

DEMOLITION BY NEGLECT OF NEW YORK CITY INDIVIDUAL AND HISTORIC  
DISTRICT LANDMARKS

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# DEMOLITION BY NEGLECT OF NEW YORK CITY INDIVIDUAL AND HISTORIC DISTRICT LANDMARKS

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When a building or district is designated by the Landmarks Preservation Commission, it provides a steep measure of protection and regulation for the building, assuring the building or district will move forward in time utilizing managed change to retain the special qualities and character that define it as a landmark. When a New York City Landmark or District suffers from demolition by neglect, it is an affront to the entire premise of what the designation represents. Although not widespread, the rupture a demolition by neglect building produces in a streetscape is jarring and cannot be ignored. In many instances, the harm caused by demolition by neglect extends beyond the loss of character. Physical deterioration and abandonment is often accompanied by squatting and associated problems with fire and a litany of illegal activities, imperiling not only the building in question, but the neighboring buildings as well. Yet, despite the seriousness of this condition both to urban heritage and the health, safety, and welfare of the city residents, there is an inadequacy of the Landmarks Preservation Commission or other city agencies to deal with demolition by neglect completely despite the regulatory mechanism provided by the landmark laws.

My thesis will examine the conditions which precede demolition by neglect when it occurs among designated properties and within historic districts; assert that the Landmarks Preservation Commission has matured from an agency whose purpose was to identify historic resources to one which must now focus more on managing and protecting the resources it has previously singled out as illustrated through demolition by neglect; determine why the landmarks law and the Landmarks Preservation Commission has not been as effective in diminishing this problem through regulation and enforcement as one might hope; identify ways in which the efficacy of the New York City Landmarks Preservation Commission can be improved and identify tools that may be utilized in tandem with established Commission avenues to produce a more dexterous approach to a complex problem.

## **KEYWORDS**

New York City Landmarks Preservation Commission, demolition by neglect, Non-Profit, Harlem, Skidmore House, Developer, Preservation, Failure to Maintain, Good Repair, City Auction, New York City Department of Buildings, New York City Department of Housing, Preservation and Development, LPC, DOB, HPD, sealed, designation, abandoned, vacant, strategic, mortgage fraud, Crown Heights, Historic District, Individual Landmark, demolition, fire, squatting, Brooklyn Heights, Hamilton Heights, hoarding, Joralemon, senility, advanced age, lack of resources, psychological instability, fragmented ownership, enforcement, monitoring, John M. Weiss, Ethel Tyus, structural instability, Landmarks Law, NYC Administrative Code, Preservation Commission

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## **LIST OF ABBREVIATIONS**

LPC—LANDMARKS PRESERVATION COMMISSION NEW YORK CITY

DOB—DEPARTMENT OF BUILDINGS NEW YORK CITY

HPD—HOUSING PRESERVATION AND DEVELOPMENT NEW YORK CITY

NOTE: The Landmarks Preservation Commission is referred to throughout the text variously as the Landmarks Preservation Commission, Landmarks, the Commission, and the LPC. All of these refer specifically the Landmarks Preservation Commission of New York City.



## Introduction

Demolition by neglect is defined as the process of allowing a building to deteriorate to the point where demolition is necessary to protect public health and safety.

Analyzing demolition by neglect from the standpoint of historic preservation often yields the dominant cause of the problem to be the rapacious developer. The National Trust for Historic Preservation's material on Preservation Law defines it in this way:

'Demolition by Neglect' is the term used to describe a situation in which a property owner intentionally allows a historic property to suffer severe deterioration, potentially beyond the point of repair. Property owners may use this kind of long-term neglect to circumvent historic preservation regulations.<sup>1</sup>

Although demolition by neglect as a strategic approach by a wily property owner to remove an encumbrance to development does happen, it is vastly overstated as the fundamental or most common cause. Designation does not typically spur demolition by neglect; it is most commonly a collision of preservation with timeless social problems like lack of resources and mental illness. Thus the assumption that historic preservation regulations produce demolition by neglect is an oversimplification of the problem.

Misunderstanding or overstating the predominance of the developer hinders our ability to confront the problem effectively. More refined tools to confront the issue could be developed through understanding the wider spectrum of causes. The aim of this thesis is to elucidate the complexity of the problem through five case studies

of demolition by neglect of New York City Landmarks. The following (Figure 1) is an illustration of demolition by neglect as seen from the exterior:



Figure 1. 56 Cambridge Place  
Clinton Hill Historic District, Brooklyn, NY. 2004.  
Photograph courtesy LPC NYC

The five case studies will encompass the eight predominant causes of demolition by neglect in New York City that my research has identified. Due to a tendency for causation to cluster, the eight causes are readily represented through five studies. The eight causes I have isolated as antecedents to demolition by neglect are as follows:

- Lack of resources (money and/or access to credit)
- Advanced age/senility/dementia

- Severe mental illness or intellectual disability
- Inheritance issues/intestate
- Fragmented ownership as through organizations such as non-profits
- Mortgage Fraud
- City Auction
- Strategic

The case studies were chosen to represent both individual landmarks and buildings within designated historic districts, as well as variables in income, race, and period of designation. Finally, the status of the building's resolution was considered and includes two that are active and their fate is unknown, one that was resolved after a trial, one that was a pre-trial settlement of a demolition by neglect lawsuit, and one that was resolved without any litigious action.

One of the reasons demolition by neglect is frequently over-attributed to the developer is because it is viewed through the lens of preservation. The case studies are New York City designated landmarks because my introduction to demolition by neglect was through the Landmarks Preservation Commission (LPC) in New York City. Demolition by neglect has an entirely different significance when it occurs to a designated historic landmark. An abandoned deteriorating building anywhere is unsettling. An abandoned and deteriorating designated landmark is not only an affront, it is illegal (See Appendix A for the New York City Landmarks Law N.Y. ADC. LAW § 25-311: NY Code - Section 25-311: Maintenance and repair of

improvements). Once a building is designated, it is extremely difficult to obtain a demolition permit—demolition was precisely what Preservation Commissions and Laws were designed to thwart in the 1960s and 1970s. As a result, one obtuse way to remove an obstacle Landmark from the land is for the city to declare it as a public safety hazard (See Appendix A for the New York City Landmarks Law N.Y. ADC. LAW § 25-312: NY Code - Section 25-312: Remedying of dangerous conditions). This is where the misconception of the developer comes into play—the developer is an old and storied enemy in preservation and for a reason, but we cannot let our history distort our perception of this multifaceted and important problem.

This thesis will present an overview of heretofore unrecognized patterns of causation utilizing thorough case studies. Through insight into the causes of demolition by neglect, this thesis will alert the preservation community to the full spectrum of the problem. Once this is understood, there will be opportunities for preservation to arrive at complementary responses to augment those already in place. Discerning whether a property owner is unwilling or incapable of keeping the building in good repair is paramount. Demolition by neglect often manifests itself as a problem perpetuated by people who have no intention of damaging a designated building, sometimes they do not even perceive it as a landmark. Two of the case study buildings were sealed at the time of designation, illustrating the point that demolition by neglect can, and does, precede designation. 809 Prospect Place in Brooklyn (Figures 2 and 3) was designated at least ten years after it was abandoned by quarreling brothers following an inheritance.



Figure 2. 809 Prospect Place Crown Heights North Historic District, Brooklyn. 2012. Photograph by author



Figure 3. 809 Prospect Place  
Crown Heights North Historic District, Brooklyn. 2012.  
Photograph by author

Ironically further clouding the problem is the fact that when the LPC has initiated lawsuits and is successful in its strategy to force the owner to repair and restore the building, it received a fair amount of press. The two most famously successful lawsuits that the LPC brought and won for demolition by neglect were both against very wealthy developers—the Skidmore House in Lower Manhattan and the Windermere (Figure 4) in Midtown Manhattan.<sup>2</sup> Because these two cases are high-profile successes in preservation law against demolition by neglect, they unintentionally reinforce the concept that the primary culprit is the developer. A review of literature on demolition by neglect acknowledges that sometimes demolition by neglect is the result of poor estate planning or destitution, but then the literature cites the New York City victories with Skidmore and the Windermere

and the more typical and less sensational underlying causes are once again obscured.<sup>3</sup>



Figure 4. The Winderemere  
West 57<sup>th</sup> Street and 9<sup>th</sup> Avenue  
Resolved Demolition by Neglect.  
2004.  
Photograph courtesy LPC NYC

Most demolition by neglect scholarship approaches the problem from the perspective of enforcement, law, and recommendations for new or amended legislation.<sup>4</sup> The effectiveness and teeth of Landmarks Law, particularly in New York City, is valuable and cannot be underestimated. Conversely, it also cannot be overestimated. The aspect of the Landmarks Law that allows for the Commission to sue for the fair market value of the building or the land, whichever is greater, is a potent disincentive for an individual with resources and a motive for their behavior (See Appendix A New York City Landmarks Law N.Y. ADC. LAW § 25-317.1: NY Code - Section 25-317.1: Civil penalties). When the owner has little or no motive for

allowing their building to fall down, and their presumed action is only a complete inability to deal with or even comprehend that the building is collapsing, is when litigation is disproportionate and misdirected. I am not suggesting that using the strength of the Landmarks Law is fundamentally flawed—I am suggesting that different aspects of any given problem require solutions directed specifically at the target. The Commission is aware of the nuances of demolition by neglect and handles the amorphous problem with latitude and discretion. Nevertheless, the Commission would be well served by having more calibrated tools beyond litigation, possibly including an outside entity better equipped to respond rapidly to an incompetent or destitute owner.

This thesis advocates for the larger preservation community being informed of the complexities of the issue, so that resources beyond the scope of the Commission may be dexterously applied to the problem. The underlying primary issue behind an inability to handle demolition by neglect as thoroughly and elegantly as possible is the lack of human and financial resources. Once the myriad causes of demolition by neglect are understood, solutions will come more readily in the form of the capital needed to support the significant expense of containing demolition by neglect. Other municipalities have programs in place that include revolving funds, grants, and receivership along with more broadly based programs such as tax increment financing. New York City utilizes a third party transfer program through the Housing Preservation and Development (HPD) agency that allows for abandoned properties to be placed in the custody of individuals with the financial wherewithal to stabilize

a building quickly and turn it around. Although a useful option in theory, qualifying for the program can be difficult due to requirements that the property be heavily encumbered with unpaid taxes and not exist in isolation, essentially requiring a blighted block (See Appendix C for a thorough analysis of HPD's Third Party Transfer Program). Receivership could be used in New York City and was successfully utilized once in a demolition by neglect case by the LPC and the New York Landmarks Conservancy in 1995.<sup>5</sup> Why this potential alternative solution has never been revisited is unclear, but likely is a result of the significant sum of money involved in stabilizing a structurally unsound building with an economically unsteady owner; it is an unattractive tableau.<sup>6</sup> The extraordinary human and economic resources of the New York City preservation community could rally around this issue and effectively augment the existing tools of the Landmarks Preservation Commission.

The literature is abundant with lamentations of how underfunded preservation commissions are, and the fallout from said paucity tends to inhibit enforcement and monitoring programs nationwide.<sup>7</sup> New York City has close to 30,000 designated buildings and new buildings and districts are proposed continually. As an acknowledgement of the responsibility of regulating billions of dollars of extraordinarily valuable real estate and the maturation of the agency into one that enforces the designations it is empowered to grant, the City of New York and its citizenry need to recognize that adequate agency funding is critical. Demolition by neglect affects a very small percentage of New York City Landmarks—there are

approximately 60 buildings at any given time that are known to the LPC to meet the definition of demolition by neglect. However, when the problem does emerge it drains the time and resources of the Commission and several other attendant city agencies due to the complexity and urgency of the situation. Continually triaging the instability of the buildings and their owners, the Commission must be adequately funded to identify, stabilize, and resolve demolition by neglect as a most egregious antithesis to preservation.

In the communities in which they stand, demolition by neglect buildings have a profound effect on the physical fabric, the rupture they represent to preservation, and the neighborhood. When a building succumbs to demolition by neglect, the structural integrity of the building is compromised through water infiltration and interior collapse. The architectural detail that defines it as a Landmark is eroded or removed for sale in the lucrative salvage and architectural antiques market. These buildings are highly susceptible to fires as squatters, drug dealers, and prostitution overtakes them. The infestation of the demolition by neglect building by crime in turn erodes the sense of safety and security of any given block it is present on.

Buildings are manifest expressions of their owners. When the owner of a building is deeply distressed or absent, the building reads that way on the street. Some people respond to the evident vulnerability of the building and hence the owner by taking advantage of its monetary value and abandoning it as collateral damage as will be seen in my case studies of mortgage fraud and a ruthless developer. Still others read it as an affront to their community, the Landmark designation, and as a cry for help

as seen in my case studies involving dilute ownership, profound psychological impairments, and city auction. The destruction or decay of the historic fabric of the building that arouses the ire of preservationists thus becomes a catalyst for an externality of the preservation movement.

Never intended to mitigate severe social problems, preservation commissions are now placed in the position of negotiating the waters of our country's most pressing social problems. Preservation was promoted in the 1960s as a way to combat rootlessness in an era of disorienting change.<sup>8</sup> Today, the New York City Landmarks Preservation Commission is battling irresponsible banking, foreclosure, and mortgage fraud among other more fundamental and fragile issues like poverty and mental illness—all the while mediating change one rooftop addition at a time. This observation is not to be read as an outcry against the leaks in our social support system as much as it is meant to inform the preservation community of the exceptional ways in which preservation can be highly relevant, useful, and well beyond the domain of an esoteric pursuit.

The following five case studies of demolition by neglect represent the causes of the problem, as it presents itself in New York City. Chapter 2, the first case study, is a study involving a non-profit that was never formally dissolved, where the founder of the organization died without making provisions for the entity or the building in her will. It serves as an illustration of dilute ownership and inadequate succession planning. Chapter 3 is a case study involving a developer intent on challenging

several aspects of designation, including the designation itself—this case illustrates demolition by neglect as a strategic attempt to rid oneself of a designated landmark. Chapter 4 is a study of an elderly hoarder in Brooklyn who inherited multiple properties and was never well equipped to handle them as a study of inheritance, advanced age and mental illness. Chapter 5 is an unresolved case study involving an owner who purchased a sealed building in Harlem at a city auction almost 30 years ago and is still unable to commence restoration of the building due to lack of resources. Chapter 6 is a case study of mortgage fraud in a recently designated historic district.

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<sup>1</sup> National Trust for Historic Preservation, *Preservation Law Educational Materials...Demolition by Neglect* (Washington D.C.: National Trust for Historic Preservation, 2009), 1, accessed May 8, 2013, <http://www.preservationnation.org/information-center/law-and-policy/legal-resources/preservation-law-101/resources/Demolition-By-Neglect.pdf>.

<sup>2</sup> Benjamin Baccash, *Enforcement and the New York City Landmarks Law: Past, Present, and Future*, thesis, Columbia University, 2010 (New York: Columbia University, 2010), 32, 37, 71, 130; Benjamin Baccash, "The New York City Landmarks Law: Embracing Litigation and Moving Toward a Proactive Enforcement Philosophy," *Widener Law Review* 18, no. 159 (2012): 178, 182, 204, 213, accessed April 30, 2013, [http://widenerlawreview.org/files/2008/10/04\\_BACCASH.pdf](http://widenerlawreview.org/files/2008/10/04_BACCASH.pdf); Dunlap, David W. "Court Steps in to Try to Save a City Landmark on the Brink." *New York Times*. December 28, 2004. Accessed January 2013. [http://www.nytimes.com/2004/12/28/nyregion/28landmark.html?\\_r=1&](http://www.nytimes.com/2004/12/28/nyregion/28landmark.html?_r=1&); Anna Martin, *Demolition by Neglect: Repairing Buildings by Repairing Legislation*, thesis, Georgetown University Law Center, 2007 (Washington D.C.: Georgetown University Law Center), 21, 22, accessed May 9, 2013. [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps_papers); Julia Miller, *Doing Away with Demolition by Neglect* (Washington D.C.: National Trust for Historic Preservation), 16.; New York City, Law Department, "In a Legal First, City Landmarked Building Is Saved from "Demolition by Neglect"" news release, accessed February 10, 2013, <http://www.nyc.gov/html/law/downloads/pdf/pr122204.pdf>; New York City Land Use News and Legal Research, *New York Law School, CityLand*, 12/May/2012.

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<http://www.citylandnyc.org/landmarks%E2%80%99-deputy-counsel-john-weiss-on-combating-demolition-by-neglect/> (accessed July 2012); John M. Weiss, "Pursuing An Owner for Demolition-By-Neglect: A Tortuous Legal Path," *District Lines: News and Views of the Historic Districts Council* 23 (Spring 2009): 2-3; John M. Weiss, "Protecting Landmarks from Demolition by Neglect: New York City's Experience," *Widener Law Review* 18, no. 309 (2011): pp. # 310-320, accessed July 2, 2012, [http://widenerlawreview.org/files/2012/07/09\\_WEISS.pdf](http://widenerlawreview.org/files/2012/07/09_WEISS.pdf). John M. Weiss, "Protecting Landmarks from Demolition by Neglect: New York City's Experience," *Widener Law Review* 18, no. 309 (2011): 310-320, accessed July 2, 2012, [http://widenerlawreview.org/files/2012/07/09\\_WEISS.pdf](http://widenerlawreview.org/files/2012/07/09_WEISS.pdf).

<sup>3</sup>Andrea Merrill Goldwyn, "Demolition By Neglect: A Loophole in Preservation Policy" (thesis, University of Pennsylvania, 1995), 12. <http://ia600500.us.archive.org/17/items/demolitionbynegl00gold/demolitionbynegl00gold.pdf>; Anna Martin, *Demolition by Neglect: Repairing Buildings by Repairing Legislation*, thesis, Georgetown University Law Center, 2007 (Washington D.C.: Georgetown University Law Center), 5, 10, 20, accessed May 9, 2013, [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps_papers); Julia Miller, *Doing Away with Demolition by Neglect* (Washington D.C.: National Trust for Historic Preservation), 3; Meg C. Richardson, *Demolition by Neglect: An Examination of Charleston's Ordinance*, thesis, Clemson University, 2008 (Clemson: Clemson University, 2008), 6, 47, accessed May 8, 2013, <http://etd.lib.clemson.edu/documents/1211389250/umi-clemson-1624.pdf>.

<sup>4</sup> Benjamin Baccash, *Enforcement and the New York City Landmarks Law: Past, Present, and Future*, thesis, Columbia University, 2010 (New York: Columbia University, 2010), 1, 2, 42, 43, 112, 113, 119, 125, 128; Anna Martin, *Demolition by Neglect: Repairing Buildings by Repairing Legislation*, thesis, Georgetown University Law Center, 2007 (Washington D.C.: Georgetown University Law Center), 11, 15, accessed May 9, 2013, [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps_papers); Julia Miller, *Doing Away with Demolition by Neglect* (Washington D.C.: National Trust for Historic Preservation), 1-20; Meg C. Richardson, *Demolition by Neglect: An Examination of Charleston's Ordinance*, thesis, Clemson University, 2008 (Clemson: Clemson University, 2008), 6, accessed May 8, 2013, <http://etd.lib.clemson.edu/documents/1211389250/umi-clemson-1624.pdf>; Sakina B. Thompson, *Saving the District's Historic Properties from Demolition by Neglect*, thesis, Georgetown University Law Center, 2004 (Washington D.C.: Georgetown University), 2, 20-21, accessed October 12, 2012, [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1013&context=hpps\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1013&context=hpps_papers).

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<sup>5</sup> Andrea Merrill Goldwyn, "Demolition By Neglect: A Loophole in Preservation Policy" (thesis, University of Pennsylvania, 1995), 39.

<sup>6</sup> Steven V. Roberts, "Decayed Housing in City Reported at 800,000 Units," *New York Times*, May 27, 1968, accessed April 2013, <http://select.nytimes.com/gst/abstract.html?res=F70714F63954157493C5AB178ED85F4C8685F9>.

<sup>7</sup> Benjamin Baccash, *Enforcement and the New York City Landmarks Law: Past, Present, and Future*, thesis, Columbia University, 2010 (New York: Columbia University, 2010), 42, 112-113, 128; Andrea Merrill Goldwyn, "Demolition By Neglect: A Loophole in Preservation Policy" (thesis, University of Pennsylvania, 1995), 19; Anna Martin, *Demolition by Neglect: Repairing Buildings by Repairing Legislation*, thesis, Georgetown University Law Center, 2007 (Washington D.C.: Georgetown University Law Center), 9, 13, accessed May 9, 2013, [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps_papers); Meg C. Richardson, *Demolition by Neglect: An Examination of Charleston's Ordinance*, thesis, Clemson University, 2008 (Clemson: Clemson University, 2008), 30, 47, accessed May 8, 2013.

<sup>8</sup> United States, Special Committee on Historic Preservation, United States Conference of Mayors, *With Heritage So Rich*, by Albert Rains and Laurance G. Henderson (New York: Random House, 1966), 207.

## CASE STUDY ONE

467 West 140<sup>th</sup> Street, New York, NY

Status: Resolved

Cause: Fragmented Ownership

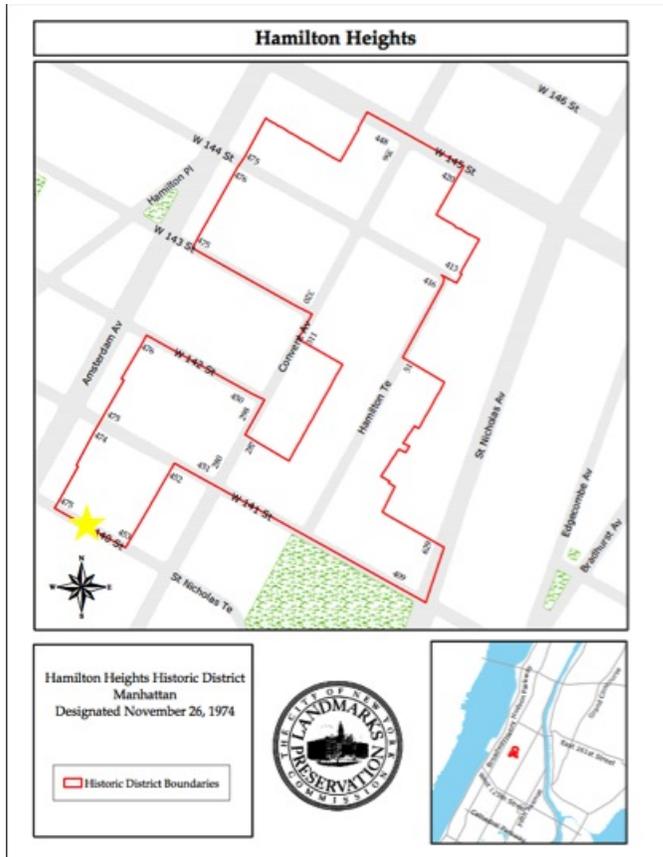


Figure 5. 467 West 140<sup>th</sup> Street, Hamilton Heights Historic District, Harlem. LPC NYC Map

467 West 140<sup>th</sup> Street is a resolved demolition by neglect building in the Hamilton Heights Historic District in Harlem. Built in 1901 as one of five of the earliest buildings on a block of West 140<sup>th</sup> Street, it is a modest three-story rowhouse with fairly simple ornamentation.<sup>1</sup> The Hamilton Heights Historic District was proposed in 1966 and designated by the New York City Landmarks Preservation Commission in 1974. The designation report speaks earnestly of the pride the community has in

their neighborhood and to the “generally excellent maintenance” of the buildings.<sup>2</sup> Unfortunately, Hamilton Heights has been plagued by demolition by neglect in recent years, despite the Commission’s declaration that, “Designation of the District will strengthen the community by preventing further loss through a process of reviewing plans for alteration and new construction. Designation is a major step towards insuring the protection and enhancement of the quality and character of the entire neighborhood.”<sup>3</sup> Sadly, demolition by neglect is an insidious process that does not submit itself for permits or review and moves very stealthily. 467 West 140<sup>th</sup> Street is a case study illustrative of demolition by neglect caused by a fragmented ownership profile that was produced by the death of the founder of the organization who neglected to account for maintenance or termination of the organization and the building that housed it.



Figure 6. 467 West 140<sup>th</sup> Street, Hamilton Heights Historic District Designation Photograph, 1974. Courtesy LPC NYC



467 West 140<sup>th</sup> Street, Hamilton Heights Historic District, Photograph 2012. Courtesy Harlem Bespoke

467 West 140<sup>th</sup> Street was built as speculative housing and served as residential until it was purchased in 1950 by an organization called the Adam Clayton Powell Senior Fund, Inc. Soon thereafter, the corporation was renamed the Intercultural Educational Fund, Inc. Founded by Katherine “Katie” J. Hicks and her husband George W. “Bud” Hicks in 1946, the mission of the fledgling non-profit was to “help children obtain a good education, giving them the necessary counseling required in order that they might join society with the parents of these children so that they too could share in the guiding of their children into the world as productive citizens.”<sup>4</sup> Although somewhat inscrutable, the statement reveals Kate Hicks devotion to the cause of helping children and their families, who could fall through the cracks without intervention.

The building at 467 West 140<sup>th</sup> Street was the physical presence of the guidance center. Thirty thousand children and their families are reputed to have passed through its doors for remedial English and mathematics classes, counseling and support groups, and so forth, until it drifted into oblivion following the death of its charismatic founder in 1989. A newspaper article from the *New York Amsterdam News* in 1988 laments “another” robbery at the Vocational Guidance and Workshop Center, the popular name for the organization. Described as “ransacked”, the article states, “A file cabinet system was overturned, years of accurate records and reports on 30,000 children, their first contact with the Center and their present whereabouts, strewn about the floor in wild disarray. Police are investigating this apparent ‘inside job.’”<sup>5</sup> Following the aforementioned robberies, a fire, and finally

water damage from the roof collapsing, virtually all records on the organization and the people who attended and volunteered were lost.

The Intercultural Educational Fund floundered about until around 1992 under the well-intentioned direction of the Executive Director. As the once strong teachers and Board of Directors slowly disappeared from lack of leadership, vision, and funds, the building began to reveal the deteriorated condition of the organization. Long before city agencies are aware a building has been abandoned, the drug and salvage dealers arrive and functionally seize and strip the building. Concomitant squatting typically results in a fire that further damages the structure. Once this threshold has been reached, the building is sealed and often forgotten. 467 West 140<sup>th</sup> Street is exemplary of this pattern of abandonment. By the time the building was brought to the attention of the Landmarks Preservation Commission in the winter of 2012, it had been abandoned and sealed for twenty years.



Figure 7. 467 West 140<sup>th</sup> Street, Interior View from Collapsed Roof, June 2012. Photograph Claudio Papapietro for the Wall Street Journal

This speaks to a fascinating aspect regarding the reporting of demolition by neglect cases to city agencies. Unless in an area that is fairly affluent and holds strong identity association through being in an historic district, it is surprisingly unlikely that an abandoned building will be reported to the LPC. Often it is not until the decay of the offending demolition by neglect building has reached the adjacent buildings that complaints begin to come into the Department of Buildings and/or the LPC. In the case of 467 West 140<sup>th</sup> Street, it was a concerned neighbor who had a professional relationship with Mark Silberman, General Counsel for the LPC, who contacted the LPC once it was identified by the DOB for possible demolition.

As the neighbor's complaints mounted, the building was rapidly investigated and the profile of fragmented organizational ownership emerged. Encumbered with thirty Board members, tax liens that reached \$100,000 and numerous fines from the city's interventions, the building did appear doomed on all fronts. However, a standard rowhouse demolition in New York City costs approximately \$250,000.00, making it highly desirable for the responsible party to try to sell the building as a shell, rather than have it demolished. Of course, the Landmarks Preservation Commission does not support designated buildings being destroyed and will try every avenue to alter that course. While the Commission has the authority to bring a lawsuit against the owner for allowing the building to deteriorate, that avenue would have been useless in terms of time and effort. Having been compromised severely by two decades of neglect, the Department of Buildings was very aggressive about pursuing immediate demolition in the name of public safety. While DOB

concerns are certainly valid, they are incompatible with the LPC's mission to save designated buildings. As a result, a tremendous amount of energy was expended trying to mollify the DOB while also attempting to gather thirty people who had drifted away or died over the course of twenty years.

Locating the thirty people listed on the Vocational Guidance and Workshop Center's letterhead as Board Members was a painstaking effort required by the Attorney General's office because the non-profit was never formally dissolved. As a result, the building as an asset had to be disposed of with all proceeds going to a different non-profit with a fundamentally similar mission. As a result, all living members had to be gathered to vote on the proposed sale of the shell at 467 West 140<sup>th</sup> Street. (See Appendix B: New York State Office of the Attorney General--A Guide to Sales and other Dispositions of Assets Pursuant to Not-For-Profit Corporation Law §§ 510 - 511 and Religious Corporations Law § 12).

Fortunately the Center's Executive Director was found fairly readily by the Commission and proved an eager party. Unlike most negligent owners who are usually dismayed over being called to task by Landmarks, the Executive Director came forward excited that she was part owner and thinking she could potentially profit from the proceeds from the sale. However, the Charities Bureau of The New York State Office of the Attorney General is very clear to the contrary, "The use of the proceeds must be consistent with the corporation's purposes. Sale proceeds cannot be used for the benefit of a director, officer, employee, member or other interested party."<sup>6</sup> Despite the clarity of the Charities Bureau's statement, the

Executive Director remained insistent that she was owed back pay for her duties as Executive Director in the late years of the organization. She was still attempting to argue for payment with the Attorney General's office at the time of this writing.

Ever hopeful for her day of retribution, the director was simultaneously helpful and a nuisance with regard to locating the other Board members. She desperately wanted to choreograph the outcome by leading me to some people and dismissing others flippantly as dead, useless, unpleasant or expatriated.<sup>7</sup> When I repeatedly explained to her that death had to be proven and personality conflicts were irrelevant, she would become peevish and retreat. Despite her attempts to direct the outcome, I managed to locate or confirm the death of all Board members within six weeks through census records, newspaper articles, and interviews. In the end, ten Board members appeared or conference called in to a Board meeting held in July of 2012 at the law firm handling the case pro-bono for the defunct organization.

Not to be cowed by the law that any proceeds go to another non-profit with a similar mission, she tried heartily to produce appropriate non-profits to receive the funds. Thwarted by other Board Member's wishes for different organizations to be the recipient of the funds, she backed down and redirected her energies toward canvassing Board Members privately to support her cause. At the time of this writing, that issue also remains unresolved.

The building was put on the market through a local broker in Harlem as a shell for \$500,000. All the while, the Department of Buildings was relentlessly declaring the need for an emergency demolition that the Commission had to persistently fend off. The building was unquestionably structurally compromised, but it was well contained by a sidewalk shed and there was rapid movement towards a potential sale. Some demolition by neglect buildings openly shed their constituent parts and become a source of reasonable alarm for pedestrians as well as city officials. 467 West 140<sup>th</sup> Street quietly lurked and slowly imploded, but did not look like a source of imminent collapse. This is undoubtedly part of the reason no one complained for so long—it was sealed for as long as anyone could remember and seemed to be under someone’s control because of the sidewalk shed. Offering additional anonymity was that it faces several City College loading docks and there were other vacant buildings on the block. Even the Executive Director, who lives a few doors down, apparently never gave it a second thought until she realized she might be able to profit from her involvement with it.

When the building was put on the market, seven potential buyers came forward immediately to make an offer. A couple of offers came in too low at around \$300,000 and other offers were more reasonable, coming in at around \$450,000, but they were made by unscrupulous developers the Commission was aware of and did not want to risk the possible imminent problems they represented. Not long after the interest in the building seemed to have peaked, a full price offer was received from a couple from California who seemed to have the resources and a genuine interest in

restoring the building. The sale of a demolition by neglect shell has significant limitations and time intensive expectations. The structural instability demands that a structural engineer be retained immediately to brace and shore the building to make it safe enough to assuage the Department of Buildings and rescind the demolition order. Additionally, the buyer must have ready capital to infuse into the building's purchase and restoration—there is no time to negotiate financing. Finally, it must be fully understood that the building is in a designated historic district and plans to add additions or alter the façade will be scrutinized.

The offer from the California buyers was accepted with great anticipation and the Commission spent considerable time making certain they understood fully the need for expedience. Despite the preparatory efforts made to select a qualified and informed purchaser, the buyers did ultimately delay the process so much that the Department of Buildings began threatening demolition again. After a couple of tense months, the project did finally commence and the building is now stabilized and no longer at risk for demolition.

467 West 140<sup>th</sup> Street is illustrative of demolition by neglect in general and the specific cause of fragmented ownership. No successorship plan for the organization, a tireless opportunist, and a large number of people who had no idea or did not remember they had any level of responsibility for the building are specific to this fragmented ownership profile. Despite the obstacles present with 467 West 140<sup>th</sup> Street, the building was saved from demolition by being reported to the LPC, which

subsequently untangled the ownership and was able to negotiate the need for selling the building without litigation, coordinated the sale, and now the building is being restored with its façade fundamentally intact.

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<sup>1</sup> United States, New York City Landmarks Preservation Commission, *Hamilton Heights Historic District Designation Report* (New York: Landmarks Preservation Commission, 1974), pg. #8, accessed May 2013, [http://www.neighborhoodpreservationcenter.org/db/bb\\_files/HAMILTON-HGTS-HD.pdf](http://www.neighborhoodpreservationcenter.org/db/bb_files/HAMILTON-HGTS-HD.pdf).

<sup>2</sup> *Ibid.*, p. 4.

<sup>3</sup> *Ibid.*, p. 7a.

<sup>4</sup> Melba-Joyce Bradford, *Vocational Guidance and Workshop Center: Forty-Second Anniversary Celebration* (New York: Harlem School of the Arts, 1992), pg. #5.

<sup>5</sup> Cathy Conners, "Hicks Suffers Another Devastating Robbery," *New York Amsterdam News*, September 24, 1988, accessed May 9, 2013, <http://search.proquest.com.ezproxy.cul.columbia.edu/docview/226336253/13DEF2F95F471B47116/3?accountid=10226>.

<sup>6</sup> United States, Charities Bureau, New York State Office of the Attorney General, *A Guide to Sales and Other Dispositions of Assets Pursuant to Not-for-Profit Corporation Law, Use of Proceeds*, accessed May 10, 2013, <http://www.charitiesnys.com/pdfs/sales.pdf>.

<sup>7</sup> The author was an intern at the New York City Landmarks Preservation Commission during the summer of 2012. Until May 2013, I was personally involved with the case studies 467 West 140th Street, 28 West 130th Street, and 865 Sterling Place.

## CASE STUDY TWO

37 East 4<sup>th</sup> Street AKA: Skidmore House, New York, NY

Status: Resolved

Cause: Strategic

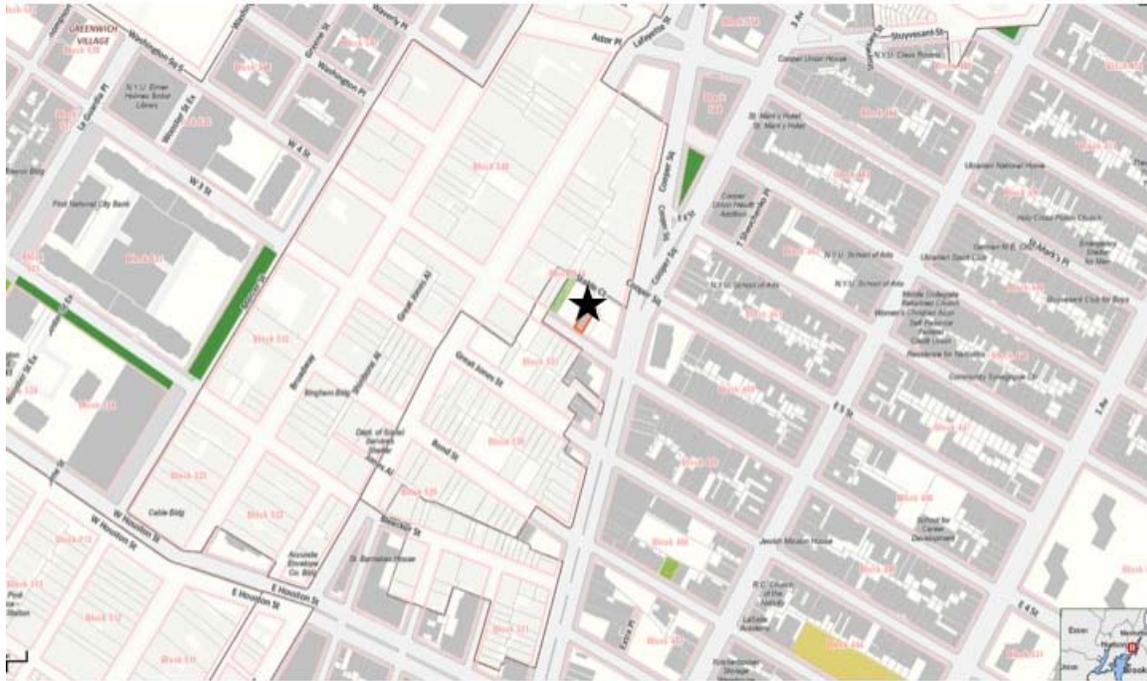


Figure 8. 37 East 4<sup>th</sup> Street, Skidmore House, Individual Landmark, NYC Oasis Map

37 East 4<sup>th</sup> Street is a resolved demolition by neglect building in the NoHo area of Lower Manhattan. Built circa 1845 as one of a grand block of townhouses on East 4<sup>th</sup> Street, it is a three-and-a half story, brick Greek Revival-style building.<sup>1</sup> Designated an Individual Landmark in 1970, the designation report describes the house as “unusually impressive,” and one of only two houses of note that have survived on the once fashionable block. Its architectural and blood cousin, 29 East 4<sup>th</sup> Street which is also known as the Old Merchant’s House, was designated an Individual

Landmark in 1965. The two houses were built thirteen years apart and subsequently sold to cousins Seabury Tredwell and Samuel Skidmore. Although the two buildings are typically discussed in relation to one another as extant examples of Greek Revival architecture in a once thriving residential neighborhood, their trajectory into the future could not have been more disparate. As the Old Merchant's House was celebrated as a perfectly intact example of the domestic world of a prosperous merchant, the Skidmore House sank into oblivion. The Skidmore House is described in the designation report as having "...traces of rustication...", "...blocked-up sidelights...", "traces of delicate carved molding...", and "vestiges of the cap molding." The "handsome doorway with full entablature supported by a pair of Ionic columns" is the most lauded element of the Skidmore House in the designation report and became the plaintive cry of the building's devolution in later photographic documentation.<sup>2</sup>



Figure 9. Skidmore House Designation Photograph circa 1969. Photograph courtesy LPC NYC

Skidmore House Doorway circa 1997. Photograph courtesy of Pi Gardiner

37 East 4<sup>th</sup> Street is a case study illustrating strategic demolition by neglect and it represents the demolition by neglect antecedent that is most often identified as the primary problem—the rapacious developer. Demolition by neglect is overrepresented as primarily the domain of the avaricious developer because the cases tend to be sensationalized in the media, producing a villain to loathe in a crisis situation, and galvanizing preservationists and the general public. This assemblage makes the strategic demolition by neglect owner profile interesting, but in reality it is the least common.

Purchased in the 1960s by New York based artists Lenore Tawney and Po Kim, the building functioned as an art gallery for emerging artists in the 1970s called Touchstone under Barbara Hirschl and subsequently served as housing and studio space for artists into the mid-1980s. In this bohemian world the Skidmore House's identity began to shift even further away from its roots as a mid-19<sup>th</sup>-century genteel home to a mid-20<sup>th</sup>-century counterculture outpost. Although the façade condition did not improve during their stewardship, there is no indication it significantly or abruptly worsened either. The designation report indicates the owners hoped to restore the building;<sup>3</sup> a plan alluded to in a 1978 thesis on the Skidmore House, which included an interview with Po Kim.<sup>4</sup>

In 1988, everything changed for the Skidmore House following the death of real estate mogul Sol Goldman in October of 1987. Goldman owned all of the property around the Skidmore House, but not the Skidmore House itself until his heirs bought

it in 1988 immediately following his death. In that same year, the Goldman heirs demolished the buildings to the west and the east of the Skidmore House. There was significant tumult within the Goldman family over the estate after his death and the widow and her children fought it out over his extensive portfolio, which included income-producing real estate and real estate purchased to lie fallow until the development opportunity ripens.<sup>5</sup> Clearly the children, who are variously titled as officers of multiple layers of real estate entities, wanted to hasten the ripeness of East 4<sup>th</sup> Street by demolishing all that they could. Because the demolition of Skidmore was thwarted by its Landmark designation, in December of 1990 the Goldman heirs requested the LPC write a report supporting issuance of a Special Permit pursuant to Section 74-711 of the New York City Zoning Resolution which permits a change of bulk and use for a landmark building if the owner agrees to restore and maintain the landmark. In 1991, Landmarks approved the Modification of Use application, but it was not acted upon.



Figure 10. Skidmore House location within Goldman family property

Between 1988, when the Goldman heirs purchased the property, and 1994, the property took a nosedive. In 1994 a fire on the parlor floor resulted in a significant amount of local press coverage about the now derelict building and the ire of preservationists gained momentum. Between 1994 and 1998, there was considerable activity surrounding the Skidmore House ranging from advocacy groups declaring their indignation over the neglect of the building to the LPC demanding investigation and subsequent repair of the building.<sup>6</sup>

In the early summer of 2002, it was reported to the LPC that the roof had collapsed. It was also reported to the LPC in June of 2002 that a \$40 million deal for a hotel that would utilize the Skidmore House as the entrance to the hotel also collapsed due to the City of New York use of the westerly neighboring lot as water tunnel access. Between the water tunnel and the designated buildings at 29 and 37 East Fourth Street, the Goldman heirs presumably had had enough with the city.

In August of 2002, the LPC initiated a lawsuit against the Goldman Estate for demolition by neglect of the Skidmore House. The complaint reads:

...that the New York City Landmarks Preservation Commission is bringing the action to compel the defendants to repair the building (Skidmore House) and maintain it in good repair as required under the New York City Landmarks Law. Defendants have emptied the Skidmore House of tenants, have demolished the buildings on either side of it, have failed to maintain it for years despite repeated admonitions to do so from the NYC LPC and have neglected the building to such an extent that almost half of its roof recently collapsed leaving the interior of the building exposed to the elements. The Skidmore House sits alone surrounded by empty lots in a prime development site as a result of the defendant's actions and is—either by design or disregard—in danger of further collapse as a result if the defendants

continue to neglect it. It further states that the LPC is seeking injunctive relief against the owners, operators, lessees, and all other persons and entities claiming any right or interest in the Skidmore House; to enjoin defendants from allowing the landmark Skidmore House to continue to severely deteriorate; and to require defendants to repair, restore, and maintain the Skidmore House as required by Section 25-311 of the Administrative Code.<sup>7</sup>

The defendant is named as 10-12 Cooper Square Incorporated with Allan Goldman listed as an owner and/or person in charge of the Skidmore House. The subject premises are further described as a designated NYC Landmark and as recognized by the federal government as a place of significance through listing on the National Register of Historic Places. A chronology follows which describes the trajectory of the demise of the Skidmore house under the defendants' ownership since their purchase of the Skidmore House in 1988. Most notably, it spells out that the building was vacant since 1990, all of the surrounding buildings were demolished which structurally weakened the building due to the fact that the party walls were never designed to be exposed to the elements and exist in isolation, and it calls out the fact that the owners attempted to utilize the Skidmore House for a Special Permit pursuant to Section 74-711 of the New York City Zoning Resolution. Although the application was approved, no action was taken pursuant to the special permit. An exchange of admonitions, assurances, and stalling endured from 1994 until 2002, the time of the complaint. In 2002, a significant portion of the roof collapsed, the NYC DOB issued an Unsafe Building Notice due to the building's roof collapse, the subsequent exposure of the interior to the elements, and a 40-foot long crack in the east wall of the building.<sup>8</sup>

The Skidmore House legal action by the LPC was countered by the Goldmans. More typically once a lawsuit is filed, the owner realizes that the situation is dire and will take action to deal with or sell the property. However, the Skidmore House went to trial, the only in the Commission's history with demolition by neglect. The unprecedented nature of a lawsuit for demolition by neglect may explain why the owners were emboldened to take on the LPC in a court of law. In the Post-Trial brief, the attorney for the Goldmans countered the LPC Complaint with the following arguments:

The Order to Show Cause had been mooted by the Owner's full performance of the work for which the preliminary injunctive relief was sought, the complaint pleads the building is a designated New York City landmark and the relief is sought on that status, which the owner disputes, and that the Commission pleads they are seeking to enforce 25-311 which states that every person in charge on a landmark site shall keep it in good repair, which the Owner's attorney feels is unreasonable, subjective, and onerously unenforceable because it would demand constant intervention by the court.<sup>9</sup>

The roof was replaced over the course of the two years it took the lawsuit to be decided. Following a dramatic collapse of a significant section that was once a large skylight, the roof collapse was the end of negotiations between the LPC and the Goldman family. However, as opposed by the Goldman's attorney's statement that roof replacement was the extent of their obligation to "repair" the building, the LPC's demands for good repair were much wider in scope, and included repair of decorative elements on the façade (see Appendix A).

In addition, the designation was challenged on the grounds that the Commission failed procedurally by not voting on the matter during a public hearing held on February 3, 1970, and did not comply with the requirement to give notice for the

hearing on August 18, 1970 during which the vote was presumably taken. The owner's attorney argues that said failures are fatal to the designation of the Skidmore House. The Judge countered that there is a "long established presumption of regularity in that it is presumed that no official or person acting under an oath of office will do anything contrary to his official duty...That presumption compels an adversary to come forward with affirmative evidence of unlawful or irregular conduct. Substantial evidence is required to overcome the presumption of legality."<sup>10</sup>

The judge found that the owners of the Skidmore House made "minimal repairs" since they acquired the property in 1988, and that the current condition is "in a dismal state of disrepair." It is also noted that the "Plaintiff (LPC) characterizes the defendants' conduct as 'demolition by neglect.'" The Post-Trial brief makes much of the definition of "good repair" and reads as endless tumult over the definition until Mark Silberman, LPC General Counsel, testified, "Section 311 requires owners maintain the exterior of their building and those portions of the interior that may affect the exterior in a state of good repairs to prevent deterioration and destruction of the resource that we are protecting, the building in this case." He further testified, "All exterior architectural elements, some of which are purely decorative to the extent they are considered significant are also covered under Section 311, and would have to be maintained."<sup>11</sup>

The court ultimately found that the building was currently in a state of disrepair, and that the repairs sought by the plaintiff were necessary to stabilize the Skidmore

House, and bring it to a state of 'good repair.' It is further acknowledged that "good repair" is to be determined by the Commission and that the courts will consistently uphold agency deference unless the determination is unreasonable or irrational. Although an unsatisfying response, it does stay the argument that the courts will be endlessly monitoring landmarked buildings.

Secondly, the court found that the owner's attempted claim that disrepair was a grandfathered condition, due to the deterioration present at the time of designation, was also fundamentally flawed. "The photographs, which accompanied the original application for designation demonstrates the deterioration that the façade of the Skidmore House has endured under the stewardship of the defendants. The repairs undertaken by the defendants have been simply inadequate to maintain the landmark in the state of repair at the time of its landmark designation."<sup>12</sup> The façade was certainly in less than pristine condition based on the photos taken around the time of designation, however, the condition of the Skidmore House at the time of this trial was reprehensible.



Figure 11. Skidmore House 2005. Photo courtesy LPC NYC.

On December 20, 2004, the judge ordered the defendants to “permanently repair and restore the exterior of the Skidmore House to a state of ‘good repair,’” to do so in an expeditious manner, and to keep it in “good repair” in perpetuity.<sup>13</sup> The Skidmore House was indeed repaired by the Goldmans, but not because they learned their lesson and realized their mistake in abusing a landmark. They restored it, as their attorney said, because, “...although this work was incredibly expensive and time-consuming, the Owner was not forced to do so ‘kicking and screaming,’ but did so to protect the value of the Building which, not coincidentally, was important

to obtain the right to develop the surrounding property for residential purposes. It would have been insane for the Owner to have intentionally jeopardized its ability to obtain a variance pursuant to Section 74-711 of the Zoning Resolution and as the Court noted, 'We're not dealing with the public. We're dealing with people who are very sophisticated...'”<sup>14</sup>

Following their success with obtaining their third approved 74-711 Special Permit, which was obtained by virtue of a 99-year lease with a developer independent of the Goldman family to ensure the owners of the once-derelect Skidmore House did not benefit from passively destroying a Landmark, there is now a 15-story residential tower on the corner of Bowery and East 4<sup>th</sup> Street built with development rights from the now restored Skidmore House. and from the development rights retained from another 99-year lease with the City of New York for the vacant land west of the Skidmore House. The owners agreed to the vacant lot being developed as a park after the water tunnel construction, on the condition they retained the development rights.



Fig. 12. Skidmore House 2010 with adjacent tower. Photograph courtesy Chester Higgins Jr. The New York Times.

Resolution of the Skidmore House through a tortuous 20-year-long process that ultimately required a lawsuit and a third zoning special permit. The Special Permit is described as “...ZR §74-711 is a powerful tool which can be used to modify many sections of the Zoning Resolution in order to make owning and maintaining historic structures less burdensome and more desirable. In return for waiver(s), applicants must ensure that the subject property is properly rehabilitated and maintained in

perpetuity.”<sup>15</sup> The process was frustrating, although the goals of all parties were ultimately met. It remains unclear to me what motivated the Goldman family to spend a significant amount of time and money to arrive at the same place they started in 1990. Perhaps it is as simple as arrogance, overconfidence in their anticipated result of the LPC lawsuit, and utter disregard for the Skidmore House as anything more than a leveraging tool for a zoning variance. Today the Skidmore House has been restored with a combination of original material and cement-based cast stone and is a ten-unit rental building.



Figure 13. 37 East 4<sup>th</sup> Street, 1979  
National Register Photo, Courtesy  
I.P.C. NYC



37 East 4<sup>th</sup> Street, 2013. Post  
restoration. Photo by author

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<sup>1</sup> United States, New York City Landmarks Preservation Commission, *37 East 4th Street House, Samuel Tredwell Skidmore House Designation Report* (New York: Landmarks

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Preservation Commission, 1970), pg. #1, accessed May 2013,  
[http://neighborhoodpreservationcenter.org/db/bb\\_files/37-EAST-4TH-STREET.pdf](http://neighborhoodpreservationcenter.org/db/bb_files/37-EAST-4TH-STREET.pdf).

<sup>2</sup> *Ibid.*, p. 2

<sup>3</sup> *Ibid.*, p. 2

<sup>4</sup> Carol Emily Gordon, *The Skidmore House: An Aspect of the Greek Revival in New York*, thesis, University of Delaware, 1978 (University of Delaware, 1978), pg. #221.

<sup>5</sup> Iver Peterson, "Heirs of Sol Goldman Battle Over Estate," *The New York Times*, September 25, 1988, section goes here, accessed May 10, 2013,  
<http://www.nytimes.com/1988/09/25/realestate/heirs-of-sol-goldman-battle-over-estate.html?pagewanted=all>.

<sup>6</sup> John M. Weiss. Discussions with author. June 2012-May 2013. The Skidmore House case study is several years old and was reconstructed primarily through LPC documentation and discussions with Mr. Weiss.

<sup>7</sup> *City of New York v. 10-12 Cooper Square, Inc.*, 793 N.Y.S.2d 688, 692 (N.Y. Sup. Ct. 2004)

<sup>8</sup> NYC DOB BIS 061102UB1014/02. Violation 06/11/2002 UB-Unsafe Building

<sup>9</sup> *City of New York v. 10-12 Cooper Square, Inc.*, 793 N.Y.S.2d 688, 692 (N.Y. Sup. Ct. 2004)

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> Scott Stringer, Recommendation on ULURP Application No. C 060525 ZSM--Skidmore House by Atlantic Realty, December 18, 2007, Borough President, Borough of Manhattan.



streets within the proposed historic district, at least 684 were built before the Civil War and at least 1,078 before the turn of the century..."<sup>1</sup> 135 Joralemon Street and its opposite-hand-plan sister building at 24 Middagh Street, are both pre-Civil War buildings that retained a great deal of original architectural detail, until 135 Joralemon Street began to falter in the late 1990s.



5. No. 24 Middagh Street. Note carriage house at right.  
Figure 15. 24 Middagh Street, Brooklyn Heights Historic District. Photograph Courtesy Clay Lancaster, *Old Brooklyn Heights: New York's Finest Suburb*



135 Joralemon Street, Brooklyn Heights Historic District. Photograph Courtesy Blog, "Little House Part the 2<sup>nd</sup>"

135 Joralemon Street is one of three properties in the Brooklyn Heights Historic District that were inherited by an only child. Largely unable to handle the complexities of property ownership and maintenance, all of his properties fell into disrepair. 14 Hunts Lane was the first of his properties to be investigated by the LPC in 2001. The owner chose to sell that building rather than make repairs following

pressure from the Commission to tend to the property. In 2003, the poor condition of 135 Joralemon and subsequent dismay from the neighborhood and community groups resulted in renewed efforts by the Commission to compel the owner to bring 135 Joralemon to a state of good repair.<sup>2</sup>



Figure 16. 135 Joralemon Street October 2004. Pre-fire. Photograph courtesy LPC NYC

The owner was anecdotally referred to as crazy, cantankerous or eccentric. Local Brooklyn newspapers referred to the building as haunted and referenced a *Time Out New York* article described it as one of the 13 creepiest places in the city, “It’s easy to picture Uncle Fester roaming the attic, testing light bulbs in his mouth — or Jeffrey Dahmer in the basement, dismembering corpses.”<sup>3</sup> In reality, the Commission discovered upon dealing with him for several years that he actually fell somewhere

more mundane--a penurious man with Collyer Brother's Syndrome, a form of compulsive hoarding. He lived in the house at 135 Joralemon Street with his longtime companion for several years into the property's demise, until the house sustained a fire on New Year's Eve in 2004, which forced them to move into another property at 16 Hunts Lane.<sup>4</sup> The conditions discovered by the Fire Department testify to the severity of Collyer Brother's syndrome and its consequences. Barely able to enter the burning house due to the detritus packed inside, a post-fire image taken of the rear of the building by the Commission in 2006 epitomizes Collyer Brothers Syndrome.



Figure 17. 135 Joralemon Street, rear façade post-fire 2005. Photo courtesy LPC NYC

Named for the Collyer Brothers of Harlem, as previously stated, Collyer Brothers Syndrome is the medical term for what is now commonly referred to as hoarding. Unfortunately, with the publicity of a successful television show of the same name, hoarding is the psychological syndrome du jour that the public consumes with voracity. However, the effects are devastating and have real consequences. The following grainy 1947 New York Times photograph illustrates hoarding conditions as seen at the Collyer Brothers residence:



A police sergeant looking at barricade of boxes behind front door which had been smashed.

The New York Times

Figure 18. Newspaper photograph of Collyer Brothers House in Harlem. March 1947. Photo courtesy New York Times

Once again, the collision or juncture of demolition by neglect with a problem seemingly much larger than preservation emerges in the case study of 135

Joralemon Street. After the fire and following repeated requests to initiate repairs to the building, the LPC sent a letter to the owner in October 2005 stating:

Over nine months have elapsed since the fire. As you know, you are required by law to maintain 135 Joralemon Street in good repair. I have previously written you about this and have met with you. I appreciate that you took me through the house. However, at this time your house at 135 Joralemon Street remains in poor condition. Additionally, it is vacant which makes it susceptible to further damage in light of its current poor condition; there is the risk of mold, water leaks, vandalism or even another fire. I am sorry to have to tell you this but at this time the Landmarks Preservation Commission has no choice but to initiate legal action to compel you to make the repairs to the house.<sup>5</sup>

Said legal action was initiated on January 6, 2006 including the following description of the building in the Order to Show Cause:

...significant architectural features of the Subject Premises are in a state of significant deterioration or disrepair. Among other things, many of the front windows have been damaged or destroyed, a portion of the front door surround is missing, two sections of wood cornices on the front façade are visibly rotted and deteriorated, wooden front steps are deteriorated and missing a riser, portions of the front porch are rotted, a rear porch is significantly deteriorated and may be near collapse, rear windows have been destroyed, sections of wooden clapboard are rotted, and there is interior fire damage to the house.<sup>6</sup> (see Figure 19)

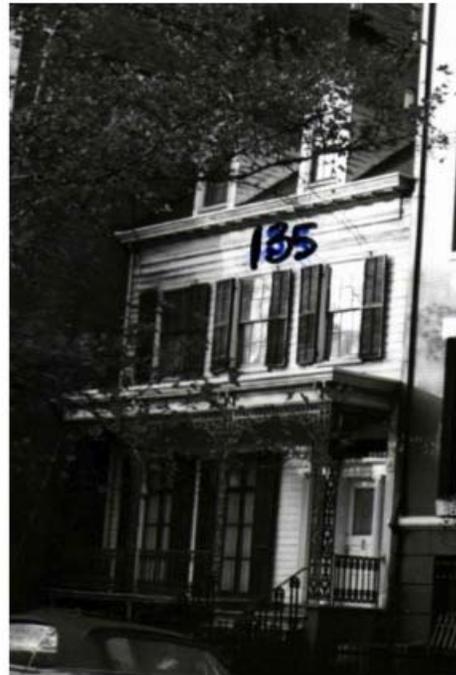
The owner ultimately sold the house in response to the lawsuit, despite having the funds available to him from the proceeds of the sale at 14 Hunts Lane to repair the building. The building was purchased by a local developer and restored close to the condition at designation with the exception of omitting the shutters that would have been original to the house and were present at designation. (see Figure 20)



Figure 19. 135 Joralemon Street, 2006. Photograph courtesy LPC NYC



Figure 20. 135 Joralemon Street post-restoration 2008. Photograph courtesy LPC NYC



135 Joralemon Street, 1965 designation photograph. Courtesy LPC NYC

135 Joralemon Street is a case study of demolition by neglect that involves the paired causes of mental illness and inheritance. It is also illustrative of the Commission's maturation in terms of enforcing good repair. Today, with the increase of the demolition by neglect case load and the need to triage buildings in terms of structural instability, which is viewed as a threat to public health and safety, 135 Joralemon Street would likely be categorized as failure to maintain rather than demolition by neglect. Although if left unchecked, Joralemon would likely have progressed to demolition by neglect, there are numerous buildings on the precipice of demolition by neglect that are not provided the attention Joralemon

received due to the sheer number of buildings that do meet the standard and the vast resources that must be marshaled to contain it.

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<sup>1</sup> United States, New York City Landmarks Preservation Commission, *Brooklyn Heights Historic District, Borough of Brooklyn Designation Report* (New York: Landmarks Preservation Commission, 1965), pg. #3, accessed April 2013, [http://neighborhoodpreservationcenter.org/db/bb\\_files/BROOKLYN-HEIGHTS-DISTRICT.pdf](http://neighborhoodpreservationcenter.org/db/bb_files/BROOKLYN-HEIGHTS-DISTRICT.pdf).

<sup>2</sup> John M. Weiss, meeting with author, June 2012-May 2013.

<sup>3</sup> Christie Rizk, "This Old House Restored!," *The Stoop* (Brooklyn), May 19, 2007, accessed April 2013, [http://www.brooklynpaper.com/assets/pdf/30\\_20bp.pdf](http://www.brooklynpaper.com/assets/pdf/30_20bp.pdf).

<sup>4</sup> John M. Weiss, meeting with author, June 2012-May 2013.

<sup>5</sup> "135 Joralemon Street," letter from John M. Weiss, October 4, 2005.

<sup>6</sup> *City of New York v. Palmer*, No. 620/2006 (N.Y. Sup. Ct., Jan. 9, 2006) (Order to Show Cause).

## CASE STUDY FOUR

West 130<sup>th</sup> Street, New York, NY

Cause: City Auction/Lack of Resources

Status: In Process/Unknown

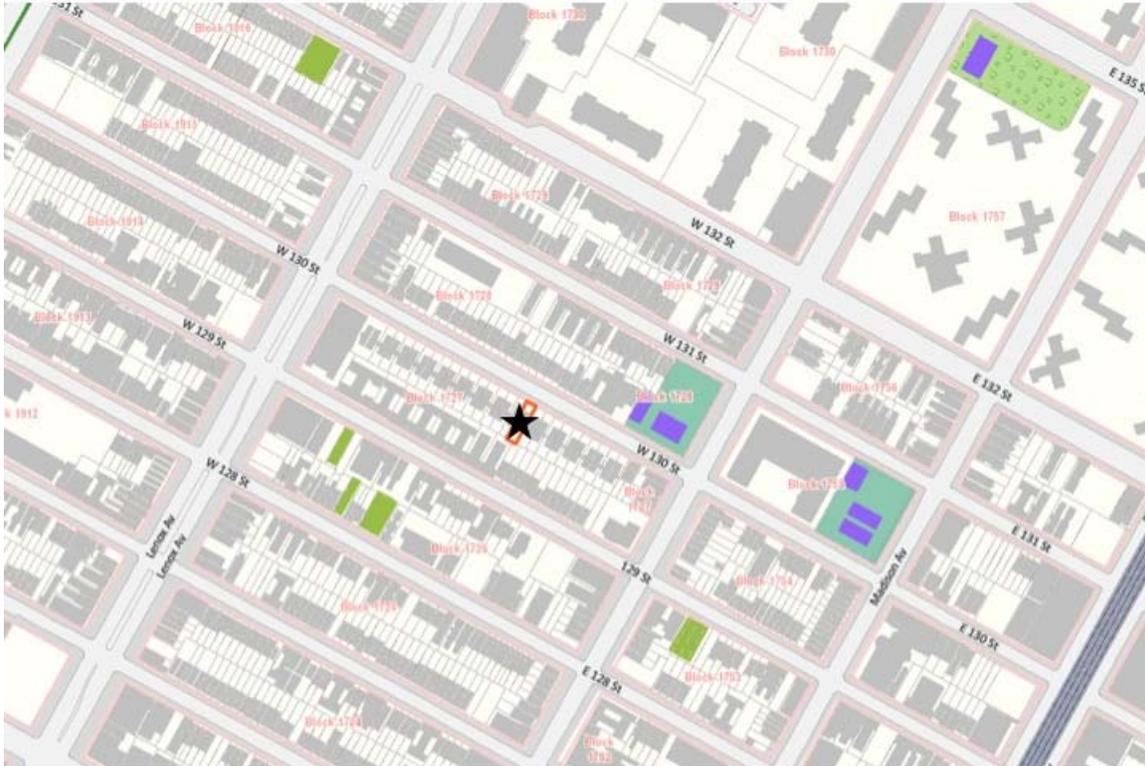


Figure 21. 28 West 130<sup>th</sup> Street, Individual Landmark, Astor Row. NYC Oasis Map

28 West 130<sup>th</sup> Street is an Individual Landmark demolition by neglect building in Harlem's Astor Row. Built from 1882-1883, it was designated in 1981 as one of 28 nearly identical residences built as speculative housing under the ownership of William Astor.<sup>1</sup> According to the designation report, Astor Row was constructed in three groups with the first eight designed by architect Charles Buek.<sup>2</sup> The second group, to which No. 28 belongs, were constructed without the architect, but based on his design concept. The difference lies primarily in the massing, as the first eight

are freestanding pairs, and the remaining twenty are a continuous row with deep recesses between pairs. Their most unique features include the small front yards and the wide wooden porches that run the full width of the building. The subject of this case study, 28 West 130<sup>th</sup> Street is described as follows in the designation report, “No. 28 West 130<sup>th</sup> Street has been completely sealed with cement blocks. The porch is still extant with most of its Eastlake spindles and details intact. The fence surrounding the yard is a modern one”.<sup>3</sup>



Figure 22. 28 West 130<sup>th</sup> Street Individual Landmark, Astor Row Tax Photograph courtesy of LPC NYC

28 West 130<sup>th</sup> Street Individual Landmark, Astor Row Photograph by author, October 2012

28 West 130<sup>th</sup> Street has been suspended in deteriorated condition on Astor Row for over thirty years. The City seized it in 1977 as a tax-lien foreclosure and sold it at auction in 1986, five years after designation. Purchased by a woman and her mother

(now deceased) at auction for \$21,000, it represented a dream of returning to Harlem, where they once lived together as a family. Although the deed specifically states that the purpose of the sale of City-owned residential buildings is to “stabilize and revitalize its neighborhoods through homeownership” and “limits the sale of designated City-owned residential properties to those individuals who agree to live in the building for at least three years after completion of rehabilitation,” none of the aforementioned conditions have been met, let alone the LPC's requirement that the building be kept weather-tight and in good repair. Twenty-seven years after purchasing 28 West 130<sup>th</sup> Street, the building's condition is as illustrated in the following photographs:



Figure 23. 28 West 130<sup>th</sup> Street Interior Roof Collapse. October 2012. Photograph by author.



Figure 24. 28 West 130<sup>th</sup> Street Interior Debris Field. October 2012. Photograph by author.

In the summer of 2012, 28 West 130<sup>th</sup> Street was brought to the attention of the LPC by virtue of a call from a neighbor who was using aerial-view software to look at his own roof, and noticed the enormous hole in a neighboring roof, reporting it to the LPC.

The agreement between the NYC Housing Preservation and Development Agency and the owner states that within two years of purchase, she must undertake and complete all rehabilitation/repairs in a “diligent manner,” and it specifically references the property’s Landmark status. As of the date of this writing, the owner has done nothing to meet the demands of HPD to rehabilitate, let alone reside in the

building at 28 West 130<sup>th</sup> Street. In addition, she is struggling mightily to meet the current demands of the LPC and subsequently the DOB that she stabilize the building.

What is most significant about the municipal alphabet soup the owner is engulfed by is that the agency that took action is the Landmarks Preservation Commission. It appears HPD does not enforce the covenants of sales through City auction based on the Commission's experience with buildings sold through auction that ultimately present as demolition by neglect. At the time of this writing, no response to requests for explanation of HPD's policy on auction sale covenants has been received. The single DOB complaint issued against the building is about the porch wood being rotted, for which a failure to maintain porch violation was issued. Presumably DOB is not concerned with the fact that the building is vacant because it is sealed and does not appear unsound from the street.

Despite pressure and guidance from Landmarks on stabilizing the building, the owner has done little more than equivocate enthusiastically. For eight months, she has been declaring herself on the cusp of funding the stabilization, but her inability to obtain a loan for the work is reveal her suspected financial instability. When asked why she let the building continue to fall into ruin, her response was, "Sometimes it just gets away from you..."<sup>4</sup> At this time, the LPC has little recourse but to initiate legal action against the owner in the form of a lawsuit and fines. It goes without saying that fining an impecunious woman is unproductive and a

lawsuit is an oblique way to force her to sell. However, at present there are no alternative mechanisms through which to handle individuals like the owner of 28 West 130<sup>th</sup> Street. With any luck, the Commission can persuade her to sell instead of threatening her, but that is not a long-term solution to this very common underlying cause of demolition by neglect: lack of resources.

Negotiating issues of insufficient funds in demolition by neglect is tricky and extremely sensitive. First of all, it defies the commonly held belief that demolition by neglect is mostly a result of the rapacious developer. Lawsuits and fines are effective tools to de-incentivize people with assets to lose, but when they have little to lose, it is just one more insurmountable nightmare. Secondly, poverty is a dreary problem that does not blend well with the crisis and outrage mentality so persistent in the preservation community. Third, there is currently no mechanism for lending in the form of loans or liens to at least stabilize demolition by neglect buildings.

City auctions attracting unprepared buyers with ill-conceived dreams is another consistent theme of demolition by neglect and one that should be tempered by proof that the individual purchasing actually has the means to follow the project through to completion. Of no additional help is the fact that HPD does not enforce the terms of sale at city auction. The LPC being forced to pick up ten or twenty years later where another city agency was remiss in qualifying prospective owners is circular and silly. The history of city auction caused demolition by neglect has a

preponderance that is worthy of careful evaluation and reconsideration of this practice.

At this time, the owner is struggling to qualify for a loan just to stabilize the building. Even if she receives the money to stabilize, she is nowhere near being able to actually inhabit the building. 28 West 130<sup>th</sup> Street is a literal and figurative abyss that serves as a model for expanding our approach to demolition by neglect.

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<sup>1</sup>United States, New York City Landmarks Preservation Commission, *28 West 130th Street House (Part of Astor Row) Designation Report* (New York: Landmarks Preservation Commission, 1981), pg. #1, accessed May 1, 2013, [http://www.neighborhoodpreservationcenter.org/db/bb\\_files/1981-28W130thStreetHouse--PartofAstorRow-.pdf](http://www.neighborhoodpreservationcenter.org/db/bb_files/1981-28W130thStreetHouse--PartofAstorRow-.pdf).

<sup>2</sup> *Ibid.*, p. 4

<sup>3</sup> *Ibid.*, p. 7

<sup>4</sup> Quote from the owner at a meeting regarding the condition of the house that was attended by the author.

CASE STUDY FIVE

865 Sterling Place, Brooklyn, NY

Status: In Process/Unknown

Cause: Mortgage Fraud

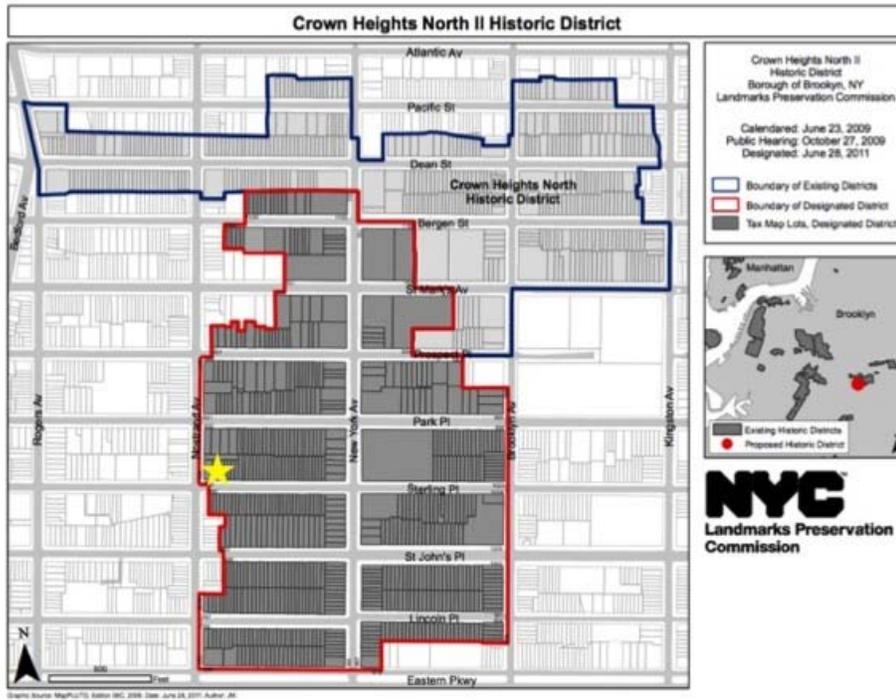


Figure 25. 865 Sterling Place, Crown Heights North II Historic District, LPC NYC Map

865 Sterling Place is an unresolved, recent demolition by neglect building in the Crown Heights North II Historic District in Brooklyn. Built in 1896 as one of seven two-family residences, it is a modest building that was sealed with masonry at the lower level and boarded up at the first and second stories at designation in 2011.<sup>1</sup> Abandoned for years, the building has barely managed to survive into the 21<sup>st</sup>

century raped by mortgage fraud, and the subsequent abandonment perils of squatting and fire.



Figure 26.  
865 Sterling Place Crown Heights North II,  
Historic District 1940's, Brooklyn. Tax Photo  
Photograph courtesy LPC NYC

865 Sterling Place Crown Heights North II  
Historic District, Brooklyn. Photograph by  
author

Demolition by neglect is beginning to intersect with mortgage fraud as crooked deed and mortgage transfers leave the buildings deteriorating as collateral damage.

Mortgage fraud began to wreak havoc in the early years of subprime lending, so the abandonment of the actual buildings started roughly ten years ago. It takes time for a building to read as deteriorating in terms of loss of architectural features, structural instability felt by neighboring buildings, or through a compromised roof. Building deterioration is a slow and stealthy process that typically needs about ten years of complete disregard before it can be declared demolition by neglect. 865

Sterling Place had the process of reaching demolition by neglect hastened by a major fire in 2009, which left it structurally compromised and exposed to the elements.



Figure 27. 865 Sterling Place Fire. March 19, 2009. Photograph courtesy Michael Combs



Figure 28. 865 Sterling Place Roof, December 2012 Photograph courtesy LPC NYC

The collision of mortgage fraud, preservation, and demolition by neglect is complex and can be overwhelming. However, the problem of mortgage fraud cannot be overestimated as two disparate realities—subprime lending that encourages fraud and increased designation in economically distressed areas—collide to create a heretofore unknown miasma. Mortgage fraud accounts for about one third of building abandonment in the current Crown Heights Historic Districts.<sup>2</sup> Calendarizing of a third extension and proposal for a fourth will result in the percentage of buildings affected by mortgage fraud to spiral. Similar results will be seen as the adjacent Bedford-Stuyvesant neighborhood is increasingly designated.

Designation of areas of Central Brooklyn has significantly increased, running parallel to the increase in mortgage fraud. This is not a false correlation. The Crown Heights North Association, a small neighborhood advocacy organization, has been driven to press for designation of Crown Heights since 2006. Utilizing a preliminary proposed LPC district map from 1978 that included 990 buildings, the Crown Heights North Association pushed for designation. In the event that a Crown Heights III and IV are approved, almost the entire original proposed district will be a reality. The community impetus for designation was twofold—first it reflects an old desire to mediate development and gentrification and secondly, and most significantly, the neighborhood wanted the perceived power of the Landmarks Law to help them address abandoned buildings. When I first met Ethel Tyus, General Counsel for the Crown Heights North Association and President of the Sterling Place Civic Association, in November of 2012 and asked her straightaway why she wanted the

neighborhood to be designated, her response was, “25-311.”<sup>3</sup> The significance of her answer is very important. 25-311 refers to the Section of the Landmarks Law that regulates good repair and by extrapolation, demolition by neglect. The import of a community advocate inductively utilizing the Landmarks Law should not be disparaged. In one short numerical answer, Ethel Tyus encapsulated and reified the maturation of preservation and the perception of the Commission as a concrete solution.

Ethel Tyus lives on Sterling Place, a block of the Crown Heights North II Historic District that is overwhelmed by abandoned buildings. The north side of the block, where she resides, bears three buildings crippled by mortgage fraud. Two of the buildings (885 and 905 Sterling Place) are the collateral damage of a particularly virulent perpetrator of mortgage fraud in Brooklyn. Although he was imprisoned in 2008 following a salacious trial during which he claimed to be beholden to God alone, resolution of his crimes is incomplete as the buildings he targeted quietly descend into perdition.<sup>4</sup> The third building is 865 Sterling Place, the subject of this case study. As previously discussed, 865 Sterling is the only mortgage fraud building in Crown Heights at the time of this writing to meet the Commission’s definition of demolition by neglect. Unless the other buildings are saved from their spiral into further deterioration through short sale or a similar tool that liberates the building from foreclosure, they will present as demolition by neglect within five years or so.

865 Sterling Place has endured years of fraudulent transactions spanning over a decade. The following is a reconstruction of ACRIS (Automated City Record Information System) property transaction records for the City of New York unless otherwise footnoted: In 1999, the last person to own the property for purposes of residency as opposed to fraud sold it to her nephew. He took out a mortgage on the property the same day the deed was transferred in the amount of \$130,000 through WMC Mortgage Corporation, a now defunct arm of General Electric Capital Corporation. WMC is currently the subject of a lawsuit involving "material and adverse" breaches of information that caused over \$500 million dollars in damages.<sup>5</sup> Two years later, the mortgage was assigned to Nationscredit Home Equity Services Corporation, a lending branch of Bank of America that had a history of predatory lending and is now also defunct. One year later, a satisfaction of mortgage was filed. Two weeks later, the nephew transferred the deed to Home Relocators Incorporation; a business located in another abandoned building in Crown Heights about four blocks from the subject property. The same day, Home Relocators transferred the deed to a Barbara Rhoden and she in turn, on the same day, took out a mortgage on 865 Sterling Place in the amount of \$292,000 through D & M Financial Corporation. D & M Financial is another defunct subprime lender that was sued by EMC Mortgage in 2005, a subprime entity of JPMorgan Chase for breach of contract. Six weeks later, in December of 2002, Barbara Rhoden sold the deed to Anthony Reid, a presumed relative who held on to the deed until 2005.

In 2003, however, Barbara Rhoden took out a \$360,000 mortgage on 865 Sterling Place through Argent Mortgage Property, LLC despite the fact she no longer owned it. Argent Mortgage assigned the mortgage to Ameriquest Mortgage in November of 2004. Argent and Ameriquest were part of ACC Capital Holdings, an enormous subprime lender that was forced to shut down most of its lending arms in 2006. Anthony Reid transferred the deed to 177D Realty Incorporated for \$20,000 in 2005. 177D Realty had a business address of 865 Sterling Place at the time of the deed transfer, the same address declared by Reid as his home address and the address of this case study. Four months later, in 2006, the deed was sold by 177D Realty to Lionel Noel for \$750,000. The same day Lionel Noel took out two piggyback mortgages via MERS, in the amounts of \$600,000 and \$150,000 to fully finance the \$750,000 deed transaction. Nine months later, Lionel Noel sold the deed to Owen Lewis, a Brooklyn man now known to have been the victim of identity theft following a foreclosure on another Brooklyn property he never actually owned.

Owen Lewis is recorded as taking out two mortgages in the amounts of \$170,000 and \$680,000 on November 15, 2006. Two weeks later, Lionel Noel satisfied both mortgages he took out in January of 2006. In 2008, the property was seized, presumably through foreclosure actions with Deutsche Bank as trustee. The recorded chain of transactions in ACRIS stops at this date.

The fraudulent mortgages are manifested physically in 865 Sterling Place as a building succumbing to all imaginable social ills. A June 2007 *Daily News* article

reports on an operation called Operation Crown Strike, a narcotics sting aimed squarely at the area destined to become the Historic Districts of Crown Heights North. The article calls out 865 Sterling as one location where a police officer involved in the raid broke her arm as she plunged through a makeshift trap door set up by the dealers.<sup>6</sup> In March 2009, as previously referenced, a serious fire further traumatized the building.



Figure 29. 865 Sterling Place Fire. March 19, 2009. Photograph courtesy of Michael Combs

The entire block has fallen victim to what the FBI's 2010 Annual Mortgage Fraud report overwhelmingly describes as the effects of mortgage fraud on neighborhoods:

As the properties affected by mortgage fraud are sold at artificially inflated prices, properties in surrounding neighborhoods also become artificially inflated. When this occurs, property taxes also artificially increase. As unqualified homeowners begin to default on their inflated mortgages,

properties go into foreclosure and neighborhoods begin to deteriorate and surrounding properties and neighborhoods witness their home values depreciating. As this happens, legitimate homeowners find it difficult to sell their homes.<sup>7</sup>

The devastation of mortgage fraud is manifest and exasperating. A potential solution for the collateral damage of mortgage fraud through 25-311 of the Landmarks Law may seem unlikely, but is very possible. As stated earlier in this chapter, mortgage fraud will continue to creep into designated districts, and will increasingly show up as demolition by neglect. The trajectory is unmistakable barring a short sale rescue or a miraculous solution heretofore unknown. In the interim, the Commission does intend to file a lawsuit with regard to 865 Sterling Place, the second of its actions against a building destroyed by fraud.



Figure 30. 865 Sterling Place Interior 2013. Photograph by author.

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<sup>1</sup> United States, New York City Landmarks Preservation Commission, *Crown Heights Historic District II Designation Report* (New York: Landmarks Preservation Commission, 2011), pg. #438, accessed April 2013, [http://neighborhoodpreservationcenter.org/db/bb\\_files/2011-CrownHeightsNorthHistoricDistrictII.pdf](http://neighborhoodpreservationcenter.org/db/bb_files/2011-CrownHeightsNorthHistoricDistrictII.pdf).

<sup>2</sup> Ethel Tyus, meeting with author, November 17, 2012.

<sup>3</sup> Ibid

<sup>4</sup> "USA v. Decoteau," Free Court Dockets, section goes here, accessed March 2013, <http://www.freecourtdockets.com/dockets/usa-v-decoteau-1-08-cr-00736-new-york-eastern-district-court-docket.html>.

<sup>5</sup> "WMC Mortgage Sued by Trust Administrator in N.Y. Court," Bloomberg, section goes here, accessed January 2013, <http://www.bloomberg.com/news/2012-12-21/wmc-mortgage-sued-by-trust-administrator-in-n-y-court.html>.

<sup>6</sup> "How Crown Heights Bit Back," NY Daily News, June 13, 2007, section goes here, accessed March 2013, <http://www.nydailynews.com/opinion/crown-heights-bit-back-article-1.220274>.

<sup>7</sup> "Mortgage Fraud Report 2010," FBI, Introduction, accessed November 2012, <http://www.fbi.gov/stats-services/publications/mortgage-fraud-2010>.

## CONCLUSION

As has been illustrated through the preceding case studies, demolition by neglect is a multifarious problem that affects not only preservation; it is also the physical manifestation of myriad serious issues facing society. From the ostensibly innocuous confusion regarding ownership illustrated in 467 West 140<sup>th</sup> Street to the brazen impertinence of the Goldman family regarding the Skidmore House, demolition by neglect is the denouement of multiple issues, often occurring concurrently. If all of the NYC Landmarks Preservation Commission's demolition by neglect cases were analyzed for the predominant combination of causes, it would be revealed as advanced age, lack of resources, inheritance, and varying degrees of psychological instability. Some configuration of these four causes, either individually or as various combinations, account for approximately 50% of demolition by neglect as identified by the Commission. Demolition by neglect as the result of a developer attempting to thwart the inviolability of a designated building is accountable for roughly 5% of the Commission's cases only.<sup>1</sup>

As stated at the outset of this thesis, misunderstanding or overstating the predominance of the developer hinders our ability to confront the problem effectively. Over-attribution to the developer not only misrepresents demolition by neglect as a reaction to designation, which in turn leads to the erroneous conclusion that designation causes demolition by neglect, it inhibits the development of equally developed and effective alternative strategies to litigation.

Much of the literature on demolition by neglect encourages municipal agency cooperation, community reporting, monitoring of designated properties, more aggressive enforcement, and increased funding for preservation commissions as solutions to combat demolition by neglect.<sup>2</sup> All of these are well intended and accurate, but there are complexities that must be taken into account. Behind municipal agencies are people—shifts in experience and demeanor can have a profound impact on negotiating the characteristically unsettled terrain of demolition by neglect, which in turn can impact the outcome. The Commission spends as much time today fighting the Department of Buildings as they do the building owners. For example, had the DOB been as aggressive ten years ago as they are today, the Skidmore House could have had a very different outcome.

Community reporting varies widely from one area to another and is not a substitute for preservation commissions monitoring the buildings they designate—that is part and parcel of designation. Without enforcement, designation is quite literally meaningless and reduced to an honorific. Funding needs to be increased within preservation commissions to acknowledge the seriousness of demolition by neglect and its directly antithetical relationship to preservation. Preservation was founded in large part to combat demolition, not to ameliorate peeling paint and bad taste. The case studies in this thesis graphically illustrate that designation does not mean the building is safe. Enforcement and monitoring are critical components to agency maturation and must be given the same credence as the designation process within the agency and throughout the preservation community.

Finally, in New York, an intermediary entity needs to be created to mitigate the netherworld between the demolition by neglect owner who is unwilling to comply with the standard of good repair and the owner who is incapable of compliance for reasons of poverty, age, or mental instability. It has been proposed that this thesis recommend how to prevent demolition by neglect. As illustrated by the case studies, prophylaxis against demolition by neglect is nearly impossible because of the unpredictable nature of the causes. Realistically, only mortgage fraud has a predictive component. One thesis reviewed suggested analyzing known aggressive developers and isolating parcels they own that may be ripening for development.<sup>3</sup> This approach is not only unrealistic; it goes back to the overestimation of the developer as the primary problem. A great deal of the literature suggests stiffer penalties and clearer standards of good repair.<sup>4</sup> Those approaches assume the owner is capable, has resources available, and possibly does not understand what their local preservation commission expects in terms of property maintenance. This thesis aims to clarify that many demolition by neglect owners will be entirely unresponsive to increased fines, laws, and guidelines. Demolition by neglect requires a wider range of solutions that target the source of the problem, not more of the same tools that are limited.

To prediction and prevention, aberrant property owners with buildings that manifest as demolition by neglect often circumvent the typical channels to property ownership. City auctions appeal to the ambitions of people who often do not have

the assets to actually realize their goals. Inheritance circumvents all safety nets to insure responsible property ownership. Mortgage fraud perpetrators isolate vulnerable people and buildings to defraud the owner and reduce the building to a target. Fragmented organizational ownership dilutes any sense of individual responsibility. Finally, senility, insanity, and impoverishment are moving targets that will never be predictable or preventable. Since it is nearly impossible to prevent, understanding the causes and having a wider range of tools in place to respond swiftly and thoroughly best serve our response to demolition by neglect.

Understanding demolition by neglect as an opportunity for preservation and not a reaction against preservation is an important goal of this thesis. The Landmarks Law being called on to utilize good repair as a weapon against significant social crises is a watershed moment declaring the maturation of the Landmarks Preservation Commission and of preservation as a whole. It demonstrates that preservation has grown far beyond perceptions of the field as an extraneous hold over from the long past crisis of urban renewal. Surrounding demolition by neglect with the skills, knowledge, and resources we have as preservationists allows for tremendous opportunity to directly affect a fundamental antithesis of preservation—demolition. It also reveals that preservation serves in a much broader and more useful way than it is often recognized. This thesis illustrates the great potential of preservation to rally around this important issue and make a significant difference in a much broader world than we may have ever imagined.

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<sup>1</sup> This information was gleaned from a preliminary report from a database created by the author for the LPC that is still in development

<sup>2</sup> Benjamin Baccash, *Enforcement and the New York City Landmarks Law: Past, Present, and Future*, thesis, Columbia University, 2010 (New York: Columbia University, 2010), 1-2, 43, 119, 125-126; Andrea Merrill Goldwyn, "Demolition By Neglect: A Loophole in Preservation Policy" (thesis, University of Pennsylvania, 1995), 19, 24; Anna Martin, *Demolition by Neglect: Repairing Buildings by Repairing Legislation*, thesis, Georgetown University Law Center, 2007 (Washington D.C.: Georgetown University Law Center), 11, 15, accessed May 9, 2013, [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps_papers); Meg C. Richardson, *Demolition by Neglect: An Examination of Charleston's Ordinance*, thesis, Clemson University, 2008 (Clemson: Clemson University, 2008), 6, accessed May 8, 2013, <http://etd.lib.clemson.edu/documents/1211389250/umi-clemson-1624.pdf>; Sakina B. Thompson, *Saving the District's Historic Properties from Demolition by Neglect*, thesis, Georgetown University Law Center, 2004 (Washington D.C.: Georgetown University), 4-5, 20-24, accessed October 12, 2012, [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1013&context=hpps\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1013&context=hpps_papers).

<sup>3</sup> Andrea Merrill Goldwyn, "Demolition By Neglect: A Loophole in Preservation Policy" (thesis, University of Pennsylvania, 1995), 40.

<sup>4</sup> Benjamin Baccash, *Enforcement and the New York City Landmarks Law: Past, Present, and Future*, thesis, Columbia University, 2010 (New York: Columbia University, 2010), 41; Andrea Merrill Goldwyn, "Demolition By Neglect: A Loophole in Preservation Policy" (thesis, University of Pennsylvania, 1995), 29, 37; Anna Martin, *Demolition by Neglect: Repairing Buildings by Repairing Legislation*, thesis, Georgetown University Law Center, 2007 (Washington D.C.: Georgetown University Law Center), 19, accessed May 9, 2013, [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1016&context=hpps_papers); Meg C. Richardson, *Demolition by Neglect: An Examination of Charleston's Ordinance*, thesis, Clemson University, 2008 (Clemson: Clemson University, 2008), 31, 86, 89, accessed May 8, 2013, <http://etd.lib.clemson.edu/documents/1211389250/umi-clemson-1624.pdf>; Sakina B. Thompson, *Saving the District's Historic Properties from Demolition by Neglect*, thesis, Georgetown University Law Center, 2004 (Washington D.C.: Georgetown University), 22, accessed October 12, 2012, [http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1013&context=hpps\\_papers](http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1013&context=hpps_papers).

## Appendix A

### **Administrative Code of the City of New York Section 25-311: Maintenance and repair of improvements**

a. Every person in charge of an improvement on a landmark site or in an historic district shall keep in good repair (1) all of the exterior portions of such improvement and (2) all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to deteriorate, decay or become damaged or otherwise to fall into a state of disrepair. b. Every person in charge of an improvement containing an interior landmark shall keep in good repair (1) all portions of such interior landmark and (2) all other portions of the improvement which, if not so maintained, may cause or tend to cause the interior landmark contained in such improvement to deteriorate, decay or become damaged or otherwise fall into a state of disrepair. c. Every person in charge of a scenic landmark shall keep in good repair all portions thereof. d. The provisions of this section shall be in addition to all other provisions of law requiring any such improvement to be kept in good repair.

### **Administrative Code of the City of New York § 25-312: Remedying of dangerous conditions**

a. In any case where the department of buildings, the fire department or the department of health and mental hygiene, or any officer or agency thereof, or any court on application or at the instance of any such department, officer or agency, shall order or direct the construction, reconstruction, alteration or demolition of any improvement on a landmark site or in an historic district or containing an interior landmark, or the performance of any minor work upon such improvement, for the purpose of remedying conditions determined to be dangerous to life, health or property, nothing contained in this chapter shall be construed as making it unlawful for any person, without prior issuance of a certificate of no effect on protected architectural features or certificates of appropriateness or permit for minor work pursuant to this chapter, to comply with such order or direction. b. The department of buildings, fire department or department of health and mental hygiene, as the case may be, shall give the commission as early notice as is practicable, of the proposed issuance or issuance of any such order or direction.

### **Administrative Code of the City of New York § 25-317: Criminal punishments and fines**

a. Any person who violates any provision of subdivision a of section 25-305 of this chapter or any order issued by the chair with respect to such provisions shall be guilty of a misdemeanor and shall be punished by a fine of not more than ten thousand dollars and not less than five thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. b. Any person who violates any provision of subdivision a of section 25-310 of this chapter or any provision of section 25-311 or any order issued by the chair with respect to such provisions shall be punished, for a first offense, by a fine of not more than one thousand dollars and not less than five hundred dollars or by imprisonment for not more than thirty days, or by both such fine and imprisonment, and shall be punished for a second or subsequent offense, by a fine of not more than five thousand dollars or less than two thousand five hundred dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment. c. Any person who willfully makes any false statement or an omission of material fact in an application or request to the commission for a certificate, permit or other approval or

in any document submitted to the commission certifying the correction of a violation, shall be punished by a fine of not more than five thousand dollars or less than one thousand dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment. d. For the purposes of this subdivision, each day during which there exists any violation of the provisions of paragraph three of subdivision a of section 25-305 of this chapter or paragraph two of subdivision a of section 25-310 of this chapter or any violation of the provisions of section 25-311 of this chapter or any order issued by the chair with respect to such provisions shall constitute a separate violation.

#### **Administrative Code of the City of New York § 25-317.1: Civil penalties**

a. Any person who violates any provision of sections 25-305, 25-310 or 25-311 or subdivision c of section 25-317 of this chapter or any order issued by the chair with respect to such provisions shall be liable for a civil penalty which may be recovered by the corporation counsel in a civil action in any court of competent jurisdiction. Such civil penalty shall be determined as follows: (1) The defendant shall be liable for a civil penalty of up to the fair market value of the improvement parcel, with or without the improvement, whichever is greater, where in violation of such provision or order: (a) all or substantially all of an improvement on a landmark site or within a historic district has been demolished; (b) work has been performed or a condition created or maintained which significantly impairs the structural integrity of an improvement on a landmark site or within a historic district; (c) work has been performed or a condition created or maintained which results in the destruction, removal or significant alteration of more than fifty percent of the square footage of two facades of an improvement on a landmark site or within a historic district, including party and sidewalls; or (d) the defendant has failed to take action to prevent any condition described in subparagraph a, b or c of this paragraph from occurring. (2) Where, in violation of such provision or order, work is performed or a condition is created or maintained which results in the destruction, removal or significant alteration of a significant portion of the protected features identified in the designation report of an interior landmark, the defendant shall be liable for a civil penalty equal to two times the estimated cost of replicating the protected features that were demolished, removed or altered. (3) All other violations. The defendant shall be liable for a civil penalty of not more than five thousand dollars.

(4) For the purposes of this subdivision, each day during which there exists any violation of the provisions of paragraph three of subdivision a of section 25-305 of this chapter or paragraph two of subdivision a of section 25-310 of this chapter or subdivision a, b or c of section 25-311 of this chapter or any order issued by the chair with respect to such provisions shall constitute a separate violation. b. In addition to or as an alternative to any of the remedies and penalties provided in this chapter, any person who violates any provision of sections 25-305, 25-310 or 25-311 or subdivision c of section 25-317 of this chapter or any order issued by the chair with respect to such provisions shall be liable for a civil penalty which may be recovered in an administrative proceeding before the office of administrative trials and hearings, the environmental control board or other administrative tribunal having jurisdiction as hereinafter provided. (1) An administrative proceeding for civil penalties shall be commenced by the service of a notice of violation in accordance with the applicable law and rules governing the procedures of the administrative tribunal before which the notice of violation is returnable or as otherwise provided by the rules of the commission. The notice of violation shall identify the allegedly illegal conditions or work with reasonable specificity. As used in this subdivision, the term "reasonable specificity" shall mean a description of work or conditions, reasonably described given the circumstances, sufficient to inform a reasonable person that (1) work has

been or is being done without an appropriate approval from the commission, (2) conditions have been created or are being maintained in violation of this chapter, or (3) there has been a failure to take action to prevent conditions that are in violation of this chapter. Such administrative tribunal shall have the power to impose civil penalties in accordance with this chapter. A judgment of an administrative tribunal imposing civil penalties may be enforced by the commencement of a civil action or proceeding in a court or as otherwise authorized by the applicable law governing the procedures of such administrative tribunal. Prior to serving a notice of violation, the chair shall serve a warning letter upon a respondent either personally or by mail in the manner provided by the rules of the commission. The warning letter shall inform the respondent that the chair believes the respondent has violated the provisions of this chapter, shall describe generally the allegedly illegal conditions and/or activities, shall warn the respondent that the law authorizes civil penalties for such violations, and shall provide the respondent with a grace period for removing or applying for a permit to legalize or otherwise address the allegedly illegal conditions. No such warning letter shall be required prior to the service of a notice of violation where (i) the subject violation is a second or subsequent offense, (ii) the subject violation is alleged to be an intentional violation, or (iii) the chair is seeking civil penalties for failure to comply with a stop work order, issued pursuant to this chapter. (2) Except as otherwise specifically provided in this chapter, where a respondent has been found liable for or admitted liability to a violation of this chapter in an administrative proceeding, a civil penalty for such violation shall be imposed in accordance with the schedule set forth below. (a) Type A and Type B violations. (i) First offense. The respondent shall be liable for a civil penalty of not more than five thousand dollars. (ii) Second and subsequent offenses. The respondent shall be liable for a civil penalty of not more than two hundred fifty dollars a day for each day that a condition underlying a prior violation continues to exist, measured from the date the respondent was found liable for or admitted liability to the prior violation, but in no event shall the civil penalty be less than the maximum possible penalty for a first offense. (b) Type C violation. (i) First offense. The respondent shall be liable for a civil penalty of not more than five hundred dollars. (ii) Second and subsequent offenses. The respondent shall be liable for a civil penalty of not more than fifty dollars a day for each day that a condition underlying a prior violation continues to exist, measured from the date the respondent was found liable for or pled guilty to the prior violation, but in no event shall the civil penalty be less than the maximum possible penalty for a first offense. (3) Notwithstanding the penalty schedule set forth above, the chair may, in his or her discretion, for good cause shown, recommend that a lesser or no civil penalty be imposed on a respondent in an administrative proceeding. (4) Restrictions on service of notice of violation for second or subsequent offense. (a) The chair shall not serve a notice of violation for a second or subsequent offense unless (i) more than twenty-five days have elapsed since the respondent was found liable or admitted liability in the prior proceeding and (ii) where the respondent in the prior proceeding has submitted an application to the commission for an appropriate approval to legalize or to undertake the work necessary to cure the condition underlying the prior proceeding, more than thirty days have elapsed since such application has been disapproved or denied in whole or in part or if granted, such approval by its terms has expired. If the respondent has filed more than one such application with the commission, the thirty day period shall commence after the first such application has been disapproved or denied in whole or in part or, if granted, by its terms has expired. (b) Nothing in this subdivision shall prohibit the chair, subject to the rules of the administrative tribunal having jurisdiction over the proceeding, from serving an amended notice of violation for the purpose of clarifying the allegedly illegal conditions referred to in the prior notice of violation, or from serving a subsequent notice of violation that alleges separate violations of this chapter. An amended notice of violation shall be returnable on the same date and before the same administrative body as the initial notice of violation. (5) Multiple violations incurred for the same work. If work, reasonably identified in a notice of violation, was done without an

appropriate approval from the commission, the total amount of any civil penalty for such work shall be determined by, to the extent feasible, separately considering and assessing a penalty for each type of work and/or each distinct effect on the protected features of the landmark, interior landmark or improvement in an historic district. In no event shall the civil penalty exceed five thousand dollars for a first offense. Where the respondent is the owner, separate penalties shall not be assessed for each type of work and/or each distinct effect if the illegal work was performed during a period of time when the premises were leased to and under the control of a person other than the owner. (6) Grace period. (a) No civil penalty shall be imposed in an administrative proceeding for a first violation if prior to the return date of the notice of violation; the respondent concedes liability for the violation and supplies the commission with proof, satisfactory to the commission, that the violation has been corrected. If the respondent makes any misrepresentation or omission of a material fact to the commission regarding the removal of the violation, the respondent shall be liable for a civil penalty of not more than ten thousand dollars. (b) No civil penalty shall be imposed in an administrative proceeding for a first violation if prior to the return date of the notice of violation the respondent concedes liability for the violation and submits an application to the commission for approval to legalize or to undertake the work necessary to cure the violation. (c) The provisions of this paragraph shall not apply to a second or subsequent offense or where the respondent is alleged to have violated a stop work order or where the respondent has after the issuance of a warning letter pursuant to paragraph one of subdivision (b) of section 25-317.1 applied for and received a permit to cure or otherwise address a violation, and the respondent has failed to cure the violation pursuant to the terms of such permit.

## **Appendix B**

### **A GUIDE TO SALES AND OTHER DISPOSITIONS OF ASSETS PURSUANT TO NOT-FOR-PROFIT CORPORATION LAW §§ 510 - 511 AND RELIGIOUS CORPORATIONS LAW § 12**

#### **Introduction**

This booklet has been prepared by New York State Attorney General Eric T. Schneiderman's Charities Bureau to assist not-for-profit corporations and religious corporations seeking court approval for sales and other dispositions of assets pursuant to Not-for-Profit Corporation Law ("N-PCL") §§ 510-511 and Religious Corporations Law ("RCL") § 12.

The procedures discussed in this booklet are not intended to serve as a substitute for legal advice from an attorney, but are designed as a guide to help organizations and their attorneys understand the statutory requirements and the procedures used by the Attorney General to review such transactions.

The information contained in this booklet is general in nature. Each transaction is governed by its own facts and is reviewed by the Attorney General on a case-by-case basis. You are encouraged to discuss the proposed transaction in advance with the Attorney General's Charities Bureau.

#### **What Transactions Are Covered**

##### Not-for-Profit Corporations:

The sale, lease, exchange or other disposition of all or substantially all of the assets of a Type B<sup>1</sup> or Type C not-for-profit corporation requires court approval in accordance with the procedures set forth in N-PCL §§ 510-511. (N-PCL § 510(a)(3)). Type D not-for-profit corporations are treated as Type B corporations for purposes of this statute. (N-PCL § 201(c)).

The assets may be real and/or personal property, including intangible property such as bonds, stocks or certificates of deposit.

There is no fixed numerical or arithmetic measure of "all or substantially all." Court approval is required where the asset to be sold represents a large proportion of the corporation's

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<sup>1</sup> New York not-for-profit corporations are designated as Type A, B, C or D, depending on the corporation's purposes. Type A includes corporations formed for civic, patriotic, political, social, fraternal, athletic, agricultural and similar purposes; it also includes professional, commercial, industrial or trade associations. Type B includes corporations formed for charitable, educational, religious, scientific, literary or cultural purposes and societies for the prevention of cruelty to children or animals. Type C includes corporations formed for any lawful business purpose to achieve a lawful public or quasi-public objective. Type D corporations may be formed pursuant to "any other law of this state for any business or non-business, or pecuniary or

non-pecuniary, purpose or purposes specified by such other law, whether such purpose or purposes are also within types A, B, C above or otherwise.” N-PCL § 201(b).

total assets or where the sale of the asset may affect the ability of the corporation to carry out its purposes regardless of the percentage of the corporation's total assets represented by the sale.

Exceptions to Covered Transactions:

Type A not-for-profit corporations

Mortgages (unless a component of the transaction would otherwise come within N-PCL §§ 510-511)

Religious Corporations:

The sale, mortgage or lease for a term exceeding five years of any real property of a religious corporation requires court approval pursuant to N-PCL § 511. (RCL § 12(1)).

Court approval is required even if the religious corporation's real property does not constitute all or substantially all of its assets.

Exceptions to Covered Transactions:

Purchase money mortgages or purchase money security agreements (RCL § 12(1))

Real property acquired as a result of a mortgage foreclosure proceeding or by a deed in lieu of the foreclosure of a mortgage owned by a religious corporation (RCL § 12(10))

The following religious corporations require court approval but do not need to give notice to the Attorney General: Protestant Episcopal Church, Roman Catholic Church, Ruthenian Catholic Church of the Greek Rite, African Methodist Episcopal Zion Church, Presbyterian Church of the General Assembly of the Presbyterian Church U.S.A., United Methodist Church, Reformed Church of the General Synod of the Reformed Church in America. (RCL §§ 2-b(1)(d-1) and 12(2)-(5-c)).

**Role of the Attorney General**

The N-PCL requires that, upon filing the petition with the court, the Attorney General be given a minimum of 15 days notice before a hearing on the application. N-PCL § 511(b). The procedure preferred by the Charities Bureau and most courts, however, is to submit the petition and proposed order to the Attorney General for review in advance of filing with the court. This enables the Attorney General to review the papers to ensure that all statutory requirements are met, that all necessary documents are included as exhibits, and that any concerns of the Attorney General are resolved before submission to the court.

If, after such a review, the Attorney General has no objection to the relief requested, we will provide written confirmation, usually by means of an endorsement on the proposed order, and will waive statutory notice. The petition can then usually be submitted to the court ex parte without the need for the 15 day waiting period, and without the need for a return date or hearing, depending on the practice of the local court.

### **Statutory Standard**

Under the two-prong test of N-PCL § 511, the court must find 1) that the consideration and the terms of the transaction are fair and reasonable to the corporation and 2) that the purposes of the corporation or the interests of its members will be promoted. (N-PCL § 511(d)) by the transaction.

These statutory standards and other statutory requirements are discussed more fully below.

### **Board Approval**

The transaction must be approved by the corporation's board. A vote of at least 2/3 of the corporation's entire board is required unless the board has 21 or more directors, in which case a vote of a majority of the entire board is sufficient. (N-PCL §§ 509 and 510(a)(2)). A corporation's certificate of incorporation or by-laws may provide for greater quorum or voting requirements. The resolution must specify the terms and conditions of the proposed transaction, including the consideration to be received by the corporation and the eventual disposition to be made of such consideration, and a statement of whether or not dissolution of the corporation is contemplated.

If the transaction involves a sale or transfer to one or more of the corporation's directors or officers, or to another corporation in which one or more of its directors or officers are directors or officers or have directly or indirectly a substantial financial interest, the requirements of N-PCL § 715 must be met. The material facts must be disclosed to the board, and the transaction must be authorized by a vote of a disinterested majority of the board. The Attorney General will require similar disclosures for transactions involving family members of directors, officers, employees or other insiders.

### **Membership Approval**

If a corporation has voting members, the transaction must also be approved by the corporation's membership. The procedure for the membership vote is set forth in N-PCL § 510(a)(1).

First, the board must adopt a resolution recommending the transaction. The resolution must specify the terms and conditions of the proposed transaction, including the consideration to be received by the corporation and the eventual disposition to be made of such consideration, and a statement of whether or not dissolution of the corporation is contemplated.

The board resolution must then be submitted to a vote at an annual or special meeting of members entitled to vote on it. Notice of the meeting must be given to each member and each holder of subvention certificates or bonds of the corporation, whether or not entitled to vote. The members may approve the proposed transaction according to the terms of the board resolution, or authorize the board to modify the terms and conditions of the proposed transaction, by a 2/3 vote. The number of affirmative votes must be at least equal to the quorum. (N-PCL § 613(c)).

The quorum for a membership meeting is a majority (N-PCL § 608(a)) unless the corporation's certificate of incorporation or by-laws provides for a greater or lesser quorum requirement. (N-PCL §§ 608(b) and 615). If the certificate of incorporation or by-laws provide for a lesser quorum, the quorum may be not less than the number entitled to cast one hundred votes or one-tenth of the total number of votes entitled to be cast, whichever is lesser. (N-PCL § 608(b)). For religious corporations, where the RCL provides a different quorum, the RCL governs. In the case of some religious corporations, the quorum is at least six persons. (See, e.g., RCL §§ 134, 164 and 195). The quorum requirement for other religious denominations may be different; consult the applicable article of the RCL.

Voting by proxy is permitted for members of not-for-profit corporations under N-PCL § 609 and for members of Jewish religious corporations under RCL § 207.

If the transaction involves a sale or transfer directly or indirectly to one or more of the corporation's directors or officers or to another corporation in which one or more of its directors or officers are directors or officers, or directly or indirectly have a substantial financial interest, the requirements of N-PCL § 715(a)(2) must be met. The material facts must be disclosed to the members and the transaction must be authorized by a membership vote. The Attorney General will require similar disclosures for transactions involving family members of directors, officers, employees or other insiders.

### **Fair and Reasonable Consideration: Appraisals**

In order to determine whether or not the consideration is fair and reasonable, there must be an appraisal of the asset to be sold. Although the statute does not explicitly require an appraisal, case law establishes that fair market value can be determined by means of an appraisal, and the court, and the Attorney General, will reject the petition if it is not supported by an appraisal.

The appraisal should be full and rendered by an appraiser who is completely independent of both buyer and seller. The appraisal cannot be provided by a broker involved in the sale of the property. The Attorney General may require that the appraisal be performed by a board certified appraiser, especially if the property to be sold is commercial real property or a business. If the asset is real property, the appraisal should be based on at least three comparable sales, unless a different valuation method is more appropriate.

If the transaction is not an arm's length transaction (i.e., if it involves a sale or transfer to a director, officer, employee or other person with some connection to the petitioner corporation), the Attorney General may require two appraisals.

An appraisal is not necessary where a solvent religious corporation seeks to convey real property to another religious corporation or to a membership, educational, municipal or not-for-profit corporation for nominal consideration. (RCL § 12(8)).

An appraisal is not necessary for religious corporation mortgages from institutional lenders.

### **Use of Proceeds**

The use of the proceeds must be consistent with the corporation's purposes. Sale proceeds cannot be used for the benefit of a director, officer, employee, member or other interested party.

Where the property to be sold is a religious corporation's house of worship or a not-for-profit corporation's main premises and as of the date of the sale the corporation has not yet entered into a contract to purchase or lease new premises, the Attorney General will require that the sale proceeds be placed in escrow to ensure that funds will be available to obtain new premises so that the corporation can continue to carry out its corporate purposes.

### **Option Contracts**

Option contracts require court approval at the time the option is exercised. The Charities Bureau discourages the use of option or other contingent contracts by not-for-profit and religious corporations, especially if they may be exercised over a long term.

### **Requirements for the Verified Petition**

The verified petition must set forth the following required statements and information:

The name of the corporation. (N-PLC § 511(a)(1)). The name should appear exactly as it does in the certificate of incorporation.

The law under or by which it was incorporated (i.e., Not-for-Profit Corporation Law, Religious Corporations Law, an act of the legislature, etc.). (N-PCL § 511(a)(1)). A copy of the certificate of incorporation and all amendments thereto, and a certified copy of the corporation's complete by-laws, should be attached as an exhibit.

The names of its directors and principal officers, and their places of residence. (N-PCL § 511(a)(2)).

The activities of the corporation. (N-PCL § 511(a)(3)). This should include a description of the purposes for which it was formed and its activities.

A description of the assets to be sold, leased, exchanged, or otherwise disposed of (or mortgaged if a religious corporation), or a statement that it is proposed to sell,

lease, exchange or otherwise dispose of (or mortgage if a religious corporation) all or substantially all of the corporate assets more fully described in a schedule attached to the petition. (N-PCL § 511(a)(4)). A copy of the contract, lease, proposed deed or mortgage commitment should be attached as an exhibit. If the contract has been assigned, or is to be assigned at or prior to closing, a copy of the assignment agreement should also be attached as an exhibit.

A statement of the fair value of such assets. (N-PCL § 511(a)(4)). A copy of the appraisal should be attached as an exhibit.

A statement of the amount of the corporation's debts and liabilities and how secured. (N-PCL § 511(a)(4)). In addition, a copy of the most recent annual financial report (i.e., IRS Form 990 or 990-PF) or audited financial statements should be attached as an exhibit. If the corporation does not file a 990 or 990-PF and does not have annual financial reports, it should prepare a schedule certified by its Treasurer of all assets, liabilities, income and expenses of the corporation and attach it as an exhibit. In certain circumstances, the Attorney General may decide that financial statements certified by an independent accountant are required.

The consideration to be received by the corporation. (N-PCL § 511(a)(5)). If the consideration is less than the appraised value of the assets, include a documented explanation.

The disposition to be made of the proceeds. (N-PCL § 511(a)(5)). This should include a full description of the proposed use of the proceeds. If the corporation is purchasing or leasing new premises, a copy of the contract or lease should be attached as an exhibit.

A statement as to whether or not the dissolution of the corporation is contemplated. (N-PCL § 511(a)(5)). In certain circumstances, the Attorney General will require that the proceeds be placed in escrow if the corporation plans to dissolve. In addition, if the corporation plans to dissolve after the sale, the legal doctrine of *quasi cy pres* requires that the net proceeds be distributed under the plan of dissolution to organizations engaged in substantially similar activities. (N-PCL § 1005(a)(3)(A)).

A statement that the consideration and the terms of the sale, lease exchange or other disposition (or mortgage if a religious corporation) of the assets of the corporation are fair and reasonable to the corporation, and a concise statement of the reasons therefor. (N-PCL § 511(a)(6)).

A statement that the purposes of the corporation or the interests of its members will be promoted by the transaction, and a concise statement of the reasons therefor. (N-PCL § 511(a)(6)).

A statement that the transaction has been recommended or authorized by vote of the directors in accordance with law, at a meeting duly called and held, as shown in a schedule annexed to the petition setting forth a copy of the resolution granting such authority with a statement of the vote thereon. (N-PCL § 511(a)(7)). Include the total number of directors, the number of directors present at the meeting, the vote pro and con, and what constitutes a quorum. The board resolution should be attached as an exhibit. (See also Board Approval above for voting requirements).

Where the consent of the members is required by law, a statement that such consent has been given, as shown in a schedule annexed to the petition setting forth a copy of such consent, if in writing, or of a resolution giving such consent, adopted at a meeting of members duly called and held, with a statement of the vote thereon. (N-PCL § 511(a)(8)). Include the total number of members, the number of members present at the meeting, the vote pro and con, and what constitutes a quorum. The membership resolution should be attached as an exhibit. (See also Membership Approval above for voting procedures and requirements and for required contents of the resolution).

A prayer for leave to sell, lease, exchange or otherwise dispose of all or substantially all the assets of the corporation as set forth in the petition, or in the case of a religious corporation to sell, mortgage or lease real property. (N-PCL § 511(a)(9)).

The caption should include the name of the corporation as it appears in the certificate of incorporation. The caption should also set forth what the application is for and the applicable statute. Do not list the Attorney General as a respondent.

The petition must be verified.

## **Venue**

The petition must be filed in the supreme court of the judicial district or county court of the county where the corporation has its office or principal place of carrying out the purposes for which it was formed, even if the asset to be sold is located elsewhere. (N-PCL §§ 510(a)(3) and 511(a)).

## **Notice to Interested Persons**

The court in its discretion may direct that notice of the application be given to any interested person, such as a member, officer or creditor of the corporation. (N-PCL § 511(b)). The notice shall specify the time and place, fixed by the court, for a hearing upon the application. Any person interested, whether or not formally notified, may appear at the hearing and show cause why the application should not be granted.

In certain circumstances, the Attorney General may ask the court to give notice to interested parties (including tenants or other occupants of the premises) and/or hold an

evidentiary hearing. For example, if there is a membership dispute, a dispute as to who constitutes a duly authorized board or a question about the adequacy of the consideration, the Attorney General may ask the court to hold an evidentiary hearing to resolve the dispute.

### **Notice to Creditors**

If the corporation is insolvent or if its assets are insufficient to liquidate its debts and liabilities in full, all creditors of the corporation must be served with a notice of the time and place of the hearing. (N-PCL § 511(c)). In such circumstances, notice to creditors is required by statute, and the petition cannot be approved by the court *ex parte*.

### **Requirements for the Order**

A copy of the proposed order should be submitted to the Attorney General with the verified petition.

The order should set forth the terms of the transaction and the consideration. (N-PCL § 511(d)). For sales, include the sale price, the purchaser and the address of the property. For leases, include the amount of rent, the term of the lease, the lessee and the address of the property. For mortgages, include the amount of the loan, the interest rate, the length of the mortgage and the address of the property.

The order must also set forth the use of the proceeds to be received by the corporation. (N-PCL § 511(d)). If all or part of the proceeds are to be placed in escrow, this shall be set forth in the order. Funds in escrow may only be released by further order of the court on notice to the Attorney General.

In addition, the Attorney General requires that the order contain the following statements: that a copy of the signed court order shall be served on the Attorney General, and that the Attorney General shall receive written notice that the transaction has been completed (i.e., upon closing), if the transaction has been abandoned, or if it is still pending 90 days after court approval.

### **Attorney General Registration**

If the corporation is required to register with the Attorney General pursuant to Executive Law Article 7-A or Estates, Powers and Trusts Law § 8-1.4, the Attorney General will check to ensure that the corporation is registered and that its annual financial reports are up to date before completing the review of the transaction.

If the corporation is not registered, or if its reports are delinquent, it will be required to register and file all required annual financial reports before the Attorney General's review can be completed.

If the purchaser is required to register, its registration and reports must also be current before the Attorney General's review can be completed.

Certain corporations, such as religious corporations, are exempt from registration.

### **Government Agency Approvals**

If other government agency approvals are required for the proposed transaction (i.e., NYS Department of Health, Public Health Council, Dormitory Authority, HUD, etc.), the Attorney General will require that such approvals be obtained before the Attorney General review is completed. A copy of each government agency approval should be attached as an exhibit.

### **Conclusion**

If you have any questions about the information contained in this booklet or about the procedures for obtaining Attorney General review and court approval of a transaction you may contact the Attorney General's Charities Bureau or any of the Attorney General's regional offices for assistance. A current list of regional office addresses and telephone numbers is included with this booklet.

## Appendix C

### 2000 Better Government Competition WINNER

# Breaking the Cycle of Abandonment

## Using a Tax Enforcement Tool to Return Distressed Properties to Sound Private Ownership

**Christopher J. Allred**

New York City Department of Housing Preservation and Development<sup>1</sup>

### THE PROBLEM

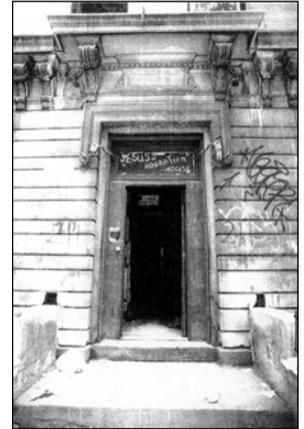
In the 1960s and 1970s, the City of New York (“the City”) suffered a surge of disinvestment and housing abandonment in many of its neighborhoods. A number of factors contributed to the disinvestment. According to Frank P. Braconi, the Executive Director of the Citizens Housing and Planning Council,

The fundamental cause of housing abandonment was demographic change and the steady impoverishment and depopulation of many inner-city neighborhoods. As middle- and working-class whites sought more attractive housing options...black and Puerto Rican migrants replaced them in the city’s older, more densely built neighborhoods.... These minorities tended to have lower incomes and far higher rates of joblessness, making it more difficult for owners of marginal rental buildings to collect rents commensurate with building maintenance and operating expenses.<sup>2</sup>

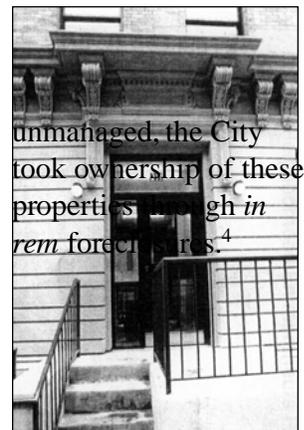
The problem was exacerbated by the high fuel costs, high inflation rates, and difficult economic times of the 1970s. Higher heating bills increased owner operating expenses, while high inflation rates made refinancing impossible and increased owner debt service expenses. Owners could not recover these increased costs because their tenants could not afford higher rents. According to Mr. Braconi, “Between 1971 and 1981 heating oil prices increased by 430 percent and overall operating costs of apartment buildings in New York City rose by 131 percent.... Those years coincided with the period of peak housing abandonment.”<sup>3</sup>

Unable to make a profit on their properties during this time, many owners deferred maintenance and services, which led to further physical and financial decline of buildings. As income decreased and costs increased, many owners were unable to pay the property taxes on their buildings, which ultimately led to City foreclosure.

Once owners recognized City foreclosure was imminent, they often intentionally accelerated property disinvestment: they failed to make repairs and stopped services, and many eventually abandoned their buildings. Unwilling to let occupied buildings go



*Reclamation of an abandoned apartment building in New York City.*



*unmanaged, the City took ownership of these properties through in rem foreclosures.<sup>4</sup>*

<sup>1</sup> Robin Weinstein, acting deputy commissioner of the New York City Department of Housing Preservation and Development's Office of Housing Intervention and Resources, provided substantial assistance with content and editing.

<sup>2</sup> Frank P. Braconi, "In Re *In Rem*: Innovation and Expediency in New York's Housing Policy," in Michael H. Schill (ed.), *Housing and Community Development in New York City: Facing the Future* (Albany, NY: State University of New York Press, 1999), pp. 94-95.

<sup>3</sup> Braconi, p. 96.

<sup>4</sup> *In rem* is Latin for "against the thing" and refers to foreclosure actions on real estate for tax delinquency.

***The City had initiated the policy of foreclosure with two goals in mind: to encourage tax compliance and to allow the City to intervene in these buildings before they deteriorated completely.... However, despite its sustained efforts the City was not up to the Herculean task of managing thousands of buildings.***

The City had initiated the policy of foreclosure with two goals in mind: to encourage tax compliance and to allow the City to intervene in these buildings before they deteriorated completely. At the time, the City hoped its intervention would rescue the buildings, and in some areas the City succeeded.

Between the winter of 1979 and the winter of 1981 the percentage of occupied *in rem* buildings without heat on any given day was reduced from nine to two, and the median time required to restore heat was cut from 14 days to three. Overall, the number of tenant complaints received by the agency's Central Complaint Bureau decreased from 56,000 in 1979 to 13,400 in 1983.<sup>5</sup>

However, despite its sustained efforts the City was not up to the Herculean task of managing thousands of buildings. As one local newspaper editorial put it, "Back in the 1970s and '80s, the City seized so many buildings for tax arrears it became the biggest slumlord in the state.... Those buildings were dumps when the city seized them, and, sadly, most remain that way—barely habitable magnets for crime, disease and misfortune."<sup>6</sup>

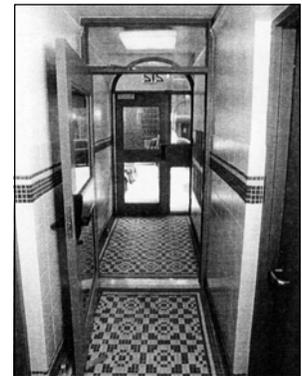
### **The Sickest Block in New York City**

Once called the "Sickest Block in the City of New York," by 1994, 22 of 36 buildings on West 140th Street had been abandoned to city control.<sup>7</sup>

The building at 212 West 140th Street had been taken into City ownership through an *in rem* tax foreclosure action on May 25, 1978. At the time of foreclosure, the owner owed \$30,013.54 in delinquent property taxes. The building was originally constructed in 1926 to provide housing for 18 working families. By 1980 it was vacant.

In April 1995 the City began rehabilitation of the building. The project was completed in June 1996 at a total cost of \$1.33 million.

During the 18 years of City ownership the City lost approximately \$160,000 in tax revenue.<sup>8</sup> Based on program per-unit maintenance and utility cost averages, the City spent approximately \$1.3 million maintaining this building.<sup>9</sup> In sum, between maintenance, foregone tax revenue, and rehabilitation costs, the City spent approximately \$2.8 million to restore the building to the private sector working class housing it was years earlier.



*The entrance to 212 West 140th Street in New York City prior to rehabilitation by the City (left)—17 years after the building was acquired by foreclosure—and a year later (right) after renovations were finally completed.*

By 1994, the City owned and managed 5,458 buildings—most were dilapidated multi-family housing occupied by a low-income population. Tremendous efforts were made to address the severe physical and financial problems facing most of these properties. However, the City lacked sufficient capital resources to address their needs. The resulting impact on neighborhood quality-of-life and on local real estate markets was devastating. It was clear the City could no longer be the landlord of last resort. A new, more effective strategy was needed.

<sup>5</sup> Braconi, p. 99.

<sup>6</sup> "Turning Houses into Homes," *Daily News*, 11 October 1999, p. 40.

<sup>7</sup> Brian Kates, "The Sick Truth About W. 140th: Disease, Neglect, Vermin And Death," *Daily News*, 27 December 1994, p. 13.

<sup>8</sup> City of New York Department of Finance tax records as of 15 September 2000.

<sup>9</sup> Michael van Biema, Assistant Commissioner, Division of Property Management, City of New York Department of Housing Preservation and Development, "FY1998 New Needs," memo to Judy Wada, Budget Director, Office of the Commissioner, 30 December, 1997, table 3 (\$4,069 per unit total annual maintenance, repair, and fuel costs, not including rental income).

The City asked the Arthur Anderson consulting firm to assess the costs associated with the *in rem* stock, consisting of 51,672 units in 5,458 buildings, of which 75 percent were occupied (see figure 1). The average length of City ownership of these *in rem* properties was 19 years. While the foreclosed properties had an average tax delinquency of \$36,000 at vesting, the City spent an average of \$2.2 million to acquire, manage, repair, and dispose of each vested building. The estimated total cost to the City was \$10.6 billion, excluding an average of \$209,000 per property in foregone tax revenues.<sup>10</sup>

In addition, despite the City’s large capital investment in these buildings, many of them continued to have significant physical maintenance deficiencies. According to the 1991 Housing and Vacancy Survey, 22.9 percent of the properties had four or more heating breakdowns, 66.4 percent had cracks or holes in walls/ceilings/floors, 35.5 percent had broken plaster, and 76.9 percent had rodents present.<sup>11</sup> A moratorium on *in rem* vesting was declared in 1993.

### A NEW STRATEGY: THE THIRD PARTY TRANSFER INITIATIVE

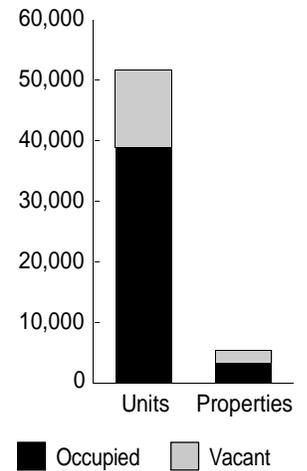
In 1994, led by former New York City Department of Housing Preservation and Development (HPD) Commissioner Deborah Wright, the administration gathered a group of tax and housing policy experts to determine a more effective strategy. The City also enlisted pro bono assistance from Arthur Anderson.

The group recommended the City sell the liens on all tax delinquent properties. However, HPD recognized that focusing only on tax collection would be insufficient for distressed residential properties. The City had an approximately 3.4 percent housing vacancy rate, and it could not afford to lose any residential housing.<sup>12</sup> Furthermore, tax lien sales alone would do nothing to improve the living conditions for the tenants of those buildings.

HPD then redefined the parameters of this approach: distressed properties would not be part of tax lien sales, but would instead be transferred to new ownership, and rehabilitation would be carried out by the private sector with private financing leveraged with public funds. Commissioner Wright turned to staff from across the agency to form a team that began formulating the program that would become the Third Party Transfer Initiative. This new approach fundamentally changed the City’s policy for addressing distressed housing.

In 1996 and 1997 the City obtained legislation that transformed its property tax foreclosure authority in two fundamental respects. First, the new authority allows the City to use the *in rem* foreclosure process to transfer ownership of tax delinquent properties directly to new owners without taking title itself, avoiding the cost of managing the properties and preparing them for sale.<sup>13</sup> Further, the new authority permits the City to initiate *in rem* actions in geographic areas as small as a tax block, roughly equivalent to a city block.<sup>14</sup> HPD thus can use its foreclosure authority strategically to address critical buildings and blocks and to complement its ongoing *in rem* disposition and neighborhood reinvestment initiatives. The process focuses on troubled buildings with problems that go beyond tax arrears and provides quick and effective intervention to turn them around and to improve conditions for the tenants.

**Figure 1. New York Housing Preservation and Development (HPD) Properties**



<sup>10</sup> Arthur Anderson and Anderson Consulting, “Breaking The Cycle: Developing an Effective Intervention Strategy for Dealing with New York City’s In Rem Housing Problem, Cost of Ownership Model,” 12 April 1995, p. 8.

<sup>11</sup> Braconi, p. 100.

<sup>12</sup> Moon Wha Lee, “Housing New York City 1996,” City of New York Department of Housing Preservation and Development, September 1999, p. 16.

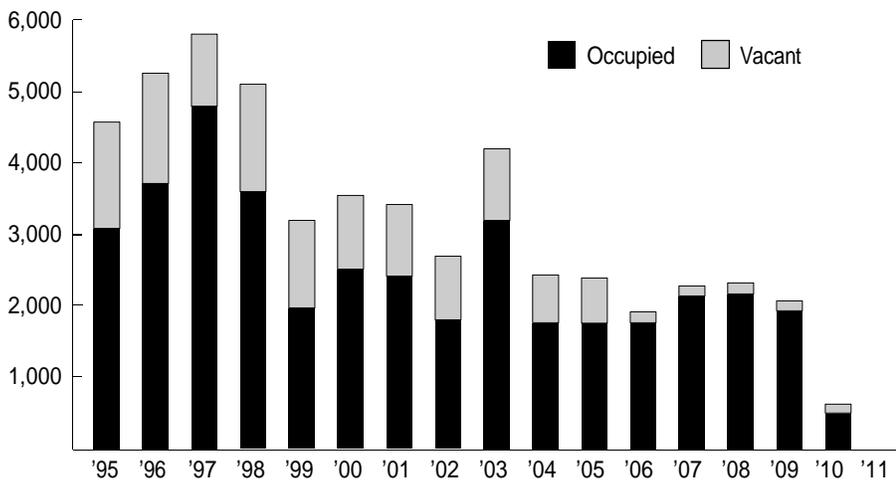
<sup>13</sup> Local Law 37 of 1996 amended the Administrative Code to give the City the authority to sell tax liens.

<sup>14</sup> Local Law 69 of 1996 amended the *in rem* process to allow sub-borough actions and make third party transfers.

### Program Overview

The principal goal of the Third Party Transfer Initiative is to improve the housing conditions and quality-of-life of New York City residents, particularly those living in the most dilapidated buildings. To accomplish that goal, the Third Party Transfer Initiative changed a property tax law to avert long-term City ownership and instead uses a standard tax foreclosure mechanism to transfer ownership of abandoned and distressed properties from neglectful owners to responsible new owners. The resulting process quickly and cost effectively conveys buildings to pre-qualified new owners, uses public resources to leverage private capital for complete building rehabilitation, and thus preserves and rehabilitates the City’s existing housing stock.

**Figure 2. Projected Disposition of HPD Properties**



Under the new authority, *in rem* foreclosures for Tax Class 2 multiple dwellings of four or more units can occur when owners have a year or more of tax and municipal charge delinquencies. One- to three-unit buildings must have three years of delinquency. After the City obtains a foreclosure judgment, owners are provided a final four months to resolve the arrears, after which time, subject to City Council review, the City may transfer title of unredeemed properties to qualified new owners.

Neighborhood Restore, a non-profit entity established by the Enterprise Foundation and the Local Initiatives Support Corporation, assumes interim ownership and, in turn, transfers ownership to new for-profit and not-for-profit owners selected by HPD through a Request for Qualifications (RFQ) process. The prospective owners manage the properties and secure rehabilitation financing prior to the final transfer, expected within one year of initial conveyance. Neighborhood Restore provides technical assistance to and oversees management by the prospective owners.<sup>15</sup>

By transferring ownership from ineffective, irresponsible owners to capable owners who will upgrade the buildings, this new initiative breaks the old cycle of disrepair and abandonment and ensures that troubled housing is not written off. In contrast to an enforcement policy that relied on long-term City management and subsidy, this Initiative strategically uses government intervention and resources to facilitate the return of residential building ownership to the private real estate sector.

The Third Party Transfer Initiative design is geared to working with the occupancy and rental characteristics of the properties to maximize both the affordability for existing tenants and economic viability for the new owners. To the extent that the properties include vacant units, they will be leased at market rents when rehabilitation is completed. Setting the vacant units at market levels provides additional income to mitigate the need for rent increases for the occupied units. Rents on occupied units are

<sup>15</sup> Memorandum of Understanding between The City of New York and Neighborhood Restore Housing Development Fund Corporation, 2 August 1999.

not increased until the completion of rehabilitation, with a goal of implementing the lowest possible increases to cover post-rehabilitation project costs.

The City has completed the Pilot round of the Third Party Transfer Initiative in the South Bronx and is currently implementing additional rounds.

### **Taking It to the Neighborhood: The South Bronx Pilot**

In June 1997, the City initiated the first pilot *in rem* action against 174 tax delinquent properties in tax map Section 10 of the Bronx, which includes portions of the Hunts Point, Longwood, Melrose, Morrisania, Mott Haven, and Port Morris neighborhoods. The area was targeted by HPD for the Pilot round because it is a region of the city with significant distressed property as well as substantial prior City investments in housing. On August 11, 1999, 46 of the properties (27 buildings and 19 vacant lots) in the South Bronx were transferred to Neighborhood Restore, with interim management provided by the designated owners.<sup>16</sup>

The Bronx Pilot provides important results of the implementation of the Third Party Transfer Initiative. The first measure of the Initiative's success is the collection of delinquent taxes for properties included in the action. At the end of the repayment period, a total of 87 owners had either paid their taxes or entered into a payment agreement with the Department of Finance. The total value of the taxes collected from those properties thus far is more than \$6.4 million.<sup>17</sup> Some owners were also required to enter into building repair agreements with HPD. As the initiative becomes known more widely, the City expects the prospect of and subsequent filing of City foreclosure actions to be a significant impetus for owners to address their tax delinquencies.

The initiative's second measure of success is the transfer of 46 properties to responsible new owners. The properties were taken from irresponsible owners who had failed to maintain them adequately and were transferred to responsible new for-profit and non-profit owners with established track records as property managers and a demonstrated ability to address building repairs and other needs.

Neighborhood Restore and the new owner/managers stabilized the buildings, removed Housing Maintenance Code violations, and formalized rent structures with the tenants. For example, one of the first steps taken by Neighborhood Restore and the new owner/managers was to survey all the occupied units with children under the age of seven for possible hazardous lead paint conditions. The new owners safeguarded the health of the children by immediately correcting all the potential problems in accordance with local lead paint requirements. Tenants in two buildings on East 167th and 168th Streets had long suffered inadequate heat from a failing boiler. The new owner of the properties immediately replaced the boilers, and over the course of the 1999-2000 winter the tenants enjoyed adequate heat for the first time in many years.

Neighborhood Restore required the owner/managers to inspect all roofs to determine whether they were water tight and to make necessary repairs, and to identify apartments where young children reside to ensure child window guards are in place. Other repairs made during Neighborhood Restore's interim ownership period included elevator brake replacement, sewer line cleaning, rodent treatment, floor repair, repair of water leaks, lock replacement, and appliance repair and replacement.

***Legislation [now] allows the City to use the foreclosure process to transfer ownership of tax delinquent properties directly to new owners without taking title itself, avoiding the cost of managing the properties and preparing them for sale.***

<sup>16</sup> Two additional properties were included later, bringing the total to 48. Fourteen properties were removed from the pilot for legal or technical reasons.

<sup>17</sup> City of New York Department of Finance records as of 10 August 2000.

In addition to physical repairs, many other management responsibilities had been neglected at these properties. Many leases had lapsed and had not been renewed, and rents were not consistently collected. Within several weeks of Neighborhood Restore's taking interim ownership, the new owner/managers surveyed all tenants to determine the status of leases and to complete necessary registrations. Since the goal of the Third Party Transfer Initiative is not to displace the residents, but to stabilize rent collections, the owner/managers reviewed individual rent histories and established a fair rent on the units where there was no prior legal rent. When there were cases where rents could have been legitimately increased, but doing so would have created a hardship for the residents, lower rents were adopted.

While addressing the most pressing needs, the new owners and Neighborhood Restore were also preparing the properties for final transfer. The owner/managers worked with Neighborhood Restore, HPD, and the participating lending institutions to develop the scope of rehabilitation work for each building, and to secure the financing to fund those renovations. Within the first year of Neighborhood Restore's interim ownership, the new owner/managers conducted joint site walk-through inspections, identified construction costs, submitted plans to HPD for approval, developed construction documents, and sought Department of Building approvals for rehabilitation.

In August 2000, Neighborhood Restore completed the transfer of 15 multi-family buildings, containing over 270 units, to the new owners. The full rehabilitation of these buildings is underway and will be completed within a 12-month period from that date of transfer. Typically this may include replacing one or more of the heating, electrical, and plumbing systems, as well as addressing structural and building envelope issues. In addition, units are being completely rehabilitated, which includes repairing and replacing windows, walls, doors, appliances, and kitchen and bathroom fixtures.

In one of the Bronx Pilot properties, 1203 Fulton Avenue, residents described the impact of the Third Party Transfer Initiative on their building and their lives. One elderly tenant, Ethyl Moses, said, "For the past 10 years this building has been in terrible condition. When the new owner came in they started making major repairs. They did the floors, they replaced the windows and doors, and they are redoing the bathroom and kitchen. It is wonderful and I am very grateful that these repairs are being made. I will finally have a nice place to live." Another long time tenant, Claris Morgan, observed, "Everything in poor condition is being replaced. They are doing a beautiful job. In 1973 the building was the best kept in the Bronx but it just went down horribly. Now it is coming back to what it was before. It is making a big difference in my life."<sup>18</sup>

Neighborhood Restore has worked with HPD to identify appropriate uses for the vacant lots conveyed through the action. First, citywide and Bronx-based not-for-profit organizations were contacted to solicit their interest in purchasing lots for housing or other community development purposes. As a result, the New York City Housing Partnership is developing several of the lots through its homeownership construction program. Neighborhood Restore also wrote to owners whose homes are adjacent to the lots, asking if they are interested in purchasing them to expand the open space surrounding their housing. Some owners are following through on this offer. One lot is expected to be added as open space for the community through the New York Restoration Project, and another lot will be used as a vegetable garden for residents of an adjacent city-run AIDS facility. Neighborhood Restore is also working with a devel-

<sup>18</sup> Author's telephone conversations with the tenants on 14 September 2000.

oper who hopes to purchase a number of lots for redevelopment housing; a restrictive covenant will ensure that affordable housing is created.

The remaining small clusters of 1- to 4-unit properties will be transferred to the new owners later this year. As with the other properties, all the buildings will be rehabilitated and restored to compliance with the Housing Maintenance Code. When the last few properties are transferred later this year, the Bronx Pilot will have saved more than 300 units of scarce affordable housing. For the first time, residents living in 15 multi-family buildings will have safe and sanitary living conditions, families in 12 one- to four-unit buildings will have decent homes, and 19 vacant lots will have been put to constructive uses including new residential housing.

**Figure 3. Bronx Pilot – Final Cost Summary for Multiple Dwelling Clusters**

Clusters	Units	Construction Cost <sup>a</sup>	Cost per Unit	Total Development Cost	Bank Loan	HPD Loan	HPD Loan/Unit	Equity
I	78	\$3,655,000	\$46,859	\$4,137,658	\$885,000	\$2,755,000	\$35,321	\$497,658
IIA	53	3,047,566	57,501	3,495,224	903,652 <sup>b</sup>	\$2,502,582 <sup>c</sup>	\$47,219	\$88,990
IIB	38	1,787,071	47,028	2,213,943	538,754 <sup>b</sup>	\$1,610,556	\$42,383	\$64,633
III	90	4,755,783	52,842	5,757,121	1,449,229 <sup>b</sup>	\$2,468,000	\$27,422	\$1,839,892 <sup>d</sup>
IV	21	1,215,378	57,875	1,450,424	240,732 <sup>b</sup>	\$1,158,839	\$55,183	\$50,853
<b>Total</b>	<b>280</b>	<b>\$14,460,798</b>	<b>\$51,646</b>	<b>\$17,054,370</b>	<b>\$4,017,367</b>	<b>\$10,494,977</b>	<b>\$37,482</b>	<b>\$2,542,026</b>

<sup>a</sup> Including contingency.

<sup>b</sup> HDC providing permanent funding.

<sup>c</sup> Includes \$1,324,651 HOME funds.

<sup>d</sup> LIHTC equity.

### Moving from Abandonment to Effective Ownership: The Process

The Department of Housing Preservation and Development is the agency primarily responsible for the development, implementation, and operation of the process. As the Third Party Transfer Initiative is closely linked to the City's sale of tax liens, the process also involves the Department of Finance and the Law Department.

#### *Targeting Properties for Potential Inclusion*

HPD targets properties in neighborhoods where housing revitalization is a critical need, and where the Initiative will enhance other HPD investments. As HPD identifies properties where basic services are lacking, or where owners are grossly mismanaging their buildings, they are added to the list of potential Third Party Transfer Initiative properties. Such buildings are identified through HPD's Housing Litigation Division, which refers properties it has identified as lacking essential services based on information gathered in its legal enforcement of the Housing Maintenance Code. Referrals may also come from the agency's Emergency Repair Program, which is responsible for correcting hazardous conditions in multiple-unit dwellings when owners fail to make the repairs.

Under Article 7A of the New York State Real Property Actions and Proceedings Law, to safeguard the health and safety of the tenants, a court may appoint an administrator to take over the day-to-day management of a multiple dwelling if its owner has effectively abandoned the property. These buildings are often among the most dilapidated properties in the City. For "Article 7A" buildings in particular, the Third Party Transfer Initiative brings a long-term solution to seemingly intractable situations.

The New York City Department of Housing Preservation and Development can be accessed online at [www.nyc.gov/hpd](http://www.nyc.gov/hpd).

Under HPD oversight, the court-appointed administrator uses the rent roll to stabilize the building. More substantive repairs, such as roof or boiler replacement, are paid for by HPD, and the costs become liens against the buildings. While this addresses the building's immediate problems, the long-term problems often remain. For many 7A buildings the Third Party Transfer Initiative is the solution because the new owner will comprehensively address the building's problems and restore it to health and long-term viability.

A property must have tax and municipal charge delinquencies to be eligible to be included in an *in rem* foreclosure leading to third party transfer. For most tax delinquent properties in fair or good condition the City sells the tax lien. The liens are sold to a trust, which uses them as collateral to issue bonds. The trust sells the bonds to investors for cash, and the cash is used to pay the City for the liens. When the Department of Finance issues the list of properties slated for tax lien sales, HPD field staff review the list and exclude those that need additional intervention through programs such as the Third Party Transfer Initiative.

HPD first determines if any properties must be excluded from the tax lien sale because they meet the statutory definition of distressed as established by Local Law 37 of 1996. Statutorily distressed properties are currently defined as those with

- a 15 percent or more tax lien-to-market value ratio
- *and* 5 or more hazardous Housing Maintenance Code violations (Class B), *and/or* 5 or more immediately hazardous Housing Maintenance Code violations (Class C) per dwelling unit
- *and/or* \$1,000 or more in HPD Emergency Repair Program liens per building.<sup>19</sup>

The law also gives HPD discretionary authority to exclude from the tax lien sales properties it deems distressed. Finally, HPD excludes properties that are already the subject of other programmatic HPD intervention or rehabilitation efforts or that are ineligible for other reasons.

Together, the properties targeted by HPD and those excluded by HPD from the tax lien sale form a pool of properties for inclusion in a Third Party Transfer *in rem* foreclosure actions.

### ***Foreclosing on the Properties***

Once properties are identified for an upcoming *in rem* foreclosure action, the owners are given a pre-foreclosure warning (the Notice Of Possible Foreclosure) and the opportunity to pay their property tax or municipal charge delinquencies. Owners can pay the debts in full or enter installment agreements with the Department of Finance. Either payment arrangement eliminates the inclusion of the property in the formal filing of the *in rem* action, which is the first step towards transferring ownership of the property. The Department of Finance offers favorable terms for installment plans entered into at this stage of the process. Exact terms depend upon the amount of the initial payment and length of the delinquency, but installment payments can be made over a period as long as eight years.

Approximately two months later, the Department of Finance requests that the Law Department file an *in rem* foreclosure action with the New York State Supreme Court against those properties that have not made any arrangements to pay their delinquent

<sup>19</sup> When inspections determine an emergency condition exists, the owner of the building is notified and instructed to repair the condition. If the owner fails to make the repair HPD will repair the problem through the Emergency Repair Program (ERP) and impose a lien to recover the cost.

taxes. After filing of the foreclosure motion and prior to issuance of the judgment of foreclosure, owners have continuing opportunities to make payment arrangements. During the pendency of the *in rem* action, owners who want to execute an installment agreement with Finance must meet the following conditions: compliance with HPD property registration requirements; execution of an agreement with HPD to correct all existing Housing Maintenance Code violations; and an agreement to participate in a housing education program when directed by HPD to do so. During this part of the process, HPD does extensive owner outreach to encourage owners not only to resolve their tax arrears, but also to seek assistance to deal with any physical or management issues affecting the buildings' underlying viability.

At the conclusion of the initial action filing period, the Department of Finance transmits the addresses of the remaining properties to the Law Department, which formally makes a request for a judgment of foreclosure to the New York State Supreme Court. The length of time it takes to render judgment is under Court control but may take as little as a day or several months.

When the final judgment of foreclosure has been entered, DOF notifies the owner and parties at interest that there is a final four-month mandatory redemption period in which to pay any outstanding taxes and other liens and thus retain title to the property. Property owners who have waited until the *in rem* judgment is obtained to enter into agreements with the Department of Finance are offered less favorable terms. Fifty percent of the delinquent taxes and liens must be paid before entering into the agreement, with the remainder paid in full within four quarters. Further, to obtain an installment agreement after judgment, the required HPD recommendation is based on an expanded review, which considers such other factors as the owner's history of ownership/management of this and other properties, record of Housing Maintenance Code violations, lien or mortgage foreclosures, tenant complaint history, ability to manage and improve the property, and financial capacity.

### ***Transferring the Properties***

At the beginning of the final redemption period, HPD distributes tenant letters to every known tenant in the affected buildings. These letters explain the foreclosure process, advise that the properties may be transferred to new ownership, and provide assurance that their rights as tenants are unaffected.

After the mandatory redemption period has ended, HPD selects a qualified new responsible owner for each property. In the Bronx Pilot round, HPD's review of the RFQ responses was concurrent with the new owner selection period. For subsequent rounds, HPD will already have a pool of qualified owners to draw from.

At this time HPD also determines which properties will be clustered together for sale. HPD clusters properties to provide an optimum mix of vacant and occupied units based on the available foreclosure property inventory. By including several buildings in a single cluster, revenue from filling vacant units can subsidize occupied unit rents. Financing can be developed for clusters that will be less expensive than if the financing were developed for each building individually. HPD also clusters buildings to take advantage of the expertise of specific new owners. For example, one- to four-unit properties or single room occupancies (SROs) may be grouped together and transferred to a new owner with experience rehabilitating that type of property.

***Tenants in two buildings on East 167th and 168th Streets had long suffered inadequate heat from a failing boiler. The new owner of the properties immediately replaced the boilers, and over the course of the 1999-2000 winter the tenants enjoyed adequate heat for the first time in many years.***

Following the mandatory redemption period, HPD has four months to transfer the property to the new owner. This period can be extended up to 45 days for the City Council to review and potentially reject the selection of the proposed new owner of any property. If the title of the property is not transferred within the four month post-judgment period as tolled by the City Council review, title of the property reverts to the original owner.

It would be difficult to complete the transfer within the legislatively required four-month post-redemption period were it not for Neighborhood Restore, because of the complexity and time-consuming nature of the property transfer and the process to obtain rehabilitation financing. Neighborhood Restore is a non-profit entity established

**Third Party Transfer Initiative Process**

- HPD identifies distressed properties for inclusion **ongoing**
- Pre-Filing 2 - 3 months**
- HPD provides the Department of Finance with targeted tax blocks
- Final Tax delinquency notices to owners of affected parcels
- **IN REM ACTION FILED** -----
- Action Filed 6-8 months**
- City commences an *in rem* action against property owners in arrears for selected tax blocks
- Outreach by HPD to encourage tax and code compliance
- Installment agreements available subject to HPD conditions
- Judgment of foreclosure requested by City, issued by the New York Supreme Court
- **JUDGMENT ENTERED** -----
- Mandatory Redemption Period 4 months**
- Owner has 4 months to pay outstanding taxes and other liens and retain title to the property
- Tenant notification by HPD
- Final outreach by HPD
- Installment agreements are available with more limited terms
- Transfer Period 4 months**
- HPD has 4 months to transfer title, subject to City Council review
- Clusters assembled
- HPD selects the responsible new owners from prequalified pool
- City Council Review up to an additional 45 days**
- City Council has up to 45 days to review the proposed new owners, tolling transfer period
- HPD transfers interim ownership to Neighborhood Restore
- Interim Ownership Period 12 months**
- Neighborhood Restore establishes agreements to use selected new owners as property managers
- New owners/property managers stabilize and manage properties, and develop scopes of work
- Rehabilitation financing packages are developed
- Neighborhood Restore transfers properties to new owners/ rehabilitation loans closed
- **TRANSFER PROCESS COMPLETED** -----
- Properties are rehabilitated 12 months**

by the Enterprise Foundation and the Local Initiatives Support Corporation to assist the City with the Third Party Transfer Initiative. HPD initially conveys the properties to Neighborhood Restore as interim owner. This arrangement provides an opportunity to stabilize the properties, arrange rehabilitation financing, and to prepare the legal documents for final transfer to the new owners. Neighborhood Restore arranges and formalizes agreements with the qualified new owners who act as property managers (owner/managers) during the period of Neighborhood Restore's interim ownership. As an additional benefit, Neighborhood Restore also provides technical assistance to the prospective new owners as they take over the day-to-day management of the properties in preparation for the final transfer.

During the Neighborhood Restore ownership period the owner/managers operate, manage, lease, and direct the operations of the properties. Their first responsibility is to inspect the properties to identify hazardous conditions, comply with lead paint regulations, and determine which repairs need immediate attention and which can be deferred for inclusion in the overall rehabilitation. The owner/managers also canvass the properties to identify the current occupants and attempt to obtain copies of their current leases. Finally, they work with Neighborhood Restore to update leases, enter new leases, and begin legal proceedings against unlawful residents.

While this is occurring, the owner/managers establish the scope of work required for each individual property. The proposed scope of work is reviewed by HPD and the lending institution(s) participating in the rehabilitation financing. A final walk-through inspection of the building is conducted by all the parties involved before the rehabilitation financing is underwritten and finalized. Once the rehabilitation financing is in place, Neighborhood Restore transfers title of the property to the new owners, and the construction closing takes place, completing the Third Party Transfer process.

### ***Selection of New Responsible Owners***

The Request for Qualifications (RFQ) to identify prospective new owners for the Bronx Pilot met with an overwhelming response—more than 120 requests for participation were received from a wide variety of for-profit and non-profit owner/developer entities. From that group, 69 were qualified as eligible new owners. The new owners eventually selected for the Bronx Pilot included two for-profit owners with substantial experience in turning around distressed property, two locally based non-profits, and two citywide non-profits, one of which focuses on tenant-controlled housing.

For-profit and non-profit ownership entities interested in becoming new owners of transferred properties through the Third Party Transfer Initiative must demonstrate residential management experience, experience in rehabilitation of occupied residential property, financial capacity, and the capacity to carry out the work. Other properties they own must be current, within two quarters, with all property and water and sewer charges or be addressed by current tax repayment agreements. Finally, they can be rejected if adverse findings are made regarding a variety of issues, including tax delinquencies, mortgage arrears or insolvency, record of Housing Maintenance Code violations, tenant harassment, illegal activities, negative history with HPD, etc.

The website for the Enterprise Foundation is [www.enterprisefoundation.org](http://www.enterprisefoundation.org).

***One elderly tenant said, "For the past 10 years this building has been in terrible condition. When the new owner came in they started making major repairs.... It is wonderful and I am very grateful.... I will finally have a nice place to live."***

Non-profit organizations may also apply on behalf of tenants interested in owning the properties. The non-profit organization would take ownership initially and transfer the property to the tenants after rehabilitation and a period of stable management.

In April 2000, HPD issued a second RFQ, which included a number of changes to simplify and improve the application process. Applicants who were qualified under the first RFQ can affirm their continued interest. Of the more than 150 responses to the second RFQ, approximately one-third were respondents reaffirming their interest. Entities that have participated in relevant HPD rehabilitation or development programs during the last five years are provided an abbreviated application. While respondents to the first RFQ were scored, respondents to the second RFQ will be identified only as qualified or unqualified.

One of the lessons learned from the Bronx Pilot is that the new owners must have the ability to obtain private financing and to provide equity for rehabilitating the properties. As part of the second RFQ, HPD has placed a greater emphasis on financial capacity. HPD also evaluates credit histories and financial and other references.

In their applications, respondents are allowed to express a preference for specific properties and for properties in specific neighborhoods. However, there is no guarantee that they will be selected for those properties. When assigning properties from the qualified owner pool HPD considers additional factors, including proximity of the Third Party Transfer Initiative properties to properties already owned by the potential new owner, the potential new owner's experience developing and managing similar properties, and the potential new owner's ability to work with government agencies. HPD will continue to use the pool of applicants qualified through the second RFQ for future Third Party Transfer Initiative rounds and will issue additional RFQs on a periodic basis.

#### *Incentives for Participants*

There are a number of reasons for both for-profit and not-for-profit organizations to participate in the Third Party Transfer Initiative. For-profit developers want to become owners of properties that will be made economically viable and become worthwhile assets, and often desire to strengthen neighborhoods where they have previous investments. Not-for-profit organizations participate because of the prospect of rehabilitating and preserving affordable housing and thereby assisting the residents and strengthening the neighborhoods in which they work.

Qualified new owners acquire what will be viable properties at a low cost. The costs are minimal compared to buying and rehabilitating a property on the open market because the new owner's equity investment is targeted for rehabilitation, not acquisition. In addition, the existing liens on the property are cleared, and the building is given a fresh start. As a result, the debt service will be lower than for a comparable building acquisition, thus reducing the income needed to support the building.

*For-profit developers want to become owners of properties that will be made economically viable and become worthwhile assets.... Not-for-profit organizations participate because of the prospect of...assisting the residents and strengthening the neighborhoods in which they work.*

## Financing: Sources and Strategies

Lien forgiveness and cross subsidization of rents may not be enough to ensure the long-term financial viability of the properties, many of which require extensive rehabilitation. The City leverages private market rate loans with City rehabilitation funds to reduce rehabilitation costs and provides a variety of short and long-term tax incentives.

HPD has several programs that use low interest loans to rehabilitate properties where rents and tenant incomes are too low to support market-rate financing. For the multi-family property clusters, the Third Party Transfer Initiative will generally provide rehabilitation funding support through HPD's Participation Loan Program (PLP). PLP was originally created in the mid-1970s to reverse the deterioration of low- and moderate-income neighborhoods by leveraging low-cost City funds with market-rate financing provided by various New York City lenders. It operates primarily for buildings of 20 or more units needing moderate rehabilitation including replacement of building systems and modernization of apartment interiors. As such, it is an ideal mechanism for the Third Party Transfer Initiative.

PLP blends City financing at 1 percent, in combination with federal funds where appropriate, and market rate financing from banks and other private lenders, significantly reducing the cost of the rehabilitation loan. Because of the lower cost, rent increases for occupied units in properties rehabilitated through PLP, including those in the Third Party Transfer Initiative, are typically limited to \$5 to \$10 per room.<sup>20</sup>

Through the Neighborhood Homes Program, HPD conveys occupied one- to four-family buildings to selected community-based not-for-profit organizations for rehabilitation. The new owners will receive funding in the form of an evaporating loan from HPD and a loan from the Local Initiative Support Corporation. Once the rehabilitation is completed, each building will be marketed to the existing tenants or other buyers who agree to reside in the building and who qualify for mortgage financing to purchase the property.

In addition, the City offers tax incentive programs that reduce the cost of operation prior to and after rehabilitation. Reducing the tax burden on the rehabilitated properties reduces the cost of operating the buildings, and reduces the pressure to increase rents, thus allowing occupied units to remain affordable.

Initially, the City seeks approval from the City Council to exempt the properties from property tax. At the same time the City Council reviews HPD's new owner selection determination. With City Council approval, during the approximately one year of Neighborhood Restore ownership the properties are provided a full property tax exemption. Neighborhood Restore is a non-profit eligible for this tax exemption under Article XI of the New York State Housing Finance Law.

HPD also requests that the City Council approve the designation of the properties as Urban Development Action Area Projects (UDAAP). The Urban Development Action Area Act was specifically enacted "to provide incentives for the correction of [such] substandard, insanitary, blighted, deteriorated or deteriorating conditions" associated with *in rem* housing.<sup>21</sup> UDAAP designation confers tax exemption on the building improvements portion of the property taxes for up to 20 years, with 10 years of full exemption and a 10-year phase-out to full taxes. During the period of UDAAP tax exemption, the land portion of the taxes remain in effect.

<sup>20</sup> Under HPD's delegated processing procedures, the private lender is given primary responsibility for loan underwriting and processing. In general, the City's share of the financing, including federal funds, is 65 percent of the total financing. The total City and private lender financing cost is generally limited to 90 percent of the total project development cost, with a maximum term of 30 years.

<sup>21</sup> Section 691. Policy and purposes of article, Article 16, Urban Development Action Area Act, New York City General Municipal Law.

### **Selected Properties from the Second Round of the Third Party Transfer Initiative**

**139 West 128th Street, Manhattan.** 16-unit building, which though listed as vacant, is currently occupied by a number of residents; 565 hazardous and immediately hazardous housing violations of record (“B” and “C” violations); \$269,642 in liens. Referred for inclusion by HPD’s Housing Litigation Division.

The building has an open front door and graffiti on the first level facade. Some apartments are missing entrance doors, the public stairway is unstable, plywood covers openings in the walls, and there are exposed and dangling light fixtures. Apartments have a range of severely deteriorated conditions, from collapsing ceilings to walls open to plumbing and electrical systems.

**213 West 111th Street, Manhattan.** 24-unit occupied building; 721 B and C violations; \$775,545 in liens. Included in current action as part of HPD’s Harlem Gateway initiative for deteriorated buildings near Central Park North where HPD has made major housing investments through other programs.

This building has severely deteriorated apartment conditions, including floors and walls in bathrooms damaged as the result of water leakage, as well as inadequate heat and hot water. Public areas are badly decayed, with dangerous stairways, debris, and open doorways.

**370 Lenox Avenue, Manhattan.** 39-unit building with vacate order but with some families still living in the building; 663 B and C violations; \$1,882,711 in liens; referred through the 7A Program as a building too devastated to be appropriate for the scope of stabilization services provided by that program.

A fire in May of 1998 destroyed the top three floors of the building, and a vacate order was placed on the building. Some tenants moved back in, even though there is no heat or hot water, public areas are in extreme disrepair and many apartments are in shambles. Extensive drug activities take place within and outside of the building. A local community group has been working with HPD to relocate families so that the building can be sealed until rehabilitation is made possible through the Third Party Transfer Initiative.

Once rehabilitation is completed, HPD is able to confer alternate ongoing tax exemption and abatement through tax incentive programs such as its J-51 program.<sup>22</sup> J-51 provides for a range of tax benefits, including up to 34 years of tax exemption from the increase in real estate taxes resulting from the improvements. The program also allows for the abatement of a percentage of the annual tax bill for up to 20 years. The amount of the benefits depends on the level of rehabilitation work, and for the Third Party Transfer Initiative will generally be 150 percent of the certified reasonable cost.

Preparing the rehabilitation financing packages is difficult, as HPD has extremely limited control over the characteristics of the buildings and tenants that become part of the final transfer portfolios. Each building has unique physical repair and rehabilitation needs, requiring different levels of capital investment. Depending on factors such as vacancy rates, tenant income, and capital needs, various financing sources must be identified and blended together. As a result, financing packages must be first tailored to each building’s individual needs, and second to support other buildings in the same cluster.

<sup>22</sup> Section 11-243 of the Administrative Code of the City of New York (formerly Section J51-2.5).

The process can also be challenging because of the lack of early or complete information on the physical and capital needs of the buildings. Given the adversarial nature of the *in rem* foreclosure proceedings, the prior owners are often uncooperative. As a result, HPD may be unable to gain sufficient access to the interior of the fore-closed buildings until title has been transferred. At times, HPD has to cluster properties and identify new owners without the physical inspections or property profiles necessary to inform cluster financing decisions fully.

Because the City is committed to rehabilitating every building transferred through the initiative, HPD cannot eliminate those with high subsidy requirements. The financing packages must ensure affordable rents for low-income residents without relying on rent subsidies, and must also ensure that rehabilitation addresses building conditions and long-term needs. Further, the new owners have varying access to private capital. As the buildings have significant capital needs and there are finite government funding resources, the financing packages are more feasible when the new owner has greater access to private capital.

**Funding**

Funding for the Third Party Transfer Initiative comes from a variety of sources, private and public. The new owners provide equity and obtain private financing from banks and financial institutions. The private financing obtained by the new owners is blended with City Capital Budget funds to reduce the total financing cost and ensure the rehabilitation remains affordable. Federal housing funds, such as HOME program funds, and Low Income Housing Tax Credit equity may also be included to reduce the overall cost and make the process possible.

Because each round of Third Party Transfer Initiative properties will have buildings with different characteristics and rehabilitation needs, the sources and amounts of funds for each round will be different. For the Bronx Pilot round of the Third Party Transfer Initiative the funding sources are shown in figure 4.

Rehabilitation of the properties transferred in the first round cost an average of \$60,908 per dwelling unit for properties with 5 or more units. Rehabilitation of the smaller buildings cost an average of \$106,071 per dwelling unit. Program costs also include \$2,009,000 to establish and operate Neighborhood Restore for the first year. Future costs will be less as the one-time cost of establishing Neighborhood Restore will not be included.

**Funding Sources**

*Multiple Dwellings* - 16 properties with 283 pre- and 280 post-rehab units divided into 4 clusters with rehabilitation costs of \$60,908 per unit. Funding sources are shown in figure 5.

**Figure 4. Bronx Pilot Funding Sources**

Funding Type	Amount	% of Total
Federal	\$3,333,651	15.1
City Capital (loans)	10,460,326	47.5
Other City (loans)	3,132,367	14.2
Private	5,107,026	23.2
<b>TOTAL</b>	<b>\$22,033,354</b>	<b>100.0</b>

**Figure 5. Multiple Dwellings Funding Sources**

City Capital	\$9,170,326
Federal HOME	1,324,651
Other City (HDC)	3,132,367
Private (owner equity, bank financing, tax credit equity)	3,427,026

**Figure 6. Smaller Buildings Funding Sources**

City Capital	\$1,290,000
Private (from LISC/Enterprise; repaid when private bank financing obtained)	\$1,680,000

*Smaller Buildings* - 12 properties with 28 units divided into 2 clusters with rehabilitation costs of \$106,071 per unit. Funding sources are shown in figure 6.

While all six clusters in the Bronx Pilot utilize City capital funds and some type of private financing, no two clusters use the same combination of funding sources at the same level, or in the same way. Each financing package is tailored to the economic and physical conditions of the buildings, as well as the sophistication of the new owners. The clusters with small buildings use funds from LISC/Enterprise that will later be repaid with private bank financing, although one of those clusters requires significantly more subsidy than the other. One of the multiple dwelling clusters utilizes federal HOME funds, while another uses tax credits. Three of the four multiple dwelling clusters will use reserve funds from the City’s financing agency, the Housing Development Corporation, allocated specifically for HPD anti-abandonment housing initiatives, while the fourth uses only City Capital funds and private financing.

**COSTS AND BENEFITS**

The Bronx Pilot provides important information about the cost avoidance possible through the Third Party Transfer Initiative. Had the City taken ownership of the 174 properties under the prior *in rem* foreclosure approach, and stayed in City ownership for an average of 19 years, it would have cost the City as much as \$382.8 million to manage and dispose of those properties.<sup>23</sup> Through the Third Party Initiative, the City avoided this cost by returning the buildings to tax paying status with responsible new owners, and leveraging its financing with private sector funds to achieve building rehabilitation.

A further benefit of the Third Party Transfer Initiative is the short turnaround time for the buildings to be transferred to new owners. For the first group of properties, from the date the properties were included in the *in rem* action to the date of the final transfer was just 26 months.

Savings from the Third Party Transfer Initiative will reduce the need to rely on scarce federal Community Development Block Grant (CDBG) funds to pay for repairs and rehabilitation of *in rem* properties. The New York City Independent Budget Office noted, “Maintenance of *in rem* properties is consuming a declining share of CDBG spending each year, from a peak of \$154.8 million in 1996, down to \$75.8 million in 1999. As spending on *in rem* properties has declined, CDBG funds used to support private housing preservation have risen, from \$6.5 million in 1993 to \$42.2 million in 1999.”<sup>24</sup>

<sup>23</sup> Based on an average of \$2.2 million per property to acquire, manage, repair, and dispose of as per Arthur Anderson report “Breaking the Cycle.”

<sup>24</sup> “Inside the Budget,” City of New York Independent Budget Office, 31 July 2000, pp. 1-2.

## Personnel Costs

Across HPD's divisions, at the Department of Finance, and the Law Department, numerous staff were involved in implementing the Third Party Transfer Initiative. Most of the work was such that it could be performed by existing staff and be absorbed into their already established responsibilities.

The HPD staff who spend 100 percent of their time on the Third Party Transfer Initiative include a Program Director and three support staff responsible for pre-transfer coordination and programmatic reporting; and a Project Manager responsible for reviewing financial packages and coordinating closings. In addition, a Director of Analysis, a Program Director, and two Senior Executive staff spend from one-quarter to one-third of their time managing and overseeing work related to the Third Party Transfer Initiative. Finally, the Office of Anti-Abandonment estimates its borough office staff collectively spend approximately 15 percent of its time on activities including: assessing properties for signs of distress, conducting owner outreach and assistance to encourage owners to resolve their taxes and obtain assistance to deal with any physical or management issues affecting the buildings' underlying viability, and contacting tenants in properties where ownership will be transferred.

To provide a very rough idea of implementation costs, HPD estimated the percentage of work time spent by the HPD staff primarily responsible for the initial implementation of the program. Those percentages applied against salaries for the staff involved yielded an estimate of personnel costs for program implementation of \$523,000.

*A benefit of the Third Party Transfer Initiative is the short turnaround time for the buildings to be transferred to new owners.*

## OVERCOMING OBSTACLES AND SKEPTICISM

When the Third Party Transfer Initiative was proposed, the most significant obstacle it faced was obtaining legislative approval. The Council was concerned about how the City would identify distressed properties for the Initiative, and how it would select new owners.

HPD established a mechanism to identify distressed properties based on level of tax arrears, lien-to-market value ratio, and the extent of serious housing code violations. To identify responsible new owners, the City established a competitive process, including a wide outreach to the for-profit and non-profit real estate communities. HPD met with many key Council Members to explain these approaches and satisfy their concerns.

The City also recognized the importance of input from other individuals and organizations that would be affected and ultimately would have to agree to the new program. HPD's team engaged these interested parties early on by aggressively reaching out to other City departments including the finance, law, and budget agencies. The team also engaged in dialogues with other elected officials, community groups, neighborhood task forces, community boards, non-profits, and religious organizations. The team established program guidelines and worked with the City's budget office to obtain rehabilitation financing. All this support was necessary to gain the community backing needed to put a new program in place and obtain the necessary legislation.

***The Third Party Transfer Initiative is highly replicable. It uses government tax enforcement tools, flexible financing, is cost effective, applies to a broad range of neighborhood and property conditions, and can use local resources to adapt the program to local conditions.***

As the Third Party Transfer Initiative has been implemented, a further obstacle has been occasional tenant resistance and the belief among some tenant groups that they have not had equal opportunity to become the new owners. HPD is solely concerned with selecting the new owner that is most qualified and best able to rehabilitate and stabilize the property, whether that is a private sector developer, not-for-profit organization, or a tenant group. Given the need for quick transfers and the advanced state of deterioration of many Third Party Transfer Initiative properties, the City needs to count on the experience, financial resources, and capacity of the established for-profit and not-for-profit ownership community to manage, develop, and promptly rehabilitate the properties. However, interested tenants have the opportunity to link to qualified not-for-profit owners with the potential to convert the properties to tenant control after rehabilitation is completed and the property operation has been stabilized.

Tenant resistance is unlikely to be as great an obstacle in another city. Because of several unique factors, tenants probably have greater influence in New York City than in other large municipalities across the country. “Unlike most other American cities, New York City is overwhelmingly a city of renters. According to the 1993 American Housing Survey, 49.1 percent of all households in central cities owned the homes in which they lived. In New York, however, only 30 percent of all housing units were owner occupied in 1996.”<sup>25</sup> Moreover, the 1999 vacancy rate in New York City was 3.19 percent.<sup>26</sup>

Further, there is a history of tenant ownership within New York City, including tenant ownership models with HPD program support. One of the programs to rehabilitate and dispose of City-held *in rem* housing gives tenants with a significant interest in tenant ownership the right to assume direct management and eventual ownership before other program options are considered. New York City has also long been a national center for residential cooperative ownership, with cooperatives at all income levels—ranging from luxury high-rises, to City- and state-assisted middle-income projects, to small low-income sweat equity ventures.

## REPLICATION

The Third Party Transfer Initiative is highly replicable. The Initiative uses government tax enforcement tools, flexible financing, is cost effective, applies to a broad range of neighborhood and property conditions, and can use local resources to adapt the program to local conditions.

Financing for the initiative is also easily replicated. Building rehabilitation can be easily supported by a wide variety of public and private sector funding sources. Depending on their needs, municipalities can blend federal, state and/or city, and private funds to finance the rehabilitation of dilapidated units. Each community can use its established real estate community.

The initiative’s cost savings and cost avoidance features are also replicable because leveraged public funds make blended public and private sector financing packages affordable. The costs of administering the program are recovered manyfold from increased tax collection, buildings returning to the tax rolls, and from savings realized from restoring distressed housing to good health.

<sup>25</sup> Michael H. Schill and Benjamin P. Scafidi, “Housing Conditions and Problems in New York City,” in Michael H. Schill (ed.), *Housing and Community Development in New York City: Facing the Future* (Albany, NY: State University of New York Press, 1999), 19.

<sup>26</sup> “1999 New York City Housing and Vacancy Survey,” 14 August 2000, p. 4.

## Resources Needed

The actual costs for each municipality will depend on the level of staffing, how the transfer process is structured, and the degree of distress of the properties. For New York City there was the initial \$2-million cost of establishing and operating Neighborhood Restore. Other municipalities may not need to fund an interim owner.

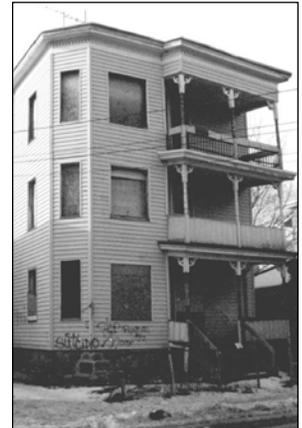
The per-unit cost to rehabilitate individual apartments depends on the degree of distress, the size of the building, and on local construction costs. In the case of the Bronx Pilot, the per-unit rehabilitation cost ranged from \$60,000 to \$100,000 depending on the size of the building. However, the per-unit costs will likely be significantly less for other municipalities. According to a recent study by the New York University School Center for Real Estate and Urban Policy, the cost of residential construction in New York City is the highest in the nation.<sup>27</sup>

As important as it is to consider the hard costs, to replicate the Third Party Transfer Initiative a municipality will also need to have or develop less tangible resources such as knowledge and experience with the issues surrounding developing and managing housing; a close working relationship between tax, legal, and housing agencies; and low-interest loan and/or tax incentive programs to reduce the rehabilitation and operating costs so that the properties will be both viable and affordable. Municipalities will also need to identify and establish working relationships with not-for-profit housing organizations, and responsible private sector real estate professionals who have the capacity to become the new owners. Lastly, the municipality will need to have a close relationship with the private sector financial industry that will provide much of the rehabilitation funding.

## Steps to Replication

To replicate the Third Party Transfer Initiative, other municipalities must first determine how they will structure the transfer process, and how they can best utilize public-private partnerships with local government, real estate developers and managers, not-for-profit organizations, and lending institutions. For New York City this meant enlisting the assistance of the Local Initiatives Support Corporation and the Enterprise Foundation to create Neighborhood Restore. Other municipalities may find it more advantageous to create direct relationships with local lending institutions and not-for-profit organizations. For example, another municipality might establish a direct relationship with a local Community Development Corporation to facilitate the transfer and rehabilitation of distressed properties in a particular neighborhood.

Once the transfer structure and strategy have been developed, the municipality must obtain the legislative authority to initiate *in rem* foreclosures and complete third party transfers. Many municipalities already have the ability to initiate foreclosures, and auction or assign tax liens. Those cities can modify that legal mechanism or adapt other legal authority to create a third party transfer process. New York City's Local Law 37 of 1996 can serve as a model on which to develop the legislation.



*Could the Third Party Transfer program be replicated to reclaim abandoned property in Massachusetts urban areas?*

<sup>27</sup> Jerry J. Salama, Michael H. Schill, and Martha E. Stark, *Reducing the Cost of New Housing Construction in New York City: A Report to the New York City Partnership and Chamber of Commerce, the New York City Housing Partnership, and the New York City Department of Housing Preservation and Development*, New York University School of Law, Center for Real Estate and Urban Policy, July 1999, p. vii.

Lastly, the municipality must identify funding for the structure of the transfer process it creates, and for required property rehabilitation. Whether the municipality completes the process through its local agencies, or establishes a public-private partnership like Neighborhood Restore, funding must be in place to transfer the titles and manage the properties until the transfers are complete.

HPD had numerous low-interest loan and tax incentive programs in place already, which were easily adaptable to the Third Party Transfer Initiative. Other municipalities may have similar programs, or may need to establish programs to ensure the long-term financial attractiveness and viability of the properties. This is important because the building must have sufficient income to cover operating expenses and debt service if the properties are to avoid the cycle of disinvestment and disrepair that leads to tax delinquency and abandonment.

## CONCLUSION

By changing existing legal tax enforcement authority the City was able to use the government power of tax foreclosure to transfer ownership of distressed tax delinquent properties directly to new owners without taking ownership itself. This fundamental change directs the worst housing stock from City ownership and utilizes the experience and flexibility of the existing real estate community to return buildings quickly to sound physical and financial condition.

This achievement provides a targeted strategy for restoring troubled buildings, avoiding and reducing City capital costs, redirecting scarce resources, and shortening rehabilitation time from five years or more to eighteen months. By preventing abandonment and improving substandard housing conditions, the initiative helps to support the City's existing investments in communities throughout the City.

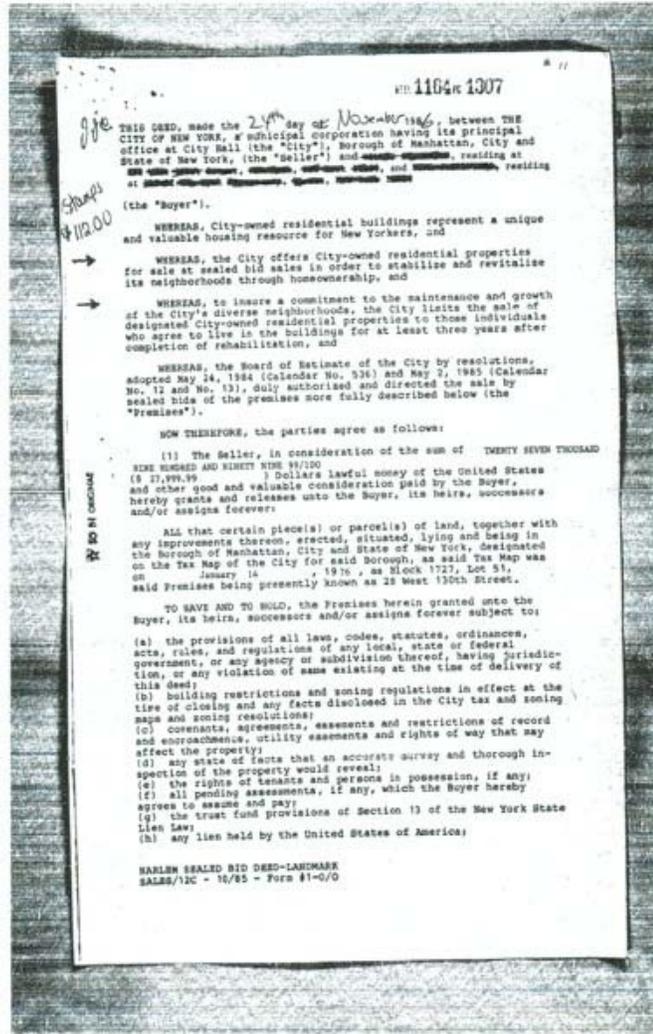
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Appendix D: Redacted first page of Deed for 28 West 130<sup>th</sup> Street, Individual Landmark (Astor Row). Source: ACRIS NYC, Document ID:FT\_1200000168920, Reel-Page: 1164-1307

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## MEETINGS

- Bankoff, Simeon. Meeting with author. November 12, 2012.  
Executive Director Historic Districts Council
- Clark, Carol. Meeting with author. December 21, 2012.  
Deputy Commissioner for Real Property and Legislative Affairs, New York  
State Office of Parks, Recreation and Historic Preservation
- Davis, Robert. Meeting with author. March 12, 2013.  
Partner, Bryan Cave LLP
- Devonshire, Michael. Meeting with author. February 10, 2013.  
Director of Conservation, Jan Hird Pokorny Associates
- Dietrich, Gregory. Meeting with author. November 13, 2012.  
Principal, Gregory Dietrich Preservation Consulting
- Farrell, Richard. Meeting with author. December 13, 2012.  
Assistant District Attorney, King's County, Brooklyn. Rackets and Real Estate  
Fraud
- Fine, Jonathan. Meeting with author. November 2, 2012.  
President, Preservation Chicago
- Gardner, Margaret Halsley. Meeting with author. March 15, 2013.  
Director, Old Merchant's House Museum
- Goeken, Brian. Telephone call with author. October 17, 2012.  
Head of National Park Service's Technical Preservation Services, Washington  
DC. Former Deputy Commissioner, Housing and Economic Development  
Department, Historic Preservation Division, City of Chicago
- Gorski, Eleanor. Meeting with author. November 5, 2012.  
Deputy Commissioner, Housing and Economic Development Department,  
Historic Preservation Division, City of Chicago
- Herrera, Alex. Meeting with author. November 26, 2012.  
Director, Technical Services Center, New York Landmarks Conservancy
- Jontef, Leora. Meeting with author. April 5, 2013.  
Director, Third Party Transfer, NYC Housing Preservation and Development
- Kim, Po. Meeting with author. March 16, 2013.  
Artist, former owner of the Skidmore House

Lynch, Timothy. Meeting with author. December 3, 2012.  
PE Executive Director, Forensic Engineering Unit, New York City Department  
of Buildings

Mustaciuolo, Vito. Meeting with author. December 14, 2012.  
Deputy Commissioner, NYC Housing Preservation and Development

Peters, Jim. Meeting with author. November 5, 2012.  
Adjunct Professor, School of the Art Institute of Chicago, Adjunct Professor  
University of Illinois at Chicago, President Landmarks Illinois, Deputy  
Commissioner City of Chicago Department of Planning and Development

Riccio, Dan. Meeting with author. October 5, 2012.  
Director of Livability, City of Charleston Planning, Preservation, and  
Sustainability

Silberman, Mark. Meeting with author. December 7, 2012.  
General Counsel, Landmarks Preservation Commission, New York City

Tatum, Terry. Meeting with author. November 5, 2012.  
Director of Research Housing and Economic Development Department,  
Historic Preservation Division, City of Chicago

Tyus, Ethel. Multiple meetings with author. November 2012-May 2013.  
President and Counsel, Crown Heights North Association

Weiss, John M. Multiple meetings with author. June 2012-May 2013.  
Deputy Counsel, Landmarks Preservation Commission, New York City

Wood, Anthony. Meeting with author. November 14, 2012.  
Founder and Chair, New York Preservation Archive Project