover the missing revenue from delinquency. **Miller** estimated the responsiveness of taxpayers to differences in penalties and interest fees using county-level property tax delinquency data from Oregon and Washington from 2000-2010. Comparing the two states, he found that a 44% increase in combined penalties and interest fees led to a 17% decrease in the amount of property tax delinquency, with an estimated price elasticity of demand for property tax delinquency of 0.36. In Miller's model, penalties and interest fees affect the behavior of short-term delinquents, who are concerned about delinquency costs relative to personal borrowing costs, but not long-term delinquents. As previously discussed (Chapter 1), short-term delinquents elect delinquency when their personal borrowing costs are greater than their delinquency costs. Therefore, short-term delinquency decreases when personal borrowing costs drop or delinquency costs rise. The relatively inelastic demand for delinquency suggests that the individuals choosing delinquency are mostly individuals with high personal borrowing rates from the start. Both unemployment and low income can raise borrowing rates (Miller, 2012). However, interest and penalties are tricky, because taxing authorities want to set them high enough to motivate compliance, but not so high that they inhibit redemption. This issue will be explored further in Chapter 4 in regard to tax lien sales.

Cities should also limit the time to foreclosure. In particular, they should establish a clear foreclosure

timeline, following state procedures for due process, and conform to this timeline once owners meet the required delinquency threshold and are not enrolled in and/or current on payment plans. By acting to take properties quickly and consistently, cities both ensure that they will not degrade further, avoiding blight and enabling productive reuse, and also induce payment, at least among short-term delinquents. As discussed in Chapter 1, **White** found that a longer grace period increased the incentive for delinquency (White, 1986). Rapid foreclosure motivates short-term delinquents, because it increases (non-monetary) delinquency costs relative to personal borrowing costs. Examining county property tax delinquency data in Washington and Oregon, Miller found that the majority of property tax delinquency is of duration less than one year; in Washington's King County, nearly 70% of 2009 delinquency was paid off within one year, and in Oregon's Multnomah County, nearly 60% was (Miller, 2012). While rapid foreclosure will not motivate intractable long-term delinquents, who have already made the decision to give up their property because they expect the net benefits of ownership to be negative, -- they will just cede their properties to the city that much earlier, -- cities have an interest in parsing out these owners, and getting their properties to more responsible owners as soon as possible.

In addition, cities should implement strict payment plan and redemption rules to address the problem of "repeat offenders," individuals who repeatedly accumulate debt; enroll in payment plans seeking to delay foreclosure and then default on their obligations; and/or or redeem property late in the foreclosure process or after foreclosure has already occurred, using their statutory "right of redemption." Payment plan default rates are very high. Philadelphia's private tax collectors indicate that 30-40% of their installment-plan payers break their first agreements and end up in either another plan or foreclosure. In Detroit and Cleveland, tax officials report default rates of about 45%; in New York City, 22%; and in Pittsburgh, about 10-15%. Under 2013, Philadelphia offered two payment plan options, with different down payments and contract periods: a standard plan for all payers, and a "hardship plan" for senior or low-income homeowners holding title to the property and regularly living there. The hardship plan let owners enroll up to three times in the event they defaulted on a previous enrollment. The standard plan had no limit. While cities should offer payment plans to low-income owner-occupants, as discussed in the previous section, they also should take care that non-cooperative owners do not use the plans "strategically" to prevent them from moving forward with property seizure. To this end, cities may not want to extend payment plans to owners who have enrolled in and defaulted on payment plans more than a specified number of times. Similar to the issue with payment plans, some owners take advantage of their "right of redemption" to avoid paying taxes for as long as possible without losing their property. For example, in Philadelphia, when the Sheriff's Office lists tax-delinquent properties for auction each month, about 60% are postponed or dropped because owners, upon seeing their properties listed, "redeem" (pay in full), request a payment plan, or file for bankruptcy. They can later default on their payment plans or withdraw their bankruptcy filings. Even after the properties are sold at auction, owner-occupants have the right to buy them back for all taxes, interest, and penalties due, plus any additional amount bid on the property, for 9 months after the foreclosure sale. This has the added effect of discouraging potential buyers (Pew Charitable Trusts, 2013, June). To demotivate this behavior, cities should have owners pay a "redemption penalty" if they redeem late in the foreclosure process or after the Judgment of Foreclosure has been issued. Ideally, this "redemption penalty" would reflect the local government's cost of pursuing foreclosure up to that point, in terms of legal fees and the amount of staff time spent on their cases. **Rao** suggests that states should not have "one size fits all" rights, but they should be targeted to specific property and owner types, with longer redemption periods for owner-occupants and shorter redemption periods for vacant, abandoned, or nuisance-creating properties. In this regard, he highlights the example of Kansas, which offers a 3-year redemption period for owner-occupied property, a 1-year period for vacant property, and a 2-year period for all other property, and Illinois, which provides only a 6-month redemption period after tax sale for vacant, non-farm property, improved property with 7 or more residential units, and commercial and industrial property (Rao, 2012).

Enforcement Pathways for "Missing in Action" Owners

Similar to the code enforcement approach, for "missing in action" owners, -- deceased individuals, heirs who received property without knowing about it, and defunct companies, -- cities should find the

responsible agents, apprise them of their responsibilities, and assess their capacity and willingness to be involved with the properties. Also as with code enforcement, "missing in action" owners are a tricky group. Cities want to hold them accountable for costs associated with the properties, but they may not be fully responsible -- for example, if they didn't know (e.g., the unwitting heir) or were part of a larger entity that has since dissolved -- and, furthermore, not in a position to pay. Using the conventions previously employed, it can be hard to differentiate between "missing in action" and non-cooperative owners, especially when it comes to financially overextended investor-owners who "walked away" after formal or informal bankruptcy. For example, Kerkstra highlighted two delinquent entities in Philadelphia that blur this distinction. The first, the Mercury Group, owns 23 tax-delinquent properties in Philadelphia, which owe a total of $138,000 in unpaid taxes. The company is no longer at its state-registered office address, and the private address associated with the firm's owner leads to an unrented UPS Store mailbox in a Wynnewood, PA shopping center. When asked, the other tenants at the shopping center did not recognize the owner's name or that of Mercury Group (Kerkstra, 2013, March 9, Ravaged by neglect: Part 1). The second, GLC Group, is a now-defunct entity set up by New York-based developer Mark Caller and his partner. In 2005, GLC bought more than 50 tax-delinquent parcels in north Brewerytown and other sections of western North Philadelphia. Caller claims that GLC bought the properties because he and his partner thought the city had agreed to remove old delinquencies from the parcels, in exchange for GLC building new low-income housing. As of 2013, GLC was listed as the owner of record for 33 parcels, which owed $343,000 in tax debt; the city had auctioned 12 other parcels at sheriff's sale, for prices ranging from $900 to $11,000. When contacted by Kerkstra, Caller expressed a desire to completely disassociate from the properties: "We told the city right away, we'll give them the deeds; as far as I'm concerned, we never even owned them. We're not getting any benefits from them." For equity purposes, cities do not want to allow responsible parties to just "walk away" from debts. However, in addition to the level of responsibility and the harm caused, cities also need to consider the ability to pay, recognizing that they cannot get blood from a stone. In some cases, if the responsible agents cannot pay and want nothing to do with the property, an uncontested, accelerated foreclosure or deed in lieu of foreclosure transaction may be the best outcome (Kerkstra, 2013, March 11, Ravaged by neglect: Part 2).

Because of the time and effort involved in locating these owners and determining their capacity to pay, -- or, to draw on another cliché, to avoid "throwing good money after bad," -- cities may want to delegate this task to a private collection agency or nonprofit, -- the delinquency equivalent of Project Rehab, -- and offer them a "performance bonus" that is a set percentage of either the lien collected (if the responsible agent, when notified, elects to pay up) or the price when transferred (if the responsible, when notified, relinquishes claim).

The Scale of the Problem and the Need for Drastic Action

When considering segmentation and prioritization by property and owner type, or the best strategy to pursue for delinquency enforcement, cities should take into account the scale of the problem: their delinquency universe, defined as all properties that are currently delinquent and eligible for enforcement action, whether or not this process has actually started. As discussed in this thesis' case studies, both New York and Boston experienced significant waves of delinquency in the 1970s (and 1990s), and Philadelphia is overwhelmed with delinquency now. To bring their "caseload" into alignment with their capacity, after a prolonged period of delinquency, cities may want to pursue a tax amnesty. Philadelphia did this in 2010, as an effort to "reset" a system that was deeply and profoundly broken. As discussed in Parle and Hilinger, a tax amnesty provides taxpayers with a one-time opportunity to clear their accounts by paying back taxes and interest without being subject to criminal or civil penalties. It has three main goals: to collect delinquent taxes at low cost (especially those that might be very expensive to collect otherwise), get individuals currently "outside" the tax system inside of it, and promote future compliance. To be successful, it must be perceived as fair, so it does not frustrate other taxpayers and promote additional delinquency, and it must be done infrequently and randomly, so people view it as a one-time opportunity and do not start waiting for the tax amnesty to occur. In addition, ideally, it combines amnesty with tax reforms to reduce delinquency long-term and prevent recidivism, such as increased penalties and more rigorous collections efforts that increase

the probability that delinquents will be caught. Parle and Hilinger consider 2 success metrics, the revenue initially produced by program, or the proceeds from amnesty), and the long-term financial benefits of higher-than-expected tax revenues in the period afterwards (Parle & Hirlinger, 1986).

Summary

Picking up where Chapter 2 left off, this chapter examines how cities can effectively treat TDP. It identifies three major barriers to doing so: meeting legal requirements for enforcement, prioritizing properties for enforcement, and developing effective "enforcement pathways" for different property and owner types. To guide prioritization, it defines 4 goals for enforcement: 1- Maximize revenue collection; 2- Return properties to productive use; 3- Protect low-income owner-occupants; and 4- Discourage delinquency among "repeat offenders." For property types, it defines four categories relevant to these goals: absolute property and lien value; delinquency severity; level of disruption to the surrounding neighborhood and contribution to the "tipping point" of disinvestment; and ownership status and occupancy. As with PP, it breaks owners into three groups: cooperative, non-cooperative, and "missing in action." It then outlines "enforcement pathways" for the three owner groups. For cooperative owners, especially low-income owner-occupants, it suggests that cities offer assistance via direct property tax relief programs (homestead exemptions or credits, "circuit breaker" programs, and/or tax freezes), payment plan and deferral programs, extended redemption periods and redemption assistance, and innovative third party "work-outs" (future discounted sale, reverse mortgage, and lien sales to housing nonprofits). For non-cooperative owners, especially "repeat offenders," it recommends that cities vigorously pursue enforcement. For "missing in action" owners, it recommends that cities take the same "case management" approach as with PP, and assess whether they are going to behave as cooperative or non-cooperative owners once notified of their responsibilities. Furthermore, to support general good tax practice, this chapter suggests that cities follow prompt reassessment procedures, facilitate payment and the appeals process, and be selective about offering tax incentives and exemptions, so as to keep the tax burden to the minimum necessary.

CHAPTER 4: COLLECTION STRATEGIES

As discussed by Matzer, debt collection has been a challenge for US cities for a long time, with "cities lack[ing] prompt and aggressive systems for the collection of outstanding debts" (34). Matzer defined indicators of poor debt collection, including "high delinquency rates; large write-offs of bad debts; inadequate collection personnel and resources; absence of penalties or low penalties; failure to pinpoint collection accountability; ... [and] absence of collection programmed evaluation" (45). Matzer suggests that cities need a more rigorous structure for collecting debt and measuring collection performance. He recommends formal debt collection policies, which define who is responsible for collection, what the goals are, and how debts will be handled, including when they will be referred to collection agencies or for court action. These should be accompanied by effective tracking systems that capture critical information (number of current, delinquent, and rescheduled accounts; amount collected; amount "written off"; collection methods used; date and timing of enforcement action) and enable prioritization (by age, size of account). In addition, the tracking system should include outcome measures, such as collection index, bad debt loss index, delinquency index, average collection period, past due index, receivable turnover rate, and number of days to collect credit amounts (Matzer, 1985). While Matzer wrote his article more than 30 years ago, his comments are still highly relevant to the practice of tax collection, with some cities evincing some of the indicators of poor debt collection. For example, Philadelphia is presently contending with all of these issues. Based on the segmentation and the prioritization of the previous chapter, this chapter considers how cities can achieve effective collection, and the relative strengths and disadvantages of different collection strategies.

Three Basic Collection Strategies

Cities have three basic strategies available to pursue collection. These strategies can be placed on a spectrum of privatization, or increasing detachment from government ownership. The first is solely government collection, in which the government performs the task of collecting the unpaid taxes from the owner, owns the tax lien, and forecloses on the property if the owner does not pay. The second is the use of a third party lien servicer, in which the servicer collects, but the government owns the lien and forecloses if the owner does not pay. The third is the sale of tax liens to a third party investor, who collects, owns all or part of the lien, and generally forecloses on the property if the owner does not pay. The strategies that cities use are influenced by both practical and theoretical considerations. On a practical level, they consider their capacity to collect (their staff and resources relative to the scale of the delinquency problem); statutory limitations on their ability to transfer the liens to a third party for collection (states may need to pass enabling legislation to allow them to do so); and the urgency of their need for the outstanding tax revenue (now or later). On a theoretical level, cities consider their commitment to receiving the full face value of the lien, plus all penalties and interest, or whether they are willing to accept a discounted value, reflecting transaction costs and the transfer of collection risk from the government to a third party; to control over the collection process; and to other goals (e.g., productive reuse, protection of owner-occupants), in addition to revenue/profit maximization. As **Poindexter et al.** put it, "Privatization forces the discussion of the trade-off between economic efficiency and social responsibility," although there are options that do not involve a black-and-white choice between the two ((Poindexter, Rogovoy, & Wachter, 1997, 157).

1. <u>Solely government collection:</u> In government collection, cities receive the face value of the lien, plus all penalties and interest. They retain full control of the collection process. As discussed in the previous chapter, they can pursue strategic enforcement and foreclosure to serve goals beyond revenue/profit maximization (e.g., productive reuse, protection of owner-occupants). However, they need significant collections staff and resources. In addition, in contrast to tax lien sales, they receive the value of the outstanding taxes over time, as an ongoing stream of revenue, versus a one-time payment.
2. <u>Use of a third party servicer:</u> With the use of a third party servicer, cities receive the face value of the lien, plus all penalties and interest, minus the cost of the servicer. In other words, they get all the

"upside" of collection, minus the servicer's fee, usually based on the type of liens. In addition, cities maintain control over collection, because they can establish restrictions on the servicer's behavior, such as limiting collection tactics, through the contract terms. Through the servicer, cities can pursue other goals beyond revenue/profit maximization (e.g., productive reuse, protection of owner-occupants). However, like solely government collection and unlike tax lien sales, they receive the value of the outstanding taxes over time, as opposed to a one-time payment. In addition, they may need to compensate the servicer upfront, and provide ongoing compliance monitoring, to make sure they are meeting the terms of the contract (Marchiony, 2012).

3. Tax lien sales: Like contracted servicing, tax lien sales transfer servicing (collection) responsibility from the government to a third party. However, the method of payment is different. Instead of getting a fee, the third party gets the lien, and the right to the outstanding balance, interest, and penalties not paid by the owner, as well as to foreclose on the lien if the owner does not pay. Put in an alternative, but equivalent, way, the third party buys the lien, for the taxes due (and sometimes an additional amount), in exchange for collection rights, including the right to foreclose on the lien. During the statutorily defined redemption period, owners have the right to "redeem" their property by paying the third party its bid for the lien (the amount for which it purchased it), plus interest, penalties, and other fees (Rao, 2012).

The Tax Lien Sales Process and Methods

Generally, as discussed above, the process is as follows. First, the taxing authority imposes the lien and notifies the owner and other interested parties. Second, the taxing authority sells the tax lien (or tax deed). Third, the purchaser enforces the lien (or deed). The redemption period can occur before or after the sale. If it occurs after, the purchaser does not immediately receive full rights to the property, but acquires an interest subject to redemption. If the owner does not redeem, the purchaser gets title to the property free and clear of all liens attached prior to the sale ("clean title"), including not just the tax liens, but also mortgage debts and other liens. In some states, the purchaser gets title (taxing authority issues deed) automatically upon the expiration of the redemption period. In other states, the purchaser must apply for it, either by requesting it from the taxing authority or pursuing a foreclosure action to formally terminate the right of redemption (Rao, 2012).

Third parties purchase liens for two reasons. First, they are a compelling investment. They can offer high returns from interest and penalties, which accrue to the buyer from the date of purchase. In addition, if the purchaser buys them at a discount from their face value, as occurs with negotiated bulk lien sales and securitization, they can yield even higher returns, because the buyer gets the difference between the discounted value and the face value. In addition, tax liens are super-priority, which means that the buyer receives payment before the holder of the mortgage and any other liens on the property (Marchiony, 2012). Second, they offer the chance to get property at a low price if owner does not "redeem" (DeBoer,Conrad, & McNamara, 1992).

With tax lien sales, cities receive money upfront. They also do not need a large in-house collections staff (Healy, 2009, August 17). In addition, tax delinquents, especially non-cooperative owners who want to retain their interest in their properties, but were delaying payment to maximize their gains (i.e., speculators or short-term delinquents) may become more motivated to pay, because they know that private investors may be more vigorous in pursuing remedies for default (i.e., adding penalties and fees or foreclosing) (Brey, 2013, October 8). However, cities lose control over the collection process. In addition, and most importantly, cities and private investors have different, and sometimes conflicting, priorities. Investors seek to maximize profit, while cities are concerned about getting properties back on the tax rolls, but also promoting neighborhood stability, productive reuse, and protecting owner-occupants. As a result, owners may have an incentive to extend delinquency and delay foreclosure to increase interest and penalties owed. This can promote "problem properties," as properties deteriorate through the long period of delinquency (Geeting, 2013, September 9). In addition, while the city might transfer ownership of a property after foreclosure to an entity that could improve or maintain it even if, by doing so, it might not fully recuperate the tax debt, while the third part would sell it to the highest bidder (Marchiony, 2012). While state laws limit the interest that

the taxing authority can charge on delinquent taxes, some servicers and bulk sale purchasers argue that they are not subject to these restrictions (Rao, 2012).

There are three basic mechanisms for tax lien sales: auctions, negotiated bulk sales, and securitization. The mechanism of sale chosen impacts the rate of return to the third party and the city, because of differences in transaction costs, the potential for residual ownership on the part of the city, and the legal structure (Poindexter, Rogovoy, & Wachter, 1997).

Tax Lien Sales Method 1: Auctions

Prior to the 1990s, taxing authorities just used auctions to sell liens. The auction process is relatively straightforward. The taxing authority prepares a list of liens, which is typically published in the local newspaper; provides notice and opportunity to "cure" to the owner; and then instructs the appropriate government official to hold the sale.

There are two basic types of auctions: the tax deed sale and the tax lien (certificate) sale. In a tax deed sale, the government sells the property deed, which represents full title to the property. Following the sale, the purchaser obtains the right to collect interest and penalties immediately, and becomes the owner either immediately or upon the expiration of the redemption period. In return, the government receives the face value of the lien, plus sale costs. In a tax lien (certificate) sale, the government sells the lien, which represents less than full title to the property. Following the sale, the purchaser receives the right to collect interest and penalties immediately, and to pursue foreclosure later if the owner does not pay. For example, in Illinois, the winning bidder at a tax lien (certificate) sale receives a certificate of purchase for paying the outstanding lien amount and sale costs. The purchaser collects interest and penalties on the outstanding lien amount and, once the redemption period ends, can pursue foreclosure to obtain the tax deed.

It is important to emphasize that, in contrast to traditional auction sales and mortgage foreclosure sales, potential purchasers at tax auctions do not bid on the value of the property. Instead, the government offers the property for the amount of the unpaid taxes, interest, penalties, fees, and related costs. This setup reflects the fact that the intent of the sale, from the government's perspective, is just to collect on the taxes owed. To handle situations in which there is more than one bidder who wants to acquire the property, taxing authorities have developed three auction methods. Under the percentage ownership method, the successful bidder buys the tax lien for the lowest percentage interest in (fraction of) the underlying property. For example, the winning bidder obtains a 10% interest in property. If the property is not redeemed, and the bidder successfully pursues foreclosure, the original owner retains a 90% interest in the property and the bidder gets 10%. Because fractional interests are difficult to transfer, the percentage ownership method is most suitable for purchasers who are focused just on earning a high return (collecting interest and penalties), not taking ownership of the property. Under the interest rate method, the successful bidder buys the tax lien for the lowest interest rate. For example, if state law sets the maximum interest rate on delinquent taxes at 18%, the winning bidder might be willing to accept interest of 14%. Under the overbid method, the successful bidder pays the taxes, penalties, and interest owed on property (face value of the lien), plus the highest additional amount (the overbid) (Rao, 2012).

The auction method is efficient for individual liens, because it ensures that cities get the full face value of the lien. However, it has high transaction costs, because each lien must be individually sold, so it is less efficient for large lien volumes (Poindexter, Rogovoy, & Wachter, 1997).

Tax Lien Sales Method 2: Negotiated bulk lien sale

Under the negotiated bulk lien sale mechanism, the taxing authority pools and sells a package of delinquent liens to a third party, for a single upfront payment. For assuming transaction costs and the collection risks associated with the package, purchasers may be able to buy liens for a discount on their face value. For example, the City of Pittsburgh conducted a negotiated bulk sale of tax liens in the fall of 1996, in which a third party paid $16 million for $22 million in liens on over 14,000 properties, dating from 1977 to 1995. Unlike in some securitization transactions, the taxing authority does not keep a residual interest in the liens, so it does not benefit from any collections in excess of those predicted to set the discount rate. For tax lien sales, the priority of liens, which is usually a policy decision made by the state or local government, is

important, because it affects collection risk. If priority is given to subsequent liens, versus prior liens, the buyer only has one year of his claims coming first. The buyer wants more than 1 year to collect on delinquent taxes or foreclose on properties.

The negotiated bulk lien sale mechanism is efficient for large lien volumes, and spreads transaction costs over a large number and dollar value of liens. Relative to securitization, it also provides taxing authorities with greater control over the lien pool, because they do not have to adjust the pool to get the optimal rating from a ratings agency (Poindexter, Rogovoy, & Wachter, 1997).

Tax Lien Sales Method 3: Securitization

Under the securitization mechanism, the taxing authority sets up a trust to take title to liens. The trust purchases the liens, and then issues bonds. The proceeds from the bond sale are used to pay back the city. In a typical securitization transaction, the value of the bonds issued is less than the face value of the liens (generally, 70-80% of the lien face value). The bonds are backed by the tax lien receivables. The bondholders have first priority in receiving the delinquent taxes, interest, and penalties as they are collected from the owners. If the owners do not pay, the trust can pursue foreclosure. In some securitization transactions, the city takes a subordinate position after the bondholders for part of the outstanding liens (usually about 30%), in order to give it part of the "upside" (i.e., collections in excess of those needed to satisfy principal and interest payments to the bondholders), in addition to its upfront payment from the bond sale (Poindexter, Rogovoy, & Wachter, 1997).

Jersey City performed the first large tax lien securitization in 1993 ($44 million in delinquent liens), and another transaction in 1994. Other jurisdictions have also pursued tax lien securitization, including New Haven ($23 million, 1995), Fulton County/City of Atlanta ($30 million, 1995), New York City ($250 million, 1996), Washington, DC ($50 million, 1996), Philadelphia ($106 million, 1997), Puerto Rico ($400 million, 1998), Arlington, VA, and Marlborough, MA (Alexander, 2000).

Beyond the trust structure, a second form of securitization occurs when investment firms purchase large numbers of tax liens to securitize themselves. For example, Bank of America and Fortress Investment Group offered a tax-lien securitized bond to private investors in 2009, with an estimated 7-10% return (Rao, 2012).

Challenges with Tax Lien Sales, in Theory and Practice

If not carefully monitored, the potential for abuse exists in tax lien sales. Cities want to be cautious to avoid a situation like that which recently occurred in Washington, D.C. As revealed by a 2013 10-month investigation carried out by the Washington Post, starting in the early 2000s, D.C. experienced major problems with tax lien sales to out-of-town investors. Prior to that time, D.C. sold liens at auction to small, local investors for decades. Under local law, once the liens were sold, property owners had 6 months to redeem them, after which the investors could pursue foreclosure. Most local investors just sought to earn high interest rates on the delinquent liens, not foreclose on properties; when foreclosure occurred, the D.C. Office of Tax and Revenue performed it. However, in 2001, the city instructed investors to begin filing foreclosures in court themselves, which enabled them to start adding high legal fees and court costs. At the same time, the D.C. real estate market strengthened, generating new interest in liens among out-of-town investors from Florida, Illinois, Maryland, and New York. Investors started charging owners costly legal and court fees, with lien company attorneys being paid at $450/hour. In 2009, concerned about this trend, D.C. Attorney General Peter J. Nickles requested an injunction against Aeon Financial, a Chicago company, over "unlawful" and "predatory" fees. The Post investigation found that the City failed to protect vulnerable owner-occupants, including seniors and individuals with mental health challenges, from aggressive behavior by investors, especially efforts to drive up liens and forestall redemption through excessive fees. From 2008-2013, the rate of tax foreclosures initiated by private investors almost doubled. From 2005-2013, investors foreclosed on almost 200 houses and filed foreclosure cases against 1,200 more. Of the almost 200 homeowners who lost their properties, one in three originally held liens of less than $1,000. The Post also found that the D.C. Office of Tax and Revenue failed to prevent misconduct in the lien sale process itself. Of the 9,000 liens that it sold from 2007-2013, D.C. offered almost 1,900 in error, forcing compliant taxpayers to

pursue legal action to avoid foreclosure. OTR also failed to screen out problematic investors. From 2005 to 2007, for example, companies owned by Steven Berman, convicted of rigging tax auctions in Maryland, purchased more than 270 liens. Auction experts commissioned by the Post found unusual patterns of back and forth bidding in 2007 auctions (Sallah, Cenziper, & Rich, 2013, September).

The DC situation dramatizes some potentially problematic aspects of tax lien sales. Fundamentally, tax lien sales are compromised by potential misalignments between public and private goals. **Marchiony** argues that "compared to other strategies, tax lien sales create greater externalities: a risk of lower economic rates of return, political accountability challenges, and constitutional and consumer protection concerns" ((Marchiony, 2012, 234). Likewise, the *New York Times* Editorial Board advised a cautious approach: "Debt collection is always tough. But it is especially fraught when private firms go after unpaid taxes, because private collection distorts the public interest" (Editorial Board, 2009, August 27).

In their current state, tax lien sales have been criticized for providing private investors with "excessive returns," at the cost of property owners, via overly high interest rates, penalties, and fees and producing a "disproportionate loss of equity" for property owners. As **Rao** discusses, lien buyers deserve a reasonable return on investment, because they accept collections risk and effectively loan tax payments to the taxing authority while waiting for delinquent owners to pay. However, as he states, while

> "tax lien investors should receive a reasonable return on investment, taking into account potential risks related to the particular state foreclosure process,... promoting excessive investor profits should not be the goal of the tax sale system, and these profits should not come at the expense of home preservation for property owners" (33).

Interest rates, penalties, and fees that are too high, and do not reflect the true cost of capital and delinquency enforcement services, respectively, make it difficult for owners to redeem, by rapidly increasing small- to moderate- size debts. The foreclosure process, which depends on the state, can result in liens/properties being sold for only the amount of the liens, which can be low relative to the total property value. In contrast, in mortgage foreclosure, the owner typically owes an amount closer to the property value. The foreclosure process makes it likely that some owners will lose significant equity if they do not redeem, and enables buyers to get properties at minimal cost (Rao, 2012).

Second, tax lien sales have been criticized for offering local governments lower rates of return than possible through alternative collections mechanisms. In particular, with auctions and negotiated bulk lien sales, the city does not keep residual ownership, and therefore does not receive any "upside," or collections over and above those used to set the discount rate (Poindexter, Rogovoy, & Wachter, 1997). Based on an analysis of negotiated bulk lien sale transactions between the City of Rochester and American Tax Funding, LLC, the Center for Community Progress found that the city might have achieved higher returns by holding onto its lien portfolio or being more selective about the liens it sold and pursuing contracted servicing. The city conducted 4 transactions with ATFS in Q1 2009, Q3 2009, Q4 2010, and Q1 2012), selling a total of 20,948 liens for $20,940,000, at significant discounts to their face value, for an average rate of approximately 45 cents on the dollar. As of February 2013, ATFS had received an IRR of 7.1% on the first transaction (paid $6.04 million for 5,168 liens and received $6.73 in redemptions and interest on 3,062 liens redeemed or foreclosed) and an IRR of 25% on the second transaction (paid $4.98 million for 5,391 liens and received more than $6.66 million in redemptions and interest on 2,793 liens redeemed or foreclosed) (Center for Community Progress, 2013). In a similar vein, **Marchiony** suggests that "a combined strategy of government servicing and delinquent tax anticipation notes (DTANs) offers the most political accountability, financial transparency, and government control over externalities," versus tax lien sales (221). DTANs are short-term bonds backed by delinquent tax receivables (liens), which are treated as assets against which funds can be borrowed, rather than assets to be sold. Cities sell the bonds to investors, who receive payment and a small amount of interest upon collection. Because the government maintains control over collection, it receives all interest and penalties, minus the cost of borrowing from bondholders, which is usually low, and therefore can receive higher rates of return. Essentially, DTANs function as an inverse securitization, where the government keeps the collateral. The "trick" with DTANs is determining the amount that local governments can borrow from bondholders, based on lien collectability. She recommends pairing DTANs with contracted servicing or consolidated government servicing. Consolidated lien servicing involves

transferring lien servicing from one level of government to another level (i.e., city to county, state, or regional). Contracted servicing allows the government to control servicing via contract terms and oversight, wih the ability to terminate for violating consumer rights and/or due process (Marchiony, 2012).

Correcting the Defects of Tax Lien Sales

If cities want to sell their tax liens to get an immediate infusion of cash and limit resources spent on collection, they should use liens strategically and correct their defects. As evidenced by the Washington, DC example and the above discussion, it is absolutely essential for cities to protect owner-occupants, in terms of both their "right of redemption" and equity invested, and correct misaligned incentives between the taxing authority and third party investors. This misalignment consists of the city's commitment to recovering unpaid taxes and/or returning properties to productive use, versus just maximizing profit.

Cities can use the following strategies to correct tax lien sale defects.

1. Consider the appropriate sale method: **Poindexter et al.** argue, for example, that relative to the auction and securitization methods, the negotiated bulk lien sale method may be the most effective in supporting community development. One reason for this is that the pool is likely to include both desirable and undesirable liens, because the taxing authority does not have to meet rating agency demands, as in securitization, so that it can require purchasers to accept less desirable liens. However, Poindexter et al. suggest that securitization may be the best option for cities with large lien pools, because they can retain residual ownership to experience the "upside" of any collections in excess of those predicted to determine the discount rate, and therefore may experience a better return on asset than via bulk sales. Relative to auctions, via securitization, they can better spread out transaction costs over the pool. The city can also direct the trust to support secondary goals (Poindexter, Rogovoy, & Wachter, 1997).
2. Consider the appropriate liens to sell: Most likely, local governments should exempt the most vulnerable (low-income) owner-occupants from tax lien sales: those over the age of 65, that are completely disabled, that have an income below the poverty threshold, and/or that live in a single-family residence with a value below a set amount (Rao, 2012). For example, as of 2012, New York City did not sell the tax liens of owner-occupants who were senior citizens, disabled individuals, veterans, active military personnel and spouses, and individuals receiving the New York State Property Tax Credit (filer income $18,000 or below; property value $85,000 or below) (New York City Comptroller, 2012). Based on the outcome of negotiated bulk lien sales in Rochester, the Center for Community Progress recommended limiting the lien types sold, "to optimize both the fiscal and community impacts of these sales" (44). It suggested selling only high-collectability liens, with a high redemption likelihood, for which the taxing authority would be able to receive face value or more, and hold onto low-collectability liens, with high foreclosure likelihood, to pursue bulk foreclosure processes (Center for Community Progress, 2013). In addition, local governments should consider the right lien categories to sell. For owner-occupants, the taxing authority may want to sell just property tax liens, but for investor-owners, they may want to sell property tax liens, emergency repair liens, and water and sewer liens. In 2007, the New York City Department of Environmental Protection, which is responsible for water and sewer, allowed the sale of stand-alone water liens through Local Law 68. The Neighborhood Economic Development Advocacy Project and Legal Aid Society testified that this decision led to an increased risk of foreclosure among low-income owner-occupants (New York City Comptroller, 2012).
3. (Have states) limit delinquency interest rates, penalties, and fees to prevent excessive returns: Rao suggests that the interest rate be tied to an established benchmark (i.e., the federal funds rate, plus additional points to reflect collection risk), so that it delivers a reasonable return, but does not forestall redemption. The state could set the interest rate each year, based on the benchmark, and/or the taxing authority (municipality) could indicate the rate in effect at the time of each sale, to apply to the redemption of all property sold at that tax sale. In addition to reducing the incentive for lien buyers to extend delinquency to increase interest, setting the interest rate in this way would also attract buyers, by allowing the interest rate to increase when other interest rates are doing so,

and thereby making liens competitive with other investments. In addition, the state could establish a maximum fee schedule for lien sale-related activities, such as title searches and attorney involvement. It could also set a timeline for fees, wherein they could be charged only after the lien buyer initiates the foreclosure process, so they are not a barrier to prior redemption.

4. Provide appropriate notice and redemption opportunities: The taxing authority should require lien buyers to inform owners about their "right of redemption" and provide them with payment plan options that match those offered by the city. Lien buyers should clearly notify owners about the period of time they have to redeem, the exact amount it will cost (including all interest, penalties, and fees), and the risk of losing their property if they do not redeem. In addition, the taxing authority should have the owners make payments directly to it, so the process is simple and there is no opportunity for payments to be lost.
5. Avert overly fast foreclosure by establishing a two-step foreclosure process for owner-occupants: Rao recommends that, if the owner does not redeem during the allotted "redemption period," the lien buyer should be required to seek a court order authorizing the final sale of property, versus having the lien certificate automatically converted into a transfer or conveyance of property via passage of a specific amount of time, expiration of the redemption period, or administrative action of the local taxing authority. This extra level of oversight is appropriate given the fact that a private entity, and not the city, is foreclosing upon the lien. Essentially, the court can act to protect the owner-occupant's interests. It should be allowed to require the lien buyer to contact social service or housing counseling agencies on behalf of the buyer before proceeding with foreclosure. In addition, the court should confirm the final sale and make sure the sale price was fair and any surplus funds were promptly paid to the owner, after satisfying court costs and additional liens (Rao, 2012). Former owners should have the right to remain in their homes under a fair rental agreement. In regard to mortgage foreclosure, New Jersey has proposed legislation that would permit owners to remain in their home, paying fair market rent, until it was sold to a new buyer who planned to use it as their own residence (Mallach & Vey, 2011).
6. To protect owner-occupants' equity, sell liens/properties for the highest value, so if the owner does not redeem, they are compensated for the loss of their property: If liens/properties are going to be disposed of a third party, states should change their tax lien sale procedures so liens/properties are always sold to the highest bidder, rather than just the outstanding lien amount. Currently, almost one-third of states do not attempt to sell liens/property in highest-bid auctions, requiring the only bid that must be accepted at auction to be the outstanding lien amount, even if the property is worth significantly more. The taxing authority should be able to get a fair market value appraisal before the sale, with the new owner to pay the cost. The court should have the authority to withhold confirmation of sale if the auction bid is significantly below appraised value (i.e., below a set percentage). This has the side benefit of ensuring that the individual purchasing it is likely to be a responsible owner who will maintain it, versus a speculator seeking an extreme bargain. For the original owner, the redemption amount should be set at the taxes owed, rather than the tax sale bid amount, so that the latter does not prevent individuals from redeeming. The surplus (overbid) can be returned to the buyer (Rao, 2012).
7. Make sure that third parties are prepared to care for properties that they receive: Governments should ensure that lien buyers are prepared to maintain the corresponding properties if necessary, so that they do not become just another non-cooperative PP owner. For example, in its negotiated bulk lien sales, the City of Rochester has experienced challenges with "limbo properties." Limbo properties are properties for which ATFS has purchased the lien, but has not yet collected the unpaid taxes from the owner or foreclosed upon the property. During this interim period, ATFS is not the property owner, so it has no direct incentive to maintain the properties. ATFS will foreclose only when the redemption likelihood is low, and it expects the foreclosure to generate sufficient return (through property sale) to cover the lien amount and/or satisfy loss mitigation goals. In Q3 2012, based on the total number of properties for which ATFS held outstanding liens, there were 4,779 "limbo properties" in Rochester, accounting for 7% of the city's total properties and 25% of the

properties with liens purchased by ATFS. Furthermore, 36% of the "limbo properties" had outstanding code violations. Rochester community groups have complained about the difficulty of getting information about when ATFS will foreclose on properties and they will become available for purchase and redevelopment. The city has limited capacity to intervene in regard to "limbo properties," because while the city can buy back liens under its negotiated bulk lien sale contracts, it must pay the liens' full face value, versus the discounted value for which ATFS bought them. The Center for Community Progress has recommended that lien buyers be required to move to foreclosure within a specified timeline, if owners are truly unresponsive (New York City Comptroller, 2012). Generally, local governments should be able to hold lien buyers responsible for maintaining properties under their control. To this end, they can use the mortgage foreclosure model for (third party) tax foreclosure. For example, the New Jersey Creditor Responsibility Act, established in 2010, requires individuals who initiate mortgage foreclosure proceedings on a property to assume maintenance responsibility if the owner abandons it. They can held accountable for code violations even if the title has not yet been transferred to them, becoming accountable as soon as the property falls out of code compliance. Governments also should have the authority to "recapture" liens if lienholders fall to maintain property (Mallach & Vey, 2011).

8. Not allow third parties who have engaged in problematic behavior to participate: Government should mandate that lien buyers have no track record of collusion, antitrust violations, to avoid a situation like in DC, where the city was transferring properties to problematic investor-owners (Rao, 2012).

The Limitations of Lien Sales, Regardless of Method

Beyond the issue of getting tax lien sales "right," there is another conceptual challenge with tax lien sales. Even if cities try to sell all of their tax liens, -- whether through auction, negotiated bulk lien sales, or securitization, -- there are still going to be properties that do not sell, for which cities are going to be the "landlord of last resort." These properties are likely to be the "worst of the worst," with extremely low collectability. In particular, they are likely to have extremely high lien-to-value ratios, either because the liens are so high, due to interest and penalties that have accrued over time, or because the property value is so low, due to property deterioration over time or declining neighborhood quality. When the lien-to-value ratio is 1 or greater, then no owner will redeem or purchaser will buy, at least when the minimum bid is the unpaid balance. Ironically, the properties that are not going to fall into this category are those where the owners have invested significant equity into the property, and only recently become delinquent, or "speculative" properties, located in areas where property values are rising, even if the individual conditions of the properties are poor. In other words, the properties that are easiest to sell are the ones that the owners most want to keep, making tax lien sales effective in motivating collection, but not necessarily in preserving homeownership.

In auctions, these "unsalable" liens will surface in the form of properties that just do not sell. This is especially true if the jurisdiction require property to be sold for the full face value of the liens. For example, **DeBoer and McNamara** analyzed the sale of 1,073 tax-delinquent parcels offered at Indianapolis' 1987 tax sale auction. Indiana uses the overbid method of auction, with the minimum bid set at the delinquent taxes, interest, and penalties owed. To successfully purchase a lien (tax certificate), the buyer must place the minimum bid, plus the highest additional amount (the overbid). In the 1987 sale, almost 40% of the parcels remained unsold. The parcels that did sell were the more valuable and developed parcels and residential parcels located outside the city, reflecting disinvestment at the core. Significantly, DeBoer and McNamara found that a $1,000 decrease in the minimum bid would increase sale probability by 2.3%; however, since the average minimum bid on all parcels was only $855, reducing the minimum bid enough to produce significant additional sales may not be possible (DeBoer, Conrad, & McNamara, 1992). Likewise, of the 39,000 tax-foreclosed properties offered by the Wayne County Treasurer's Office at auction, only 28% have sold, leaving the rest to be managed by the Treasurer's Office or transferred to the City of Detroit. In 2010, more than 8,000 tax-foreclosed properties in Detroit failed to sell at public auction for even the minimum bid of $500 (Coenen, et al., 2011).

In negotiated bulk lien sales, these "unsalable" liens will emerge as the properties that make it difficult for cities to convince buyers to accept the transaction. While cities can get buyers to take some undesirable liens as a condition of receiving other more desirable liens, they cannot require them to take too many undesirable liens; presumably, there is a "breaking point" where buyers will no longer be interested in bidding if the cities add any more, because the cumulative lien quality is just too low. Alternatively, they will demand an extremely low price. In 2007, Xspand paid 105% of the total face value of liens it acquired from Erie County, because it expected to be able to collect the face value, plus the 18% penalty rate. However, post-recession, firms are conducting negotiated bulk lien transactions at a discount. For example, American Tax Funding Services (ATF) has typically paid between 43-46% of lien face value (Poindexter, Rogovoy, & Wachter, 1997). In securitizations, these "unsalable" liens will manifest as the properties that cities cannot include in the transaction if they want to achieve certain ratings. Thus, even if they went the route of completely privatizing collection, with its attendant complications (as previously discussed), cities need to be prepared to receive and effectively manage these highly distressed properties. It is ideal not to privatize these, because servicers may not be prepared to handle them. For example, pre-recession, third parties paid a premium for the right to acquire tax liens in negotiated bulk lien sales.

To make liens more attractive, as discussed by **Alexander**, governments should consider enabling economies of scale through more uniform enforcement procedures and overcoming challenges related to due process requirements, as confusion around constitutionally adequate due process requirements increases transaction risks. As Alexander notes, "The elusive nature of this constitutional test poses significant barriers to predictability, certainty, and stability in the tax foreclosure process... It also casts continuing doubt on the insurability and marketability of properties" ((Alexander, 2000, 805).

Summary:

This chapter considers the three collection methods available to cities: public collection, contracted third party servicing, and privatized collection (tax lien sales). It examines the three main types of tax lien sales, -- auctions, negotiated bulk lien sales, and securitization, -- and evaluates the relative advantages and disadvantages of each. It then discusses the major challenges with tax lien sales, in both theory and practice. In particular, it focuses on the potential for misaligned incentives, namely that the lien buyer, seeking profit maximization, will either foreclose too slowly (in order to accumulate extra interest and fees) or too quickly (in order to take a property with significant equity, before the owner is able to redeem it or find a buyer to do so), relative to what the taxing authority might do. It then makes suggestions for correcting tax lien sale defects, recognizing that cities may turn to them to get receivables upfront and reduce their direct enforcement burden. These recommendations center on protecting owners and controlling investor profits (by limiting interest rates and fees and establishing foreclosure oversight), maximizing public return (by choosing the appropriate lien sales method and liens to sell), and preventing the emergence of "limbo properties" (by ensuring that lien buyers are prepared to receive and manage properties, if necessary). Finally, it addresses a major limiting factor on tax lien sales: the fact that, even if cities want to privatize all collections, they may not be able to do so, because lien sales depend on demand from the private market. Thus, even if cities were to commit fully to tax lien sales, they need to be prepared to assume responsibility for the "worst of the worst" properties, in terms of physical and financial distress and market prospects.

CHAPTER 5:
DISPOSING OF TAX-DELINQUENT PROPERTIES EFFECTIVELY

Cities must be thoughtful about how they treat tax-foreclosed property because it can involve a significant amount of land, larger than that associated with planned redevelopment efforts in many cities (Dewar, 2009). Cities need a comprehensive, phased strategy for handling the PP and TDP they receive that leverages the public, private, and nonprofit sectors. For example, Baltimore has partnered closely with the private sector in the Vacants to Value program (Leonard & Mallach, 2010). As **Schilling** asserts,

> "Communities must design and adopt a comprehensive 'vacant properties action plan,' as the long-term impacts from vacant and foreclosed properties will be with us for decades to come. [This plan will] stabilize neighborhoods and... lay the groundwork for catalytic public and nonprofit development initiatives and eventually the return of private investment." It should include a timeline that explains how resources will be allocated over time, so that "the right [approaches] are applied to the right places at the right time" (Schilling, 2009, 112).

Building on the previous discussion, this strategy should be predicated on a few basic principles. First, cities should seek to prevent properties from coming into public ownership, -- by assisting cooperative owners and prompting non-cooperative owners to take action, -- but be prepared to manage them effectively if they do. Second, recognizing their limited resources and flexibility of action, which compromises their ability to operate properties long-term (especially occupied properties, which bring with them both tenant demands and significant liability), and their extensive other responsibilities, cities should minimize their holdings and transition properties back to the private market whenever possible. Here, the private market is used to refer to both private and non-profit entities. Third, to promote disposition synergies and economies of scale, cities should manage their entire property portfolio together. This portfolio consists of two separate, but related inventories: first, properties willingly acquired to serve a public use or purpose through direct purchase or eminent domain, and second, properties received by the city as the "landlord of last resort," or the PPs and TDPs discussed in this thesis. Fourth, cities should take both an individual and collective approach to properties, recognizing that each property is unique, but there also opportunities to "bundle" properties and treat them together, in terms of property and neighborhood characteristics. Fifth, and finally, cities should recognize the temporal component to disposition, as markets and submarkets, uses, and users can evolve over time.

This chapter conceives of the disposition process as involving three major, and successive, steps for each property, as outlined below.

Step 1: Determining property usage and timing of disposition.

As with identifying and prioritizing PP and TDP (Chapters 2 and 3), cities should take a highly data-driven approach to this process. To do this, cities need three systems, recognizing the need for decision-making on both the property and neighborhood level:

<u>System 1: Central property inventory</u>

The central property inventory should list all of the properties that the city owns, broken down into properties that it willingly acquired (through direct purchase and eminent domain) and those that it received as the "landlord of last resort." It is important to differentiate between these two groups because of the implications for the level of current demand for the property and the city's interest in holding onto the property. Specifically, properties that the city gained through tax or lien foreclosure may have low demand associated with them, because no one "redeemed" them prior to foreclosure, and are likely parcels that it wants to recycle quickly.

The inventory should also track critical land and building characteristics.

Category	Characteristics	Determined Via
Land characteristics	• <u>Location</u>: Landlocked (surrounded by other parcels that the city does not own); close to other city-owned parcels • <u>Developability/buildability</u>: Slope (steep/flat); ledge; size (large –	Inspection

	5,000 square feet); odd-shaped; very easy to develop/very difficult to develop • Environmental: Known environmental issues; suspected environmental issues; wetlands/drainage	
Building characteristics	• Occupancy: Occupied or vacant, owner-occupant or tenants • Condition: Good, fair, poor, structurally unsound/demolition required	Inspection

In addition, the inventory should track when the properties came to the city, as market conditions may have changed since the time of acquisition. For example, a property that was tax-foreclosed in the 1970s may be highly desirable now, if it is located in an area that experienced subsequent gentrification.

Finally, the inventory should track all costs associated with properties. Ideally, the city should be able to put an exact dollar figure on each property, so it can see which properties are the most expensive to hold, and also get a sense of what it would need to charge to recover its costs. As discussed previously, potential sources of cost include: police and fire service calls, code violation corrections, basic property maintenance, and environmental uses.

System 2: Property reuse potential score

For property-level decision-making, cities should consider the current and future reuse potential of the site, relevant to possible uses, both broad categories (residential, commercial, industrial, mixed use, and open space) and subcategories within that.

Property Type	Reuse Considerations
If occupied structure	• Length of continued tenancy (i.e., how long it will take to relocate tenants to an appropriate and comparable location) • Condition of structure • Zoning (indicates surrounding use and impacts reuse potential) • Transportation and service infrastructure • If site reflects "highest and best use"
If unoccupied structure	• Condition of structure • Zoning • Transportation and service infrastructure • If site reflects "highest and best use"
If vacant land	• Developability/buildability • Zoning • Transportation and service infrastructure

If the site has a structure, the first decision to be made is whether to demolish it. **Mallach** identifies a list of factors that cities should consider when assessing which structures to demolish: building quality (including architectural or historical value); extent of disrepair (whether it poses an immediate threat to health and safety); rehabilitation cost (relative to subsequent resale value); redevelopment or reuse possibilities created by demolition; how the building matches with current demand (both in terms of whether it represents the "highest and best use" and/or is part of an oversupply); and location (whether it is in an area where the city has decided to concentrate or withdraw investment). Cities should also weigh the demolition costs relative to expected maintenance savings associated with keeping a vacant lot vs. a vacant building and the amount they expect can be recovered via future sale (Mallach, 2012).

If the choice is to demolish the building, the next issue becomes whether to leave the site open or redevelop it – and if so, at what timescale and for what use. As discussed by **Utter**, Denver provides a useful model for determining use. The Office of Asset Management classifies properties both by current and potential use, in four categories: city use, financial investment, social investment, and surplus. Each use is

related to specific goals: city use (maximize efficiency, minimize costs, and charge internal rent); financial investment (maximize returns); social investment (quantify and minimize the subsidy); and surplus or underutilized property (maximize financial returns) (Utter, 1989).

In terms of uses, if the market is not oversaturated, -- and this is a very large if, -- developing affordable housing may be a compelling option, for three reasons. First, there tend to be a limited number of buildable sites in core urban areas, and cities should take advantage of them to support density and efficient service provision. Second, there is a national shortage of high-quality housing available to low- and moderate-income HHs, because of reduced government subsidies, limited regulations to reduce rental housing prices, and the increasing cost of newly constructed rental housing. According to the March 2006 report, "America's Rental Housing," by Harvard's Joint Center for Housing Studies, 200,000 units of rental housing are being lost annually. From 1993-2003, an estimated 2.3 million rental units were demolished or removed, with "over half of these rentals were in older (built before 1960) one- to four-family buildings located in the nation's most distressed neighborhoods" (Keating, 2007). Third, the housing that is being demolished on these PP and TDP sites, if the city does not foreclose on them quickly enough for unpaid taxes and/or code violations before they have deteriorated too much, is likely to be low-income. Thus, by redeveloping high-quality units on these sites, the city is performing replacement, improving the aggregate condition of the neighborhood, and increasing the property tax base. If significant time has passed since the property was taken and demolished, and the site is located in a gentrifying neighborhood, affordable housing supply may be decreasing (Mallach, 2005)

If housing is not the "highest and best use," because the market is oversupplied with properties that are comparable or superior to the current building, -- two other options are green space or commercial or industrial development (Kromer, 2009, December 10).

Category	Description	Developable?	Coordinating Agency
Ecologically important	This category includes wetlands, urban wilds, and important ecological corridors. These sites support the urban environment by decreasing stormwater runoff, reducing the urban "heat island" effect, and supporting biodiversity.	No	Conservation Commission, Environment Dept.
Located in areas with high need or demand for open space uses	This category includes sites in areas where existing open space is limited or the community seeks specific open space uses.	Maybe	City Planning Dept., Parks Dept.
Proximate to existing open space resources	This category includes sites that could be used to buffer existing open spaces, be combined with them to yield larger open spaces, and/or fill in "gaps" or "missing links" in open space systems. It also may include sites already subject to informal open space uses, such as community gardens established on city-owned land without permission.	Maybe	Parks Dept.
Physically difficult to develop	This category includes wetlands, steep slopes, ledge areas, and environmentally contaminated areas.	No	Real Estate Dept.
Suitable for land banking (Financially difficult to develop)	This category includes sites that are not economically feasible to develop now, but could be in the future. They are sufficiently large to support development.	Yes	City Planning Dept., Housing Dept.
Viable as	This category includes sites where there is a	Maybe	Neighborhood

community-run open space	community group with the financial and organizational capacity to assume long-term management. They are able to fund the ongoing maintenance of the property, have sufficient staff and/or volunteers, and a track record of success.		Development Dept.

Green space uses can be revenue-generating or non- revenue-generating, temporary or permanent, and publicly or privately accessible. Generally, selection of green space uses depends on the level of need for open space in the community; the presence of qualified receivers prepared to hold and maintain it; liability challenges associated with opening land no longer owned by the municipality to public use; and desire to support temporary uses that leave the land open for future development. For example, in certain instances, solar farms may be an attractive choice, because they are a relatively quiet and non-noxious use that provides income in the short term, but leaves the land available for development; the solar farm can sign a ground lease for 15-20 years, give the municipality a percentage of the power proceeds; and assume maintenance responsibilities for the duration of the lease. Drawing on **Mallach**, potential green space uses are outlined below, along with viability considerations (Mallach, 2012):

Open Space Use	**Considerations That Affect Viability**	**Revenue-Generating?**	**Temporary or Permanent?**	**Private or Publicly Accessible?**
Active park (Playgrounds, tot lots, and/or sports facilities)	• Need: Young population • Significant liability costs: Not covered under the Massachusetts Recreational Statute. • Expensive to maintain, because of their equipment and the intensive use they receive → Require sustained endowment through fundraising or a Parks Improvement District, modified bid, and/or other taxing entity)	No	Permanent	Publicly accessible
Community garden	• Need: Less community garden space per capita than city average. Limited access to fresh food. • Receiver with financial and organizational capacity • Opportunity to build formalize "renegade" gardens located on suitable sites and/or expand existing gardens. • Opportunity to connect to food banks, food pantries, soup kitchens, and/or schools.	No	License	Publicly accessible
Dog run	• Site feasibility: Size; grassy, open land with well-drained soil; flat (so no erosion, do not contribute to runoff contamination from pet wastes); in vicinity of highly	No	Permanent	Publicly accessible

	populated areas; not too close to residential housing (noise complaints)			
Open space facilities included in development project	• Can be included as part of city-owned development projects • Developers could be required to provide attractive privately-owned public space	No	Permanent	Private
Parking	• Low-value use	Yes	License	Private
Passive park	• Safety • Receiver with financial and organizational capacity	No	Permanent	Publicly accessible
Solar farm	• Zoning • Site feasibility: Size; slope; light exposure (south-facing); large site not previously allocated for other uses. • Renewable energy incentive programs. • Added value: SF leaser will perform maintenance and potentially some basic site preparation, such as site clearing or leveling land, during the lease.	Yes	License	Private
Tree farm	• Require less direct maintenance than community gardens or urban agriculture • Can be commercial or non-commercial • Receiver with financial and organizational capacity	Yes	License or permanent	Private
Urban agriculture	• Need: Limited access to fresh food. • Site feasibility: Size; slope; light exposure (south-facing); water access. Large site not previously allocated for other uses. • Opportunity for community economic benefits: employment, job and skills training.	Yes	License	Private
Yard sale/side yard	• Must be valued below a certain amount to avoid triggering competitive bid process	Yes	Permanent	Private

If green space is not viable or needed, cities can support commercial or industrial uses, linked to economic development goals, like the growth of regional industry clusters (Mallach & Vey, 2011).

System 3: Market model that effectively segments neighborhoods and identifies inflection points

For neighborhood-level decision-making, it is important to build an ongoing, continuously updated market model to understand the current state of the market, historical trends, and probable future trends and assess the demand-supply gap (positive or negative). The model should include supply and demand determinants and indicators of both investment and disinvestment (Mallach, 2005):

Category	Component
Supply determinants	• Net additions to supply: Construction starts and completions minus demolitions and renovations: If less than 0, then below replacement rate **Indicators of potential oversupply:** • Positive completions minus net absorption • Month's supply (current vacant space plus new construction starts, divided by 1/12 of annual net absorption) greater than average length of time to complete new construction
Demand determinants	• Net absorption • Rental and sale activity • Economic drivers: Job growth, income growth, business growth (new business permits) • Demographic drivers: Population growth • Quality of life indicators: Crime, fires
Supply-demand interactions	• Vacancy • Price and rent trends, especially relative to replacement and/or rehabilitation costs: Both absolute and percentage
Investment indicators	• Increasing homeownership rates • Decreasing tax delinquency rates (especially serious tax delinquency), and increasing redemption rates • Decreasing tax foreclosures • Decreasing mortgage foreclosures • Decreasing code violations • Increasing permitting activity: new construction and building alterations, versus demolitions • Increasing rental and sales activity (prices and volumes) • Lending activity

As discussed previously, cities should be tracking significant amounts of this data already, to assist with preemptive identification of PP and TPD. The challenge will be assembling this data from the agencies responsible for it, and ensuring that it is regularly updated, so that trends can be tracked over time (Geeting, 2013, September 11).

The market model should be used to segment neighborhoods (submarkets), recognizing that different types of neighborhoods require different types of interventions at different timescales, because of the need to build demand and assemble funding over time. Focusing on housing, Mallach suggests 3 classifications: "stable or regionally competitive neighborhoods"; "intermediate neighborhoods"; and "disinvested areas." Stable or regionally competitive neighborhoods have steady housing demand, with stable or increasing housing prices that are greater than replacement or rehabilitation costs. Intermediate neighborhoods have declining homeownership rates, decreasing housing prices, increasing code violations, and increasing tax delinquency. Disinvested areas have high levels of code violations, tax delinquency, a disproportionate number of abandoned properties (properties with a combination of physical and financial distress), and a large amount of vacant land, because of long-term disinvestment (properties deteriorated and were demolished). Mallach supports smaller, more targeted infill development and rehabilitation, done by CDCs and local contractor-developers, for intermediate neighborhoods, in contrast to "large-scale, long-

term transformative strategies" for disinvested areas. For example, CDCs and local contractor-developers can focus on vacant houses on otherwise fully occupied blocks, as well as some more ambitious anchor projects, such as larger apartment buildings and small commercial and industrial buildings, where sites are available and economically viable. For disinvested areas, Mallach supports either a large-scale redevelopment project, to provide a concentrated, substantial infusion of investment that is capable of countering the trend towards disinvestment, or a series of smaller projects over time, provided that there is a CDC or another entity with the organizational and financial capacity to maintain the required level of investment over time. He suggests linking housing investments to other kinds of investments, including open spaces, schools, transit access, and commercial development, which support a motivating quality of life. For Mallach, the critical task in these neighborhoods is to build demand, rather than create excess supply and/or take demand from other at-risk areas (intermediate neighborhoods) (Mallach 2005).

As discussed by **Kromer**, Philadelphia actually implemented a neighborhood segmentation approach as part of the Neighborhood Transformation Initiative, a 5-year revitalization plan run by the Office of Housing and Neighborhood Preservation and financed by $295 million in bonds. OHNP used a segmentation performed by The Reinvestment Fund, a research firm, to target neighborhoods for specific types of intervention. For its major activities, NTI carried out large-scale demolition of dangerous residential, commercial, and industrial properties; stabilized (cleaned, sealed, and repaired major systems) properties for future rehabilitation; conducted land assembly; and supported housing investment and neighborhood preservation efforts. The segmentation divided the city's neighborhoods into clusters, based on housing value trends, the age and condition of buildings, the use mix, homeownership versus rental percentages, and resident credit scores to identify neighborhoods experiencing upward, downward, and ambiguous value trends. In addition to the segmentation, OHNP also used the Neighborhood Information System (NIS) to guide its reinvestment efforts (Kromer, 2002).

In addition to segmenting neighborhoods to identify the type of interventions that might be appropriate, the market model should assist with identifying "inflection points" to guide the timing of these interventions. Specifically, the model should seek to define locations where disinvestment is being replaced by investment, so the city can build on this trend through its disposition actions. In this regard, monitoring trends in the investment indicators will be critical. For example, **Smith, Duncan, and Reid** used tax delinquency data to understand the spatial movement of investment, via the emergence and spread of a "frontier line" along which reinvestment replaced disinvestment, in New York City's East Village during the 1970s-1980s. Under this formulation, "the frontier line represents the leading historical and geographical edge of urban restructuring and gentrification." Ahead of the frontier line, properties are still experiencing relative or absolute disinvestment, or "the relative withdrawal of capital in all its forms," and exhibit a rent gap produced by this disinvestment, where the actual capitalized ground rent (land value) received at that location under the present use is significantly less than that which could be received under the "highest and best" use. Behind the frontier line, there is reinvestment, whether in the form of private investment in rehabilitation or construction, public investment in infrastructure, or speculative investment that involves the infusion of financial capital, but not major physical changes. In their analysis, Smith, Duncan, and Reid recognize that both reinvestment and disinvestment are collective processes. When neighborhood quality is declining, a rational, profit-maximizing owner will not invest to rehabilitate or maintain his building, because while it may increase the building's intrinsic value, it does not increase the ground rent at the site, and is unrecoverable via rents or resale price. Likewise, when neighborhood quality is improving, the owner will not maintain his building in poor condition, because he does not fully benefit from neighborhood-wide ground rent increases resulting from capital addition if he does not rehabilitate, although short-term speculative gains may be possible through warehousing (deliberately holding a building off the market while it appreciates) or flipping (buying a building just to resell it).

Smith, Duncan, and Reid chose tax delinquency redemptions to define the "frontier line" instead of mortgage financing increases or building condition improvements (reduced code violations), because the earliest reinvestment may be done by developers who cannot secure traditional financing and financial reinvestment (in the form of paying off the outstanding tax liens) may occur before physical enhancements do. In fact, as discussed by DiGiovanni, during the earliest reinvestment, the owner may actually allow the

building to deteriorate further, to clear the existing low-income tenants, before rehabilitating or reselling it. Smith, Duncan, and Reid compared the peak years of tax delinquency, vacancy, and population loss between 1975-1986. They found that tax delinquency peaked in 1976-1977 and vacancy rates between 1976-1978, depending on the census tract, and the number of households did not increase until after 1982, suggesting a delay of as much as 6 years between the earliest investment and repopulation. They then examined the relationship between the number of buildings in "intermediate" delinquency (6-12 quarters in arrears) and "serious" delinquency (greater than 12 quarters in delinquency) from 1975-1984. Serious delinquency, 12 quarters (3 years), was the de facto threshold for the initiation of foreclosure ("in rem") proceedings. Until 1980, there was an inverse relationship between the number of buildings in intermediate and serious delinquency, with owners partially redeeming seriously delinquent buildings in 1978-1979 to avoid losing them under a new foreclosure law. In 1980, there was a spike in delinquency, with 170 buildings going from intermediate to serious delinquency. However, after 1980, the number of buildings in both categories declined. Therefore, serious reinvestment in the East Village as a whole began after 1980, the peak year of serious delinquency. Smith et al. mapped the frontier line by identifying the "turning point" (peak year of serious delinquency) for each census tract, and then creating contour lines by joining the centerpoints of all tracts with the same chronological "turning points." For tracts with a bimodal distribution, they used the later of the two years. Reinvestment spread faster in areas with contour lines far apart, and slow in areas with contours close together, with sinkholes representing places where reinvestment happened ahead of the surrounding areas and peaks where it lagged behind. They discovered a fairly consistent east-to-west frontier line, with the earliest "turning points" occurring on the western edge of the East Village in 1975-1976 and the latest on the eastern edge in 1983-1985, and every tract experiencing a "turning point" by 1985. There appeared to be two distinct reinvestment periods, with the first 1977-1979 in the western and northern blocks, and the second after 1980, in the southern and eastern blocks, plus those already reinvested in the earlier period. From 1975-1981, the frontier line moved at an average of 100-200 meters per year (Smith, Duncan, & Reid, 1989).

Smith and DeFillippis then continued the analysis, examining serious delinquency in the Lower East Side from 1975-1996, but focusing on the period since 1987. They identified high and low "turning points" for all census tracts and tax blocks, with high turning points representing peaks of serious delinquency, followed by decreasing delinquency and increasing reinvestment, and low turning points representing troughs of serious delinquency, followed by increasing delinquency and disinvestment, from 1988-1996. They then mapped these high and low turning points, creating "iso-annums" linking the centerpoints of census tracts and tax blocks with the same peak and trough years, to create reinvestment and disinvestment contour maps. They found a general decline in disinvestment since 1987, reflecting the neighborhood's overall gentrification. However, they also discovered that reinvestment was a cyclical process, related to cycles in the larger real estate market and economy, showing that the gentrification "frontier line" has become tied to global capital markets. From 1988-1994, the number of properties in serious delinquency increased more than 200%, from a low of 89 properties in 1988 to a high of 282 properties in 1994, revealing the disinvestment associated with the late 1980s to mid-1990s recession. This disinvestment seemed to have spread across the entire Lower East Side in 3 years (1988-1990). From 1994-1996, rapid reinvestment occurred, with the number of properties reduced to 174 by 1996. The earliest reinvestment took place in 1994-1995, in the northeast, area west of Tompkins Square Park, and south. Later investment occurred in the eastern sector between Avenues B and D above Houston Street. By 1996, the entire neighborhood had experienced reinvestment, moderate in some areas and strong in others. Smith and DeFillippis discovered that the post-1987 patterns of disinvestment and reinvestment were much more fragmented than the 1970s-1980s eastward-moving "frontier line," with islands of faster and slower investment scattered throughout the Lower East Side (Smith & DeFilippis, 1999).

Hackworth developed a standardized index to compare disinvestment and reinvestment levels in individual census tracts over time. To create the index, he divided the level of disinvestment or reinvestment activity (demolitions and building renovations, respectively) in the census tract by the level of activity citywide in the first period, and then subtracted from that the same metric calculated for the second period, to find changes in the total disinvestment and reinvestment between the two periods. He defined census

tracts experiencing high increases and high decreases as those experiencing quantitative change greater than one standard deviation from the mean for all census tracts (Hackworth, 2001).

Ideally, using the market model to identify "inflection points" would allow the city to do 3 things. First, it would enable the city to provide strategic support (financial or nonfinancial) to "tip the balance" and prompt investment, recognizing that it must be a collective decision. Second, it could accelerate investment, by building on opportunities already identified by private actors. Finally, it could try to "pulse" disposition when (and where) the market is strong. The city could promote the development of adjacent or nearby parcels to build momentum and market confidence and create a positive feedback loop in these areas, where investment brings more investment. According to Kromer, Philadelphia and Camden have achieved redevelopment success with "small parcel transactions," involving single vacant lots or buildings on blocks that are otherwise fully occupied, infill development on medium-sized (half-acre or less) vacant lots in neighborhoods located in or near emerging or strong markets, and sites near anchor institutions like academic and health centers (Kromer, 2009, December 10).

There are three relevant prototypes for using a market model to guide disposition. The University of Chicago's Data Science for Social Good Fellows program partnered with the Cook County Land Bank Authority (CCLBA) to build a market model to identify which properties are the best candidates for redevelopment. In addition, DSFSG ultimately sought to evaluate outcomes associated with different redevelopment strategies, such as the effect on neighboring property values if parcels were turned into open space, versus redeveloped or rehabbed (Dale, 2013, July 23). DSFSG analyzed variables in three categories: property conditions, submarket conditions, and neighborhood potential. Property condition variables included vacancy and assessed values. Neighborhood market conditions included mortgage foreclosure rates, tax foreclosure rates (number of properties listed on the "Scavenger Sale" list, indicating they have taxes delinquent for 3 or more years and are available for sale by the County Treasurer; quit-claim deeds), lending activity (mortgage approval rates and loan costs; number of cash-financed and/or low-value transactions), and building permit activity. Neighborhood potential variables include zoning, crime activity, transit locations, demographics (median income; owner occupancy rates; household sizes), brownfield locations, and incorporation into community plans. DSFSG then ranked neighborhoods from 0-100, in terms of reinvestment potential, considering housing affordability (median income versus median housing prices, to find the percentage of residents capable of buying property in the area), community stability, and vacancy (Velez, 2013). As previously discussed, the University of Pennsylvania has also built the Neighborhood Information System (Hillier, Culhane, Smith, & Tomlin, 2003). In addition, Case Western University operates the NEO CANDO property database, serving Cleveland and Cuyahoga County, Ohio, which helps prioritize properties for disposition (Schilling, 2009).

Step 2: Once the property usage and timing of disposition is determined, choose the appropriate pathway for disposition, recognizing that there are multiple disposition pathways that cities can use.

As previously discussed, there are actions that take properties out of city control even before foreclosure occurs, namely receivership and the sale of tax liens (not deeds). There are 4 primary methods that cities can use, and all carry with them significant advantages and disadvantages that make them suitable for different property types, at different timeframes. This thesis does not take an absolutist approach, supporting only one method, but suggests that cities should consider using multiple methods, in conjunction with each other. The following section outlines the 4 methods, the property types for which they are most appropriate, and improvements to make them more effective, or maximize revenue and ensure productive reuse.

Option 1: Sheriff's sale or tax deed auction

The sheriff's sale or tax deed auction is a close cousin to the tax lien sale. The advantages of the sheriff's sale are that it tends to be fast, generates immediate revenue for the city, consists of a simple process (highest bid wins), and requires minimal city involvement before the sale. The city must just determine which properties are to be sold, list them for auction, and hold the auction. The disadvantages are the need to ensure the properties are transferred to a responsible owner and do not experience

"bounceback" (where the properties become tax-delinquent again, and the city has to take them back) and the challenge of factoring in non-monetary considerations. Specifically, the imperative to sell properties to the highest bidder and to pay the full property cost upfront, without the opportunity to obtain financing, can prevent potential owner-occupants, nonprofits, and community groups from taking ownership.

For example, **Dewar** compared property outcomes associated with auctions, versus other disposition methods, in Michigan, following the passage of a 1999 state law that reduced the time to foreclosure from approximately 7 years to 2-3 years, ended tax lien sales, and required the county treasurer to auction all property after receiving the foreclosure judgment. Dewar examined all properties foreclosed in Detroit in 2002-2003 and Flint from 2002-2004, comparing outcomes with a random sample of Flint properties disposed of through managed sale by Genesee County Land Bank (GCLB) and a random sample of Detroit properties foreclosed under the old law and sold by the City of Detroit's Planning and Development Department (PDD). GCLB worked with community groups to promote reuse in selected areas, sold properties to adjacent owners, and banked land to reduce supply. PDD sold "bundles" of 5 or more properties at once to developers and sold properties to adjacent owners. Dewar found that "auctions do not facilitate the purchase of homes by new owner-occupants, help adjacent owners to expand their properties, [or] contribute to land assembly for new development," and that "a large amount of the property remained vacant with no sign of ownership or use." The GCLB and PDD transactions were more likely to ensure productive reuse. Dewar also discovered that the auctions favored investors, because of the lack of opportunity to examine the property before sale and the need to pay upfront. She differentiated between "overenthusiastic" investors who bought properties to sell or rent, but overestimated potential returns, and "speculative" investors who bought properties to extract remaining value. Demonstrating the presence of investors, Dewar discovered that 71% of Flint properties auctioned 2002-2004 and 40% of Detroit properties auctioned 2002-2003 were purchased by individuals who bought multiple properties. In addition, 23% of Flint properties and 17% of Detroit properties auctioned were "flipped," or resold in the next year. Finally, showing the "bounceback" problem, a significant percentage of properties auctioned in Flint (more than 40%) and Detroit (20%) became tax-delinquent and were foreclosed again by 2007. In many cases, new owners never paid any property taxes (Dewar, 2009).

Similarly, **Coenen et al. (2011)** examined Detroit property auctions from 1999-2011. Like **Dewar**, they found that "the current auction process for selling tax-reverted property in Detroit is not effective for several key reasons, including failing to collect sufficient revenue, creating hardship for homeowners, and not facilitating positive property reuse," and that, "compared to other disposition strategies, such as managed sales or brokered sales, auctions lead to poor outcomes after sale." They discovered that, over time, Wayne County has been selling fewer Detroit properties at auction and recovering a lower percentage of liens on those sold. At the same time, the number of foreclosed properties and the amount owed per property has increased, creating a revenue shortfall. For example, Wayne County sold 86% of properties in the 2002 auction, but only 32% in the 2010 auction. It received 56% of the liens in the 2005 auction, but only 7% in the 2010 auction. In 2004, the mean amount owed per property was $1,162 and mean sales price was $4,280, versus $14,965 and $2,523 in 2010. Wayne County's revenues have been hurt by the fact that since 2005, a larger percentage of properties have been sold in each year's second auction, where the minimum bid is $500, than the first auction, where the minimum bid is the amount of the outstanding lien, because individuals are waiting until the second auction to purchase properties. For example, 84% of properties sold in 2002 were bought at the first auction, compared to only 2% in 2010. Since 2009, redemptions and auction sales have not covered the delinquent taxes, requiring the City of Detroit to pay the Treasurer's Office the shortfall, which was approximately $63 million in 2009. Coenen et al. found the major factors affecting property sales and outcomes to be location, property type, buyer type, time of sale, and purchase price. Properties in stable neighborhoods and areas targeted for future development, and commercial and industrial properties and housing in good condition, had higher sales rates. Properties in stable neighborhoods had better outcomes. Commercial and industrial structures had better outcomes, compared to single-family and duplex homes and vacant lots, except for those purchased by adjacent property owners. Properties sold in 2007 had worst outcomes of all properties sold between 2002-2007. Coenen et al. differentiated between investment, which involves a financial commitment, and reuse, which involves an

expenditure of time and energy, but no financial commitment. Purchasers were more likely to invest in properties with high purchase prices, and commercial properties and residential structures. They were more likely to reuse properties with lower purchase prices, and vacant lots. Many residential structures experienced further disinvestment after auction, with resale rate as an important predictor of disinvestment. Of the residential structures resold at least once after auction, 69% were tax-delinquent, 28% went through tax foreclosure again, and 14% were now city-owned. Like Dewar, Coenen et al. identified 5 types of bidders: "resident buyers," seeking to expand their current property, repurchase a foreclosed home in the second auction for a minimum bid of $500 (with all liens cleared), or find a property to inhabit; "business owners" buying vacant commercial lots to expand parking; "nonprofits," buying low-priced vacant lots or structures to rehabilitate or redevelop as low-income housing; "investors," purchasing properties to generate returns through rental or sale; and "speculators," buying large numbers of properties in areas of expected public or nonprofit development hoping to achieve high resale values. Coenen et al. argued that investors were more interested in "property and neighborhood condition" than speculators, who were more interested in "property location." They further broke investors into 3 subgroups, based on their level of property investment: "equity extractors," who do not invest or pay taxes, but just take out the remaining equity in their properties by renting them until they no longer generate profit, and then letting them go back into tax foreclosure; positive investors, who generally purchase properties in good condition, invest, pay taxes, and rehabilitate or resell them; and "flippers," who resell properties for a higher price within 12 months of auction. They also separated speculators into two subgroups: "profiteering obstructionists," who take advantage of uncoordinated public and nonprofit development to purchase necessary properties that they can then resell for a profit, and "preventative obstructionists," who also buy critical properties but may try to stop development altogether. Coenen et al. argued that speculators are especially problematic because they purchase large numbers of properties, while their business model depends on reducing holding costs. From 2002-2011, 11 buyers have purchased 24% of the total properties (2,664 properties) sold at auction, and 6 were investors and 5 were speculators. Only 10% of properties were sold to buyers purchasing only 1 property, even though 51% of buyers (1,127 out of 2,180) fell into this category. The 5 largest speculators received 472 blight violations on their properties (and attended only 8% of hearings), but scheduled 642 Michigan Tax Tribunal hearings to contest their tax assessments (and attended almost all hearings). Moreover, of 1,493 properties that went through foreclosure twice, 40% belonged to bidders who had bought at least 20 properties (Coenen et al., 2011).

Auction recommendations

Based on this research, cities should only auction properties in good condition in (relatively) strong markets, when they need to sell properties quickly. Cities could agree to auction all properties valued over a certain amount or in neighborhoods exhibiting certain strength, drawing on the market model discussed in the previous section. In addition, to maximize revenue and ensure productive use, they should consider the following improvements to auction procedure, reflecting some the instructive insights from Coenen et al.'s study of Detroit auctions.

1. Attract more bidders to increase auction competiveness and ideally increase prices paid: Cities should conduct outreach to potential bidders, especially nonprofit organizations, community groups, and prospective owner-occupants, to explain the properties available for disposition, the auction process, and the title-clearing procedure. They should also offer an online property information portal, with lot size, assessed value, building and property condition, and zoning, through collaboration with a third party, so the city does not take responsibility (incur liability) for data accuracy. In addition, cities should consider performing online auctions, because they allow more bidders to participate, as well as create a clear log of bidders, which can be helpful if there is a performance issue with the winning bidder, and the city has to go to the second-highest bidder.
2. Reduce the number of properties auctioned each time, both to enable buyers to examine properties more carefully and to avoid dumping excess properties on a potentially already-weak market: Cities want to avoid higher-value properties getting "lost in the shuffle," especially given the research that bidders tend to pay less for equivalent properties as the auction proceeds. To simplify buyers' search

process, cities can break properties into lots by type or usage (residential structures, residential vacant lots, commercial and industrial properties, etc.), location, usable square footage, and/or condition (good, fair, poor, demolition required).

3. Do not hold second auctions, because they incentivize buyers to wait so they can obtain properties at a lower price: As discussed by Coenen et al., this has been a major problem in Detroit, with a growing number of buyers over time waiting to acquire properties at the second auction for $500, compared to the full value of the outstanding liens at the first auction. If cities reliably offer second auctions, where properties are available at a discounted price, and buyers do not expect many competing bids for their desired properties, it is economically rational for them to wait. If properties do not sell at the first auction, cities can transfer them to a land bank or another holding entity. If cities are really not in a position to transfer the properties, they should at least allow variable minimum bids. These minimum bids can be set at a percentage of the liens, or better yet, of the fair market value, if cities are using the approach discussed in Chapter 4 to avoid the loss of owner equity.
4. Enable clear title to attract responsible buyers and increase the price the price they are willing to pay: Buyers need clear title to obtain financing and title insurance and make redevelopment viable. While, in theory, foreclosure should clear all liens, cities should work with buyers to help them understand all parties who have property interests and from whom they may need to seek the "quit claim" deeds necessary for title insurance. Title issues create additional uncertainty and risk where none is needed.
5. Encourage city, state, and county governments to exercise their right of refusal to remove properties from auction as appropriate: Under the new Michigan foreclosure law, for example, city, state, and county governments have the capacity to remove properties from the auction list pre-sale by paying the minimum bid, or all taxes, interest, fees, and sale costs. Moreover, under the law, the government entity taking the property has to pay only the taxes it did not personally assess, so, for example, the city is not responsible for city taxes. In the auction context, local governments should exercise their ROR judiciously to acquire land for public projects, prevent individuals from purchasing land in areas where they might want to reduce services and infrastructure, conduct site assembly, or transfer to a land bank, nonprofits, or prospective owner-occupants. By taking properties through their ROR, governments can give nonprofits and prospective owner-occupants time to secure financing, which they currently lack in the auction setting.
6. Establish minimum requirements for bidders to ensure that properties go to responsible owners: Cities should prohibit bidders with delinquent taxes from bidding or closing on properties. This tactic's effectiveness may be limited by individuals' ability to form shell corporations, which remains a persistent problem in regard to both PP and TDP.
7. Require prepayment of taxes upon sale: Cities could require prepayment of taxes for a certain duration of time (i.e., taxes for the next 6-18 months) to avoid situations in buyers allow properties to quickly lapse into delinquency again, paying either minimal or no taxes after sale. They could require all buyers to do so, or just bidders who purchase a large number of properties (more than 5) at auction, purchase vacant lots but are not adjacent homeowners, or purchase low-value properties, sold or assessed below a certain amount. Because future taxes can change, based on reassessment that revises them upward or downward, cities can hold prepayments in an interest-bearing escrow account. If owners paid less than needed, they can pay the additional amount when it becomes due. Likewise, if they paid more than needed, the city can refund them the difference, with the accumulated interest.
8. Institute deed restrictions, specifically a "clawback" or reverter clause, so cities can easily take properties back if new owners fail to perform: If the new owner fails to maintain the property (exceeds a certain threshold of code violations) to pay taxes, the property should automatically come back to the city, so that it does not need to go through the time and expense of foreclosure (Coenen et al., 2011).
9. Take a percentage of the resale value if properties are resold within a certain amount of time (12-24

months) to deincentivize "flipping": Cities want to make sure that speculators are not profiting excessively from their need to recover delinquent taxes, especially if they purchase properties for less than their lien amounts in the variable bid second auction. The money recovered through the percentage system should be used to pay back the city up to the lien amount, and then distributed back to the original owner, who might have lost equity.

10. Conduct online auctions to permit a "financing lag" for nonprofits or "resident-buyers": Online auctions allow all bidders and their bid amounts to be recorded. Cities could provide nonprofits or "resident-buyers" with a reasonable amount of time after sale to secure financing. If they are unable to do so within the allotted time, the property can then be "handed down" to the next highest bidder.

Option 2: Request for proposal process

Under the request for proposal model, at least as practiced by the City of Boston's Department of Neighborhood Development, the city decides to release a property for disposition, works with community members to craft a request for proposal that reflects their needs and concerns in a public participation process, and then opens the RFP to qualified individuals or firms, which then submit proposals. The city then chooses the proposal that best fits the selection criteria, and transfers the property for an agreed-upon amount.

The advantages of the RFP method are the city retains more control over the disposition process and can consider non-monetary factors, such as the public benefit to be realized from green space or affordable housing. The disadvantages are that the disposition process can take longer, because of the time associated with preparing and responding to the RFP, which can compromise the city's ability to sell property rapidly in a strong market (and reap higher prices) and generate additional holding costs, because the city both is spending money to maintain the property and losing tax revenue; the need for more city involvement during the disposition process; the challenge of establishing clear, feasible, and fair selection criteria; and the difficulty of quantifying and justifying non-monetary factors.

RFP recommendations

Cities can use the RFP process for more distressed properties in (relatively) weak markets. It may be especially suitable for sites where cities want to promote uses other than what the market might produce. For example, cities may want to support green space or affordable housing at a site, rather than market-rate development, to serve current needs or catalyze future development, because the site exists at a prominent location or is large. To maximize revenue and ensure productive reuse, cities should contemplate the following modifications to the RFP process:

1. Have potential RFP respondents pre-qualify to save time during the selection process: Cities can keep lists of individuals and firms with the financial and organizational capacity to perform different types of projects. That way, they only have to check the basic qualifications of new entrants before starting to review the project-specific components of proposals. In a way, the ideal is to create an RFP process that functions almost like a limited auction, where a group of equally qualified bidders are competing to develop the most value for the least cost under the RFP stipulations.
2. Distribute past winning proposals and selection criteria for different project types to educate potential RFP respondents about what it takes to be successful and prepare them to respond more effectively: Cities can display this information on an online application portal. This would allow respondents to avoid "obvious" errors, and potentially increase the universe of respondents.
3. Refine selection criteria using "lessons learned" from previous projects.
4. "Bundle" multiple properties together under one RFP to reduce transaction costs associated with preparing and responding to the RFP and increase economies of scale for parties on both sides.
5. Require winning respondents to self-report on their projects at regular intervals to ensure that they are in compliance with the RFP terms: If non-monetary factors like public benefit are important considerations in the selection process, cities want to ensure that respondents are delivering on their commitments, such as providing a certain number of construction jobs, infrastructure

improvements, or public access.

6. Facilitate public participation in the RFP development: Cities should clearly indicate when community feedback is needed.

Option 3: Third party transfer

Under the third party transfer model, as pioneered by New York City in the late 1990s, cities can deed tax-delinquent properties to nonprofit groups or private developers without ever taking control after foreclosure occurs. In New York City, to qualify, properties must be statutorily "distressed," with tax liens that are at least 15% of market value and at least $1,000 in Emergency Repair Charges or 5 emergency code violations (Allred, 2000). The City has also expanded this third party transfer strategy to mortgage-foreclosed homes. In 2009, it planned to spend $24 million of federal funds to subsidize the rehabilitation of 115 mortgage-foreclosed homes, with Restored Homes, a third party nonprofit developer, taking ownership (Fernandez, 2009, January 14).

The advantages of the third party transfer method are that the city never receives properties, and thus never incurs the cost and liability of direct management. The disadvantages are that the city needs a pipeline of qualified receivers, who are capable of assuming management responsibility for and ownership of the properties. For receiver demand to exist, the properties must be economically viable. If the properties are viable, with rehabilitation and operating costs that are not significantly out of line with rents, they can be attractive, because of their low acquisition costs, relative to comparable buildings that were not obtained through TPT, and their lack of liens, which are cleared through TPT. These factors allow new owners to focus their investments on rehabilitation, compared to acquisition and debt service. However, if the city is transferring extremely distressed properties, it may need to transfer a packaging of funding along with them, especially if it seeks to preserve affordability for existing tenants. Thus, the city may need to allocate funds away from maintaining its inventory of city-owned properties to supporting private-sector rehabilitation via TPT. This has been the case in New York City.

In a way, the third party transfer method operates like Baltimore's receivership process, in that distressed properties are transferred to a third party nonprofit. However, in the case of third party transfer, the process is initiated not by nuisance abatement liens associated with future repair work, but by existing liens owed to the city (Allred, 2000).

TPT recommendations

As suggested by the New York City case, cities can use TPT for highly distressed, investor-owned properties. To enable TPT to offer as effectively as possible, cities should:

1. Implement the TPT strategy in conjunction with the sale of tax liens to focus city resources: This bifurcated strategy ensures that the number of TPT properties is manageable and that those coming into the program really require it. The properties that go into the TPT program should be those with low-collectability liens. Most likely, if the liens of these properties were sold, they would continue to deteriorate unless the servicing company took prompt action to foreclose, which it is unlikely to do, especially if the properties are occupied and there are issues associated with eviction and/or relocation. In New York City, as discussed, HPD excludes statutorily "distressed" properties from lien sale and directs them to TPT.
2. Have the authority to undertake TPT actions in a small area, without violating the Uniformity Clause: This enables the city to target specific areas with high numbers of properties in financial and physical distress, where the city may be making other investments, for TPT action without overloading the system. Under its TPT ordinance, New York City has the authority to undertake sub-borough enforcement and pursue foreclosure against only the properties in a single tax block without violating the Uniformity Clause, provided that it addresses all parcels on the block. In New York City, HPD identifies blocks for TPT action based on the presence of Housing Litigation Department code enforcement cases, Emergency Repair Program charges, and 7A Receivership buildings, where a temporary third party receiver has been appointed because of owner abandonment under Article 7A of the New York State Real Property Actions and Proceedings Law.

3. Limit the post-foreclosure redemption period so that the holding agency and/or final receiver can take possession without the risk of the owner reclaiming the property after investments have been made: Under New York City's TPT ordinance, following the final Foreclosure Judgment, the owner or the owner's agent has 4 months to redeem the property, either by paying the full outstanding lien amount or entering a payment agreement. To participate in a payment agreement, the owner must pay 50% of the outstanding lien amount upfront, and the remainder within 12 months. In addition, HPD must approve the plan, based on the owner's track record in regard to code violations, mortgage and tax foreclosures, and tenant complaints.
4. Create property "clusters" that support economic viability: Cities should consider how to put together effective "clusters" that promote financing, rehabilitation, and management economies of scale and "balance out" each other. Balancing factors include the relative amount of vacant and occupied units, as vacant units can be offered at market rents and used to subsidize occupied units; current tenant capacity to pay (income level); extent of need, and therefore rehabilitation costs; geographic proximity; and concentration of specific property types to leverage owner expertise.
5. Support each property or property cluster with an appropriate financial "package" that addresses both owner economic viability and tenant affordability concerns: Owners can leverage federal, state and/or city capital budget, and private funds to finance rehabilitation. Because TPT is intended to be driven by private-sector resources, it is critical that cities ensure that receivers are able to bring in private capital, via their own equity and private loans. They can help owners achieve sustainable returns by offering low-interest loans and tax incentive programs and allowing controlled rent increases. For example, under New York City's TPT program, owners are allowed to offer units vacant at the time of transfer for market rents, in order to subsidize occupied affordable units. Owners are not permitted to increase rents on occupied units until rehabilitation is complete, so the rent adjustments reflect the minimum possible increase necessary to cover the rehabilitation.
6. Partner with the Code Enforcement Department to conduct a thorough "needs assessment" pre-transfer: The TPT administrators should interface with the Code Enforcement Department to evaluate these buildings as soon as they become eligible for transfer.
7. Establish a nonprofit TPT holding entity to take and hold title to the properties during the transfer process, before they reach their new owners: The holding entity can perform the following functions: assist the final owners with securing financing; set rehabilitation and management standards, in collaboration with the city; provide ongoing monitoring and ensure all the transfer conditions are met. It can focus on technical assistance and program administration. So that the holding entity does not need to have property management capacity, the final owners can act as property managers during the holding entity's period of interim ownership, operating the building and handling leasing activity. This is the current policy in New York City. Cities may need to provide funds to establish the holding entity.
8. Set rehabilitation and management standards for the final owners, with action items tied to specific timelines: By specific timelines, final owners should be required to: correct all immediately hazardous code violations; formalize and/or update all existing leases; start legal proceedings against all unauthorized tenants; secure financing; prepare the construction budget; obtain all planning approvals; and complete the rehabilitation. Upon the completion of rehabilitation, properties should be in full compliance with all provisions of the Housing Maintenance Code.
9. Build a pipeline of qualified receivers with demonstrated financial and organizational capacity: To support transfer speed, cities can assemble a prequalified pool of receivers. Because of TPT's emphasis on private-sector resources, it is critical that final owners have financial capacity, via equity and private loans. Cities should support disposition to nonprofits, community groups, and tenants where appropriate. For example, HPD uses TPT, via the Neighborhood Homes Program, to convey 1-4 family buildings to selected nonprofits for rehabilitation, so they can then offer the building to existing tenants.
10. Consider using the TPT procedure not just for structures, but also for vacant lots, as a land bank variant: In a way, the holding entity can function as a land bank alternative. New York City offered

vacant lots for housing development and use as side yards by abutters through the TPT program (Allred, 2000).

Option 4: Land bank

Under the land bank model, an independent entity takes title to tax-delinquent properties and oversees management and disposition. Depending on their statutory authority, some land banks automatically get title to all tax-delinquent properties not sold at auctions, and others to all tax-delinquent properties in particular areas. In addition, some land banks can identify specific tax-delinquent properties and acquire them before auction, and some have the right to refuse to take title (Samsa, 2008). Michigan pioneered the land bank model, passing legislation in 2004 that allowed counties to create their own land banks. Because of that act, and the 1999 tax foreclosure reform law, Genesee County, the location of Flint, was able to establish the Genesee County Land Bank Authority (Kerkstra, 2013, March 12, Ravaged by neglect: Part 4). Based a law signed by Governor Andrew Cuomo in 2011, New York State has designed 8 out of 10 land banks, in cities like Syracuse, Buffalo, and Rochester, with spots open for two additional cities now (Dale, 2013, July 23). In 2012, land banks were established in Cook County, IL and Franklin County, OH. Pennsylvania also passed the Land Bank Act, sponsored by State Representative John Taylor (R-Philadelphia) in 2012 (Kerkstra, 2013, March 12, Ravaged by neglect: Part 4).

The advantages of the land bank method is that it allows long-term planning and systematic, coordinated redevelopment under one entity, but this entity is separate from the city, with attendant implications for expenditures and de-politicization. Land banks are ideal for cities with large numbers of tax-foreclosed properties, which do not have the staff or resources to handle disposition. They can also take mortgage-foreclosed and other vacant "problem properties" (Samsa, 2008). Schilling identifies an opportunity for land banks to take REO properties in bulk transactions with lenders and mortgage servicers, rather than have them go to out-of-town and foreign speculators. Depending on the need to wait for the market to strengthen or stabilize and/or avoid dumping properties on an already oversaturated market, land banks can hold properties for a short or long time (Schilling, 2009). The disadvantages are that they generally need to be created by a state enabling act. In addition, whether they are run by a single municipality or multiple municipalities, they need inter-governmental agreements with all agencies that share their jurisdiction. They also need the authority to effectively manage their inventory, contract for services, and sell properties, as appropriate, and not necessarily at fair market value. Finally, land banks also need a budget or revenue source for operating and potentially purchasing properties (Samsa, 2008).

Land bank recommendations

Cities can use the land bank method to cope with areas with widespread abandonment (dozens or hundreds of vacant properties). Cities should encourage states to pass effective land bank legislation that gives land banks the capacity to:

1. Independently initiate tax foreclosure: Otherwise, they are reliant on other entities, like the county or municipal treasurer's office, which nay be overwhelmed with existing foreclosure cases and/or not proceed with the necessary urgency.
2. Purchase land for site assembly: They may need to acquire additional parcels to large-scale redevelopment plans.
3. Take title to other government-owned properties: These properties may have been acquired through previous tax foreclosure or other pathways, such as eminent domain for urban renewal or seizure for illegal activities (Samsa, 2008).
4. Sell property for less than the liens or market value in order to ensure productive reuse: The land bank should operate under a strategic plan that allows it to dispose of land at a discount to achieve specific goals, including addressing public needs for affordable housing, job creation, community facilities, and open space. The situations in which it is appropriate for the city to sell land at a discount should be clearly defined, and the city should follow up to ensure that goals are met (Geeting, 2013, October 30).
5. Have immunity against liabilities that could arise in conjunction with holding large numbers of

highly distressed properties: Specifically, land banks need immunity against public nuisance suits and environmental liability for the properties they hold. This immunity should be similar to that which other government agencies holding title involuntarily to "problem properties" have against clean-up costs and environmental liability. It should be in effect even if land banks purchase problem properties, provided they do so to protect public welfare, in order to prevent the unfair transfer of liability from delinquent property owners to society as a whole.

6. Clear title by extinguishing the claims of prior owners and lienholders, to attract responsible owners and avoid inhibiting redevelopment: For example, to assist with redevelopment in cases where prior liens might otherwise be an obstacle, the Atlanta Land Bank practices "conduit transfers," where private individuals buy property, convey it to land bank to eliminate prior tax liens, and get it back free and clear (Samsa, 2008).
7. Fund their operations through foreclosure fees, sales proceeds, or value capture: For example, the Genesee County Land Bank maintains an $8 million self-sustaining fund, supported by three revenue streams: 1- State tax foreclosure fee (funds staff, overhead, basic maintenance); 2- Land sale proceeds (basic maintenance), 3- Brownfield Tax Increment Finance (TIF) revenue, derived from a $5 million issuance of TIF bonds (demolition and site preparation) (Schilling, 2009). For the new Philadelphia Land Bank, Steven Paul Cote has proposed that when the land bank returns a property to productive use, the city provide it with 50% of the tax revenue produced by the property for the next 5 years, reflecting the fact that the Land Bank has put it back on the rolls (Geeting, 2013, September 10).

Step 3: Overcome three major obstacles to successful disposition.

To achieve successful disposition, cities must overcome three additional obstacles. First, they must move past the tendency to undermanage public assets and become more aggressive in managing and monetizing their inventories. Second, they must surmount the weak market conditions that tend to be in place where large numbers of PP and TDP exist, for the reasons previously discussed. Third, they must cope with redevelopment or rehabilitation financing challenges.

Barrier 1: Under-management of public assets

Currently, there is significant under-management of public assets. This is a longstanding issue, both in regard to public real estate and corporate real estate more generally. Public real estate can be viewed as a subset of corporate real estate, because the government is "a large organization... not primarily in the real estate business." Based on two large surveys of corporate real estate executives, one conducted in 1981 by Harvard Real Estate, Inc. and one conducted in 1987, **Veale** found "that, despite their tremendous value, corporate real estate assets are often under-managed" (2). Specifically, many of the large private and public organizations surveyed failed to keep adequate information on their properties and managed their properties as cost centers, rather than profit centers. For example, in the 1987 survey, 25% of firms did not maintain an inventory of their real estate (Veale, 1988). Based on a 1989 survey of 30 major non-real estate US companies, **Gale and Case (1989)** also found under-management of corporate assets (Gale & Case, 1989).

Focusing on public assets in particular, **Simons** conducted a 1992 survey of 21 self-identified municipal property managers in the suburbs of Cleveland, OH, and found that, while municipalities were performing many of the same real estate activities as larger non-real estate corporations, they were not using the same formal financial analysis tools, such as discounted cash flow. Only 15% of municipal property managers (versus 87% of private-sector managers) used formal decision rules for property acquisition or disposition, and only 19% (versus 54%) had a formal property management or development plan. Simons identified four factors contributing to under-management: decentralized control of assets (scattered among different departments); limited access to market valuations, because municipal properties are tax-exempt, and thus not regularly assessed; reelection pressures and the short-term nature of the election cycle, which works against long-term management; and the challenge of quantifying social returns (Simons, 1993). Building on this work, based on a literature review of real estate management practices and a survey of 30

municipal and regional public property managers, **Simons** found that real estate management "expertise among current public real estate managers lags behind the private sector," and that this lag, particularly prominent in regard to financial decision-making, may produce "suboptimal management of publicly owned real estate in general, and... put the public sector at a disadvantage when dealing with developers in joint projects" (Simons, 1994). A 1999 World Bank survey discovered that few municipal governments approach their inventories in terms of portfolio management (Kaganova & Nayyar-Stone, 2000).

However, there is an opportunity for the public sector to become more aggressive in managing and monetizing its assets. Simons suggests that the public sector borrow asset management techniques from private non-real estate corporations (Simons, 1993). Done right, public asset management has the potential to add significant value to the government and community (Rodriguez & Sirmans, 1996). In addition, based on evidence from previous disposition of distressed assets, there is a role for both public and quasi-public entities, like land banks. **Curry, Blalock, and Cole** compared the recovery rates among samples of distressed commercial real estate assets (Federal Savings and Loan Insurance Corporation receivership assets) managed and sold by FSLIC receivership staff (public sector), the Federal Asset Disposition Association (quasi-public), and private contractors during the late 1980s. They discovered that three factors impacted recoveries: expected future local market health; difficulty of management and disposition; and percentage write-downs. More importantly, after controlling for additional factors that affect recoveries, they found that private management produced below-mean recovery rates (inferior performance) on assets in strong local markets, while quasi-public management (by FADA) produced above-mean recovery rates (superior performance) on assets with larger percentage write-downs, relative to public management. Thus, as Curry, Blalock, and Cole stated,

> the superior performance by FADA suggests there may be a role for a quasi-private entity to coordinate private sector participation in the management and disposition of government agencies' distressed assets, [with] the combination of private-sector expertise and the return of all proceeds to the government appear[ing] to produce the highest average recoveries for the taxpayer (Curry, Blalock, & Cole, 1991, 541).

Barrier 2: Weak markets

As defined by Mallach in the context of the housing market, "weak markets" have 5 characteristics: weak demand, with those seeking housing disproportionately likely to be low-income households; low housing values; poor housing conditions, because low demand and low values promote disinvestment; high vacancy rates and widespread abandonment; and declining neighborhood quality. In terms of disposition, these markets present cities with an unfortunate reality. They are where TDP and PP are most likely to be, but are also where cities are likely to experience the most difficulty promoting positive reuse, given their limited resources.

To help cope with weak markets, cities should take an "assets-based" approach and consider both the financial and non-financial mechanisms available to them to create a positive reinvestment climate. The next section will focus on financial tools. In terms of non-monetary support, cities have a range of options throughout the development process. Pre-disposition, they can provide property and market information, as previously discussed. They also can assist with site assembly and/or "bundle" properties for auction or RFP to promote economies of scale possible with larger development projects. In addition, they can perform demolition and/or site preparation work, if the costs involved render an otherwise unfeasible private-sector project unviable. Post-disposition, they can provide legal assistance to resolve any lingering title issues. In addition, they can offer fast-tracked permitting, to reduce uncertainty and risk during the permitting process; rezoning assistance; and help coordinating environmental remediation through federal or state programs. To promote reinvestment in weak market cities, Mallach emphasizes the importance of making government processes "efficient, transparent, and predictable," so that it is clear to private actors what agency is responsible, what action is needed from their side, and what the timeline is for action and response (Mallach, 2005, 11). To facilitate private reinvestment through more streamlined government action, the City of Baltimore has formed Baltimore Housing, a dual agency consisting of the Baltimore City Housing Authority and Department of Housing and Community Development. The unit oversees Community

Development Clusters, and offers a coordinated acquisition process that delivers properties in 90 days or less, with redevelopment grants of up to $10,000 (Patten, 2013, September 10).

In addition, as previously discussed, cities should also provide vigorous code enforcement, to show "first-movers" that the government will act to protect their investment and therefore lower the barriers to collective reinvestment. In an article discussing how to kick-start reinvestment in weak market cities, **Buki and Schilling** emphasize the crucial nature of restoring market confidence, arguing that "if the goal is stabilization and revitalization, the structural problem to solve for in weak markets is confidence, not affordability" (1). In their view, reinvestment comes with increasing confidence (and demand), and "confidence is inversely related to affordability," because as markets become less attractive, and demand decreases, affordability increases (Buki & Schilling, 2010, February 4).

Barrier 3: Financial challenges

Financing is likely to be a challenge to achieving productive reuse in weak market neighborhoods, for two reasons. First, projects may teeter at the edge of economic viability, especially those involving properties that have suffered long-term disinvestment are in poor condition. Foreclosure clears the liens, -- extinguishing the tax liens, code enforcement liens, and mortgage liens, as well as any other encumbrances on the property -- and returning it to financial zero, provided that the city can offer it for less than the liens it is owed, after it does not sell once for this amount. However, while the property may not longer be "underwater" in terms of its lien-to-value ratio once foreclosure occurs, it may be "underwater" in a different way, in terms of the amount needed to return it to productive use. In other words, demolition or rehabilitation may cost more than the property is worth, referring to ground rent or land value. Mallach refers to the "market gap," which can occur in two scenarios. With properties that are candidates for rehabilitation, it occurs when the rehabilitation cost exceeds the value of the rehabilitated property either in the present or in the future, if values decline as expected. With properties that are candidates for new development, it occurs when the rents or selling prices of new units will not cover development costs. Furthermore, conventional private lenders may be reluctant to lend in disinvested areas, because of concerns that the disinvestment will continue, property values will decrease farther, increasing their loan-to-value ratios, and making their loans more risky. Thus, to kick-start reinvestment, cities may need to provide direct and indirect financial support, via loans, grants, tax abatements, reduced land prices, and fee abatements.

To maximize returns on public investment and leverage as much private investment as possible, cities should segment projects into 3 groups. Group 1 consists of projects that are financially viable without city support, which the private sector can accomplish independently. Group 2 comprises projects that are viable with moderate city support, either strictly non-monetary or below a certain monetary threshold. Group 3 are projects that are not viable without significant city support. Linking these groups to the "frontier line" concept, Group 1 projects are likely to lie at or behind the frontier line, Group 2 projects at or slightly ahead of the frontier line of reinvestment, and Group 3 projects well ahead of it. This segmentation approach recognizes that the viability of projects changes over time, as the level of disinvestment in specific areas and citywide, availability of public and private capital, and number of private-sector actors willing to participate in the market shifts. For Group 1 projects, cities can let the private market handle them, just making the property available for disposition, likely through auction. For Group 2 projects, cities should seek to "catalyze" private investment, with the minimum infusion of public money, to get the greatest "bang for their buck." They should strive to "tip the balance" and prompt action, rather than reward action – or, in other words, help projects that are really Group 1, not just Group 1. They can provide incentives that motivate people to invest (rehab or build) just beyond the level supported by current market conditions. To ensure that they are not providing more than necessary, they can build in "recapture" or "clawback" provisions, so they must be repaid by the amount that the property increases in value (Mallach, 2005).

In addition, to maximize returns from public investment and leverage as much private investment as possible, cities can seek to tap into "excess capacity" in weak markets, a concept developed by **Buki and Schilling** through two observations. First, they noted that all cities have an "affordability ratio," the ratio of median housing cost to median income. Generally, cities with an affordability ratio of 2.7-3.3 have a stable

housing market; less than 2.5, a weak market; and greater than 4, a strong market with affordability issues. Second, they pointed out that household income tends to be more stable than housing prices. Thus, when housing prices fall in weak market cities, they decrease more quickly than income, thereby lowering the affordability ratio. Consequently, residents of these cities spend relatively less on housing than they otherwise would, even after factoring in high home heating costs, transportation costs, and property taxes, generating "extra money" that could be used to maintain and improve their properties. **Buki and Schilling** emphasized that this "withheld confidence" can involve significant amounts of money: $9 million a year, for example, in a market of 30,000 individuals, benefitting from an "extra" $75 per month. The difficulty for cities, of course, is getting people to invest, by giving them the confidence that they will recoup their investments. Buki and Schilling suggest that cities offer matching grants, and focus their investments on blocks with a combination of "excess capacity," such as those with older homeowners (owners tend to have more than renters, and middle-aged owners than young families), and "highest probable return on investment," with only a few low-quality properties (TDP and/or PP) affecting a large number of otherwise high-quality properties. Thus, like Kromer and Mallach, Buki and Schilling recommend concentrating on "middle market" blocks at risk, with declining owner-occupancy, to achieve cost-effective revitalization (Buki & Schilling, 2010, February 4).

Examining a spatially targeted revitalization strategy in Richmond, VA, **Galster et al.** considered the level of public investment needed to create a "critical mass" capable of attracting and sustaining private investment. The City of Richmond, in collaboration with the Local Initiatives Support Corporation, launched the Neighborhoods in Bloom program in 1998. Through NIB, the city concentrated federal Community Development Block Grants (CDGB) and Home Investment Partnership (HOME) funds on 300 blocks in 7 target neighborhoods. LISC also directed funds to CDCs working in NIB neighborhoods. Galster et al. found that single-family homes in NIB target areas experienced significantly greater (10.85%) price increases than comparable homes in similarly distressed neighborhoods. Suggesting the existence of a public investment threshold, they discovered the greatest positive effects on blocks that received $21,000 or more in site-specific investments and $9,000 in public and nonprofit infrastructure investments, for a total of $30,000 per block, or $6,000 per year. In addition, they found that the $21.33 million invested by the City of Richmond and LISC during the first 6 years of NIB increased single-family home values in the total target area by $44.98 million more than if they had increased at the same rate as the rest of Richmond, which appears to make the strategy potentially self-financing over a 20-year horizon, with the public investment cost offset by future property tax revenue increases (Galster, Tatian, & Accordino, 2006).

To generate the public and private funds necessary to return PP and TDP to productive use, cities can also draw on innovative financing sources, such as social impact bonds and crowdfunding. Social impact bonds were pioneered in the US by the Bloomberg administration. In February 2012, the City of New York coordinated the issuance of a social impact bond, where the nonprofit MDRC received an almost $10 million loan from Goldman Sachs to prevent recidivism among young adults on Rikers Island. The loan is partially guaranteed by a grant from Bloomberg Philanthropies. Under the SIB structure, if MDRC's program decreases the recidivism rate by 10%, the city will repay the loan and Goldman will break even; if the rate falls further, Goldman can receive up to $2.1 million. However, if MDRC's program does not reduce recidivism by at least 10%, the city will not repay the loan, and Goldman will lose up to $2.4 million (Forman, Giles, Kleiman, & Ko, 2013, August). In addition to providing "pay for performance" funding for social programs, SIB could be used to fund revitalization, as suggested by **Roman**. Under the SIB model, a city could issue SIB to get private-sector capital that might not be available through traditional loans for a specific project. The city could then work with a private developer (for-profit or non-profit) to build the project. A set period of time after project completion, if the project delivers the required minimum return, the city could repay the loan, using part of the increased rents, property taxes, sales taxes or business taxes, and/or savings from reduced negative externalities associated with the project. As the list of potential revenue sources suggests, and this thesis has repeatedly emphasized, it is important to consider both the direct and indirect returns from revitalization. If the project delivers higher than the required minimum return, the investors profit. If the project fails to deliver, the city does not repay the loan. The challenge is finding private-sector lenders, philanthropic or not, willing to provide or function as guarantors for the

capital and bear the risk of unsuccessful projects (Roman, 2013, November 6). Showing the diffusion of the "pay for success" model to the development sector, in 2013, the Department of Housing and Urban Development (HUD) stated that it would provide $5 billion in Community Development Block Grant funds to Hurricane Sandy-impacted communities for rebuilding and strengthening and encouraged them to use "pay for success" strategies. In addition, the Department of the Treasury issued a Request for Information to collect input on the design of a $300 million incentive fund to help state and local governments implement the "pay for success" model, focusing on viable financing models and programmatic areas (Greenblatt, 2013, November 20). In addition to social impact bonds, crowdfunding may be a viable option to secure financing, especially if there is "excess capacity" in the neighborhood due to the low cost of housing, as discussed.

Summary

This chapter considers how cities can be more effective in managing and disposing of properties "taken" for delinquency. To aid in property- and neighborhood-level decision-making, it suggests that cities establish a central property inventory that includes critical land and building characteristics, a property potential reuse scoring system, and a market model that segments neighborhoods and identifies spatial and temporal "inflection points." Cities can use these three tools to determine property usage and disposition timing. In addition, it recommends that cities select the disposition method, -- whether sheriff's sale/auction, RFP, third party transfer, or land banking, -- that is most appropriate for the property type, (sub)market condition, and desired outcome(s), recognizing the advantages and disadvantages of each. Finally, it presents strategies to help cities overcome three major obstacles to successful disposition: the general tendency towards under-management of public assets, weak markets, and financing challenges.

CHAPTER 6:
DELINQUENCY ENFORCEMENT AND DISPOSITION CASE STUDIES

This chapter is intended to complement the more generalized discussion of delinquency enforcement and disposition in the previous chapters (1-5), with specifics from practice in Philadelphia, New York City, and Boston. In other words, while the other chapters set out what cities could do, this chapter concentrates on what cities have done, outlining the strategies they have used, successfully and unsuccessfully, to cope with delinquency and disposition. To leave readers with a clear picture of what has happened in these three cities, it focuses on straightforward chronological documentation. The "lessons" learned from these case studies have been extracted and placed in Chapters 1-5, as well as Chapter 8, which summarizes specific recommendations for the three cities.

CASE STUDY 1: PHILADELPHIA

Introduction

Philadelphia is a perfect laboratory for examining how best to address tax delinquency and disposition of tax-foreclosed properties, because the city has longstanding challenges in these areas. It has tried, and is currently trying, a variety of strategies to improve performance, and there are opportunities to learn from its successes and failures.

Delinquency Challenge

Currently, Philadelphia is experiencing massive tax delinquency. In April 2012, the City of Philadelphia and the Philadelphia School District were owed $292.3 million in delinquent taxes, or $515.4 million with interest and penalties, on 102,789 properties. These properties represented about 18% of Philadelphia's taxable real estate (579,323 properties in total). In 2011, 9% of property taxes went uncollected. For comparison, the median delinquency rate of a cross-section of 36 cities examined by the Pew Charitable Trusts in 2011 was 4.1%. For every one percentage-point reduction in the delinquency rate of Philadelphia, the city could generate an additional $13 million of tax revenue each year without increasing the tax rate, or cut the tax rate by about one cent on the dollar while still raising the same amount of revenue (Pew Charitable Trusts, 2013, June). Collections have been trending downward in Philadelphia for more than 30 years. From 2008-2011, the first term of Mayor Michael Nutter, Philadelphia's one-year collection rate, or percentage of property taxes collected within 12 months of being levied, was 85.5%, or 10 percentage points below the average collection rate of the 20 largest US cities. While the 2009 recession decreased collection rates in large cities across the country, no city's rate fell as much as Philadelphia's did, and only Detroit and Indianapolis have experienced slower collection recoveries in the years since (Kerkstra, 2013, March 9, Ravaged by neglect: Part 1).

Plan Philly, the *Philadelphia Inquirer*, and the Pew Charitable Trusts have identified several city-specific reasons for Philadelphia's high delinquency rate. First, the city has not been proactive in delinquency prevention through outreach to at-risk owners, both before and immediately after their taxes came due. Second, the city has not followed strict enforcement timelines and procedures. In its collection procedures, Philadelphia follows the Pennsylvania Municipal Claims and Tax Lien Law, first passed in 1923 and amended at least 12 times since then, which applies primarily to the state's "first-class" and "second-class" cities (Philadelphia and Pittsburgh). Compared to the actions of other states, Pennsylvania has traditionally given Philadelphia significant flexibility about initiating foreclosure and offering payment plans. The city has used this discretion to delay action, give delinquents the opportunity to enroll in and default on payment plans multiple times, and avoid foreclosing on and putting properties up for sale (Pew Charitable Trusts, 2013, June). In addition, it has been inconsistent in pursuing delinquents. For example, to assess the city's enforcement procedure, Plan Philly and the *Philadelphia Inquirer* selected a random sample of 593 properties from the 59,600 properties that were at least 3 years tax-delinquent as of April 2009, and tracked them for the next 3 years. The sample size was large enough to yield a 95% confidence level, with a 4-percentage point margin of error. In 2012, 63% (375 properties) owed more in taxes than they did in 2009, and 23% (134

properties) had partially paid off their debt or were enrolled in payment plans. Only 12% (69 properties) were subject to foreclosure proceedings, and 11% (66 properties) received money judgments. Thus, the overwhelming majority of the sample properties, 77% (458 properties), were not subjected to any delinquency-related court action (Kerkstra, 2013, March 9, Ravaged by neglect: Part 1). Moreover, from 2008-2012, the city issued at least 10,000 licenses and permits to tax-delinquent properties, even though officially not permitted to do so (Kerkstra & Brey, 2013, March 13). Confronted with massive delinquency, the city picks and chooses properties for enforcement, trying to get the "biggest bang for its buck" (Kerkstra, 2013, March 9, Ravaged by neglect: Part 1). Generally, the Revenue Department works with the Law Department to pursue foreclosure in two situations: when it believes it can collect more revenue than it will cost to perform the foreclosure (approximately $1,500) or when city officials want to acquire a property for public use or to transfer or because an individual or firm has requested it for redevelopment. Groups can petition the Vacant Property Review Committee through their local City Council member. Currently, the Law Department estimates that it forecloses on 400-500 properties per month, and that the judicial foreclosure process takes 6-8 months to complete (Philadelphia LISC & National Vacant Properties Campaign, 2010).

Furthermore, the city's lax enforcement practices may reflect the low priority assigned to them by city officials, because they account for only about 18% of total tax revenue, vs. 37% in New York City and 66% in Boston. While property taxes are more critical for the Philadelphia School District, where they comprise 35% of the budget, the Revenue Department and Law Department control collection. In addition, Philadelphia also has high homeownership rate, percentage of homes without mortgages, and poverty rate, factors that can contribute to delinquency (Pew Charitable Trusts, 2013, June).

Since 2011, several factors have united to make delinquency a pressing issue in Philadelphia. First, there has been increasing publicity about the harm caused by delinquency. Plan Philly and the *Philadelphia Inquirer* published two reports, "The Delinquency Crisis" in 2011 and "Ravaged by Neglect" in 2013, which emphasized the tremendous direct and indirect costs of delinquency and the city's collection failures (Kerkstra, 2013, March 9, Ravaged by neglect: Part 1). In addition, the Pew Charitable Trusts released a study in 2013, which found that as much as 70% of the $515.4 million outstanding is most likely uncollectable (Pew Charitable Trusts, 2013, June). Finally, the City Controller's Office generated a highly critical internal analysis of current tax collection and enforcement efforts (Philadelphia Office of the Controller, 2013, November). Second, Philadelphia is experiencing a fiscal crisis, especially in light of decreased state aid, necessitating school closings and bringing additional attention to the lost revenue (Pew Charitable Trusts, 2013, June). Third, effective Tax Year 2014, the city has launched a new tax system, the Actual Value Initiative. AVI, which involves a shift from fractional (39%) to full-value assessment and a full reassessment of all property, will increase the tax burden of residential properties, previously underassessed relative to commercial and industrial property, and the city is concerned about payment resistance. To assist owner-occupants, Mayor Michael Nutter has recommended a $15,000 homestead exemption and $20 million in "gentrification relief" to long-term occupants. It is important to note that, under the Pennsylvania State Constitution, Philadelphia is not allowed to tax different property classes at different rates, and therefore would require state authorizing legislation for any income-based relief (Pew Charitable Trusts, 2013, May).

Collection Strategies

Throughout the years, Philadelphia has tried numerous strategies to improve collection, including securitization, privatization, and tax amnesty. In 1997, the city performed a large securitization. It sold $106.3 million of liens on 33,600 properties to the quasi-public Philadelphia Authority for Industrial Development (PAID), which then issued bonds to cover the purchase amount, using the liens as collateral (Kromer, 2002). However, the pool of liens was problematic, because many of the most collectable liens had been paid off or removed before it was sold, leaving older liens on deteriorated houses and vacant lots in weaker submarkets. Thus, when the bonds reached maturity in 2004, many liens were still outstanding. The city defaulted on the bond, and the bond insurance company had to compensate lenders $46 million (Kerkstra, 2013, March 9, Ravaged by neglect: Part 1). In addition, the securitization complicated third party efforts to return tax-delinquent properties to productive reuse. Individuals interested in buying properties whose liens had been securitized could not do so without paying a premium to the lien servicer or

performing a "substitution" process to replace one lien with another (Kromer, 2002).

In 2009, the city partially privatized tax collection, using outside collectors to supplement internal efforts. Under the current system, the Philadelphia Revenue Department works with two firms, Linebarger, Goggan, Blair, & Sampson, LLP, and Goehring, Rutter, & Boehm. Each year, the PRD splits the pool of newly delinquent properties equally between itself, Linebarger, and GRB. The PRD then tracks how each firm performs, and reassigns cases to the firm that collects at a higher rate from the other firm. Linebarger and GRB are paid a percentage of the total tax and penalty money they accumulate.

In 2010, the city launched a "tax amnesty" campaign, in which 22,000 delinquent taxpayers ultimately participated. They had most of their interest and penalties removed in exchange for paying off their principal balances. In addition, in 2010, the city started checking if its employees were current on their property taxes and garnishing wages and pension payments if they were not (Pew Charitable Trusts, 2013, June).

Following the initial 2011 Plan Philly and *Philadelphia Inquirer* tax delinquency report, City Council members Bill Green and Maria Quiñones Sánchez sponsored a new delinquency enforcement law (Bill No. 120054). It was passed by the City Council in June 2013, and took effect October 1, 2013. The law focuses on two problematic issues: the timeline to foreclosure and payment plans. It requires the city to follow state requirements to "proceed" with enforcement (initiate foreclosure) within one year of owners failing to pay taxes (Kerkstra, 2013, August 25). In this regard, it reinforces a 1992 amendment to the Pennsylvania Municipal Claims and Tax Lien Law, which required the city to do so, but was never followed. In addition, the law limits the number of times that owners can enter into payment plans; requires the PRD and all private collection firms to offer the same payment plan terms; and expands payment plan eligibility to individuals holding partial ownership in a property. It also increased the low-income threshold for payment plans. Previously, the city had two payment plan options: a standard plan for all owners and a "hardship" plan with slightly more favorable terms for senior and/or low-income owner occupants. Under the "hardship" plan, owners could enter into and default on a payment plan up to 3 times, while the standard plan had no restrictions, allowing owners to repeatedly enroll and default. In addition, private collectors could set different terms (Pew Charitable Trusts, 2013, June).

The city also has started pursuing new "hardball" enforcement tactics. For example, it has threatened to revoke the business licenses of tax-delinquent companies if they do not pay. In September 2013, it launched programs to place income-producing delinquent properties into receivership and/or seize their rents to pay off back taxes (Kerkstra, 2013, August 25). In addition, recognizing and acting on the link between PP and TDP, the Department of Licenses & Inspections has increased code enforcement efforts (Kerkstra, 2013, March 9, Ravaged by neglect: Part 1). Between 2008-2012, L&I increased the number of code enforcement cases brought against property owners in Municipal Court by 720%, from 532 to 4,368 (Kerkstra & Brey, 2013, March 13). In addition, the Philadelphia Revenue Department has started checking with L&I about which tax-delinquent properties eligible for sheriff's sale should not be offered payment agreements, because of negative impacts they are causing on their neighborhoods.

In addition, the city has taken action to streamline and consolidate enforcement operations. In February 2013, Mayor Michael Nutter requested $40 million in delinquency enforcement funds, $25 million for new technology to create a shared "data warehouse" and $15 million for new staff and a call center to conduct outreach to delinquents, over five years. In April 2013, the city appointed its first Chief Revenue Collection Officer, responsible for coordinating collections across all departments, so, for example, L&I will no longer issue permits to delinquent owners. Previously, the city moved foreclosure attorneys and records from the Law Department to the Revenue Department (Pew Charitable Trusts, 2013, June). In addition, Philadelphia is seeking new authority from the state to pursue collection. In November 2013, the Pennsylvania State Senate passed two relevant bills. The first bill allows the city to set up monthly tax payment programs for certain homeowners, so they do not have to pay in one large lump sum. The second bill lets the city place liens for unpaid taxes on any property in the state owned by tax delinquents to force them to pay, reflecting the city's problem with suburban delinquents (Graham, 2013, November 20).

Finally, Philadelphia is now considering tax lien sales to assist with collection. City Controller Alan Butkovitz has estimated that investors would be interested in purchasing the liens on approximately two-

thirds (65,000) of the total delinquent properties. These liens, which include those delinquent for less than 8 years and with a lien-to-value ratio of 20% or less, total $240.8 million (Philadelphia Office of the Controller, 2013, November). As evidenced by the previous 1997 lien sale, the city has the authority to sell liens under Pennsylvania state law. The state caps the interest rate that investors can charge. In October 2013, the City Council passed a bill, sponsored by Councilman Bill Green, to sell tax liens that establishes some protections. It prohibits liens under $1,000 from being sold, and caps legal and service fees at a maximum of $200 per hour, for a total cost of $2,500 per transfer (Brey, 2013, October 8).

Disposition Challenge

Because of widespread tax delinquency and owner abandonment, Philadelphia is now facing the issue of property disposition on a large scale, to a much greater extent than Boston or New York City. It has many vacant properties, both publicly and privately owned, requiring transfer back to responsible ownership. Currently, there are an estimated 15,000 to 25,000 abandoned structures in Philadelphia, and another 30,000 to 40,000 vacant lots. Approximately one-quarter of these are publicly owned. The city does not have a complete inventory of either.

Primary responsibility for acquisition and disposition of tax-delinquent and "problem" (blighted/public nuisance) properties exists with five city departments and agencies: the Sheriff's Office, Philadelphia Redevelopment Authority (PRA), Philadelphia Housing Authority (PHA), Philadelphia Housing Development (PHDC) Corporation, and the Vacant Property Review Committee (VPRC). The Sheriff's Office is responsible for auctioning all tax-delinquent property. The City of Philadelphia (Department of Public Property) holds about 6,200 publicly-owned vacant properties. Based on a full 2009 records review, the PRA, a separate redevelopment entity, owns about 3,500 properties: 3,200 vacant lots and 300 buildings. The PHA, a separate housing authority, does not maintain a publicly accessible comprehensive inventory. Based on a May 2009 agreement with the Department of Housing and Urban Development, in which PHA gained permission to sell 1,000 houses and 800 vacant lots over a 3-5 year period, depending on market conditions, PHA owns, at a minimum, 3,300 vacant properties, 2,500 vacant houses and 800 lots. The Philadelphia Housing Development Corporation Is a quasi-public corporation that administers housing preservation and rehabilitation grants and does some limited direct acquisition and rehabilitation. Through its development activities, it has obtained some surplus properties, but the agency also does not keep a full inventory. The Vacant Property Review Committee is the City of Philadelphia's advisory committee that oversees all acquisitions and dispositions of vacant structures and lots declared blighted/public nuisance or "surplus," per Chapter 16-400 of the City Code. It is comprised of the executive directors of 10 city departments, commissions, and quasi-public agencies; 2 City Council members; and representatives from 2 citywide development organizations. The VPRC reviews all potential transactions, and, if it approves them, prepares the City Council resolution authorizing the city's Public Property Commissioner to receive or convey the property, to be submitted by the local Council member. The VPRC can recommend that the city seek to acquire tax-delinquent property at sheriff's sale, by bidding the amount of the outstanding liens, or accept it as a "gift" from owners, in exchange for forgiving their liens, in order to transfer it to a nonprofit or for-profit developer for revitalization. To conform to the terms of its charter, which prohibits direct conveyance of surplus public property for less than fair market value, the city has the PRA handle all private acquisitions and public dispositions for less than fair market value. The VPRC coordinates the transfer of City property to the PRA, with the approval of the Public Property Commissioner and PRA Board, a process that takes about 3-5 months to complete, unless other city agencies need to be involved, which extends it to up to a year. From 2000-2010, the VPRC accomplished about 300 property transfers annually (Philadelphia LISC & National Vacant Properties Campaign, 2010).

Disposition Strategies

Currently, the city's primary method of disposition for tax-delinquent property is the sheriff's sale. Once the city files the foreclosure case and the court issues a judgment, the sheriff, as an officer of the court, can sell the property/ The Real Estate Division of the Sheriff's Office handles the sale. The minimum bid is the outstanding lien amount. If a property sells for more than the taxes owed, the other lien holders are paid

first, and then the rest goes to the original owner. The winning bidder must put down a 10% deposit at the time of sale, and has 30 days to complete the transaction. If property does not sell during the sheriff's auction, it is held for 30-60 days, and then re-auctioned, with this process repeating again if necessary. If property is offered 3 times without a bid, it is withdrawn from the sheriff's sale, and a "stayed" status placed upon it. Following a successful sale, the original owner has 9 months to exercise a "right of redemption" and reclaim the property by paying all liens. If the original owner does so, the bidder receives back their bid and/or deposit.

Relative to other cities, Philadelphia has been slow in disposing of properties through sheriff's sale. According to the Controller's Office, the process generally takes about 2.5 years, although sometimes as long as 6 years, from the date of delinquency (foreclosure eligibility) to sheriff's sale completion and subsequent new ownership. In recent years, the Sheriff's Office has sold about 200 properties per month, a rate that would require over 40 years to clear out the existing inventory (Pew Charitable Trusts, 2013, June). In the first 7 months of 2013, however, fueled by pressure from City Council, the Sheriff's Office offered about 360 tax-delinquent properties per month. Mayor Michael Nutter has committed to increase sales to 600 properties per month, or 7,200 per year. City officials tend to view the Sheriff's Office itself as a barrier to achieving this goal. It is subject to an ongoing FBI investigation. Currently, it is also undergoing a major technology upgrade, scheduled for completion at the end of 2014, to replace outdated information systems and enable it to handle larger property volumes (Kerkstra, 2013, August 25). Faster disposition also requires a better flow of up-to-date lien information from the Revenue Department to the Sheriff's Office (Pew Charitable Trusts, 2013, June).

Like Detroit, Philadelphia has experienced difficulty securing desired outcomes through the sheriff's sale process, including preventing the transfer of properties to problematic owners and helping CDCs, nonprofits, and community groups accomplish productive use. In theory, eligible bidders must not be the current owner of any property with outstanding code violations or have been the owner of record for any property tax-foreclosed in the last 5 years or confiscated for criminal activity by the Philadelphia District Attorney (City of Philadelphia, 2012, April 20). However, according to the Deputy Sheriff, some private investors are able to circumvent these restrictions and bid anyway (Kerkstra, 2013, March 9, Ravaged by neglect: Part 1). In addition, the highest-bidder structure of the auctions makes it difficult for the city, which is limited to bidding the outstanding lien amount, and CDCs, nonprofits, and community groups, which tend to be able to pay less, to obtain properties, versus private investors (Philadelphia LISC & National Vacant Properties Campaign, 2010). For example, from the 1990s-2000s, when the market was strong, it was so hard for the city to get properties through sheriff's sale that it had to rely on the PRA's capacity to take properties through eminent domain. PRA practiced two forms of eminent domain, taking properties within certified redevelopment areas (the "urban renewal" approach) and doing "spot condemnation" (Act 94 condemnation) of blighted/public nuisance, tax-delinquent properties across the City (Kromer, 2002). In regard to CDCs and other nonprofit developers, according to city staff, they face competition from 30-45 private investors who regularly purchase tax-delinquent properties, and often bid on properties just because nonprofit developers are. Nonprofits are also hampered by Information asymmetries, in that the Sheriff's Office operates a password-protected list of properties scheduled for upcoming auctions that users must pay a fee to view. Finally, the 9-month "right of redemption" possessed by the original owners makes it difficult for purchasers, especially nonprofit developers, to obtain rehabilitation financing, because they might lose their properties.

Philadelphia also disposes of some properties via the PRA. As mentioned in the previous section, the PRA manages disposition of two types of property: property that it already owns, most acquired through eminent domain, and City-owned vacant and surplus property, transferred to it by the VPRC. From 2006-2008, the PRA sold an average of 285 properties per year, nearly all vacant lots to private developers. During the same time, the PRA acquired the greatest number of vacant properties in 2006 (763) and 2007 (368), due to the Neighborhood Transformation Initiative (NTI), and fewer in 2008 (68), because the Controller's Office found evidence of overspending on land acquisition in an audit. Generally, PRA disposition is triggered by outside action, when an individual or firm submits an expression of interest. If the property is owned by PRA and available, the PRA obtains an assessment of fair market value via independent appraisal within 6 weeks.

If the property is valued at $100,000 or more, the PRA must offer it for sale via a competitive open bid process. If it is worth less than $100,000, the PRA has the interested party submit a development proposal that includes a financing plan and preliminary architectural drawings. If the PRA is confident that the interested party has the development expertise and financial capacity to complete the project, the PRA approves it, and the buyer signs a legally binding redevelopment agreement and puts down a "good faith" deposit of 10% of the property's fair market value. The PRA then obtains project approvals from the required city agencies. Once these are secured, the PRA schedules a property settlement meeting, at which point the buyer must pay all costs. Three to six months later, the PRA and the buyer attend a pre-construction meeting, where they review the project plans and schedule. Once the buyer finishes the project, the PRA conducts a final inspection to confirm that the terms of the redevelopment agreement have been met, and then issues a certificate of completion, clears the title, and returns the good faith deposit. If the PRA is not satisfied, it can request changes from the buyer or deny the completion certificate (Philadelphia LISC & National Vacant Properties Campaign, 2010).

Currently, to address its large volume of properties that need disposition, Philadelphia is taking action to create a land bank. The city's vision is that the land bank will function as the "central clearinghouse" for all publicly and private owned vacant buildings and lots, providing a "one-stop shop" for developers and de-fragmenting and de-politicizing the disposition process. Philadelphia, with a population of 1.5 million people, is the largest US city to pursue a land bank strategy (Hurdle, 2013, December 31). The City Council passed land bank bill sponsored by Councilwoman María Quiñones-Sánchez on December 12, 2013 (Vargas, 2013, December 13). Under the bill, the new land bank is to take control of all vacant properties owned by the City of Philadelphia, PRA, and PHA. An independent board will run the land bank. It will have the power to request a sheriff's sale of any tax-delinquent property and take possession of the property before the sale occurs by bidding only the amount of the unpaid liens. Thus, the land bank will have the capacity to transfer properties with clear title to CDCs, nonprofits, and community groups (Kerkstra, 2013, March 12, Ravaged by neglect: Part 4). In addition, it will be able to sell properties below fair market value for certain purposes, like affordable housing, economic development, community development, or side yards.

While the land bank has the potential to transform disposition in Philadelphia, it does face significant political, financing, and administrative challenges. Critics are concerned about a provision in the land bank law that requires City Council approval for all sales, via a vote of both the VPRC and the City Council itself, which could hold up development (Hurdle, 2013, December 31). This provision was necessary to get the bill passed by City Council (Vargas, 2013, December 13). Second, there is the need to secure start-up funding for the land bank. The land bank is intended to be self-sustaining financially, potentially via property sales or part of the tax increase received on sold properties for up to 5 years, but it will need about $5 million to become operational. The city could use Community Development Block Grants, or the money from a $6 million settlement between the city and the PHA, reserved for blight remediation or affordable housing (Geeting, 2014, January 14). The land bank also needs to develop a strategic plan, defining its goals, policies, and procedures (Geeting, 2013, July 8). To some extent, the city has already been working on this issue. In April 2012, it released "policies for the sale and reuse of city-owned properties," focusing on the inventories of the PRA, PHDC, and City of Philadelphia's Department of Public Property. These written disposition policies are unique among the three cities examined here, Philadelphia, Boston, and New York City. They recognize four priorities:

> encourage the development and reuse of vacant properties consistent with the City of Philadelphia's Comprehensive Plan (Philadelphia2035), and other City-approved... plans; eliminate blight and revitalize neighborhoods; strengthen the City's tax base; [and] sell, at market value, properties without an adopted public purpose, and discount properties that provide significant community benefits (City of Philadelphia, 2012, April 20, 1).

In addition, the land bank must be incorporated by the state, and its strategic plan, budget, and staff approved by City Council. During its startup phase, the land bank will be located under the Philadelphia Housing Development Corporation, relying on disposition staff there, as well as the PRA and the Department of Public Property (Vargas, 2014, January 14). It also will have an interim board of directors.

However, it needs a permanent board of directors, with 5 members to be chosen by the mayor, 5 by City Council, and 1 by a combination of both, and 4 members to be representatives from community groups or nonprofits with expertise in development and/or affordable housing. Furthermore, City Council must transfer city-owned properties to the bank. Land bank supporters are concerned that almost all city-owned properties are conveyed to the bank, and the PRA or other agencies do not hold back any beyond those currently involved in a transaction (Geeting, 2014, January 14). City officials estimate that it will take a year to get the land bank up and running, by the end of 2014 (Vargas, 2014, January 14). To promote transparency, according to the bill, the land bank is required to provide annual reporting on property requests and project outcomes and costs (Geeting, 2014, January 14).

Like the other cities discussed here, recognizing the barriers to disposition, Philadelphia has also launched initiatives specifically targeted at vacant land. In the mid-2000s, Philadelphia established the Green City Strategy, where the city works in collaboration with the Pennsylvania Horticultural Society and community groups to "stabilize" vacant land. The strategy involves two programs, the Vacant Land Stabilization Program and the Community Land Care Program, and has been integrated into the Neighborhood Transformation Initiative (Agyeman, Fitzpatrick, Magari, & Yenco, 2007, September).

CASE STUDY 2: NEW YORK CITY

Introduction

New York City had a similar delinquency problem to Philadelphia during the 1970s-early 1990s, but has since brought its delinquency under control, benefitting from an very strong market. Due to its delinquency challenge, which brought in significant numbers of tax-foreclosed buildings, New York City has been required to contend with large-scale disposition. Over the last 30 years, the city experimented with a variety of strategies to transfer properties, especially occupied structures for which it sought to avoid management responsibility and liability, and pioneered a number of innovative methods, the most successful of which has been third party transfer.

Delinquency Challenge

New York City ha experienced ebbs and flows of delinquency over the years, reinforcing the importance of general economic health and market strength to delinquency levels. In 1948, with a change in state law, New York City gained the power to foreclose on tax-delinquent property, with properties more than 3 years (12 quarters) delinquent eligible for foreclosure. However, the city did not really start foreclosing on properties until the mid-1960s, when computerized tax records made it easier to identify properties with outstanding liens (Strom, 1985). The three critical agencies involved were the Finance Department, which sent out notices of tax delinquency; the Law Department, which initiated foreclosure proceedings, and the Department of General Services, which sold properties at auction (Smothers, 1983, April 10).

During the 1970s, NYC experienced a delinquency epidemic, which was fueled by a number of factors. First, delinquent tax bills carried a low interest rate, promoting (at least) short-term delinquency. The interest rate was 4.5% for properties with an assessed value less than $12,000, and 7% for all other properties, which was less than the market rate of interest (Arsen, 1992). Second, there was widespread abandonment, as owners lost confidence in entire areas of the city and "strategically defaulted" because they believed their properties would continue losing value and the rents they were getting were insufficient to cover operating costs and/or justify further tax payments (see Chapter 1) (DePalma, 1988, July 10). The mid- to late 1970s were a difficult time for owners, who faced increasing operating costs, due to rising fuel prices and aging building stock, and high mortgage refinancing costs (Oser, 1979, April 26). In buildings subject to rent control, owners could not increase rents to bring them into alignment with operating costs (Kennedy, 1995, March 13). In buildings where rent control had recently been lifted, low-income tenants struggled to pay, because the presence of rent control during the previous high-inflation period constrained natural market adjustment (Oser, 1979, April 26). Finally, like in Philadelphia, delinquency was enhanced by

lax enforcement. The city tended to wait until properties had been delinquent for longer than 3 years before pursuing foreclosure, especially if owner-occupied one- to two-family houses were involved, because they did not want to displace people (DePalma, 1988, July 10). In 1975, the city experienced a fiscal crisis, partially caused by the overestimation of potential FY 1975 real estate tax receipts by $48 million (Strom, 1985).

During the late 1980s, the city benefitted from an improving economy, which increased property demand, values, and rents and reduced delinquency. In 1988, for example, the number of delinquent properties decreased sharply in all 5 boroughs, except for Queens, where it was already low. There was less owner abandonment, as owners began "redeeming" more properties, by either paying their taxes in full or setting up installment payment plans. For example, of the 9,527 properties on the original vesting (foreclosure) list for Brooklyn in November 1986, 7,065 had been redeemed as of July 1988. In other boroughs, more than half of the properties on the original vesting lists were redeemed. Under the city's redemption system, owners were allowed to redeem within the first 4 months of vesting by paying 10-15% of the unpaid taxes upfront, and committing to payments plans for the rest. From 4-24 months of vesting, owners could request payment plans, but the Board of Estimate had to agree to release. Ironically, during the late 1980s, property demand, and thus foreclosure prevention, was actually helped by the fact that the city had already seized so much property, reducing the available supply and increasing competition (DePalma, 1988, July 10).

During the early 1990s, there was an economic downturn, and thus a resurgence of delinquency and owner abandonment. For example, in 1988, the city filed 6,609 foreclosure proceedings, and in 1993, it filed 18,003, almost 3 times as many. Likewise, in 1988, 6,021 delinquent owners (91%) redeemed their properties, compared to only 5,816 (32%) in 1993 (Kennedy, 1995, March 13). In addition, in 1993, the city owned almost as many foreclosed units (32,078 units as of June 30) as in 1983 (31,756 units) (Oser, 1994, March 27). As a result, in 1993, concerned about the growing number of properties coming into city ownership, city officials took the extreme step of all stopping new foreclosures (Kennedy, 1995, March 13).

Collection Strategies

Throughout the last 30 years, in response to surges in delinquency, the city has tried new collection strategies, the most important of which have been the 1978 "fast foreclosure" law (Local Act 45) and the 1996 tax lien sale law (Local Act 26). The third party transfer law (Local Act 37), which is related, will be discussed in the disposition sections. The 1978 "fast foreclosure" law (Local Act 45) enabled the city to foreclose on properties more than one year (4 quarters) delinquent, as opposed to three years (12 quarters) delinquent, as previously. The city intended the law to motivate owners to bring their properties into compliance, by showing them that delinquency would no longer be tolerated. However, because many owners were willing to relinquish their deteriorated, low-value buildings, the law actually had the inverse effect intended, and ended up bringing a large number of buildings into city ownership immediately after passage (Strom, 1985). Between 1978-1979, the city seized 2,100 buildings in Manhattan, 3,947 in the Bronx, and 7,324 in Brooklyn (DePalma, 1988, July 10). After this disastrous 1978-1979 "vesting," the city never again took properties only one year delinquent, waiting until they owed at least 3 years of taxes to do so because of the costs involved (Strom, 1985). Even so, the city was so overwhelmed with foreclosures that it did not reach its goal of yearly vestings, or takings of tax-delinquent properties, In each borough until 1986 (Oser, 1986, July 13). In 1993, as noted above, the city, experiencing another surge of delinquency, actually stopped filing new foreclosures (Kennedy, 1995, March 13).

In 1996, determined to take a new approach to delinquency, the city passed a major new collection law, Local Act 26, which permitted tax lien sales. In this regard, the city followed the model of Jersey City, which sold $43.7 million in liens to First Boston Corporation for $25 million in 1993 for the first US tax lien securitization (Oser, 1996, March 3). The Finance Department completed the first tax lien sale in May 1996. It sold $250 million in liens to a private investment trust (NYCTL96-1), which then issued $215 million of bonds, secured by the liens. The city kept the residual interest of $35 million, so that it could collect on any "extra" money received once the bonds were retired. Morgan Stanley & Company underwrote the bonds, and sold them in 3 packages with separate rates (A, AA, and AAA). The trust hired J.E. Roberts Companies as the servicing company to collect on the liens. The sale involved liens on 4,645 properties, with an mean lien-

to-value ratio of 24.5% (Oser, 1996, July 16). To protect owner-occupants, the city sold liens on commercial and multi-family properties, but not one- or two-family homes, co-ops, and condominiums (Oser, 1996, March 3). Significantly, notification of the impending lien sale got many delinquents to pay. During the time between when the city published list of delinquent properties eligible for sale and the sale actually occurred, individuals paid over $200 million in outstanding liens (Oser, 1996, July 16). It is important to note, however, that the tax lien sales act was based on the premise that the city would not sell the liens on the most distressed residential properties; instead, it would channel these properties through the third party transfer program, so they could be brought under new ownership and rehabilitated (Allred, 2000).

Disposition Challenge

Prior to 1978, all foreclosed properties came to the City's Department of Real Estate (RED) for disposition, which then auctioned them. From 1978-1980, the city came to the realization that it needed a new disposition process. Due to the 1978-1979 "fast foreclosure" vesting, as well as earlier foreclosures, the city owned a huge number of vacant and occupied properties. Furthermore, under the "fast foreclosure" law, it had the potential to gain many more (Oser, 1979, April 26). RED did not have the staff and resources to manage these properties, especially the occupied buildings. It was rapidly becoming overwhelmed, and conditions in city-owned buildings were deteriorating, to the point that the city was at risk, in many cases, of becoming as poor a landlord as those from which it had originally seized the structures (Strom, 1985). Demonstrating the scope of the problem, in 1979, the Koch administration requested, and received, $100 million in federal Community Development Block Grant funds to manage and rehabilitate its tax-foreclosed inventory. The city also allocated $30 million for rehabilitation from its own budget (Oser, 1979, April 26). Furthermore, its auction process faced scrutiny and criticism. In November 1978, Councilman Stanley Michaels put forward a City Council resolution requesting that the Board of Estimate institute a 6-month moratorium on the sale of all city-owned property at auction and commission a study of auction outcomes, after his staff found that 116 of the 127 residential buildings auctioned January-April of that year were now tax-delinquent. Michael's staff also discovered that the buildings were selling at significant discounts (41.7% sold for less than $1,000 and 20.6% sold for less than $2,000), likely to speculators or unprepared investors (Ranzal, 1978, November 14). RED also received negative feedback for auctioning some South Bronx properties falling in the federal and city redevelopment area, requiring the city to potentially buy them back for a higher price (Fried, 1978, March 21).

Consequently, in 1978, the city took a major action to prepare for a new disposition era. It passed Local Law 3, which transferred management and disposition responsibility for all occupied buildings from RED, an administrative agency, to the Department of Housing Preservation and Development (HPD), the housing policy agency. Effectively, this meant that HPD acquired oversight over almost all residential buildings, which could move in and out of occupancy as tenants were relocated and they were rehabbed. To handle the properties, HPD created the Office of Property Management, which was divided into two groups: the Division of Property Management (Central Management) and the Division of Alternative Management (DAMP) (Strom, 1985). Central Management took control of all buildings run directly by the city, while DAMP assumed responsibility for all buildings run by community groups, tenant associations, and private investors in coordination with the city (Goodwin, 1981, April 8). In addition, following the City Council report on auction outcomes, which indicated that, 4 years post-auction, 94% of former city-owned properties were tax-delinquent again (54% for at least one year) and 44% of buildings occupied at sale no longer offered adequate housing, the city prohibited selling occupied properties at auction (Gonzalez, 1993, October 8). While HPD took control of all occupied properties, RED remained responsible for management and disposition of all vacant properties, including vacant commercial structures and vacant lots. In the hierarchy of city-owned buildings, RED's vacant buildings tended be those in worst condition, abandoned by their owners for long periods of time, with the Central Management buildings in the second-worst and DAMP buildings in the best (Goodwin, 1981, April 8). In addition to tax-foreclosed properties, RED also retained control of "surplus" properties, acquired for public purpose and then never used (Oser, 1985, October 6).

In April 1980, the city held 10,000 tax-foreclosed buildings, 4,300 occupied, with 38,000 units and 150,000 people living in them (Oser, 1980, May 2). DAMP was responsible for 12,000 units. The city had a

staff of about 1,000 people, with an additional 420 repair workers and 1,800 superintendents working under contract. That year, it spent about $80 million in CDGB, with the continuation of federal funds dependent on its ability to show HUD an effective disposition program (Oser, 1980, November 21). During the mid- to late-1980s, with the year 1986 serving as a turning point, the city was moderately successful in reducing its inventory, through a combination of programs focused on returning buildings to community groups, tenants, and private management firms. In 1986, with the City's bond rating having improved since the fiscal crisis, the Koch administration a initiated 10-year, $5 billion capital investment program in housing, which provided rehabilitation funds (Chen, 2003, December 21). By 1988, with fewer properties coming in via foreclosure and more money for rehabilitation, in the words of a *New York Times* reporter, the City's disposition policy "shift[ed] from crisis management to something more resembling a long-term management plan." The city updated its 1986 10-year housing plan with ambitious goals regarding the management and disposition of both occupied and vacant city-owned properties. These goals included rehabilitation of all 47,000 existing city-owned vacant units, with 15,000 to be reserved for the homeless and 32,000 for low- to moderate-income households, at a rate of 4,700 units per year; rehabilitation of additional vacant buildings as they are foreclosed; and rehabilitation of all 50,000 existing city-owned occupied units, as well as the 32,000 additional occupied units expected to enter city ownership over the next 10 years. The city budgeted $2.4 billion for the rehab of the vacant buildings and $1.3 billion for the occupied buildings (DePalma, 1988, July 10).

During the early 1990s, with the economic downturn and increase in tax delinquency and owner abandonment, the city's inventory grew to a level similar to that of the early 1980s. By 1994, the city owned and managed 51,672 units in 5,458 buildings, of which 75% were occupied. On average, these properties had been in city ownership for 19 years, and it cost the city $2.2 million to acquire, rehabilitate, and dispose of each building, even though the average arrears at the time of taking was only $36,000. Moreover, the majority of these buildings were in poor condition (Allred, 2000). The city was spending $200 million a year to manage its inventory, with tenant rents covering one-quarter and CDGB grants covering the rest (Oser, 1994, March 27). In 1995, under the Giuliani administration, the city declared that it would no longer be the "landlord of last resort," and began efforts to aggressively dispose of buildings to the private sector. To this end, in 1996, the city passed Local Law 37, or the third party transfer law, which permitted the city to transfer title of any "distressed" tax-delinquent multifamily residential property to a qualified third party (for-profit or nonprofit firm). A property was considered "distressed" if its lien-to-value ratio was more than 15%, its owner had not paid at least $1 in taxes for one year, and it had either $1,000 in emergency repair liens or 5 or more hazardous (Class B) or immediately hazardous (Class C) housing violations outstanding (Oser, 1996, July 16). Under the third party transfer law, once the court issued a foreclosure judgment, HPD had 8 months to transfer title to itself or another third party. In the first four months, owners could automatically redeem their properties by fully paying off their debts or entering into payment plans. In the next four months, owners still could request redemption agreements, but the city was not obligated to grant them (Oser, 1999, November 14). The law was intended so that the city would never take title to the properties. Local Act 37 also gave the city the power to initiate sub-borough foreclosure actions, so that it could pursue enforcement at the scale of a single tax block, provided that it did so uniformly against all properties on the block (Allred, 2000). As previously discussed, Local Act 37 was meant to work in tandem with Local Act 26, so that the least collectable liens/properties were addressed through third party transfer and the most collectable liens/properties through tax lien sale (Oser, 1996, July 16).

By 1999, the city was seeing results from its latest round of disposition efforts, especially those aided by Local Acts 37 and 26. From 1994-1998, according to an HPD report, the number of city-owned foreclosed buildings decreased by 41% from 30,358 in 1994 to 17,941 in 1998, the lowest level since 1978. However, there was the issue of how much progress to attribute to general economic growth and reinvestment in the city (Zielbauer, 1999, February 7). By the early 2000s, the real estate market was so strong that demand started to affect Housing Fund Development Corporation buildings, former tax-foreclosed buildings that had been converted into low-income co-ops through the TIL program, which were scattered through Harlem, Washington Heights, Brooklyn, and the Bronx. Since they were established in the late 1970s-early 1980s, units had generally sold for less than $7,500 to low- to moderate- income individuals;

however, in the 2000s, private firms like Halstead Property and the Corcoran Group discovered them and began listing them for $100,000-$900,000. The city never anticipated this level of demand, and had not included resale restrictions in the earliest TIL agreements. Starting in 2003, HPD required new TIL buildings to have a 30% flip tax, set income limits at 120% of median, and required the buildings to abide by these terms for 30 years (Healy, 2009, Aug. 17).

Disposition Strategies

First wave: Community Management Program, Tenant Interim Lease, and Private Ownership and Management Program (late 1970s to mid-1980s)

During the late 1970s-1980s, under the Koch administration, the city pioneered a set of innovative alternative management programs to convey tax-foreclosed buildings to responsible community groups, tenants, and private developers, with emphasis on the first two groups. As previously discussed, these programs, ultimately called the Community Management Program, Tenant Interim Lease Program, and Private Ownership and Management Program, operated out of HPD's Division of Alternative Management, or DAMP. HPD handled buildings that could not be transferred to DAMP, because no community groups, tenants, or private investors would accept them, via Central Management. CM buildings tended to have lower values, greater deterioration, higher operating costs, and/or have uncoordinated or uncooperative tenants (Strom, 1985). With buildings in Central Management, the city tried to practice a kind of "filtering," relocating tenants into buildings in better condition and/or recently rehabilitated using Section 8 funds (Oser, 1980, May 2). However, despite being necessary for inventory management, relocation was difficult, because tenants sometimes resisted, and eviction could take 3-5 months (Oser, 1980, November 21).

The Community Management Program and Tenant Interim Lease Program emerged from the city's earlier receivership program. Under the receivership program, RED took responsibility for managing occupied, owner-abandoned buildings under court order. From 1970-1972, RED went from operating 20 to 200 buildings, and struggled to do so effectively. Recognizing that the city was underperforming as a landlord, in 1972, community groups convinced HPD to give them management contracts for buildings, launching the Community Management Program. The original premise of CMP was that the city would transfer buildings to community groups, with city loans for required rehabilitation, and the groups would sell the buildings to tenants when repairs were complete. In 1975, HPD established the Direct Sales Program to eliminate intermediate ownership, and let tenants in tax-delinquent, owner-abandoned buildings to purchase their units directly from the city. The Direct Sales Program achieved limited success, because the disposition process was too complex, with unclear sales prices and complicated management contracts that tenants needed to sign. In 1978, when HPD assumed responsibility for the occupied tax-foreclosed inventory, DAMP re-launched modified versions of the Community Management Program and Direct Sales/TIL Program. Under the new CMP, DAMP contracted with community groups for rehabilitation and management of city-owned buildings, and provided them with operating subsidies, rehabilitation funds, and management fees. Most contracts covered 5-12 buildings, or 100-300 units, at a time. Under the new TIL, tenants organized and signed a lease with DAMP to obtain management control of their buildings. Simultaneously, they signed an intent to purchase agreement to buy their units in the future for a pre-determined price. For TIL, DAMP provided basic repair funds, but, unlike CMP, no operating subsidies, as rents were expected to cover building costs (Strom, 1985). In February 1980, the Board of Estimate passed a law requiring all CMP and TIL buildings to be sold as cooperatives for $250 per unit, except for in certain central locations, where the real estate market was stronger. The $250 figure was based on the average auction price of tax-foreclosed units in the late 1970s. In these areas, the Board of Estimate and Planning Commission was given the right to determine sales prices after appraisal. To promote stable tenure and discourage speculation, the Board of Estimate permitted CMP tenants selling within 3 years and TIL tenants selling within 2 years of city sale to get back only their purchase price plus assessments. CMP tenants who stayed until Year 4-15 could keep up to 30% of resale profits, and TIL tenants until Year 3-10 50%, unless their co-ops adjusted these percentages downward by majority votes. As of May 1980, there were 165 buildings enrolled in CMP and 235 buildings in TIL, versus 2,800 buildings in Central Management (Oser, 1980, May 2).

In 1979, DAMP launched the Private Ownership and Management Program (POMP), **to** leverage private-sector real estate experience. POMP reflected the policy debate between individuals who wanted as much tenant and community ownership of tax-foreclosed buildings as possible and individuals who believed that private firms could contribute to more efficient management and disposition (Fried, 1979, January 26). Under POMP, the city transferred management of buildings to private real estate firms. POMP basically included the most attractive buildings in the DAMP inventory, which private firms believed could be potentially profitable. Firms signed a one-year management contract with the city, and then were permitted, and expected to, purchase the buildings at the end of the year. To be eligible for POMP participation, firms needed to be involved in the management of similar buildings in the same area, ensure that the POMP buildings would not be more than 1/3 of their portfolio, and not have track record of harassing their tenants or outstanding code violations. During the first year of management, firms received operating subsidies, repair grants, and management fees. They also worked with DAMP staff to develop "rent restructuring" plans to bring income in line with expenses (Strom, 1985).

Collectively, the HPD programs, and especially those under the DAMP, were slow to get off the ground, with the city not getting the rate or volume of sales it wanted. From 1978-1981, the city spent about $285 million to take and manage tax-foreclosed buildings, but sold only 200 of the 10,000+ it acquired, with CMP and TIL entities buying only 16. To some extent, this reflected the inverse incentives associated with CMP and TIL. Specifically, many tenants preferred continued city ownership, despite potential poor management, because it was cheaper for them. The city gave repair grants and operating subsidies to the buildings that it owned, which kept rents low. If tenants or community groups took over buildings, to maintain the same level of service, they had to pay higher rents in order to offset the lost city money. Moreover, for most city-owned buildings, the rents that tenants could feasibly pay were not sufficient to cover operating costs, property taxes, and debt service on capital improvements, such as major systems repairs. To be economically viable, the buildings required ongoing subsidies, the same reason that their original owners had abandoned them in the first place (Goodwin, 1981, April 8). Thus, the city had difficulty locating receivers with the financial and organizational capacity to take over buildings. In addition, the city faced decreasing federal aid (Section 8) for rent subsidies. It also had a slow RFP process for transferring buildings (Oser, 1986, July 13). Internal discussions about who should be selected lead to delays and contracts being not awarded at all, without a publicly stated reason. By the end of FY1986, reflecting the slow rate of disposition relative to acquisition, the city had more tax-foreclosed buildings (9,716) than it did at the end of FY1983 (9,194). In addition to its roughly 5,000 occupied buildings (50,000 units) and 5,000 vacant buildings (another 50,000 units), the city owned 10,000 vacant lots. Nonetheless, via CMP and TIL, the city was running the largest "urban homesteading" program in the US. DAMP was spending $30 million per year, and had a staff of 125 full-time employees. Thus, in regard to its occupied properties, by 1986, the city had to confront some hard realities, namely the fact that it could not dispose of all buildings to community groups, tenants, and private firms, and still needed the Central Management function, or some variant thereof, to treat the most challenging, deteriorated, and non-profitable buildings (Oser, 1986, July 13).

While HPD carried out its activities, RED (later the Division of Real Property in the Department of General Services) continued to auction. During the 1980s, the city held as many as six 2-day auctions per year (Gonzalez, 1993, October 8). From 1982-1987, RED auctioned about 1,000 properties a year (DePalma, 1987, October 11). Generally, RED selected vacant properties to auction based on public expressions of interest. It could sell any tax-foreclosed or surplus property not included in projects funded under the 5-year capital plan. Under a 1978 law, with surplus land, RED had to offer it first to the original owner, if the project for which it was acquired was abandoned within 10 years, before offering it to the public (Oser, 1985, October 6). To be eligible to purchase buildings, bidders had to disclose all properties in which they had a current or previous interest (Strom, 1985). In addition, to help with commercial property disposition, in 1981, RED, in collaboration with HPD, the Planning Commission, and Office of Economic Development launched a "shop-steading" program to sell tax-foreclosed commercial property to local business owners at low prices. The program was Intended to help qualified owners open or expand businesses and revitalize neighborhood shopping districts. If the buildings were mixed-use, the buyers were required to renovate the rental

apartments. The city offered business owners an 8.5% purchase-money mortgage and CDGB repair funds (Daniels, 1983, May 4).

RED received criticism for its handling of commercial property sales during the 1970s-1980s. For example, in 1983, the State Comptroller's Office found that the city sold commercial properties at auction too quickly to unqualified buyers, failing to check their histories and/or investigate or take action on negative information it received. Successful auction bidders let properties become delinquent again and did not stay up-to-date on favorable city mortgages. For example, of a set of 97 commercial properties sold at auction in 1979, almost a third (27) faced foreclosure in 1982. Owners were late on payments for 684 of the 1,457 mortgages held by the City on February 28, 1981 (Carroll, 1983, March 24). A 1986 follow-up report criticized the city's handling of commercial property auctions from July 1983 to March 1985. It found that, on average, RED waited 6 years before auctioning properties and took 85 days, rather than the stipulated 30, to inspect newly acquired properties. It also sold properties to nonprofits at below-market rates, but then did not track them to ensure they were used for this purpose (Barbanel, 1986, September 2). The "shop-steading" program was viewed as too small-scale, considering the size of the disposition problem, because it involved only 9 buildings in the first phase (1981), 4 of which did not sell and had to be reoffered, and only 67 buildings in the second phase (1983) (Daniels, 1983, May 4).

RED also struggled to dispose of vacant land through auction, partially due to quality and strategic planning issues. In 1987, the city owned about 30,000 parcels, or 3.5% of the total urban parcels. Much of this land was affected by physical or usage constraints. For example, many parcels were small, scattered (making site assembly difficult), and in economically challenged locations. Other large, developable sites were being held for future use by the Board of Education, Transportation Department, or Planning Department. In particular, the Planning Department sought to retain contiguous parcels in order to perform long-term site assembly for large redevelopment projects. Despite the massive inventory of city-owned land, developable land was so limited that the city used its urban renewal powers to condemn land for projects. In 1986, when Real Estate Board of New York offered to build 3,000 affordable housing units at cost on city-owned land, there was only one site capable of holding even 1,000 units (DePalma, 1987, October 11). Making decision-making difficulty, the city did not have a master plan or policy guidelines for disposition of vacant land. During the 1990s, the city was still experiencing challenges disposing of this problematic inventory. In 1991, the Planning Department started a review of 24 neighborhood land-disposition plans to guide future public and private development and improve coordination among groups. The city also tried leasing the land for temporary use, as well as offering it for side yards and using it to construct small commercial strips next to affordable housing complexes. In 1993, out of 14,000 parcels, the city was leasing 1,300 to community gardens and 1,000 to private individuals (Gonzalez, 1993, October 8).

Second wave: 10-Year Housing Plan (late 1980s-early 1990s) and efforts to shift buildings out of Central Management

In December 1986, now able to obtain bond financing, the Koch administration launched a new phase of disposition, with an ambitious 10-year housing plan focused on recycling as much city-owned property as possible, via the private and nonprofit sectors. By 1988, with its foreclosed property intake finally slowing, the city was able to tackle the most challenging part of its residential inventory: the stock of buildings that needed total rehabilitation to be usable. The 1986 housing plan, as updated in 1988, involved four components: the Vacant Buildings Program (5,200 units), the Nonprofit Program (2,000 units), the Construction Management Program (1,800 apartments in 59 buildings), and the Permanent Housing for the Homeless Program (4,400 units) (Oser, 1988, March 13).

Under the Vacant Buildings Program (VBP), the city offered vacant buildings to private builders through a competitive RFP process. Builders were awarded projects based on their capacity to provide the greatest number of low-income units for the least cost, via construction and operations savings. The VBP buildings consisted of two types: "market" buildings, with 20% low-income units, where the city expected the market-rate units to generate enough income to subsidize the low-income units, and "low-income" buildings, where the city did not expect them to do so. The city capped the maximum initial rents for low- and moderate-income households in VBP buildings. In exchange, it transferred them for $1, granted property tax abatements under the J-51 program, and provided financing at 1% interest for about 2/3 of the

development cost. Builders had to secure the remaining financing within 90 days of their successful bid, with the city loan becoming the second mortgage on the property. The city intended builders to obtain financing from the New York City Community Preservation Corporation, a consortium of commercial and savings banks that had previously partnered with the city on "participation" loans in which it provided partial financing (Oser, 1987, January 4). In 1987, HPD conducted 3 sequential RFP rounds to grant the first VPP contracts, with construction starting in early 1988. Previous NYCCPC had a mean cost of $58,000 per unit. Since tenant rents were capped, VBP success depended on builders' ability to be very cost-effective in rehabilitation and management, as well as the J-51 tax abatements. Under the Nonprofit Housing Program, the city transferred buildings to nonprofit housing developers. NHP involved 2 components: nonprofit developers renovating 1,000 units, using equity raised by the Local Initiatives Support Corporation (LISC), and the Enterprise Foundation renovating an additional 1,000 units, using state Housing Trust Fund money (Oser, 1988, March 13). For the first component, LISC raised $16 million in equity financing for the program, relying on the tax credits offered by the Tax Reform Act of 1986, which enabled corporations funding low-income housing to write off 9% of the total project cost per year over 10 years. LISC acted as the intermediary between HPD and the selected nonprofits. Under the NHP, the city provided all mortgage financing ($49 million), at 1% interest with nominal principal repayment over 30 years (85% of principal outstanding at loan expiration), to minimize tenant debt service. The buildings were granted J-51 tax abatements, so rents had to cover only operating and maintenance costs, plus the minimal debt service. The rehabilitation cost was $60,000-$65,000 per unit (Oser, 1987, February 15). Under the Construction Management Program, the city contracted with two major private construction firms, Lehrer McGovern, Inc. and Tishman Construction Corporation, to rehabilitate units, which remained under city ownership. The city sought to turn them over to nonprofit managers. Finally, under the Permanent Housing for the Homeless Program, Central Management conducted rehabilitation of units itself, using city money. These units were to be filled with homeless families currently living in shelters and tenants currently living in city-owned buildings scheduled for demolition or complete reconstruction (Oser, 1988, March 13).

By 1990, the city had made progress with VBP, NHP, the Construction Management Program, and PHH. In FY 1988 and 1989, construction starts were made on 13,260 vacant units requiring gut rehabilitation. However, by 1990, the city also began to experience challenges recycling vacant units. First, rehabilitation programs proved more costly than expected, especially when the city directly supervised or performed construction. The VBP, with private builders using private construction and permanent financing, was the most cost-effective. In contrast, Construction Management Programs went over budget in Harlem and the Bronx. In Harlem, it cost at least $72.7 million to rehab 720 units to New York's Public Housing Authority standards, $30 million more than the city planned. In November 1989, the third-round bids for the next round of rehabilitations, with the lowest being $115,000 per unit, came in so high that the city rejected all of them. The city re-grouped the buildings into smaller sites and re-bid out the work, seeking costs below $70,000 per unit for walk-ups being redone as elevator buildings. In addition, as the city used up its larger stock and buildings became smaller and more scattered, making it harder to achieve economies of scale, the city struggled to keep recycling vacant units in a cost-effective way and attract developers. In 1990, there were 15,000 vacant units in 1,700 buildings with 5-20 units each. In a December 1989 report, the Citizens Housing and Planning Council identified the city's small building rehabilitation and sales program as the one most in need of reform, including many buildings that were not really viable for it. To help the city cope with small buildings, CHPC recommended that it open the bidding process to very small builders, simplify disposition procedures, raise tenant income-eligibility thresholds, and consider leaving some buildings under public ownership and management. Third, with VBP, NHP, Construction and Management, and PHH, the city faced the challenge of making rehabilitated buildings sustainable for 20-30 years, by ensuring both that low-income tenants' incomes and rents keep up with operating costs and that sufficient reserves are set aside for future repairs. For privately-financed VBP and NHP buildings, with low-income tax credits and mortgages insured by the Federal National Mortgage Association, reserves were generally not an issue, because private developers were required to set them aside. However, for city-financed buildings, they were, even if the buildings were debt-free and tenants had units without mortgages, so rents need only

cover operating expenses. These buildings potentially required Section 8 vouchers to provide repair funds, even if this was not their intended purpose (Oser, 1990, January 7).

In 1990, the Dinkins administration (1990-1993) came into power. Shortly after taking office, Dinkins stopped the POMP program for occupied buildings, because of housing advocates' concerns about giving private firms responsibility for low-income tenants. Instead, the city re-focused on transferring occupied buildings to community groups and tenants. Community groups and tenants were given the "right of first refusal" before buildings could be offered to private firms (Oser, 1994, March 27). In addition, in 1992, the city started a 4-year effort to shift occupied buildings out of Central Management. As of February 1992, the city held 33,000 units in 3,267 buildings under Central Management, compared to 9,300 units under DAMP, and CM had an operating budget of $165 million, with 700 full-time and 2,500 contract employees. Under the CM disposition initiative, the city allocated $353 million of capital-budget spending over four years to transfer and rehabilitate CM housing. The city launched the bidding process for Phase I (2,300 units in 125 buildings) in spring 1992, requesting proposals from experienced operators and developers to take over management and ownership of CM buildings. Relative to the CMP, TIL, and POMP (DAMP) buildings, the CM buildings were the last component of the City's tax-foreclosed occupied residential inventory to get focused rehabilitation attention, because they were the least attractive part of this inventory, as previously discussed. In 1992, they generally consisted of small (8-20 units) buildings in poor condition, paying marginal rents. The city sought to transfer CM buildings for several reasons. First, they were costly to manage, because they were geographically dispersed. In addition, CM lacked the necessary budget and staff. Its operating budget covered only emergency repairs, not rehabilitation. Because of fiscal strains, CM had to cut 200 staff members from 1990-1992, leaving fewer managers responsible for more units (300 units/manager, compared with 225-250 in the past). Second, the CM staffing structure was not ideal for small building management, with job descriptions that were insufficiently flexible. In addition, under competitive bidding regulations, CM was required to bid out major emergency repair jobs to over 3,000 venders, and the bidding and vendor payment processes were laborious. Fourth, rents from CM buildings flowed into the City's general fund, so they did not serve the needs of the buildings from which they originated (Oser, 1992, February 2).

Third wave: Privatization

Under the Giuliani administration, the city strongly recommitted to privatization and the return of tax-foreclosed buildings back to the private sector. The city, still the largest landholder in the 5 boroughs, was concerned about long-term management sustainability, especially if it lost federal management and rehabilitation funds. In 1995, Giuliani officially stated that New York City would no longer be the "landlord of last resort" (Kennedy, 1995, March 13). The city was no longer willing to accept holding tax-foreclosed buildings for an indefinite amount of time. To accomplish this goal, the new administration added $60 million to the city's 4-year budget for disposition (Oser, 1994, March 27).

Between 1994-1998, it also launched a new set of disposition programs. In 1994, the city started the Building Blocks Program, focused on transferring 30,000 buildings to private for-profit and nonprofit developers for rehabilitation as affordable housing (Zielbauer, 1999, February 7). In 1995, the city started the Neighborhood Entrepreneurs Program (NEP) to transfer (occupied) CM buildings to small local entrepreneurs, with the goal of serving a dual purpose of disposition and capacity building. The program was a joint effort between HPD and the New York City Housing Partnership, which helped select entrepreneurs and secure equity financing. In addition, local nonprofits assisted with tenant needs, and the police department focused crime enforcement in and around buildings. Under NEP, the city selected entrepreneurs to receive building clusters. The entrepreneurs served as interim managers during construction, and took title when the buildings were complete. At this point, the buildings were capitalized with equity secured through the federal low-income tax credit program. The city provided 30-year mortgages at 0.25% interest (basically a servicing fee), and granted buildings J-51 tax abatements. To be eligible to participate in NEP, the entrepreneurs needed to put in a $50,000 cash minimum and have management experience (successfully operated at least 50 apartments over a three-year period). They received a nominal management fee during construction, a developer's fee of $1,500 a unit when they took title, and a deferred developer's fee paid out at $35,000 a year per building cluster over 15 years. Entrepreneurs were permitted

to offer vacant units at market rents. For in-occupancy tenants, rents were adjusted based on income. All rents were subject to rent stabilization. Generally, rents were insufficient to cover long-term operating costs plus reserves, so tax-credit equity investment was used to build up operating reserves. The tax-credit equity investors, who acted as limited partners, could be bought out after Year 15, upon which event the entrepreneur became the sole owner (Oser, 1998, November 22). In 1995, the city also launched the Neighborhood Rehabilitation Program, almost identical to the Koch-initiated Nonprofit Housing Program. Under NRP, local CDCs partnered with LISC and the Enterprise Foundation to obtain low-income tax credit financing to rehabilitate buildings. The city provided low-interest construction loans, averaging $60,000 per unit, and J-51 tax abatements (Oser, 1998, February 8). In 1996, the city launched the Homeworks Program, which transferred vacant buildings to private developers for rehabilitation and resale. For example, in March, the city offered 122 vacant brownstones in Harlem, with developers were expected to sell the rehabilitated brownstones for prices in the low $200,000s to the high $400,000s, with no income limits for purchasers (Oser, 1997, March 16).

As of 1998, largely via NEP and NRP, which accounted for 70% of rehabilitation activity associated with tax-foreclosed, city-owned housing (currently, about 120 buildings per year per program), New York City was the largest US user of federal low-income tax credits. Between 1988-1998, the city used low-income tax-credit financing in the rehab of 12,100 units, both vacant and occupied (Oser, 2001, June 3). As of November 1998, HPD had placed 6,340 units into NEP, with 21 building clusters (240 buildings, with 3,380 units) in progress, and 17 clusters (116 buildings, with 1,260 units) completed, while 17,000 units remained in CM and 7,000 in DAMP. In the process, it had spent $180 million. For NEP buildings, rehabilitation costs varied, going from as low as $21,000 per unit, to a mean of $47,000 per unit in an occupied building, to $64,000 per unit in a vacant building requiring substantial rehabilitation (Oser, 1998, November 22). For both NEP and NRP, which involved occupied building rehabilitation, the key challenge was convincing tenants to relocate. Private and nonprofit firms had to practice "checker boarding," moving tenants from one building to another while rehab was occurring, with the option to return once it was complete Oser, 2001, June 3). In addition, as of March 1997, the city had offered 237 vacant buildings through the Homeworks Program. For Homeworks developers, and actually all developers working with vacant city-owned buildings, one major challenge was obtaining building permits. Before they could get permits, they had to go through an inquiry process with HPD to ensure that no tenants were ever harassed to vacate their rooms and obtain certificates stating such. Even with HPD cooperation, this process could take several months, because the developers had to advertise for people who might have been forced to leave their rooms years ago. This non-harassment legislation was enacted in the 1980s, to protect tenants in buildings that might have been more valuable vacant and available for rehabilitation than occupied by low-income tenants (Oser, 1997, March 16).

Most importantly, in conjunction with, and in support of, these programs, in 1996, the city passed a major disposition law, Local Act 37, or the third party transfer (TPT) law. As previously discussed, Local Act 37 enabled the city to transfer "distressed" tax-delinquent buildings to qualified third parties to avoid city ownership. Under the TPT program, when the Finance Department publishes the list of properties scheduled for tax lien sale, HPD reviews it and eliminates any properties that are statutorily "distressed," as well as others that it evaluates as distressed and/or already involved in other programs. In June 1997, the city launched its first TPT pilot, initiating tax foreclosure against 174 properties in a single South Bronx tax district (Section 10), including Hunts Point, Longwood, Melrose, Morrisania, Mott Haven and Port Morris. Of these properties, 128 owners entered payment plans, leaving 46 properties -- 27 buildings and 19 vacant lots -- available for the program. The city "bundled" the properties into packages, and invited for-profit and nonprofit firms to bid for them. The city received 120 bids, and accepted 69 entities as qualified new owners. The city worked with the Enterprise Foundation and Local Initiatives Support Corporation to set up Neighborhood Restore to receive the properties as an interim holder, so that the city was able to meet the 4-month TPT transfer deadline. NR took title to the first group of properties in August 1998, with the goal of transferring them to the winning bidders as soon as they secured rehabilitation financing. Neighborhood Restore transferred 15 multi-family buildings, with over 270 units, in August 2000. During the interim period, the winning bidders served as the property managers. NR worked with them to address immediately

hazardous code violations, formalize all tenure, and define the scope of rehabilitation work (Allred, 2000). In its FY 2002 four-year capital budget plan, extending up to FY 2005, the Giuliani administration provided rehabilitation financing for 6,000 third party transfer units (Oser, 2001, June 3).

The TPT program has been extremely effective. It has allowed the city to use foreclosure strategically to address distressed buildings, while avoiding long-term city ownership of buildings. The city has been able to be strategic in foreclosure, while still abiding by the Uniformity Clause that requires it to pursue collections equally, by targeting specific blocks for enforcement, but then checking the tax status of all buildings on the block. However, there have been a few challenges with TPT, in both concept and practice. The first was speed. TPT was powerful because it got buildings out of city ownership quickly, but it also forced the city to decide what it wanted to do with specific properties within a very short time (4 months). This truncated turnaround was the reason that the city established a pre-approved list of qualified third parties, and supported the establishment of Neighborhood Restore to hold the properties. Second, there was the need to have a pipeline of qualified receivers, willing and able to receive the properties, and more prepared than the old owners. In this regard, New York City built on the disposition infrastructure established in the 1970s-1980s. During this time, through its programs, the city "developed a group of people (staff) who could give loans on the city side and a group of people (developers and lenders) who could get loans on the for-profit and nonprofit side," especially after the advent of low-income tax credits. By the 1990s, the city had fostered a large community of developers and lenders and "basically built an affordable housing industry," compared to the 1970s, when "it had nothing" (Schultz, 2014, March 28). Third, there was the challenge of avoiding taking buildings from smaller owners experiencing temporary financial hardship. Fourth, there was the need to provide a funding package for these buildings, which tend to have low rents, high operating costs, and high tax bills, to enable them to be economically viable while continuing to hold low-income tenants (Oser, 1996, July 16). The city has tended to select the third parties that require the least subsidy. In terms of continued subsidy, the decline of Section 8 funds is troubling. The "right of redemption" established by Local Act 37 made transfers potentially problematic (more risky) (Schultz, 2014, March 28). In addition, the city has experienced some criticism of the selection process, wherein HPD matches buildings to the city's list of approved bidders. For example, in 2001, there was controversy over 334 East 96th Street, near First Avenue, one of 53 residential buildings in a TPT round. HPD elected to transfer the building to Joseph Spitzer, a private developer with ties to the Giuliani administration, rather than the nonprofit Metropolitan Council on Jewish Poverty, which owned another building next door. City Council Speaker Peter F. Vallone asked the Office of Investigations and Oversight to review the selection process and determine why the Metropolitan Council on Jewish Poverty or another nonprofit was not chosen (Bagli, 2001, April 2). Following this request, the City Council Housing and Building Committee voted against approving the transfer of 7 TPT buildings, including 334 East 96th Street. For that building, the Committee was concerned about outstanding code violations on other properties owned by Spitzer and the nature of the selection process. For the other 6 buildings, the Committee responded to a request from Councilman Bill Perkins that the city consider TIL (turning them into tenant cooperatives) before TPT (disposing of them to the private sector) (Cardwell, 2001, April 12).

The city's privatization efforts significantly reduced its holdings. From 1990-2003, the city reduced its inventory by more than 95%, from 10,000 to fewer than 800 buildings, containing 4,000 units. In fact, to some extent, it went from having an oversupply of city-owned properties to a shortage. With a smaller portfolio of city-owned properties, it was harder for the city to take actions like supporting the creation of affordable housing. To this end, in 2001, the Bloomberg administration announced $3 billion program to repair, preserve and build 65,000 units of housing, and urged the City to try to build as much housing as possible on property owned by other agencies, like the Public Housing Authority. In the wake of this massive disposition, the city received criticism for not considering long-range outcomes beyond just selling properties and getting them off the city's books. Housing advocates argued that, in transferring properties, the city could have increased density more to help with the housing shortage and made greater efforts to mandate low rents after the change in ownership (Chen, 2003, December 21). During the financial crisis, the city experienced a moderate "bounce back" problem, reflecting the marginal nature of some of the buildings that were transferred. In 2010, there were 442 former city-owned buildings in severe financial distress, most

in Bedford-Stuyvesant and other parts of central Brooklyn, the South Bronx, and Harlem. These buildings owed a total of $140 million, or a rough mean of $318,000 each, with almost 50% having $3,000 or more in debt per unit. Low-income tenants struggling to pay, rising municipal fees (water and sewer), and the expiration of tax abatements hurt the economics of the buildings. For example, as of July 2010, the Bronx Heights Neighborhood Community Corporation, owed $3.7 million in taxes and other debts for 1694 Davidson Avenue, a 42-unit building, and 8 other former city-owned buildings nearby, and the city had started foreclosure proceedings against the entire portfolio. The Bronx Heights NCC had lost a tenth building at sheriff's auction after being privately sued by an individual who fell in the building. The city did not want to take these buildings through foreclosure, but it had few other options. Under Local Act 26 (the tax lien sale law), it could not sell the tax liens of co-ops, or housing development fund corporations. It could force them to assume new management, which might cause shareholders to lose their stakes in the building (Buckley, 2010, July 18).

CASE STUDY 3: BOSTON

Introduction

Boston is similar to New York City. It experienced high levels of delinquency in the 1970s, and then had to cope with the ensuing inventory. Unlike New York City, it has not relied on the tools of tax lien sales and third party transfer. Instead, depending on the mayoral administration, the city has alternated between auctioning and offering properties via a RFP process.

Delinquency Challenges

Like Philadelphia and New York City, Boston has struggled to cope with delinquency at different points in its history. In Boston, there are several entities involved in collections. The Collector-Treasurer's Office is responsible for collecting taxes and recording the "instrument of taking" on delinquent properties, which establishes the official tax lien and allows the Law Department to pursue foreclosure. The CT must publish a notice at least 14 days before the taking, and record the instrument within 60 days of the taking, or it becomes invalid and the process must begin all over again. The Law Department can pursue foreclosure through the state Land Court 6 months after the taking. The Land Court has exclusive jurisdiction over foreclosure, and follows the procedures set out in MGL Chapter 60, Sections 65-75. It does not move cases forward on its own, but relies on the local government representative (Law Department) to do so. The original owner can redeem automatically at any point until the final foreclosure decree. However, once the instrument of taking has been filed, the owner must either pay in full or enter an installment plan with each payment to be no less than one-fourth of the amount due and the total balance to be paid within one year, as under MGL Chapter 60, Section 62. Following the final foreclosure decree, the owner no longer has an automatic "right" of redemption, but can request to have the degree vacated for one year. For abandoned properties, this period is 90 days. The Assessing Department determines the amount due, and has the capacity to abate taxes in certain situations by submitting a formal application to the State Revenue Commissioner (CHAPA, 2000).

During the early 1970s, Boston, like NYC, experienced problems with abandonment and disinvestment, promoting delinquency, although the scale of the issue was never as great as it was in NYC, where entire parts of the city were abandoned. As of February 1972, there were 1044 abandoned buildings in Boston, representing about 1% of the entire housing stock. By definition, all of these structures were tax-delinquent. The city was concerned about related blight, fire, and crime. From January 1, 1970 to November 1, 1971, according to the Boston Fire Department, there were 557 fires in vacant buildings, with damage exceeding $2 million. In addition, in a 6-month study of police enforcement activity in the South End from January-June 1969, the Boston Finance Commission (FinCom) found that 1431 arrests occurred in and around abandoned buildings, for an average of 3.5 arrests per structure. Even before pursuing collection, the city was spending significant amounts of money to address these delinquent buildings. As of February 1972, the BFD employed 2 vacant building inspectors, and the city spent an average $25 per window and $700 per

building to secure open structures. In addition, the Building Department was demolishing 30-50 buildings per month, at an average cost of $2200 per structure. The city was awaiting permission from the Law Department to start a $1 million crash demolition program. The *Boston Globe* and FinCom criticized this program as being insufficient to address the larger issues of disinvestment and abandonment, if not combined with efforts to intervene earlier, before buildings passed the point of no return. As of February 1972, 20% of the city's housing was considered substandard, and the demolition rate was matched or exceeded by the abandonment rate, suggesting ongoing disinvestment. According to the Citizens' Housing and Planning Association, from 1960-1970, even though 17,000 new housing units were built, Boston experienced a net loss of more than 6,000 units because of abandonment, thereby worsening the preexisting housing shortage.

Not surprisingly, Boston's high rates of delinquency and abandonment during the early 1970s occurred in conjunction with poor enforcement. The foreclosure process took 6 or more years, leaving buildings in extremely poor condition by the time they were finally taken. The city was understaffed, and there was poor coordination between the different departments responsible for enforcement. The city also struggled with the use of shell entities to conceal ownership, which made foreclosure more difficult and time-consuming. In 1972, to help with the delinquency challenge, the Massachusetts State Legislature passed a law reducing the owner's "right of redemption" from 2 years to 6 months. The city also increased its code enforcement efforts, to more quickly identify owners who were nonresponsive. The Housing Inspection Department started annually inspecting buildings rehabilitated with government funds. The city established its first Housing Court in 1973 to enable it to process buildings with code violations more quickly and institute large fines against them (Taylor, 1972, February 10). As of July 1977, the city was owed about $110 million in back property taxes, of which the CT estimated that $50-60 million was collectable. Through more aggressive enforcement tactics, the CT expected to increase collections by $10 million by the end of 1977. These tactics included filing suit against 18 Boston banks that owed about $60,000 in taxes on properties taken through mortgage foreclosure. In a precursor to the 2008 financial crisis, the CT had an issue with bank paying taxes on their properties (Robinson, 1977, July 9).

In 1984, according to the CT's Office, the city was filing foreclosure petitions at a rate of approximately 1,000 per year. The Law Department generally waited about 2 years after the property entered delinquency to file. It avoided filing against occupied tax-delinquent properties, because it did not want management responsibility or liability for tenants. The city held 3,133 tax-foreclosed parcels, had legally petitioned for foreclosure on another 3,577 parcels, and had tax liens on an additional 11,168 aditional parcels (Knasas, 1984). From mid-1984 to April 1987, the CT's Office was able to reduce the number of outstanding delinquency cases from 17,000 to 10,000. However, in April 1987, the Boston Finance Commission published a report, based on a 6-month investigation of the entire process through which the city took in and disposed of property, criticizing the Collector-Treasurer's Office for management of its case backlog. FinCom found that the CT's Office did not have sufficient staff to address cases, and did not quickly and consistently take action to collect back taxes or foreclose on property and transfer it to new owners, instead allowing it to deteriorate. FinCom examined a random sample of 800 delinquent cases, and found that 19 properties had been delinquent for 11 years and 97 properties had been delinquent for 5 or more years before the city petitioned for foreclosure (Frisby, 1987, April 10). By 1989, in response to the FinCom criticism, the city became more aggressive in pursuing foreclosure, especially against tax-delinquent vacant lots that could be used for the construction of affordable housing. In 1988, it foreclosed on almost three times as many vacant lots as in 1985 (300, versus 110), increasing its total vacant land inventory. The city also took 24 buildings, although its building inventory dropped because it disposed of 37, for a total of 65 buildings (Howe, 1989, February 13).

However, by 1991, the city was still struggling with collections. That year, the *Boston Globe* investigated the city's efforts to collect $81 million in back taxes. The *Globe* found that the CT had failed to pursue foreclosure against properties with initially small debts, which then became much larger over time, and some commercial properties which had just "f[allen] through the cracks." In addition, the CT had failed to seek foreclosure against some businesses that had leased parcels from the Massachusetts Port Authority and subsequently not paid property taxes as their leases required, because city officials felt they could not

take land owned by another government agency. Following the *Globe* investigation, the city announced that it would take three of these businesses to court to collect more than $300,000 in back taxes (Walker, 1991, Oct. 14). In 1993, FinCom published a follow-up report, which documented similar problems to those identified in its 1987 report. FinCom identified 100 tax-delinquent properties assessed for total of $14 million, which were capable of producing an additional $400,000 in tax revenue per year (Walker, 1993, Sept. 1).

In 1993, showing the rising tide of disinvestment associated with the economic downturn, according to the Public Facilities Department, there were 1,350 abandoned buildings in Boston, concentrated in Dorchester, Roxbury, South Boston, East Boston, and Mattapan. This was approximately twice the number of abandoned buildings in 1988. The city received censure for not acting to quickly take the tax-delinquent structures among this group. In 1993, the city owed about 200 buildings (119 residential) and 3,000 vacant lots (Carroll, 1993, August 22).

In 2000, CHAPA published a report about the collections process in Massachusetts generally. It noted that the process could be slow, hindered by due process requirements, limited communication between departments responsible for enforcement, and challenges associated with prioritizing the caseload. As of 2000, FinCom estimated that Boston had $95 million in unpaid taxes. The Land Court, responsible for handling all foreclosure cases in the state, had a backlog of over 12,000 cases (CHAPA, 2000).

Collection Strategies

In regard to collections, Boston has implemented some innovative strategies. In particular, it has relatively sophisticated accelerated foreclosure and tax abatement procedures, although they are underutilized, according to CHAPA. For accelerated foreclosure, two procedures exist in Massachusetts. For land of "low value," assessed at under $5,000, the city can pursue an administrative (non-judicial) foreclosure process under MGL Chapter 60, Section 79. For "abandoned" properties, the city can pursue a "fast foreclosure" process, which shortens the period of time the city must wait after the taking to file the foreclosure petition, as well as the period of time the owner has to request that the foreclosure decree be vacated. In order for a property to be eligible for this "fast foreclosure," the Building Inspector must certify it as vacant.

In regard to abatement, the city also has two systems: the standard abatement procedure and the "8 by 58" procedure. Under the standard abatement procedure, controlled by MGL Chapter 59, Section 59, the city/owner must request an abatement within 3 months of assessment from the State Revenue Commissioner. As described in the CHAPA report, the city tends to be cautious with abatement, because the abatement amount is subtracted from the overlay account established by the Assessing Office each year; if the Assessing Office has not set aside a sufficient amount, the city must recover the shortfall in the following year's taxes. The Chapter 58, Section 8 procedure is intended for situations that do not fall under the standard abatement procedure. It has three requirements: there are circumstances that prevented the standard abatement from being used; the abatement is necessary to address a hardship or inequity and/or provide a public benefit; and the amount to be abated is appreciable.Under Chapter 465 of the Acts of 1984, in an effort to cope with the large amounts of abandoned property in Boston at the time, the city added an expedited "8 of 58" abatement process for abandoned property with 6 or less units. The expedited process was intended to promote the "economic feasibility" of small rehabilitation projects, by reducing the outstanding tax burden, without offering developers "unwarranted benefit." However, the need to demonstrate no "unwarranted benefit" slowed it down (CHAPA, 2000). The Chapter 465 process built on the RETAP (Rehabilitation of Tax Abated Properties) program established by Boston in 1982. The efficacy of this program was compromised by the fact that some delinquent owners, assuming the new owner would be able to secure the abatement, demanded higher prices for their properties, reducing the benefit to the new owner (Knasas, 1984).

In 1990, the city also partnered with the state on "padlock law" buildings. Under the "padlock law," the state could seize buildings where drug dealing had occurred. The Public Facilities Commission took the tax-delinquent buildings (Aucoin, 1990, February 18).

Finally, It is important to note that unlike Philadelphia and New York, Boston has never pursued lien

sales. According to CHAPA's research, Boston has the capacity to sell individual liens under MGL Chapter 60, Section 52 and bulk liens under Chapter 375 of the Acts of 1996. However, the bulk lien sales process is cumbersome. The law does not allow smaller, mixed transactions; instead, it requires that any bulk lien sale include all properties of the same class in one transaction (CHAPA, 2000).

Disposition Challenges

In Boston, the entity responsible for disposition has changed over time. During the 1980s, the Public Facilities Department's Real Property branch worked with the Neighborhood Development and Employment Agency to handle the city's tax-foreclosed inventory. NDEA operated under a mayoral Executive Order and focused on revitalizing neighborhood commercial centers, using tax-foreclosed "anchor" commercial parcels (Knasas, 1984). During the 1990s, under the Menino administration, these functions were consolidated under the Department of Neighborhood Development. Effectively, the Real Property Department became DND's Real Estate Management and Services (REMS), and NDEA became DND's Office of Business Development. REMS manages all tax-foreclosed parcels, as well as surplus properties transferred from other city agencies. DND's activities are overseen by the Public Facilities Commission, which approves all conveyances (Murphy, 2013, April 7). The Public Facilities Commission consists of the three-member board appointed by the mayor. Disposition plans are set by DND/REMS' internal Property Disposition Committee, which assesses potential uses (Agyeman, Fitzpatrick, Magari, & Yenco, 2007, September). In its disposition efforts, the city must follow MGL Chapter 30B, which controls procedures in the event that the city does not auction. Under Chapter 30B, the city must conduct a competitive RFP process for properties valued over $25,000; it can do a negotiated sale for properties $25,000 and under. Prior to 1995, the 30B threshold was $500, instead of $25,000. 30B does not apply to certain actions by urban renewal and/or economic development agencies (Knasas, 1984).

Like in Philadelphia and New York City, disposition challenges have existed in Boston for a long time. Demonstrating this fact, in 1984, Knasas described disposition in Boston as "a process in need of a policy" (1). In a review of the system, she found "technical and bureaucratic inefficiencies" and "a lack of long-term planning for property" (8). She argued that the city required "a coordinated property disposition policy" that recognized the link between disposition and neighborhood development, and helped the city use its tax-foreclosed and surplus inventory in a targeted way to achieve neighborhood revitalization and generate construction jobs, affordable housing units, and economic activity where needed. She recommended two actions to facilitate this: the creation of a multi-agency disposition task force and the development of a comprehensive property inventory and neighborhood classificaton system. The task force, consisting of representatives from CT, Real Property Department, Public Facilities Department, NDEA, and BRA, could coordinate disposition activities between the agencies and ensure policy implementation. The property inventory could help the city decide whether to pursue land assemblage in specific areas. The neighborhood classification system could differentiate areas based on percentage and severity (length of arreage) of property tax delinquency, condition of stock, and reuse options (private, public, or land banking and assemblage). It could also include relevant demographic and economic factors, such as median HH income, owner-occupancy status, and duration of residence, and supply and demand indicators. Knasas suggested that the city be prepared to match disposition programs to neighborhoods' needs. She recommended the use of auctions in strong markets, and negotiated sales in weaker markets, with the latter involving deed restrictions to control reuse and potential linkage between less and more desirable properties. The city could perform land banking and site assembly activities in heavily disinvested areas to add value to parcels that did not have much on an individual basis. In this regard, she pointed to NDEA's work in Codman Square to acquire and assemble parcels adjacent to tax-foreclosed commercial property, with the goal of transferring a large site to PFD for disposition as a single development parcel (Knasas, 1984).

In 1993, when Mayor Thomas Menino took office, DND owned about 200 buildings (119 residential) and 3,000 parcels of vacant land. In a report published that year, the Boston Financial Commission found that a significant amount of city-owned property had major code violations. The Real Property Department made minimal effort to collect rents because of its concern that tenants would take the city to Housing Court. The Real Property Commission pointed to inadequate maintenance funds. In FY 1992, the Real

Property Department had only $105,000 for building maintenance, and spent $40,000 on major repairs to just one building in East Boston. The RPD estimated that it would take $14 million to bring all city-owned buildings up to code (Carroll, 1993, August 22).

Disposition Strategies

Depending on the mayoral administration, the city has alternated between auctioning and offering tax-foreclosed properties via RFP.

First phase: Switching from auction to RFP

Under Mayor Kevin White (1968-1984), the city auctioned properties off to the highest bidder, both to generate revenue and reduce liability. If properties did not sell, they were immediately re-auctioned and then placed on hold. As of 1984, according to Real Property Department staff, there were 275-300 properties advertised for auction per year on average (out of 375-425 foreclosures). Of these 275-300 properties, an estimated 80% were sold at auction. The Public Facilities Commission took the rest for projects either pre-auction or after they did not sell. It is important to note, however, that the White administration did pilot an alternative disposition method. In March 1983, the city partnered with the Boston Housing Partnership, a newly formed nonprofit, to achieve the rehabilitation of 500 affordable housing units in both occupied and delinquent buildings and abandoned structures. The city committed $1 million in CDGB funds to the BHP, so it could offer rehabilitation financing and technical assistance to local nonprofit developers and community groups. The intent was that these developers and groups would perform the rehabilitation, and then own and operate the buildings (Knasas, 1984).

However, under Mayor Raymond Flynn (1984-1993), the city stopped doing so, because of concerns that auctioned properties were not being returned to productive use and/or used to support affordable housing to the greatest possible extent. In an investigation, the city found that, in 1983, the last full year of disposition via auction, only 3 housing units were built on the 181 land parcels auctioned off. The Flynn administration stated that its top disposition priority was creating more housing, not just generating as much revenue as possible through auction proceeds and subsequent property taxes. Consequently, in fall 1984, the city started offering properties via RFP to selected for-profit and nonprofit developers for affordable housing construction. The city transferred properties for low prices, often $1 per property. In the summer of 1987, the Flynn administration launched Project 747, an initiative to sell off 747 city-owned lots for the construction of 2- and 3-family houses (Howe, 1989, February 13). Project 747 was intended to produce 1,311 units for low- to moderate-income households by 1990. In addition, the city launched the Residential Development Program to provide rehabilitation grants to first-time homeowners acquiring deteriorated housing, including tax-foreclosed properties (Walker, 1991, Oct. 14).

The city experienced some challenges with disposition via RFP. In addition to censuring the CT in its April 1987 report, the Boston Finance Commission criticized the Public Facilities Commission for being slow in transferring properties and for not putting in place proper guidelines and procedures for executing and tracking property sales. FinCom found that, out of the 55 properties sold via RFP from fall 1984 to April 1987 for housing rehabilitation or new construction, only 16 were completed and occupied, with 10 others near completion and/or awaiting tenants, and the remaining 29 were on hold, mainly due to difficulties securing financing. FinCom also noted that the city conducted little to no public advertising of forthcoming sales, and transferred properties to for-profit and nonprofit developers without providing a clear rationale for why they were chosen over their competitors. In addition, in many cases, the city sold properties without including deed restrictions or other legal stipulations to ensure they would only be used for affordable housing. FinCom also criticized the city for not considering redemption likelihood and spending significant time preparing renovation plans for properties that were then taken back by their owners. Finally, FinCom indicated that the city's property management system was inadequate to identify properties that were good candidates for rehabilitation, track properties sold, and ensure they were being used as planned. In its report, FinCom emphasized that, since the city was receiving less revenue from property sales under the RFP process than the auction process, it was critical that it produce desired results. From 1982-1983, when it was auctioning, the city received $4.4 million in property sales ($1.7 million in 1982 and $2.4 million in 1983). From 1985-1986, when it was offering properties via RFP, the city received only about $1 million ($889,665 in

1985 and $115,518 in 1986). In 1984, the year that it switched from auctioning to RFP-ing, the city earned $2.7 million. Both during and immediately after the production of the FinCom report, the Public Facilities Commission introduced reforms to address some of FinCom's negative evaluations. It introduced a more comprehensive system of advertising property for sale; checked that development proposals were both economically feasible and promoted affordable housing; reviewed the credit, tax delinquency, and fair housing records of buyers, and provided technical assistance to new owners (Frisby, 1987, April 10). In addition, during the late 1980s and early 1990s, the city struggled to get Project 747 and the Residential Development Program off the ground, because of financing challenges associated with the economic downturn (reduced lending, weaker markets) and the elimination of state housing programs. From April 1989 to October 1991, according to the Public Facilities Commission, no project was completed under Project 747. As of October 1991, the most recent date that a project had been started was June 1990. Of the 1,311 units meant to be completed, only about 350 units (27%) were done. In addition, while the majority of the 100-plus buildings taken through the Residential Development Program since 1986 had been renovated or were completing renovation, a small number were in limbo because of financing challenges (Walker, 1991, Oct. 14). The city especially had difficulty disposing of its vacant land. In 1989, 50% of the parcels it held were too small or oddly shaped for development. The city focused on selling these properties through its side lot/abutter program or holding them until they could be combined with other parcels to yield larger sites. In 1988, City sold more than 40 of these lots, most of them smaller than 3,000 square feet, through abutter lots program (Howe, 1989, February 13).

Second phase – Switching from RFP to auction and back again

In 1993, following the release of the FinCom report revealing the poor condition of many city-owned properties, the Menino administration refocused on disposition. The report stated that the city was "an irresponsible landlord," partially because of poor coordination between the Real Property Department and the Public Facilities Department. First, Menino established a 5-member task force to "evaluate and overhaul the disposition process," with the goal of finding a balance between selling properties for the greatest revenue, both in terms of actual proceeds from the sale and ongoing tax revenue, and supporting affordable housing (Carroll, 1993, August 22). Menino then launched a new disposition program, which involved using a $3 million grant from HUD to finance the sale of 43 tax-foreclosed homes and condominiums to first-time homebuyers, selling the 25 most highly assessed city-owned commercial properties at market value, offering 50 city-owned vacant lots for sale to abutters, and allocating funds from the city's operating budget to pay past-due fees on city-owned condominiums (Walker, 1993, September 1). From September 1993-March 1998, then, the city effectively resumed auctioning. However, in March 1998, the city stopped selling properties at auction, for reasons that echoed those of the Flynn administration: concerns that disposition via auction did not address the affordable housing shortage or necessarily support positive community outcomes. The city has continued to RFP up to the present moment.

During the late 1990s, operating under the RFP procedure, DND worked with CDCs to repurpose tax-delinquent properties for the 1-4 family program. The CDCs identified properties of interest, and then DND worked with them to obtain control. The CDCs acquired funding through the Local Initiatives Support Corporation (LISC), Boston Community Capital (BCC) and state and city HOME funds. However, even with city support, the CDCs still struggled to get their desired properties promptly (CHAPA, 2000). In 1999, FinCom published another report criticizing the city's RFP process for being slow, and therefore missing opportunities to benefit from the strong real estate market and increasing the affordable housing supply, and for failing to generate maximum revenue, by selling properties below market value. The *Boston Globe* pointed to the fact that out of the 5 parcels withdrawn from the final March 1998 auction, in which 18 other parcels sold for $1.2 million with 400-plus bidders, 2 were still sitting undisposed, with the building on one lost to fire (Mooney, 1999, May 29).

In the intervening years, the city has continued to press on with disposition, albeit slowly. Vacant land, as in Philadelphia and New York City, remained a particular challenge. In September 2007, student researchers from the Tufts University Department of Urban and Environmental Policy and Planning published a report with recommendations for improving the vacant land disposition system, to both make it

more efficient and support community development and sustainability goals. The students built on the work of the Sustainable Neighborhoods Group, a working group of over 40 public, private, and community stakeholders that assembled in fall 2006. Among other initiatives, the students recommended incorporating vacant land disposition into the Mayor's Greening Initiatives; creating a Vacant Land Disposition Task Force; facilitating greater interagency coordination between the BRA, DND, ONS, and Energy and Environment Cabinet; supporting and formalizing maintenance partnerships between the city and community groups; establishing a matching fund for vacant land maintenance and programming; and creating a standardized Request for Proposal scorecard to enhance transparency (Agyeman, Fitzpatrick,Magari, & Yenco, 2007, September). In 2011, the *Boston Globe* columnist Paul McMorrow criticized the city for not being more proactive in monetizing its inventory, referring to both long-standing tax-foreclosed and surplus parcels. He suggested that the city take a more aggressive approach, citing the way that, at the end of the White administration, the city sold many municipal parking garages to generate immediate revenue and return land to the private sector for long-term tax revenue. McMorrow emphasized that, in 2010, the towers that replaced the garages at Fort Hill, Kilby Street, St. James Avenue, and Kingston-Bedford Street provided $56 million in property tax revenue last year (McMorrow, 2011, March 18).

In September 2013, responding to internal and external pressure to make the most of its inventory, the Menino administration released its Housing 2020 Plan, intended to provide a blueprint for the new administration. Housing 2020 called for the creation of 30,000 new units of housing by 2020, with 5,000 to be middle-income units. To support the creation of these middle-income units, the plan recommended the city conduct a thorough review of its existing inventory, both tax-foreclosed and surplus, with the goal of putting 500,000 square feet of city-owned land on the market. These parcels were intended to complement the one million square feet of city-owned land already offered under the existing Middle Income Housing Initiative in 2013. The plan also suggested the city consider potential developable sites belonging to state and federal entities (DCAM, DCR, MBTA, USPS, and GSA). Taking a strategic approach to foreclosure, it recommended that the city "manage the tax foreclosure process to prioritize the acquisition of distressed and underutilized sites that can be turned quickly into taxpaying middle-income housing development sites" (City of Boston, 2013, 20).

CHAPTER 7:
DETAILED ANALYSIS OF THE TAX FORECLOSURE AND DISPOSITION LANDSCAPE IN BOSTON

This chapter builds on the Boston case study previous chapter, and is intended to deepen the discussion of delinquency enforcement and disposition efforts in the city. It uses data from the Department of Neighborhood Development, described more fully below, to perform some basic descriptive statistics in order to examine the landscape of tax foreclosure and disposition in Boston. The results of this analysis are summarized below, and feed into the recommendations in Chapter 8.

Data Background

Four databases were extracted from the Department of Neighborhood Development's REMS Tracking system: Vacant Land – All, Buildings – All, Active Land, and Active Buildings. REMS Tracking is DND's system for tracking its inventory of city-owned properties for both maintenance and disposition purposes. The Real Estate Management and Services (REMS) Division oversees these activities. REMS' Clearinghouse Unit manages REMS Tracking.

The properties in REMS Tracking fall into two major groups: tax-foreclosed properties that it receives from the Law Department when foreclosure is complete and surplus properties that DND receives from other city agencies. The intake process for the two groups is as follows. For tax-foreclosed property, the Law Department sends the Clearinghouse manager a Preliminary Foreclosure Legal Notice once the Land Court has ruled in favor of foreclosure, but before it has issued the formal Foreclosure Decree, so DND can prepare to receive the property. Shortly afterwards, once the court has issued the formal Foreclosure Decree, the Law Department sends the Clearinghouse manager a Final Foreclosure Legal Notice. The Clearinghouse manager then enters the property into REMS Tracking, and DND officially assumes responsibility for property management and disposition. If the property is vacant land, a Property Manager is assigned by ward. If the property is a building, the REMS Deputy Director selects a Property Manager, based on size and complexity. For surplus property, once a city department determines that it has extra property that is no longer needed, the Director of that agency notifies the Director of DND or the Public Facilities Commission and requests that DND accept the property. DND confirms with the Directors of other agencies (Cabinet members) that no other departments need the property. If another department needs the property, the PFC may transfer it directly to them, via an affirmative vote of the PFC and the City Council. If no other department does, the property is transferred to DND, operating under the PFC, via an affirmative vote of the PFC and the City Council (City of Boston, Dept. of Neighborhood Development, 2013, Real Estate Management and Sales policies and procedures).

The Vacant Land – All database contains all the vacant land ever held by DND, both tax-foreclosed and surplus. Likewise, the Buildings – All database contains all the structures ever held by DND, both tax-foreclosed and surplus. The Active Land database contains all the vacant land currently held by DND, and therefore functions as a subset of the Vacant Land database. The Active Building database contains all buildings currently held by DND, and therefore functions as a subset of the Buildings – All database. All four of these databases are parcel-based. Buildings are not counted twice, in that the Vacant Land – All database only includes vacant parcels with no buildings on them and the Buildings – All database only includes parcels with buildings on them.

Data Processing

To prepare the data for analysis, two basic processing steps were performed. First, the Vacant Land – All database was combined with the Buildings – All database to create a single comprehensive inventory. The combined Vacant Land-Building database was then cross-referenced with the Active Land and Active Building databases, in order both to ensure that the combined Vacant Land-Building database was complete and to identify parcels currently owned by the city.

Data Overview

Based on the Vacant Land-Building database, over its lifetime, DND has held more tax-foreclosed

properties than surplus properties, with tax-foreclosed parcels comprising 97.88% of its total inventory. Tax-foreclosed properties were defined as those with a "Foreclosure Date," recording the date that the formal Foreclosure Decree was recorded and DND officially took possession. "Surplus" properties were defined as those with no "Foreclosure Date."

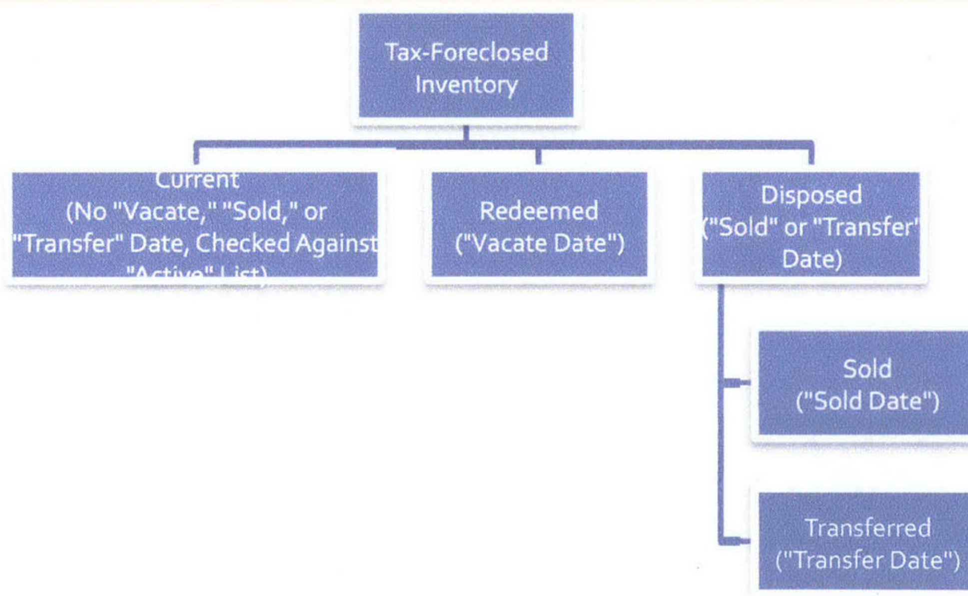
Of the tax-foreclosed properties that the city has received, the majority are land (85.17%), not buildings (14.83%). The earliest foreclosure date recorded for a building parcel was 1958. The earliest foreclosure date recorded for a land parcel was 1909.

Figure 0-1. Total Lifetime Tax-Foreclosed vs. Surplus Inventory

	Tax Foreclosed	Surplus	Total
Buildings	806	34	840
Land	4629	84	4713
Total	**5435**	**118**	**5553**

DND's tax-foreclosed inventory can be divided into four groups, as shown below. CURRENT properties are those that DND currently holds. They are defined as those with no "Vacate," "Sold," or "Transfer" Dates, and validated by being cross-reference against the "Active" Building and Land databases. REDEEMED properties are those that DND no longer holds because their original owners and/or owners' agents took them back, either by paying the full amount of the outstanding liens or entering a payment plan within one year of the formal Foreclosure Decree being recorded. They are defined as those with a "Vacate Date," which records the date that the Foreclosure Decree was vacated or canceled. DISPOSED properties are those that DND no longer holds because it sold or transferred them. They are defined as those with a "Sold Date" or "Transfer Date." SOLD properties were sold back to the private sector, with the "Sale Date" defining the date of final conveyance to the buyer. TRANSFERRED properties were transferred internally to other city agencies, with the "Transfer Date" defining the date of final conveyance to the receiving agency. Due to data quality issues, there were some properties that had both a "Sold Date" and "Transfer Date." For these properties, the later of the two dates was selected as the current state and used to classify the property.

Figure 0-2. Structure of DND's Tax-Foreclosed Inventory



Currently, DND holds 1364 tax-foreclosed properties. Like its lifetime inventory, its current inventory consists mostly of land (97.29% of current inventory), not buildings (2.71%). Of DND's lifetime

inventory, 11.09% (603 properties) have been redeemed, and 63.81% (3468 properties) have been disposed via sale or transfer.

Figure 0-3. Tax-Foreclosed Inventory Breakdown				
	Current	Redeemed	Disposed: Sold or Transferred	Total
Buildings	37	434	335	806
Land	1327	169	3133	4629
Total	**1364**	**603**	**3468**	**5435**

PART I: FORECLOSURE ANALYSIS

Foreclosure analysis was conducted for the tax-foreclosed properties in DND's inventory. Before launching into a discussion of the results, it is important to note that the number of tax-foreclosed properties in DND's inventory does not represent the total number of properties for which the city filed foreclosure cases. Instead, it represents only the number of properties that made it completely through the foreclosure process and received a formal Foreclosure Decree. Other properties "dropped out" before that point as they were redeemed by their owners prior to final foreclosure.

1a. Foreclosure Location

The largest number of tax-foreclosed properties, both land and buildings, were present in three neighborhoods: Roxbury, representing 31.44% of the total inventory (1709 properties); Dorchester/Mission Hill, representing 28.56% (1552 properties), and Mattapan, representing 10.27% (558 properties). Collectively, they accounted for 70.27% (2267) of the tax-foreclosed inventory. The neighborhoods with the next largest number of foreclosure were West Roxbury (7.12% of the total inventory), Jamaica Plain (5.10%), Hyde Park (3.81%), South Boston (3.75%), and East Boston (2.83%). Property location was determined using the "Neighborhood" field in the combined Vacant Land-Building database. There was no data for 53 building parcels and 1 land parcel.

To find the neighborhoods with the highest rate of tax-foreclosed properties, the number of tax-foreclosed parcels would need to be standardized against the total parcels in that neighborhood.

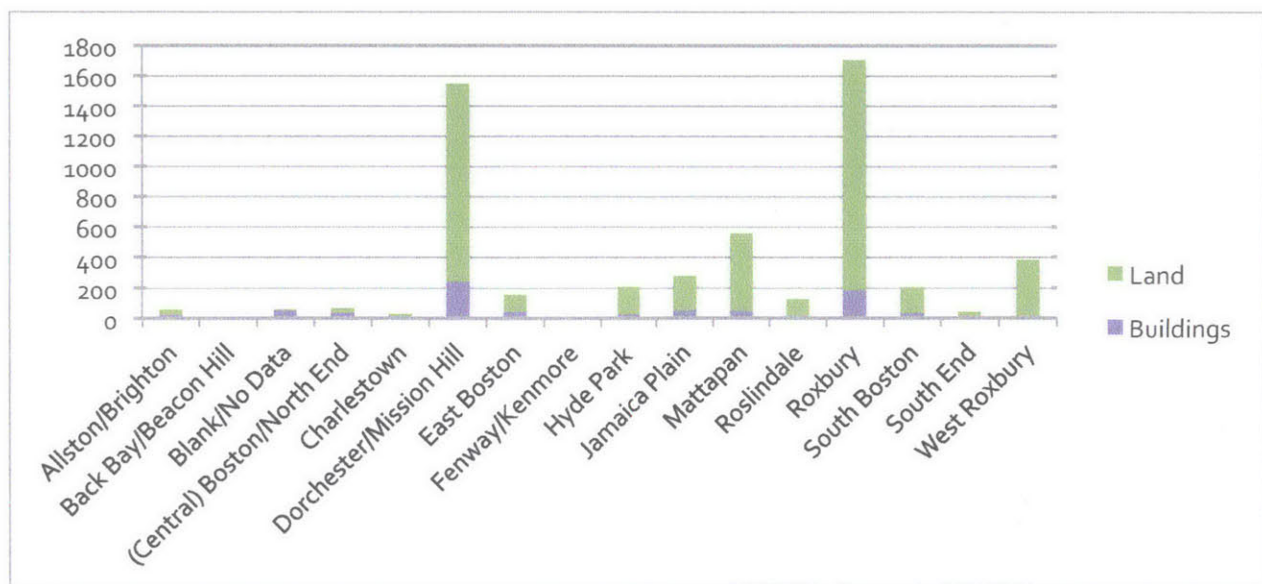


Figure 1-1: Number of Tax-Foreclosed Properties By Neighborhood

1b. Foreclosure Timing

The timing of tax foreclosures also shows clusters. For buildings, there was an upsurge in foreclosures starting in 1987 that peaked in 1994, and then declined, before rising again sharply in 2010. For land, there were foreclosure peaks in the early 1960s, mid-1970s, and late 1980s-mid 1990s, as well as 2010.

Based on the peaks and troughs of foreclosure timing for DND's inventory, the timing of property foreclosures seems to reflect larger economic cycles, such as the economic downturn of the early 1990s and the 2008 recession. For foreclosure timing, it is important to remember that, due to legal requirements and resource constraints, foreclosure is a process that takes time, generally about 2 years from the initial point of delinquency. Thus, the date of disinvestment, reflected in the act of not paying property taxes any longer, may precede the actual date of foreclosure by some time.

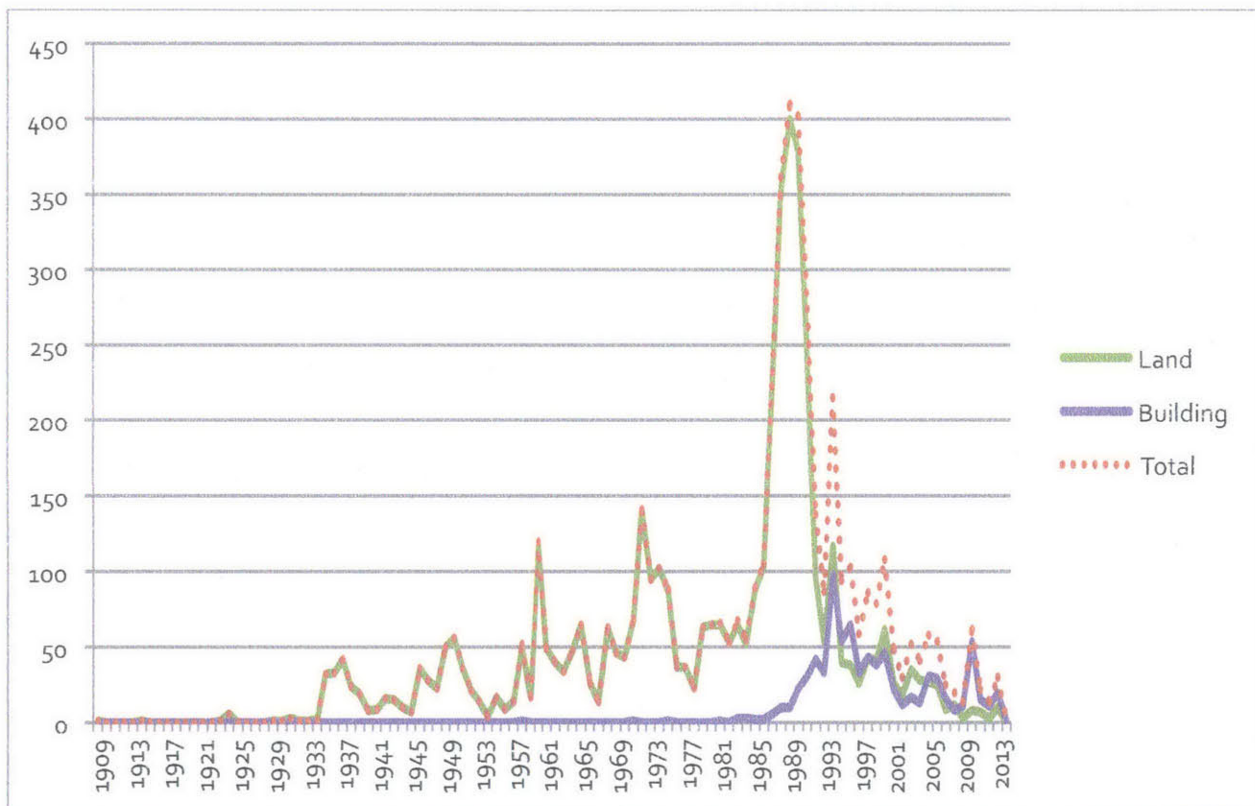


Figure 1-2: Number of Tax-Foreclosed Properties By Year

The timing of tax-foreclosed properties also suggests that, during periods of disinvestment, land foreclosures may precede, and thus potentially serve as an indicator of, building foreclosures. This timing fits with delinquency economic theory, in that owners generally have less capital invested in vacant land, and thus may be willing to relinquish it sooner to avoid additional tax payments, compared to buildings, from which they seek to extract the last remainder of capital.

To further examine the timing of land and building foreclosures, the top 10 land foreclosure years, building foreclosure years, and property (both land and building) years were pulled. With the exception of 1994, there was only one year (1994) that fell in the top 10 for both land and buildings. The peak land foreclosure years (1987-1991) preceded the peak building foreclosure years (1994-1996).

Figure 1-3: Top 10 Foreclosure Years By Property Type

Year	Land Rank	Building Rank	Property Rank
1960	7		9

1972	6		7
1974	10		
1986	9		
1987	5		5
1988	**3**		**3**
1989	**1**		**1**
1990	**2**		**2**
1991	4		4
1992		7	8
1993		9	
1994	**8**	**1**	**6**
1995		**3**	
1996		**2**	
1997		10	
1998		6	
1999		8	
2000		5	10
2010		4	

1c. Foreclosed Property Owners

The ownership of tax-foreclosed properties, specifically the presence of multiple-property owners, was also examined. The percentage of multiple-property owners is important because they can be roughly viewed as a proxy for investors, and single-property owners for owner-occupants or small investors. Multiple-property owners were defined as individuals or entities who owned more than one tax-foreclosed property. The "Owner" field was used to determine the owner of record.

Based on the component of DND's lifetime inventory with usable owner data (i.e., excluding problematic owners), multiple-property owners constitute 14.28% of the total owner population. They are more common in the land owner population (16.80% of total land owners) than buildings (5.77% of total building owners).

Figure 1-4. Owner Count By Property Type

	Number of Multiple-Property Owners	Number of Single-Property Owners	Number of Total Distinct Owners	Number of Problematic Owners (Excluded)
Buildings	26	424	450	4
Land	245	1213	1458	12
Total	**271**	**1637**	**1908** **Adjusted for 11 owners who own land and buildings: 1897**	16

It is important to note that the overlap between building and land owners was relatively small. There were only 11 owners who owned both buildings and land.

Figure 1-5: Dual Building-Land Owners

Owner	Building Count	Land Count
Anthony V Feola	1	2
Anthony W. Gemellaro Trustee of G & A Realty Trust	1	1
Bethlehem Haitian Baptist Church	1	1

Billy J. Smith	2	2
Charles J O'Malley	1	5
Clare L. Mowder	1	1
Clifton Realty Trust	1	6
Gerald Pierce	1	1
Jam Realty Trust	2	6
Joseph D. Papasedero	1	1
Omar L. Fernandez	1	1

However, despite being a moderate component of the total owner population, not surprisingly, multiple-property owners held relatively large percentages of DND's lifetime inventory with usable owner data. Multiple-property owners held about one-third (34.02%) of DND's total inventory, and single-property owners the remaining 65.98%. Their holdings were relatively more concentrated in land (38.92% of total land parcels) than buildings (14.17% of total building parcels).

Figure 1-6. Property Count By Owner Type

	Number of Properties Belonging to Multiple-Property Owners	Number of Properties Belonging to Single-Property Owners	Number of Properties Belonging to Total Distinct Owners	Number of Problematic Owners (Excluded)
Buildings	70	424	494	312
Land	777	1219	1996	2633
Total	847	**1643**	**2490**	**2945**

However, these percentages likely understate the number of multiple-property owners and the extent of their holdings because of data quality issues related to missing data and duplication. In regard to missing data, there were 300 building parcels and 2465 land parcels with no owner listed and 12 building parcels and 168 land parcels with a problematic owner list. "Problematic owner" parcels were defined as those with a government agency (Real Property, Secretary of Housing, City of Boston, BPD, BTD, BFD), "surplus/discontinued street," or "title" [issues] listed as the owner. In regard to duplication, it was difficult both to avoid double-counting owners who were actually the same individual or entity and to identify some multiple-property owners and/or the true number of properties they owned for two reasons. First, minor differences in spelling and punctuation caused the same owner to be listed as two (or more) separate owners. This issue was addressed through manual data cleaning, in which duplicate owners were consolidated, with 85 owners found to have one or more duplicates. Second, some multiple-property individuals might deliberately have tried to conceal their ownership by registering properties under different family members or shell entities, especially if they are concerned about the city pursuing their properties through a mass foreclosure action. The manual data cleaning did not correct for this issue. One additional way to check for these multiple-property owners might be to compare the registered addresses of all tax-foreclosed property owners. Individuals or entities with different names, but at the same address, are likely to be linked. Multiple-property owners may not go through the trouble of establishing multiple addresses for properties under different names if they do not expect the city to have the time or resources to check.

For multiple-property owners, the timing of their foreclosures was examined, to see if they had their properties taken in a single wave or multiple waves some time apart. For this analysis, a single wave was defined as properties being foreclosed in a span of two years. Multiple waves suggest that the owners might have entered the property market more than once, for two reasons. First, it is more efficient for the city to pursue foreclosure on all properties belonging to a single owner at once (mass foreclosure), because of cost savings related to notification, maintenance of geographically proximate parcels, and delinquency reduction. Second, owners in financial distress on one property are likely to be in distress on others.

For all multiple-building owners (26), approximately one-third (34.61%) had their buildings taken in multiple waves. For the top 10% of multiple-land parcel owners, more than half (54.17%) had their properties foreclosed in multiple waves.

Figure 1-7. Foreclosure Timing of All Multiple-Property Building Owners			
Count	Owner	Foreclosure Dates	Waves
8	Federal National Mortgage / Federal Home Loan	All 2010	One
5	Deutsche Bank	1994 (2) || 2010 (3)	Two
5	John S. Patterson/John Patterson	2012 (2) & 2013 (3)	One
3	Adams Village LLC	All 2007	One
3	Bank of America	All 2010	One
3	Bank of New York Mellon	All 2010	One
3	Emanuel Saponte	1994 (1) || 2005 (2)	Two
3	Jack Cincotti	2001 (2) || 2006 (1)	Two
3	Maryanne McLeod Crush and Brian Cush	1994 (1) || 2009 (2)	Two
2	Billy J Smith	2000 (1) & 2002 (1)	One
2	G.M.M. Inc	All 1992	One
2	George C. Stamatos TS	1995 (1) || 1998 (1)	Two
2	Harriet S. Finks	2008 (1) & 2010 (1)	One
2	Hon Pu Chan	1999 (1) || 2005 (1)	Two
2	Jam Realty Trust	2011 (1) & 2013 (1)	One
2	Johnnie C. Reese	All 2013	One
2	JP Morgan Chase Bank	All 2010	One
2	Julio Dias DeSenas	1995 (1) & 1996 (1)	One
2	Kathleen Gaskin	2003 (1) || 2006 (1)	Two
2	Lev Y. Shubov	All 1994	One
2	Lloyd H. King, Tr.	1999 (1) & 2000 (1)	One
2	Norman M. Holcomb	2003 (1) || 2011 (1)	Two
2	Olufemi Adegbesan	All 2007	One
2	Premiere	All 2010	One
2	Rufus Darby	1986 (1) || 2001 (1)	Two
2	US Bank NA	All 2010	One

Figure 1-8. Foreclosure Timing of Top 10 Multiple-Property Owners (Land)			
Count	Owner	Foreclosure Dates	Waves
27	A. Musto Co. Inc. Mass Corp	1981 (22) & 1982 (5)	One
17	George Nackley	1924 (1) || 1935 (1) || 1943 (1) || 1949 (6) & 1950 (8)	Four
16	Roxbury Action Program Inc.	1987 (1) & 1989 (12) || 1992 (2) & 1994 (1)	Two
13	John. E Sherman, Tr. Val Realty Trust & Annie Berry	All 1964	One
13	Lora P. Jenney & Mary E. Jenney	All 1994	One
12	Hermene Boucher	1950 (2) & 1951 (1) || 1958 (9)	Two
11	John F. Murphy	All 1965	One
11	Thomas J McGreevy	1991 (1) || 1995 (1) & 1996 (1) || 2003 (4) & 2004 (1) & 2006 (3)	Three
9	Alfred C. Perry Trust(s) (Bruce Getchell)	1990-1991 (7) & 1992-1993 (2)	One
9	Katherine Nilson	All 1936	One

9	Jay M. Cashman/Jay Cashman	1975 (1) || 1988 (2) || 1991 (2) & 1994 (4)	Three
9	Shep Realty Trust (Evelyn and Saul Weinstein & City Bank)	1985 (5) || 1988 (2) & 1989 (1) & 1990 (1)	Two
8	Allan F. Wright	All 1937	One
8	Weld Associates, LP	1990 (1) & 1991 (1) || 2000 (3) || 2004 (3)	Three
6	Clifton Realty Trust	2002 (2) & 2003 (4)	One
6	Jam Realty Trust	2001 (4) || 2011 (2)	Two
6	Milton Benjamin, Samuel B., Minnie Zelterman	All 1946	One
6	Securities R.E. Trust Inc	1938 (4) || 1943 (1) || 1951 (1)	Three
6	Sevenel Inc./Boston Natural Areas	1942 (1) || 1999 (4)	Two
6	Vincent O. Watson & Concetta Watson	1971 (1) || 1989 (2) & 1990-1992 (3)	Two
6	William T. Inch	1973 (1) || 1994 (3) || 1997 (1) || 2004 (1)	Four
5	Anna V Brockbank	1937 (1) & 1960 (4)	Two
5	Anthony C. Mercuri	2001 (1) & 2002 (4)	One
5	Catherine Webster	All 2004	One

PART II: REDEMPTION ANALYSIS

Redemption analysis was conducted for the redeemed buildings, or those that have a "Vacate Date." Before beginning a discussion of redemption, it is useful to summarize the process.

When an owner or owner's agent wants to redeem the property, he has two options. He can either request that the City of Boston (Law Department) petition the Land Court to vacate the foreclosure decree or go directly to the Land Court himself. Under the foreclosure statute, the owner has 12 months to pursue the redemption. Generally, the Land Court will allow the redemption unless the City of Boston makes a compelling case for why the owner should not be permitted to do so and it should retain control of the property. Typically, the city does not oppose redemption except in two situations. The first situation is that the city is actively involved in the disposition process. The second is that the owner has a track record of poor management, with extensive code violations and/or other properties in arrears, and/or the community has identified the property as critical for city action. In order to redeem the property, the owner must pay all property management costs incurred by DND during the time it held the property.

2a. Redemption Frequency

Of the total properties that DND no longer holds, either because they were disposed (sold or transferred) or redeemed, 85.19% were disposed and only 14.81% were redeemed. However, when redemption is examined by property type, differences emerge between the relative redemption frequency of land and buildings. Of the total buildings that DND no longer holds, 56.44% were redeemed, versus disposed, or more than half. In contrast, of the total land parcels that DND no longer holds, only 5.39% were redeemed.

Figure 2-1. Exit Route of Tax-Foreclosed Properties DND No Longer Holds

	Redeemed	Disposed	Total
Buildings	434	335	769
Land	169	3133	3302
Total	603	3468	4071

2b. Redemption Speed

The redemption speed was also assessed. Statutorily, property owners have 12 months after the final Foreclosure Decree is recorded to redeem properties. Based on the data, the city has not abided by these deadlines, permitting property owners to redeem after the official redemption period has passed. Of the building parcels with usable data (2 out of 434 excluded for negative redemption times), 74.30% (321) were redeemed within 365 days or less. Of the land parcels, only 33.73% (57) were redeemed within 365 days or less.

The median time to redemption for all building parcels is about 6 months. In contrast, it is about 2.6 years for all land parcels. The city may be more aggressive in enforcing the redemption period timeline for buildings because it wants to move ahead with projects on building sites.

The redemption speed was calculated by taking the difference between the "Foreclosure Date" and the "Vacate Date" to find the total days to redemption. For data quality reasons, properties with negative redemption times due to vacate dates before foreclosure dates were excluded (a total of 2 properties).

Figure 2-2. Redemption Speed For All Disposed Properties		
	Mean	Median
Buildings	364.10	181
Land	2742.86	942

PART III: DISPOSITION ANALYSIS

Disposition analysis was conducted for the disposed tax-foreclosed assets, or those with a "Sold Date" or "Transfer Date." Before beginning a discussion of disposition, it is helpful to summarize the process.

The internal transfer process is relatively straightforward, while the external sale process is somewhat more complex. As discussed in the corresponding case study, Boston has alternated between disposition via auction and via RFP. DND disposes of property in accordance with Massachusetts General Law Chapter 30B, Section 16, which applies to the acquisitions and dispositions of real property and/or real property interests. Under Chapter 30B, for all dispositions of real property and/or real property interests, local governments must declare the property available for disposition, state any restrictions on its subsequent use, and secure a valid appraisal. In addition, for all properties valued greater than $25,000, local governments must conduct a competitive bidding (RDP) process. In Boston, the city follows the 30B competitive proposal process for all properties except those handled through the Yard Sale program, because of their low values (City of Boston, Dept. of Neighborhood Development, 2013). The current RFP sale process is outlined below.

Figure 3-1. Internal Transfer Process	
1	City agency or department submits request to DND for property. DND confirms that property is not required for another purpose.
2	DND notifies the Public Facilities Commission.
3	The PFC meets and votes to transfer the property to the other agency or department.

Figure 3-2. Sale Via RFP		
1	Appraisal: DND determines that a property is ready for disposition. The Project Manager verifies the property value via the current assessed value or, with the approval of the Deputy Director, an outside appraisal.	
2	Community Process – Round 1: DND notifies the community – defined as residents living within a 300-foot radius of the property, individuals who have submitted formal Expressions of Interest, and local government and community leaders – of the proposed disposition. DND conducts a community meeting with local residents to develop RFP selection criteria.	CM must be completed within 90 days of notification
3	RFP Preparation: DND prepares the RFP, incorporating community feedback into the selection criteria. DND submits the RFP to the Law Department for review and	

	approval.	
4	RFP Advertisement: DND advertises the forthcoming RFP to prospective developers.	Minimum of 30 days
5	Proposal Submission: Prospective developers submit proposals to the DND bid counter by a specified deadline.	
6	Proposal Review and Evaluation: DND reviews the proposals and identifies the one(s) that best meet(s) the selection criteria. DND performs LOOPS to check outstanding liens (unpaid taxes, water and sewer accounts, code violation fines) on the highest-rated developer(s).	
7	Community Process – Round 2: DND coordinates a second community meeting, where the highest-rated developer presents its proposal. If the proposal is generally satisfactory to the community, DND proceeds.	This is a point at which a project can stall
8	Design Review with DND Architects: The Project Manager coordinates DND's internal design review, as well as the Boston Redevelopment Authority Design Review process.	
9	Tentative Designation of Developer and First Public Facilities Commission Vote: DND selects the final developer and notifies the PFC. The PFC holds the Tentative Designation vote. DND notifies the highest-rated developer of any additional conditions imposed on approval by the PFC.	
10	Developer Due Diligence: The developer secures financing and permits/planning approvals.	
11	Final Designation of Development and Second Public Facilities Commission Vote: PFC holds Final Designation (Conveyance) vote.	
12	Property Sale: DND's Legal Department prepares the Purchase and Sales Agreement and finalizes it with the developer. DND places restrictions on the sale to ensure the developer follows through on its plan in an appropriate and timely manner.	
13	Development Monitoring: DND monitors the project through the development process to ensure the developer performs as planned.	

3a. Disposition Method: Sale vs. Transfer

Of the properties that it has disposed, DND has sold significantly more (87.34%) than it has transferred (12.66%). Comparing buildings and land, it has sold 98.50% of total disposed buildings, compared to 86.15% of total disposed land parcels.

Figure 3-3. Disposition Method

	Sold	Transferred	Total
Buildings	330	5	335
Land	2699	434	3133
Total	3029	439	3468

3b. Disposition Speed – Overall

For all disposed properties, it took the city significantly longer (about 4.5 times) to dispose of vacant land than buildings through either sale or transfer. The longer time for vacant land disposition is not surprising because buildings, by their nature, occupy developable sites, which tend to be more valuable. Vacant lots may or may not be buildable, and therefore worth less. In the city, 5,000 square feet is generally considered the minimum size for a buildable lot, although it depends on zoning (Agyeman, Fitzpatrick, Magari, & Yenco, 2007, September).

The disposition speed was calculated by taking the difference between the "Foreclosure Date" and the "Sold Date" or "Transfer Date" to find the total days to disposition. For data quality reasons, properties

with negative disposal times due to sale or transfer dates before foreclosure dates were excluded (a total of 16 properties).

Figure 3-4. Disposition Speed For All Disposed Properties		
	Mean	Median
Buildings	1480 days **4.05 years**	1049 days **3.85 years**
Land	6774 days **18.56 years**	5267 days **14.43 years**

The 20 fastest buildings and land to be disposed, in terms of total days to disposition, were then examined to determine the characteristics of "fast-mover" properties in each category. In a reverse of the overall pattern for all disposed properties, the 20-fastest land parcels were disposed of more quickly than the 20-fastest buildings, likely reflecting the fact that significantly more of the land parcels were handled through transfer, rather than sale. Transfer can be faster, because, unlike sale, the properties do not have to go through an external disposition review and approval process.

Figure 3-5. Characteristics of 20 Fastest-Disposed Properties						
	Transferred	Sold	DS – Mean	DS – Median	Sq. Ft. – Mean	Sq. Ft. – Median
Buildings	5%	95%	275.15	313	7779.05	3015.5
Land	60%	40%	136.8	151	4369.05	3129.5

Of the 20-fastest buildings, the majority seemed to be more recently acquired properties, with 16 foreclosed in or after 1995. In addition, based on the "Current Use" variable (unique to the Building database), half seemed to be commercial or industrial buildings. This may reflect the fact that the city has traditionally been more willing to auction commercial and industrial buildings, because they tend to be less useful for affordable housing construction or rehabilitation. In addition, they can be less "risky," in terms of being located farther away from residential structures on which they could have a negative effect if the new owner is not responsible. Of the 20-fastest buildings, 14 were officially sold through auction (tagged with "AUCT" under the "PRGM ACTL" variable), and 17 were disposed of during times when auction was the disposition method in effect.

Of the 20-fastest land parcels, the majority also seemed to be more recently acquired properties, with 14 foreclosed in or after 1995. The parcels seemed to fall into two basic groups. Smaller parcels (4) were transferred to the Parks Department, for use as green space (mean SF: 2,660). Larger parcels (3) were transferred to Neighborhood Housing, for use in housing projects (mean SF: 6,488). It is important to note that these uses are not available for all properties. The Parks Department is reluctant to accept parcels that do not fit with its green space needs and plans, as it then has maintenance responsibility and liability for them. Sites that are not buildable, because of either physical conditions (ledge, marsh, etc.) or size, cannot be used for housing unless, in the second case, they are combined with other land via site assembly, which can be an expensive and time-consuming process.

3c. Disposition Speed – Auction vs. RFP

Depending on the mayoral administration, the city has switched between auctioning and not auctioning property. Thus, it is possible to tie the primary disposition method in effect to specific time periods, and thus to specific properties disposed. The mean and median disposition speed for properties (both buildings and land) disposed under the two methods was calculated, under the hypothesis that the auction process may be faster than the request-for-proposal process.

Based on this analysis, auction does seem to be the faster method. Depending on whether the mean or median disposition speed is considered, it takes about 1.5 to 2 times longer to dispose of properties via the RFP method. However, it is important to note that this analysis is limited by several factors. First, it does

not consider other factors, such as general economic health, the condition of the real estate market, and the relative attractiveness of the property being disposed, that could impact disposition speed besides disposition method. Second, and on a related level, it does not reflect the fact that the two options are not completely independent of each other. For example, properties that did not sell in earlier auctions (and under previous administrations) might have been offered through RFP. However, on a broad level, the results do suggest that auctions deliver on speed, and may be a disposition option worthy of consideration if negative externalities can be controlled through careful bidder screening, tax prepayment requirements, deed restrictions, and other mechanisms discussed in Chapter 5.

Figure 3-6. Disposition Speed By Method (Auction vs. RFP)

Disposition Method	Mean Disposition Speed (Days)	Median Disposition Speed (Days)	Count of Properties Disposed
Auction	4294	2655	949
RFP	6586	5376	2073

Figure 3-7. Disposition Speed By Time Period and Mayoral Administration

Time period	Mayor	Disposition Method	Mean Disposition Speed (Days)	Median Disposition Speed (Days)	Count of Properties Disposed
Pre-1968	Pre-White	Auction	3288	3386	4
1968-Sept. 1984	White	Auction	6278	5056	12
Sept. 1984	Flynn	RFP	5114	3862	565
Sept. 1993	Menino	Auction	4272	2635	933
Mar. 1998	Menino	RFP	7138	5635	1508

3d. Disposition Program

The disposition usage of the sold properties was considered by examining the PGRM ACTL variable. This variable offers a rough proxy of the use for which the parcel was disposed, although its usefulness is limited by three factors. First, programs have been added, eliminated, and/or renamed over time. For example, DND no longer operates the following programs: Air Rights, Auct, Boston Home Center, BOSHome, BuildHome, CandR, COMYARD, and REDI-B, REDI-L. In addition, the program of selling vacant lots to adjacent property owners for open space has been called the ABUT-BILD, ABUT-OS, ABUTTER LOT, and the YARD SALE Program. Second, the PRGM ACTL field has been used to store not only programs, but also property characteristics (SLIVER, URBAN WILD). Third, not all parcels have a complete PRGM ACTL field. For example, 0.30% (1/332) of buildings and 20.04% (539/2690) of land had a blank field. Despite these limitations, the PRGM ACTL variable is still useful for getting a rough estimate of what programs have been used most frequently for disposition.

Based on the PRGM ACTL field, the city has largely kept building parcels in development. The dataset does not specify whether the original building was kept and rehabilitated or whether it was demolished and redeveloped. However, it does suggest that in Boston, if parcels are developed at the time of disposition, they stay developed. The city has disposed of about 7 times as many buildings for residential uses as for commercial uses.

In regard to vacant land parcels, the city has disposed of an approximately equal number of parcels for open space and development. Of the 2139 land parcels with a non-Miscellaneous PRGM ACTL, 45.25% (968) have been sold for some type of open space use and 971 (45.39%) for some type of development use. Of the open space group, 89.15% have been sold for the Yard Sale program and 9.09% have been sold for the Grassroots program, making Yard Sales, by far, the dominant disposition program. The large number of

Yard Sale parcels sold is likely due to the difficulty of selling small, non-buildable vacant land parcels (under 5,000 square feet) to individuals other than abutters. Because these lots are not developable, they have limited value to other buyers, who also do not want to assume the costs of long-term maintenance. However, abutters may be interested in acquiring these parcels because of the value added to their current property, both by increasing total square footage and minimizing externalities associated poorly-maintained adjacent land, and the convenience of doing so. The small number of Grassroots parcels likely reflects two factors: the city's limited funding for open space and the limited number of groups with the financial and organizational capacity to perform long-term, independent maintenance of open space. Generally, if residents seek to create a community garden, they need to be prepared to fund and manage it largely themselves. The city provides funding for only capital improvements, not maintenance through the Grassroots program. The Parks Department faces budget constraints, and so is reluctant to accept responsibility for any additional parcels, especially those that are not proximate to its existing parcels (Dowty, 2005).

Of the development group, the majority (82.08%) have been sold for housing development, via the Boston Home Center, Neighborhood Housing, and REMS Residential/Housing programs. In addition, 9.17% have been sold for commercial development, and 8.75% have been sold for mixed development. Programs classified as mixed development could have been sold for either residential or commercial uses, as the program tag indicates that they were sold for development, but does not specify which type.

Figure 3-8. PROG_ACTL Breakdown – SOLD PARCELS			
	Building	Land	Total
OPEN SPACE			
Grassroots	0	88	88
Yard Sale (ABUT-BILD, ABUT-OS, ABUTTER LOT, YARD)	0	863	863
Sliver	0	16	16
Urban Wilds	0	1	1
Total	**0**	**968**	**968**
RESIDENTIAL DEVELOPMENT			
Boston Home Center (BHC, BOSHOME)	64	10	74
NEIGHBRHD HSNG	97	821	718
REMS-Residentl, REMS Housing, REMS – L	22	150	172
BUILDHOME	0	16	16
Total	**183**	**797**	**980**
COMMERCIAL DEVELOPMENT			
BusinessDev.	1	0	1
REMS-Commercial	25	89	114
Total	**26**	**89**	**115**
GENERAL DEVELOPMENT (RESIDENTIAL OR COMMERCIAL)			
AIR RIGHTS	0	1	1
Boston Redevelopment Authority	0	32	32
REDI – Building, REDI – Land	61	52	113
Total	**61**	**85**	**146**
MISCELLANEOUS			
AUCT	60	8	68
Blank/No Data	1	539	540
Miscellaneous (CandR, HOLD, TMW)	1	4	4
Total	**62**	**551**	**612**
GRAND TOTAL	**332**	**2690**	**3022**

For the sake of comparison, the PRGM ACTL of the transferred parcels was examined, relative to the sold parcels. As with the sold parcels, there were data limitation issues: 40% of the transferred buildings and 43.78% of the transferred land had no PRGM ACTL data. There are two aspects of the data that are worth noting. First, some of the transferred parcels participated in the same programs as the sold parcels, suggesting that either there was a conveyance for no monetary compensation or parcels were mislabeled as being transferred instead of sold. Second, the majority of transferred parcels went to five entities: the Parks Department, the Boston Redevelopment Authority, the Transportation Department, Boston Public Schools, and Municipal (covering all other departments or agencies within the City of Boston). The purpose of each agency is summarized below. The dominance of Parks reflects the city's large inventory of vacant land.

Figure 3-9. PROG_ACTL Breakdown – TRANSFERRED PARCELS

	Building	**Land**	**Total**
TRANSFER AGENCIES			
Boston Redevelopment Authority	1	32	33
Municipal	0	3	3
Parks	0	159	159
Schools	0	5	5
Transportation	0	15	15
Total	**1**	**214**	**215**
PROGRAMS			
Blank/No Date	2	190	192
Miscellaneous (CandR, HOLD)	0	13	13
Grassroots	0	8	8
REDI – Land	0	2	2
REMS – Commercial	2	2	4
REMS Housing, REMS Residentl	0	4	4
Yard	0	1	1
Total	**4**	**220**	**224**
GRAND TOTAL	**5**	**434**	**439**

Figure 3-10. Agency Breakdown

Agency	**Parcel Use**
Boston Redevelopment Authority	The Boston Redevelopment parcels were used in larger redevelopment projects managed by the BRA. Because the BRA is a separate redevelopment agency, and not technically a city agency, DND cannot just transfer property titles to it, like it can with other city agencies. Instead, DND must officially "sell" properties to the BRA, but the transaction can occur for as little as $1 (Agyeman, Fitzpatrick, Magari, & Yenco, 2007, September).
Municipal	The Municipal parcels were used for facilities belonging to other city departments, such as the Department of Public Works and the Department of the Environment.
Parks	The Parks parcels were used to expand existing parks or create new open space where needed.
Schools	The Schools parcels were used for schools facilities.
Transportation	The Transportation parcels were used for roads, parking, and other transportation facilities.

Figure 3-11. Description of PROG_ACTL Uses	
PROG_ACTL	**Program Description**
Open Space Uses	
ABUT-BILD ABUT-OS ABUTTER LOT YARD	Through the Yard Sale program, the city sells vacant lots that are under 5,000 square feet, are not adjacent to other city-owned property, and are valued at or under $25,000 to residential abutters. Only owners of occupied residential homes directly abutting the offered parcel are eligible to purchase it at the Yard Sale. Parcels with assessed values greater than $25,000 are not eligible for the Yard Sale program. However, if REMS staff believe the parcel is slightly overassessed and its best use is as a Yard Sale parcel, they can order a reappraisal of the parcel with the permission of DND's Deputy Director. The city sells the land at the request of abutters. Generally, DND releases Yard Sale parcels in batches of 10. They advertise the potential sales to residents living within a 100-feet linear radius around each Yard Sale parcel. The parcels are deed-restricted so, in the future, they can only be used as open space and sold as part of the abutting property. The purchaser cannot be the former foreclosed owner. The parcels are sold for $500, $750 or $1,000, depending on their square footage. If there are two interested parties, DND will sell to them as "Tenants in Common" (City of Boston, Dept. of Neighborhood Development, 2013).
GRASSROOTS	Through the Grassroots program, the city funds the design and construction of community gardens. Grassroots funds can only be used for capital construction, not site maintenance. These activities can include building or renovating pathways, raised garden beds, and irrigation systems, among others. Each year, DND awards 3-5 Technical Assistance grants up to $25,000 and 3-5 Construction grants up to $150,000 to successful applicants. Applicants must have demonstrated capacity in long-term community garden management, and live in neighborhoods where at least 51% of the population is low- to moderate-income. The program emerged from Boston's community garden movement in the 1970s. From 1975-1977, the city ran the Garden Revival Program, which used CDGB funds to establish 30 community gardens. In 1985, it established the Grassroots Program. Recently, Grassroots has expanded beyond community gardens to urban agriculture; in 2011, the city offered 4 parcels (38,878 square feet) for an urban agriculture pilot under the Grassroots program Dowty, R. (2005).
SLIVER	
Residential Development	
BHC BOSHOME	The Boston Home Center is a division of DND that helps support homeownership, particularly for first-time homeowners, through financial and technical assistance. It focuses on smaller residential projects.
Neighbrhd Hsng	The Office of Neighborhood Housing and Development is a division of DND that administers CDBG. It focuses on larger, more complex residential projects.
REMS- Residentl REMS Housing	The Real Estate Management and Services Department is the division of DND that handles the management and disposition of most tax-foreclosed properties. Under these programs, REMS disposes land and buildings for residential projects.
Commercial Development	
BusinessDev.	The Office of Business Development is a division of DND that helps support small businesses through financial and technical assistance. It also oversees the Main Streets program, which facilitates the revitalization of neighborhood commercial districts.
REMS- Commercial	Under this program, REMS disposes land and buildings for commercial projects.
Mixed Development	
REDI – Building	REDI refers to the Real Estate Disposition Initiative. It was a program run by the Real

REDI – Land	Property Department, the precursor to the current REMS. For REDI – Buildings, buildings were sold for rehabilitation at or below market value through the RFP process. For REDI – Land, land was sold for residential, commercial, and industrial development at or below market value through the RFP process. The buildings and land were sold "as is." The RFP process was initiated by requests from constituents (Agyeman, Fitzpatrick, Magari, & Yenco, 2007, September).

CHAPTER 8: CONCLUSION

This thesis has considered two types of problematic properties: those in physical and potential financial distress ("problem properties") and those in financial and potential physical distress (tax-delinquent properties). Both are a major concern to cities because of the significant direct and indirect costs that they generate, especially their negative effect on surrounding properties. While traditionally viewed as separate challenges, PP and TDP are related, in that they both reflect disinvestment and have the capacity to be handled through foreclosure for unpaid liens if their owners are completely unresponsive.

This thesis makes a broad range of suggestions for how cities can cope with these properties, both "before" (proactive prevention) and "after" (correction/collection and disposition) they emerge. However, to leave cities with a clear guide for action, the following section summarizes the 10 most important recommendations for cities seeking to more effectively manage their PP and TDP.

General Recommendations

1. Define a strategy for PP and TDP that is based on clear goals: Cities should develop a strategy for how they want to handle their PP and TDP, which reflects the kind of outcomes that they want to support and investments that they are prepared to make. Cities should clearly define and prioritize their goals, whether these goals involve protecting vulnerable owner-occupants and/or tenant populations, discouraging "strategic defaulters" and "repeat offenders," returning properties to productive use, generating maximum tax revenue, and/or minimizing city expenditures. To be clear-sighted and focused, cities should recognize where these goals are complementary (i.e., discouraging "strategic defaulters" and "repeat offenders") and potentially conflicting (i.e., protecting owner-occupants and generating maximum revenue), so that they can make choices about which goal(s) come(s) first.
2. Create a comprehensive system for addressing PP and TDP: Cities should seek to create an integrated, proactive system for addressing PP and TDP that connects data, enforcement efforts, resources, and personnel. As of yet, no city has completely "cracked the code" on how to manage PP and TDP, because most cites have considered these challenges in isolation and/or taken a reactive approach. Cities should reorient their internal functions to this comprehensive approach. In particular, all departments with property-level responsibility (Code Enforcement/Inspectional Services, Neighborhood Development, Assessing, Collections/Revenue, and Legal) should be linked.
3. Segment PP and TDP by property and owner type and develop different "enforcement pathways" for each: Cities should segment PP and TDP by property and owner type, recognizing that different types pose different enforcement challenges, align differently with cities' goals, and require different methods to return them to productive reuse. For property type, the characteristics below are important:

Important Property Type Characteristics	
PP	TDP
• Occupied vs. unoccupied • Type of distress (physical vs. financial) • Code violations severeity • Level of disruption to neighborhood (crime impacts) • Contribution to "tipping point" of disinvestment	• Property and lien value (Assessed value; lien amount) • Delinquency severity (Lien-to-value ratio, length of delinquency) • Level of disruption to neighborhood (property condition or investment level, neighborhood condition or investment level) • Ownership status and occupancy

For owner types, it is most critical to differentiate between cooperative, non-cooperative, and

"missing in action" owners, as defined below.

Owner Type Groups		
Owner Type	**Description**	**Action Required**
Cooperative	Willing to correct the problem, but experiencing financial hardship that prevents them from doing so	Assistance
Non-Cooperative	"Strategically defaulting" on their maintenance and/or tax obligations	More vigorous and timely enforcement, to get them to take corrective action and/or sell their properties
"Missing in Action" Owners	Not aware of their responsibilities	"Case management" approach to determine if they are cooperative or non-cooperative owners

4. Invest in the digitization and integration of all property records and property-level data to aid in identification and enforcement of PP and TDP: Cities need complete, integrated propery-level data so they can take a more predictive approach to identifying PP and TDP, based on disinvestment indicators, and pursue more coordinated enforcement against them. This coordinated enforcement could involve denying PP and TDP permits, approvals, and other city services; "liening up" the properties through code violation fines and receivership liens; and preventing the owners from acquiring additional city-owned property. Ideally, all property-level information would be connected, including assessing, code violation, permit and approval, and legal (transaction and lien) records, so that nothing could happen to a property without all affected entities knowing. Currently, digitized property records are a major gap in the system, with only some databases digitized and/or records not integrated with each other across agencies. Cities should consider partnering with county, state, and federal governments to make this investment.
5. Recognize that they do not have to take a "one size fits all" approach and select the appropriate collection and disposition method(s) for their situation: For collection, cities can choose from government collection, contracted servicing, or tax lien sales (auctions, negotiated bulk lien sales, or securitization). For disposition, they can select from auction, RFP, third party transfer, and land banking. Cities do not need to make a unilateral decision about which method to use, provided that they meet the requirements of the Uniformity and Due Process clauses.
6. Support a pipeline of qualified third parties for both PP and TDP to reduce their own management and disposition burden where possible: To decrease their own management and disposition responsibilities, cities can support PP receivers and TDP lien buyers and third party transfer bidders. To increase the pool of receivers, lien buyers, and third party transfer bidders, cities may need to offer financial assistance to make marginal properties economically viable and/or reduce risk in the transfer process to enable third parties to secure financing. They can reduce risk by controlling the "right of redemption," resolving title issues, and clarifying due process requirements.
7. Address potentially misaligned incentives in regard to privatized collection/correction and disposition: If cities are going to privatize correction (receivership), collection (tax lien sales), and/or disposition (third party transfer), they need to ensure that third parties conform to their strategy and goals, such as protecting vulnerable owner-occupants and/or tenant populations and returning properties to productive use. In regard to receivership and third party transfer, cities and third parties' incentives are relatively well-aligned, in that both have an interest in bringing the property into maintenance and tax-compliance and getting it to generate income as soon as possible. However, in regard to tax lien sales, the opportunity for misaligned incentives exists, with the lien buyer potentially having the motivation to extend delinquency in order to receive greater interest and fees and/or accelerate foreclosure to gain control of a property with significant equity before the owner can redeem it or find another buyer. Chapter 4 outlines strategies that cities can use to manage these misaligned incentives in regard to tax lien sales.

8. Be prepared to receive properties themselves, even if they pursue privatization: Cities should recognize that they will still receive PP and TDP, even if they seek to completely privatize correction/collection and disposition, because the private sector will reject properties that it views as economically unviable. Cities should budget resources and personnel in line with the amount of properties they are going to receive.

Economically Unviable Properties	
PP	TDP
• "Underwater" in terms of mortgage or tax debt • Located in an area where the buyer expects market values to continue to decline • Current use does not represent "highest and best" use • Rehabilitation/demolition costs exceed what can be recovered through rental or sale	• Located in area where buyer expects market values to continue to decline • Rehabilitation/demolition costs exceed what can be recovered through rental or sale

9. Take an aggressive, proactive approach to managing their inventories: Recently, public assets have tended to be undermanaged, similar to the situation in corporate real estate in the 1980s and 1990s, as discussed in Chapter 5. Cities need to recognize and take advantage of the opportunity to monetize their property inventory, both tax-foreclosed and surplus. To guide property usage and disposition timing, cities should build a complete property inventory, a property reuse potential scoring system, and a market model that offers a continuous "snapshot" of the market and identifies "inflection points" of disinvestment/reinvestment. To support their desired outcomes, cities have a potential competitive advantage in the amount of property-level data that they hold.
10. Seek to leverage maximum private investment: Cities should think about when and how to conduct their disposition efforts to generate maximum private investment, recognizing that reinvestment is required in areas with large numbers of PP and TDP. As discussed in Chapter 5, cities can do this by tracking **Smith et al.**'s "frontier line" of reinvestment, releasing properties exactly at, slightly before, or slightly behind the line, depending on how many properties they hold, how fast the line is moving, and how conservative they want to be. As discussed in Chapter 5, cities also may also want to take advantage of innovative financing tools, such as social impact bonds or "crowdfunding" to leverage "excess capacity" in low-income neighborhoods, as defined by **Buki and Schilling**.

Specific Recommendations: Philadelphia, New York City, and Boston

Building on the general suggestions just outlined, this section delineates specific recommendations for Philadelphia, New York City, and Boston to improve their treatment of PP and TDP. These suggestions are based on the collection and disposition case studies discussed in Chapter 6, and rely on comparisons between the three cities to identify best practices. The most critical recommendations for each city are summarized below.

Philadelphia

1. Focus equally on delinquency enforcement and disposition: In the last two years, Philadelphia has invested significant energy in tax delinquency reform and comprehensive reassessment (the Actual Value Initiative). If the city follows through on its commitment to enforcement, it needs to prepare for the influx of properties that it will receive for disposition, unless it makes a major effort to expand its pipeline of third party entities that can take them. The new land bank is a step in this direction, although it is still linked to the city.
2. For delinquency enforcement, concentrate on conformance with existing policy, rather than making additional changes: In the past, Philadelphia has been limited by its failure to follow through with policy and consistently proceed on enforcement. To assess the efficacy of its latest reforms, it needs

to just put them into action fully, rather than introducing any additional variables.

3. Consider conducting a carefully controlled negotiated bulk lien sale or securitization for the most collectable liens: A tax lien sale could bring Philadelphia's tax delinquency caseload down to a manageable level and let it focus on assisting low-income owner-occupants, tracking down "missing in action" owners and determining their interest in remaining involved with their properties, and treating the most highly distressed properties. In this regard, Philadelphia could borrow from New York City. As discussed in Chapter 4, Philadelphia can use "best practices" from other cities to avoid the issues with its 1997 securitization.
4. Continue to refine its initiatives to help low-income owner-occupants: Currently, as discussed in Chapter 3, Philadelphia is leading the way in exploring "gentrification relief," in the form of the Longtime Owner-Occupants Program (LOOPS). It is also re-looking at its homestead exemptions in the wake of AVI and has established new payment plan protocols.
5. Improve the current auction process to speed up disposition, prevent properties from beng sold to problematic owners, and promote transfer to CDCs, community groups, and prospective owner-occupants: Chapter 5 outlines auction improvements. The auction process also needs to be integrated with the new land bank, so these two disposition methods can work in tandem. Right now, it is unclear how the two will function together.
6. Use the strategic planning process for the land bank as an opportunity to engage in a broader dialogue about delinquency enforcement and disposition strategy: Philadelphia can continue to build on its 2012 "Policies for the Sale and Reuse of City-Owned Property" document.
7. Consider establishing a third party transfer program, to support a three-part disposition system: The system could be organized as below. To simplify functions, the third party transfer program could be subsumed under and run by the land bank, with the land bank performing the functions of New York City's Neighborhood Restore and serving as the interim holding entity and technical advisor.

Philadelphia's Three-Part Disposition System		
Method	**Used For**	**Rationale**
Auction	Most economically viable properties that do not require a financial package from the city to achieve reuse	Return them quickly to the private sector
Third party transfer	Highly distressed properties that the private sector is still willing to accepg if they come with a financial package	Limits the number of properties coming to the land bank
Land bank	Remaining properties	Enables the land bank to hold and manage them until they become economically viable

New York City

1. Focus on the quality of disposition outcomes: Since NYC has a limited inventory of TDP, due to its intense disposition efforts and strong real estate market, it has the capacity to pay greater attention to outcome quality, such as protecting long-term affordability through covenants; identifying opportunities to increase density; continuing to expand the affordable housing industry; and maximizing the production of affordable units, among others. NYC can become more aggressive in monitoring and assessing outcomes.
2. Continue to fine-tune the lien sales process and exercise appropriate oversight over lien sales buyers: Monitor their performance to ensure that they are not foreclosing too quickly or too slowly. Evaluate the characteristics of the foreclosed properties to determine what should be excluded from future lien sales.
3. Continue to refine the financing packages offered through the third party transfer program, recognizing that federal funding may continue to decline.

Boston

1. Consider deploying receivership for the most intractable PP, especially those owned by "repeat offenders."
2. Intensify enforcement against multiple-delinquency owners: Based on the Chapter 7 analysis, while multiple-delinquency owners are a moderate percentage of the total owners of tax-foreclosed property, they control a significant amount of total inventory. Moreover, the data suggests that a significant percentage return to the market multiple times.
3. Consider resuming auctions to increase disposition speed: The city could control potential negative externalities through careful bidder screening, tax prepayment requirements, deed restrictions, and other mechanisms, as discussed in Chapter 5.
4. Focus on vacant land disposition, for two reasons: First, it is the bulk of the city's current (unsold) inventory. Second, it is not likely to be redeemed. The city will need to overcome critical challenges related to vacant land disposition, including finding innovative uses for challenging sites (e.g., small, odd-shaped, environmentally contaminated, etc.) and building out a pipeline of organizations with the financial and organizational capacity to hold vacant land for long periods of time.

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