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Housing Abandonment and New York City's Response

David Reiss

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HOUSING ABANDONMENT AND NEW YORK CITY'S RESPONSE

DAVID REISS*

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INTRODUCTION

New York City is home to two of the largest public housing providers in the nation: the New York City Housing Authority (NYCHA) and, lesser known but nearly as impressive in scope, the New York City Department of Housing Preservation and Development (HPD) housing program.¹ HPD's *in rem*—or City owned—program oversees 3,200 occupied and 1,500 vacant buildings that have been abandoned by their original owners, totalling over 11,000 units.² Since 1978, the City has taken ownership of buildings where the private sector had been unable to provide decent, affordable housing for low- and moderate-income tenants.³ The City has managed this dilapidated housing stock and created programs to dispose of it to the private for-profit and non-profit sectors. Programs designed to return the housing to for-profit landlords, in particular, have been controversial because of their reliance upon the very sector that abandoned the housing in the first place. One such program, the Private Ownership and Management Program (POMP), did return buildings to the for-profit sector but was terminated after numerous complaints. There were high eviction rates, rents unaffordable to low-income tenants, and patterns of poor management. New York City is initiating a new program, the Neighborhood Entrepreneur Program (NEP), to replace POMP, but it may have problems similar to those of its predecessor.

This article reviews and evaluates the debate surrounding the management and disposition of city-owned housing in New York City, paying particular attention to those programs that rely on for-profit landlords. The first section reviews the theory and history of housing abandonment by the private sector and the City's responses to it. The second section documents the history of POMP and summarizes the studies that have been made of it by the City, the business-centered advocacy community, and the tenant-centered advocacy community. The third section documents the recent implementation of NEP and preliminary evaluations of it. The final section evaluates these two programs against criteria chosen by the City and analyzes the viability of relying on for-profit landlords as a solution to housing abandonment.

The primary purpose of this article is to compile the rich, but scattered, literature on *in rem* housing in New York City. Without a central repository for housing information, the City's policy is difficult to study.

1. See Anthony DePalma, *New York Plays Reluctant Landlord*, N.Y. TIMES, Dec. 14, 1986, § 8, at 1.

2. Alan S. Oser, *The New Approach on Tax-Delinquent Property*, N.Y. TIMES, Mar. 3, 1996, § 9, at 7; Arthur Andersen Consulting, *Breaking the Cycle: Developing an Effective Intervention Strategy for Dealing with New York City's In Rem Housing Problem Schedule 2 (1995)* (detailing economic impact of City's *in rem* stock) (unpublished study prepared for HPD, on file with author) [hereinafter *Breaking the Cycle*].

3. Thomas J. Lueck, *Federally Subsidized Housing At Risk*, N.Y. TIMES, Apr. 1, 1990, § 10, at 1.

Adding to this difficulty is the ephemeral nature of the information, consisting primarily of unofficial reports and unpublished papers. This article is intended to digest and preserve vital information on housing policy that otherwise might be lost in the loose sheets of press releases and position papers. Finally, I hope to make some modest suggestions about the course that the *in rem* debate should take.

I.

HOUSING ABANDONMENT

A. *Abandonment in General*

Housing abandonment became a major problem for American cities in the 1970s. In a 1978 study by the General Accounting Office, 113 of 149 responding cities reported having an abandonment problem.⁴ While the increasing number of homeless people might suggest that the demand for housing outpaces its supply, the quality of many cities' housing stock has declined to the point of abandonment. The reasons for abandonment are complex.

The housing stock is affected by urban rhythms. As tenants seek to get the best housing value for their rent dollars, they move from one unit to another. Wealthy people move from older housing to newer housing, less wealthy people replace them, and so on down the line. The poor tend to live in the worst housing. The most wretched housing, incapable of generating enough income to be profitable for the landlord, is ultimately abandoned. Economists have labelled this process 'filtering.'⁵ Most older cities, including New York, were built from the inside out. In some instances, improvements in transportation made land in central locations less profitable to landlords than land away from central locations. As a result of filtering, then, some of the oldest and worst housing is located closest to the economic centers of the cities.

Filtering alone, however, does not explain abandonment. Some commentators have noted that abandonment has a 'contagious' aspect in which good housing stock is infected by the nearby abandonment of poor housing stock so that an entire low-income community, such as the South Bronx, is devastated.⁶ This contagion effect has been linked to vicious cycles involving financial insecurity on the part of local landowners, reduction in the

4. Sarah Hovde, *An Early Stage Assessment of the Giuliani Administration's 'Building Blocks!' Initiative 15* (1995) (citing to U.S. GENERAL ACCOUNTING OFFICE, *HOUSING ABANDONMENT: A NATIONAL PROBLEM NEEDING NEW APPROACHES* (1978)) (unpublished M.S. thesis, Columbia University, on file with author).

5. EDWIN S. MILLS, *URBAN ECONOMICS* 228 (1989).

6. Hovde, *supra* note 4, at 16 (citing Peter Marcuse, *Gentrification, Abandonment and Displacement: Connections, Causes, and Policy Responses in NYC*, 28 J. URBAN & CONTEMP. L. 209 (1985); Flora Sellers Davidson, *City Policy and Housing Abandonment: A Case Study of New York City, 1965-1973*, at ii (1979) (unpublished Ph.D. Dissertation, Columbia University); PETER MARCUSE, *HOUSING IN THE CITY OF NEW YORK: SUPPLY AND*

local quality of life, and declining property values. Other commentators have emphasized that increasing poverty and demographic changes also play a role in abandonment.⁷

Perhaps most important for our discussion, private sector housing follows a simple rule: to remain as decent, well-maintained private housing, buildings must have a cash flow sufficient to maintain viability.⁸ The decision to abandon a building is often carefully calculated by a landlord who wants to maximize profit. A landlord compares the expected costs of an aging building with the potential profit to be made by providing housing to the very poor. The landlord may decide a few years in advance to abandon a building, after evaluating whether it could be more profitably sold, demolished or reused. Once the decision to abandon is made, the landlord will stop paying property taxes, reducing operating expenses by roughly one-third.⁹ Closer to the expected abandonment date, the landlord will stop maintenance altogether, reducing costs by another one-third.¹⁰ Over a period of about 5 years, it may be possible for a landlord to save approximately 25% of the initial value of the property in operating expenses, as compared with demolition and resale.¹¹

Commentators do not agree on how to avoid abandonment. Some suggest reducing government-mandated expenses such as taxes,¹² water and sewer charges,¹³ and Housing Code compliance. Others suggest limiting liability for dangers inherent in older buildings, like lead paint.¹⁴ While

CONDITION, 1975-1978, at 70 (1979); U.S.G.A.O., HOUSING ABANDONMENT: A NATIONAL PROBLEM NEEDING NEW APPROACHES (1978); LINTON, MIELDS, AND COSTON, INC., A STUDY OF THE PROBLEMS OF ABANDONED HOUSING 2, 7 (1971)).

7. Frank P. Braconi, *In Re In Rem: Innovation and Expediency in New York's Housing Policy* (unpublished paper, on file with author).

8. CITIZENS HOUSING AND PLANNING COUNCIL OF NEW YORK, INC., PRESERVING NEW YORK'S LOW-INCOME HOUSING STOCK 8 (1992).

9. See Michael J. White, *Property Taxes and Urban Housing Abandonment*, 20 J. URB. ECON. 312, 312-30 (1986) (arguing that if land values decline and tax assessment is done every few years, then property taxes represent an increasing portion of the operating costs of low-income housing, enhancing the incentive to abandon).

10. MILLS, *supra* note 5, at 224.

11. See CITIZENS HOUSING AND PLANNING COUNCIL OF NEW YORK, INC., *In Rem: Recommendations for Reform 1* (1981) [hereinafter *In Rem: Recommendations*].

12. See MILLS, *supra* note 5, at 224 (noting that while typical central city property tax liability is only about 2 percent of true market value, "low-quality housing tends to be over-assessed while high-quality housing tends to be underassessed").

13. CITIZENS HOUSING AND PLANNING COUNCIL OF NEW YORK, INC., PRESERVING NEW YORK'S LOW-INCOME HOUSING STOCK 2 (1992) (arguing that "[c]urrent metering and fee schedules fail to encourage resource conservation and are highly regressive in their economic impact") [hereinafter PRESERVING].

14. See Lloyd Chrein, *Unhappily Ever After, Good Intentions Can't Save Some Landlords from Losing Their Buildings*, N.Y. NEWSDAY, Jan. 13, 1995, at D1 (reporting that the cost of abating lead has increased to a minimum of \$2,000; costs may reach \$15,000 if a resident child is found to have elevated lead levels). See also Matthew Purdy, *New York Girding for Surge in Suits over Lead Paint*, N.Y. TIMES, Aug. 14, 1995, at A1.

some suggest that rent restrictions be removed so that rents can be increased, and/or that tenants be subsidized so that they can afford higher rents, others argue that improving City enforcement of tax and code laws will force landlords to maintain habitable housing.¹⁵

B. Abandonment in New York City

Abandonment hit New York City's neighborhoods like a firestorm.¹⁶ Cash flow problems have arisen for the City's landlords for a variety of reasons: incomes among the poor and working classes have not kept pace with inflation, public assistance payments have generally fallen behind housing costs,¹⁷ housing costs have increased dramatically, rent regulation has limited the revenue in some buildings, and the City's population has declined.¹⁸ Adding to the severity of the problem, many of the abandoned buildings in New York are occupied or partially occupied, while abandoned buildings in other cities are generally vacant.¹⁹

It was clear by the mid-1970s that New York City had an abandonment crisis. In 1976, the City owned 4,611 multifamily buildings through *in rem* proceedings.²⁰ More than a fifth of the City's multifamily residential properties were in arrears. Fourteen percent of those in arrears had been delinquent for more than three years, making them subject to foreclosure proceedings after three years.²¹ In most cases, the City could not assume responsibility for buildings until such proceedings were final. They frequently lasted as long as two years and buildings continued to deteriorate in the interim as landlords milked them for rent.

The New York City Council responded to the crisis in 1976 by passing Local Law #45,²² authorizing *in rem* tax foreclosure by the City against property owing one year or more in real estate taxes.²³ The City soon became the owner of approximately 11,700 residential multiple dwellings,

15. THE COMMISSION ON THE YEAR 2000, *NEW YORK ASCENDANT* 145 (1987) (advocating strong enforcement of housing laws: "Our theme. . .that every lawbreaker's encounter with the law must be taken seriously should apply as strongly to landlords as we argue it should to muggers").

16. See Sam Howe Verhovek, *After Exodus, Hope Comes to a South Bronx Block*, N.Y. TIMES, Nov. 10, 1987, at B1 (describing, in detail, the abandonment of one block).

17. Jack Newfield, *THE PERMANENT GOVERNMENT: WHO REALLY RULES NEW YORK?* 268-69 (1981). See also, Alan Finder, *Barely Four Walls: Housing's Hidden Crisis*, N.Y. TIMES, Oct. 11, 1996, at B1.

18. IN REM: Recommendations, *supra* note 11, at 1.

19. MICHAEL STEGMAN, THE CITY OF NEW YORK DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, *HOUSING AND VACANCY REPORT: NEW YORK CITY, 1987*, at 207 (1988). See also Robert Friedman, *For Too Many, There's No Place Like Home*, N.Y. NEWSDAY, Jan. 22, 1989, at 5.

20. Hovde, *supra* note 4, at 23-24.

21. *Id.* at 23.

22. Harry DeRienzo and Joan B. Allen, *The New York City In Rem Housing Program: A Report 4* (1985) (unpublished report prepared for the New York Urban Coalition, on file with author).

23. N.Y.C. ADMIN. CODE § 11-412 (1976).

home to about 35,000 households.²⁴ Local Law #45 was both intended as a tax enforcement measure against delinquent landlords and as a means to preserve low- and moderate-income housing by seizing marginal properties prior to their severe deterioration.²⁵ Although Local Law #45 was not intended to make the City into a landlord of last resort for low-income tenants, it had that effect.²⁶

The City also took steps to revamp the administration of housing services. In 1976, the Council established the Department of Housing Preservation and Development (HPD) to replace the Housing Development Administration (HDA) as the City's housing arm.²⁷ Two years later, the Council transferred jurisdiction for the daily management, maintenance, repair, treatment and disposition of all residential City-owned properties from the Department of General Services to HPD's Office of Property Management (OPM).²⁸

Abandonment remained a problem throughout most of the 1980's, until 1988, when the strengthening economy increased housing demand and slowed the rate of abandonment.²⁹ However, abandonment remains a chronic problem in New York City. Between 1990 and 1991, tax delinquencies of Bronx walk-ups increased by 44 percent, and of Manhattan walk-ups by 32 percent.³⁰ A recent study of housing disinvestment in New York City found that many poor neighborhoods continued to have a substantial risk of mass abandonment.³¹ The report concluded that "[e]ighteen of the city's 59 community districts face high risks, [in] either a combination of high tax arrears and mortgage foreclosures or an unusually high rate of tax arrears," with the South Bronx, Harlem, and East Brooklyn—already damaged by

24. THE CITY OF NEW YORK DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, *In Rem* Housing Program, First Annual Report, at iii (1979) [hereinafter FIRST ANNUAL REPORT].

25. STEGMAN, *supra* note 19, at 207.

26. See generally Carol Felstein & Michael A. Stegman, *Toward the 21st Century: Housing in New York City* (May 1987) (unpublished report prepared for the Commission on the Year 2000, on file with author).

27. Luis Sierra, *The Contribution of New York City's Task Forces and Working Groups to City-Owned Housing Policy, 1978 to the Present*, in HOUSING IN THE BALANCE: SEEKING A COMPREHENSIVE POLICY FOR CITY-OWNED HOUSING 7 (Michele Cotton ed., 1993). HDA had been created in 1967 as a super-agency to deal with New York City's housing.

28. *Id.*

29. Anthony DePalma, *Pace of Building Abandonment Tumbles*, N.Y. TIMES, July 10, 1988, § 10, at 1.

30. See PRESERVING, *supra* note 13, at 8 (citing NEW YORK CITY DEPARTMENT OF FINANCE, ANNUAL REPORT ON THE NEW YORK CITY REAL PROPERTY TAX, FISCAL YEAR 1992). At the end of fiscal 1991, 14,634 walk-up apartment buildings were in arrears. *Id.* While the number of walk-up buildings in arrears has not changed significantly during the past several years (prior to the issuance of this report), the average amount of those arrears has increased from \$1,922 to \$3,034. *Id.*

31. VICTOR BACH & SHERECE Y. WEST, COMMUNITY SERVICE SOCIETY OF NEW YORK, HOUSING ON THE BLOCK: DISINVESTMENT AND ABANDONMENT RISKS IN NEW YORK CITY NEIGHBORHOODS 28 (1993).

earlier waves of abandonment—most at risk.³² A 1992 report noted that in the twenty poorest community districts nearly one out of every seven units of privately owned rent-regulated housing was in immediate jeopardy of lapsing into abandonment.³³ Abandonment has worsened in recent years. Each year, the City loses about 15,000 units to abandonment, fire, and aging while gaining about 5,000 new households.³⁴

C. Vesting

Vesting, the acquisition of properties by the government through legal action for non-payment of property taxes, has become a focal point for the debate regarding the fate of the private sector housing market.³⁵ Vesting highlights the private, for-profit sector's failure to provide adequate housing for low-income tenants. As such, it is the first point in the process of abandonment at which commentators may ask: is the for-profit private sector the best landlord for low-income households?

Tax delinquent housing does not automatically belong to the municipality. Rather, the city must choose to take ownership of it. The city may choose to vest tax-delinquent property in order to maintain a credible threat to landlords who find it convenient to be delinquent.³⁶ It may also choose to vest delinquent property to protect the health and safety of tenants in abandoned buildings. Timely vesting also allows the city to take

32. *Id.* at 8.

33. PRESERVING, *supra* note 13, at 1 (finding that of 350,000 units in those districts, 50,000 were in immediate jeopardy of abandonment).

34. Philip Lentz, *City Preparing Zoning Changes to Lift Buildings: Housing Urgency Prompts Proposals Aimed at Relaxing Curbs on Developers*, CRAIN'S N.Y. BUSINESS, Nov. 11, 1996, at 1.

35. Stegman, *supra* note 19, at 207. Prior to vesting, the City typically sends a number of warnings to landlords who are delinquent in their tax payments. The City also makes available several opportunities to reclaim their buildings before final vesting. The City has installment agreements for owners (10 percent down; payment over 12 years). In the past, the City had allowed, although only with Board of Estimate approval, owners to redeem buildings up to four months after final vesting. From 1978 to September 1982, the owners of 21,311 buildings had entered into installment agreements and only 2.7 percent had their buildings repossessed. Ronald Smothers, *New Law Reduces Brooklyn Tax Foreclosures*, N.Y. TIMES, Sept. 12, 1982, § 8, at 7.

Later, the redemption policy became more generous. In 1986, the City allowed owners two years to reclaim title from the City. In the first four months, owners could have 'mandatory redemption' if they paid their arrearage or made a long-term payment agreement. After that initial period, redemptions could only occur at the City's discretion. Philip S. Gutis, *City To Seize 7,500 Occupied Apartments in Brooklyn*, N.Y. TIMES, Apr. 13, 1986, § 8, at 7.

In the 1990s, the City stopped vesting. The City does, however, file a notice to foreclose when a property is 12 months overdue if its annual tax bill is \$2,750 or more. Shawn G. Kennedy, *New York City Stops Foreclosing On Tax-Delinquent Buildings*, N.Y. TIMES, Mar. 13, 1995, at B1.

For a history of early vesting legislation, see Nancy A. Brownstein, *The Warranty of Habitability as Applied to New York City In Rem Housing*, 50 BROOK. L. REV. 1103, 1105-06 (1989).

36. See Smothers, *supra* note 35, at 7.

control of buildings earlier in the abandonment cycle, therefore saving on repair costs and assist tenants earlier.³⁷ Too liberal a vesting policy, however, increases the pressure on the city to efficiently and effectively manage vested properties. As a result of these pressures, very few municipalities choose to vest tax-foreclosed housing, preferring instead to auction it off.³⁸

New York City's policy toward vesting has changed over time as it balances these competing needs. In the late 1970s, the City began to reevaluate its policy of auctioning off *in rem* housing to the highest bidder. The City discovered that such auctions were not generating any net revenues as purchasers failed to pay taxes or repay City-provided mortgages.³⁹ The City halted auctions in 1978.⁴⁰ The next year, HPD vested about 14,000 buildings.⁴¹ This sudden increase in the *in rem* stock caused "a great fear" that the decline of privately owned housing would cause New York City, emerging from a debilitating fiscal crisis, to again be "plunged into ruin," this time by the demands of a collapsing rental market.⁴² As the managerial demands on HPD became overwhelming, it became HPD policy to avoid increasing its stock of vested units.⁴³ Willingly or not, however, HPD continued to receive more *in rem* properties: in some years in the 1970s and early 1980s, the City was vesting 10,000 to 30,000 units at a time.⁴⁴

Once it was clear the City would continue vesting abandoned property, HPD's policy shifted. Rather than trying to avoid vesting altogether, it attempted to limit the rate of growth to one which the City could handle.⁴⁵ Though vesting remained irregular, the City had vested nearly 46,000 occupied units of *in rem* housing by 1984.⁴⁶

37. Paul A. Crotty, *New York City Has Been Making Major Strides as a Landlord*, N.Y. TIMES, Mar. 1, 1988, at A22.

38. See THE CITY OF NEW YORK, *BREAKING THE In Rem Cycle: The Giuliani Administration's Proposal to Reshape NYC's Property Tax Enforcement and Housing Preservation Policies 5* (1995) (finding that only 3 of 26 responding cities own and manage occupied properties) [hereinafter *PRESERVATION POLICIES*].

39. See FIRST ANNUAL REPORT, *supra* note 24, at 2 (reporting that an HPD study of 885 residential multiple dwellings sold at auction from January, 1976 through February, 1978 disclosed 90% were delinquent in either tax or purchase money mortgage payments, or both, as of early 1979; of the delinquent properties, 43% had never made a single tax payment and 31% were already four or more quarters in arrears and eligible again for foreclosure). See also Brownstein, *supra* note 35, at 1107.

40. FIRST ANNUAL REPORT, *supra* note 24, at 3.

41. DePalma, *supra* note 29, at 1.

42. Felstein & Stegman, *supra* note 26, at 28.

43. *Id.* at 29.

44. Alan S. Oser, *Taking Steps to Head Off Abandonment*, N.Y. TIMES, Mar. 29, 1992, § 10, at 5.

45. Alan S. Oser, *Approach to Rehabilitation of West Harlem's Housing*, N.Y. TIMES, Oct. 10, 1980, at A23.

46. Stegman, *supra* note 19, at 206.

Commentators urged regular vesting as a way to avoid protracted abandonment and the consequent hardship for tenants and on the buildings themselves.⁴⁷ In 1984, New York City decided to vest annually in each borough.⁴⁸ This consistency increased tax collection rates, encouraged owners to pay their taxes in order to redeem their buildings, and resulted in the City garnering successively fewer buildings and lots.⁴⁹

By 1992, HPD's annual vestings averaged about 5,200 units within 400 to 500 buildings and the rate of building intake was roughly equal to the rate of disposition. This period of relative stability ended with the recession in the early 1990s. Defaults again began to rise, and buildings in serious tax arrears grew from 13,737 in 1989 to 18,003 in 1993.⁵⁰ The City responded to this increase by ceasing vesting altogether. It has not vested any buildings since 1993.⁵¹

Though it ceased vesting in 1993, the City had already taken ownership of an immense stock of housing and will continue to own it for the foreseeable future. Therefore, it is important to evaluate the City's policy towards the *in rem* properties for which it is currently responsible.

D. The DAMP Programs

When HPD became responsible for *in rem* properties in 1978, its newly established Office of Property Management became, in effect, the new landlord for *in rem* tenants.⁵² As such, OPM has been responsible for management, repair and renovation of City-owned housing, as well as for finding emergency housing for displaced tenants.⁵³ This office is also responsible for developing and operating programs to return these properties to private ownership.

HPD's First Annual Report in 1979 summed up OPM's first year's accomplishments:

- developed a maintenance delivery system
- developed a comprehensive program for long term treatment and disposition
- surveyed and categorized its holdings

47. Felstein & Stegman, *supra* note 26, at 36; Andrew Scherer, *Is There Life After Abandonment? The Key Role of New York City's In Rem Housing in Establishing an Entitlement to Decent, Affordable Housing*, 13 N.Y.U. REV. L. & SOC. CHANGE 953, 962 (1984).

48. Stegman, *supra* note 19, at 207.

49. See DePalma, *supra* note 1, at 1.

50. Shawn G. Kennedy, *Defaults Rise, Posing Peril for Housing*, N.Y. TIMES, May 31, 1994, at B1.

51. Kennedy, *supra* note 35, at B1. The City has, however, sold some tax liens to a private investment trust. Alan S. Oser, *New York City Shifts Tactics on Troubled Housing*, N.Y. TIMES, June 16, 1996, §9, at 1; see also, Oser, *supra* note 2, at 7.

52. CITY OF NEW YORK, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, MATERIAL IN SUPPORT OF THE REPORT ISSUED BY THE MAYOR'S PRIVATE SECTOR SURVEY 2-3 (Sept. 1989) [hereinafter SUPPORT].

53. FIRST ANNUAL REPORT, *supra* note 24, at 2.

- created decentralized local offices
- hired real estate managers
- developed alternative management and sales programs
- developed a program to move tenants to refurbished apartments.⁵⁴

HPD acknowledged that the creation of OPM signalled a move away from a rapid disposition strategy:

The establishment of the Office of Property Management within HPD signified this Administration's change in attitude towards the treatment of the City's owner-abandoned housing stock. It represented a recognition that the City's long term housing objectives could only be served by a planned treatment and disposition program which took into account local neighborhood development efforts and the existence of other complementary housing programs and initiatives in developing comprehensive treatment and disposition strategies.⁵⁵

At the same time that it was rehabilitating *in rem* housing, HPD wanted to continue disposing of it. The Division of Alternative Management Programs (DAMP) was created in 1978 to fill that need. DAMP was designed to dispose of *in rem* buildings to community organizations, tenant associations, individuals, private real estate firms, and the NYC Housing Authority. Its stated goal was to select managers and owners who could operate these buildings responsibly.⁵⁶

At its conception, DAMP consisted of only two programs: the Community Management Program (CMP), in existence since 1972, and the newly created Tenant Interim Lease Program (TIL). At that time, these two programs were responsible for 85 buildings with 1700 units.⁵⁷ Within a year, four new programs were added and 413 buildings with 8,200 units were turned over to DAMP.⁵⁸

HPD identified its goals for DAMP programs as the following:

- providing decent and adequate housing to tenants in City-Owned buildings
- training, supervising, and testing private organizations in housing management and maintenance to assure that they are qualified to manage and subsequently purchase City-owned property
- conveying properties—stabilized and upgraded through a period of responsible management—to private groups

54. *Id.* at 3-4.

55. *Id.* at 11.

56. *Id.* at 30.

57. *Id.*

58. *Id.*

- returning *in rem* properties to the City's tax rolls.⁵⁹

DAMP attempted to develop creative solutions to the problem of disposing *in rem* units. Each DAMP program relied on a different type of housing manager, hoping to maximize the number of organizations that could take responsibility for some portion of New York City's low-income housing stock.

The oldest program, CMP, was designed to actively involve tenants and community members in the maintenance and day-to-day management of buildings in deteriorating neighborhoods. CMP contracted with locally-based non-profit community organizations, placing each organization in control of managing and upgrading 100 to 350 units of City-owned housing in 1978.⁶⁰

Under TIL, organized tenant groups living in City-owned buildings could sign an 11-month, renewable lease with HPD which allowed them to manage and maintain their buildings from the proceeds of the rent rolls. This program was designed to "promote and develop self-management skills among tenants."⁶¹ Unlike the other programs established in the 1970's and 1980's, this program is still in operation today.

DAMP's new programs targeted other types of housing providers. The 7A Extension Program provided "court appointed administrators managing privately-owned buildings with a legal basis for continuing to manage their properties after they become City-owned."⁶² Under the Management in Partnership Program (MIPP), HPD contracted with established "housing management organizations (the Senior Partners) to provide four inexperienced community based groups (the Junior Partners) with the training necessary to make them successful housing managers."⁶³

The HPD-NYC Housing Authority program (HPD-NYCHA) was intended not only to improve the *in rem* stock, but also "to protect the investment of the Federal Government" in neighborhoods in which public

59. *Id.*

60. *Id.* at 31. CMP, like POMP, faced public criticism. See, e.g., Jacqueline Rivkin, *Tenants Fault Equity Program on Maintenance*, N.Y. NEWSDAY, Jan. 2, 1990, at 21. It was slated for discontinuation in 1995. See Ann Henderson, *Low Income Tenant Cooperatives: Can They Survive?*, in HOUSING IN THE BALANCE: SEEKING A COMPREHENSIVE POLICY FOR CITY-OWNED HOUSING 66 (Michele Cotton ed., 1993).

61. FIRST ANNUAL REPORT, *supra* note 24, at 34.

62. *Id.* at 36. See also Lisa W. Foderaro, *City's 7-A Administrators Help Neglected Buildings*, N.Y. TIMES, Jan. 12, 1986, § 8, at 7.

63. FIRST ANNUAL REPORT, *supra* note 24, at 37. See also Alan S. Oser, *Management of City-Held Properties*, N.Y. TIMES, Nov. 27, 1981, at B27 (describing one senior partner's experience in running a community-based management group). The City tried another for-profit/not-for-profit partnership later in the 1980s, the Neighborhood Ownership Works (NOW) program. See Penny Loeb, *City Tops Slumlord Business: Study Shows Worst Housing Operated by Government Agency*, N.Y. NEWSDAY, Jan. 3, 1993, at 6. NOW was soon terminated. TASK FORCE ON CITY-OWNED PROPERTY, THE *In Rem* Organizer's Sourcebook 7 (Michele Cotton ed., 2d ed. 1995) [hereinafter *In Rem Organizer's Sourcebook*].

housing was located.⁶⁴ This program had two components. In the first, the Housing Authority Management Program (HAMP), HPD contracted with the New York City Housing Authority (NYCHA) for management and moderate rehabilitation of occupied City-owned buildings neighboring NYCHA projects. In the second component, the Housing Authority Rehabilitation Program (HARP), NYCHA rehabilitated substantially vacant City-owned buildings near public housing projects and took ownership of them.⁶⁵

The final program, the Private Ownership and Management Program (POMP), sold buildings to for-profit landlords. This program is described in detail below.

In all of these programs, the City intended for the alternative managers to have wide latitude in day-to-day management of the buildings under their control. DAMP reserved for itself the ultimate responsibility of monitoring performance. To this end, DAMP established three oversight units: Fiscal, Technical Services and Rent Restructuring.⁶⁶

The City also directly managed a substantial amount of the *in rem* stock through OPM's Division of Property Management.⁶⁷ No one, including senior HPD officials, has characterized HPD as an effective manager of housing. While some have criticized HPD as the worst possible landlord,⁶⁸ others have noted that it is sometimes better than private sector providers.⁶⁹

II.

THE PRIVATE OWNERSHIP AND MANAGEMENT PROGRAM (POMP)

Under POMP, the City sold *in rem* buildings to for-profit landlords. The City abandoned this program during the Dinkins administration due to repeated outcry by tenants and their advocates, negative findings by the Comptroller's Office, and extensive litigation. Despite the failure of POMP, the Giuliani administration recently revived sales to for-profit landlords under a new program, the Neighborhood Entrepreneurs Program (NEP). An examination of POMP provides some evidence of how NEP is likely to fare.

64. FIRST ANNUAL REPORT, *supra* note 24, at 41.

65. *Id.*

66. *Id.* at 43.

67. DePalma, *supra* note 1, at 1.

68. *Id.* at 1; PETER D. SALINS, SCARCITY BY DESIGN 127 (1992); Loeb, *supra* note 63, at 6.

69. See e.g., Harry DeRienzo, *Conclusion*, in HOUSING IN THE BALANCE: SEEKING A COMPREHENSIVE POLICY FOR CITY-OWNED HOUSING 74, 87-88 (Michele Cotton ed., 1993).

A. *The Origins of POMP*

In 1979, New York City was spending over \$50 million per year to maintain 33,000 *in rem* units. HPD contacted some of the City's larger real estate management firms to determine if they would be willing to manage the City's stock on a 'pro bono' basis. After the firms declined to participate in this initiative, HPD contacted smaller firms with experience managing fifty- to seventy-five-year-old properties in low-income areas. Some of these firms expressed an interest in managing and buying *in rem* units.⁷⁰

HPD inaugurated POMP to take advantage of this private sector interest. According to Mayor Koch, POMP was

designed to encourage not only good management of City-owned properties, but also their eventual return to the tax roll. We need the experience and commitment of the responsible private real-estate sector to get these buildings into decent shape after years of neglect by their former owners and to ensure that proper, efficient management will be the rule during the contract and after sale.⁷¹

Through POMP, the City turned over *in rem* buildings to for-profit managers who would oversee City-funded rehabilitation and, in time, take ownership of them. POMP's mission expanded to ensure that the buildings remained as low- and moderate-income rentals and to make more housing available to homeless families.⁷²

To find stable real estate firms that were managing at least 100 units, HPD advertised in newspapers. These firms were required to submit a Request for Qualifications (RFQ) outlining their staffing, experience, and the histories of the buildings they managed or owned.⁷³ The POMP staff confirmed the information on the RFQ, made unannounced visits to a sample of the properties managed by the firm, and checked to ensure that the POMP applicant had never owned a building taken by the City for tax arrears.⁷⁴ The RFQ and the results of the inspections then went to an HPD committee, which made the final selection of firms to be awarded POMP contracts.⁷⁵

70. Diane Adler, *HPD's Private Ownership And Management Program*, N.Y. AFFAIRS, Fall 1986, at 117, 118-19.

71. *Id.* at 117.

72. CITY OF NEW YORK, OFFICE OF THE COMPTROLLER, AUDIT REPORT ON THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT'S PRIVATE OWNERSHIP AND MANAGEMENT PROGRAM ME 89-106, at 1 (Apr. 26, 1991) (report prepared by the Bureau of the Audit, on file with author) [hereinafter *AUDIT*].

73. *Id.* at 1.

74. CITY OF NEW YORK DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, *In Rem* Housing Program, Second Annual Report 12 (1980) [hereinafter *SECOND ANNUAL REPORT*].

75. *AUDIT*, *supra* note 72, at 2. The committee looked for firms that possessed the following characteristics: experience in the management of older, multi-family residential

After receiving approval from the HPD committee, the firm could choose buildings from the POMP-eligible building list. POMP-eligible buildings were lower risks than most of the other occupied buildings in the City's hands: they had high actual or potential occupancy rates, they were located on blocks where abandonment had not yet become widespread, and they were in relatively good condition. To be designated a POMP building, HPD also had to determine that its inclusion in POMP would contribute to the stabilization of the neighborhood.⁷⁶ Finally, HPD required that the firm choose buildings close to those that it already owned.⁷⁷ HPD distributed flyers throughout each POMP-eligible building, alerting tenants that their building was being considered for placement in the program.⁷⁸

Once the firm selected a building, the building's tenants were notified and met with POMP officials, who introduced the private contractor and presented the proposed rehabilitation and repair plan.⁷⁹ At the same time, POMP staff would obtain a list of the building's outstanding 'hazardous' and 'immediately hazardous' housing code violations from HPD's Division of Code Enforcement. The POMP staff and the POMP contractor conducted independent inspections of the building before negotiating a one-year repair plan and budget. The plan and budget were fashioned into a two-stage contract that would then be submitted for approval.⁸⁰

In the first stage of the process, the City executed a one-year management contract with the firm. The firm received a fee to manage the property and supervise City-funded building renovations. The goal of this one-year, subsidized management contract was to ready the building for sale to the firm. The City provided funding for major repairs and to cover any negative cash flow in the first six months of operation.⁸¹ Although POMP began with low subsidy levels, the funding for rehabilitations increased dramatically over the years, from \$500-\$1000 per unit in 1979 to as much as \$15,000 per unit in 1991.⁸²

buildings; experience in the neighborhoods in with a number of City-owned properties appropriate for POMP; ability to foster a co-operative relationship with tenants; technical ability to identify and correct structural problems; and administrative expertise in management, repair, personnel and record-keeping activities. Community Service Society of New York, *The Alternative Management Programs: A Housing Resource Guide* (Feb. 1980) (unpaginated guide, on file with author) [hereinafter *Alternative Management Programs*].

76. AUDIT, *supra* note 72, at 2.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Alternative Management Programs*, *supra* note 75.

82. When POMP began, HPD provided \$500-1,000 per unit for rehabilitation. Beverly Cheuvront, *POMP's Broken Promises*, CITY LIMITS, Aug.-Sept. 1988, at 12, 13. In its second year, POMP provided rehabilitation funds of \$570-2,468 per unit. SECOND ANNUAL REPORT, *supra* note 74, at 12. By 1986, approximately \$4,000 per unit was available. Adler,

In order to monitor POMP firms, HPD required that they complete Monthly Management Reports (MMR) and Contracting Agency Monthly Fiscal (CAMF) reports.⁸³ The MMR indicated the number of apartments rented, the number under repair, and the number vacant. The MMR also reported, by apartment, any legal proceedings against tenants.⁸⁴ The CAMF listed the total repair payments for each building and showed the balance of the monies allotted by HPD to the firm under the contract.⁸⁵

To attract for-profit landlords, rental rates had to exceed the cost of running the building. Prior to being sold, City-owned buildings were exempted from rent control or rent stabilization laws, and rents in occupied apartments were generally "restructured" (raised) to market levels.⁸⁶ Rents in vacant apartments were lifted to near market rent.⁸⁷ To offset the effects of these restructured rents, the City set aside about 30% of the vacant units for homeless families and placed an income cap on new tenants so that the housing was available only to moderate- and low-income families.⁸⁸

Near the expected sale date, POMP staff determined whether the rent roll was sufficient to cover the monthly operating costs of the building.⁸⁹ HPD staff also inspected the apartments to determine whether the POMP contractor had corrected the hazardous and immediately hazardous violations that were outstanding at the beginning of the contract.⁹⁰

After the first year, the City sold buildings to those firms whose performance had satisfied HPD.⁹¹ The POMP contractors who bought the

supra note 70, at 122. By 1989, the City provided between \$5,000-12,000 per unit for rehabilitation. Citizen's Housing and Planning Council, Housing Network 26 (undated newsletter, on file with author). *See also*, Barry Meier, *City on the Brink: Housing Hope for Harried Tenants*, N.Y. NEWSDAY, Jan. 24, 1989, at 6 (reporting that a POMP landlord received \$11,700 per unit for rehabilitation); Barry Meier, *POMP and Circumstances: City Effort Gets Mixed Evaluation*, N.Y. NEWSDAY, Jan. 24, 1989, at 6 (reporting that landlords received as much as \$15,000 per unit for rehabilitation). While these numbers are not adjusted for inflation, they do indicate a real increase in funding.

83. AUDIT, *supra* note 72, at 2.

84. *Id.* These included notices of eviction sent, warrants, evictions, or settlements.

85. *Id.*

86. Chevront, *supra* note 82, at 15-16. The authority to remove rent protections is found in the N.Y.C. ADMIN. CODE, §§ Y51-3.0[e][2][f]; YY51-3.0[a][1][a]. Although HPD maintained that no one was to be evicted because of inability to afford the rent, it is undocumented whether this policy was enforced and whether its compliance was monitored.

87. Some commentators noted that such a policy may create an incentive to evict tenants during the first stage of the contract in order to replace them with tenants who could afford higher rents. Chevront, *supra* note 82, at 13. *See also* Hovde, *supra* note 4, at 51.

88. Alternative Management Programs, *supra* note 75.

89. AUDIT, *supra* note 72, at 2.

90. *Id.*

91. HPD kept broad discretion as to what was 'satisfactory.' The POMP guidelines noted only that "HPD may terminate the POMP lease, the POMP contract and any participation by the POMP contractor in POMP if HPD determines that the POMP contractor's performance has been unsatisfactory." City of New York Department of Housing Preservation and Development, Proposed POMP Regulations, § 404 (a) (undated guidelines, on file with author).

City's buildings entered the second stage of the contract. Buildings were generally sold for \$2,500 per unit.⁹² HPD stopped monitoring the building at this point,⁹³ although it required that the firm obtain HPD's written approval before it could sell, refinance, transfer, exchange, assign or lease all or substantially all of its interest in the building for the first ten years of the mortgage.⁹⁴ In addition, HPD forbade firms from converting POMP buildings to cooperatives or condominiums for fifteen years after the sale unless the firm first secured HPD approval.⁹⁵

After the building was sold to the private firm, rents were once more controlled or stabilized.⁹⁶ State or federal subsidies were generally provided to eligible in-place tenants who could afford the new rents, although these subsidies were not available for all POMP tenants.⁹⁷

B. *The Growth of POMP*

The number of units placed in POMP and the number of firms that became POMP contractors increased dramatically over time. While the size of individual contracts also increased, HPD maintained a low ratio of staff to units in POMP.⁹⁸ Unfortunately, data about POMP's growth was not consistently collected. HPD published annual reports only during the first seven years of POMP's existence. After the last annual report in 1986, sources of data were scattered and the types of data collected changed.

In 1979, POMP's first year, HPD expected that the typical contract would be for 100-150 units to be managed and upgraded by an established management firm for which 200-300 units of City-owned housing would not represent more than one-third of its total workload.⁹⁹ In reality, POMP contracted with two private firms to manage more than a total of 800 units

92. Audit, *supra* note 72, at 2. Prices were sometimes lower than \$2,500 per unit. In one case, a landlord bought a building for \$1,800 per unit. Rita Giordano, *Housing Programs under Tenant Fire*, N.Y. NEWSDAY, Jan. 28, 1991, at 3.

93. In response to a critical audit conducted by the Office of the Comptroller, HPD required owners of former POMP buildings to correct any serious violations. HPD also began to make field visits to all former POMP buildings to assess the conditions of the properties. Audit, *supra* note 72, at 4, 9. However, POMP was defunded soon after these changes were made. See *infra* notes 140-141 and accompanying text.

94. Audit, *supra* note 72, at 2. This was the policy at the time that POMP ended. The previous sales policy, in effect from 1981 through 1986, had a five year bar on resale. This led to some quick profits from resale for at least one POMP firm. See Cheuvront, *supra* note 82, at 16.

95. Audit, *supra* note 72, at 3.

96. N.Y.C. ADMIN. CODE §§ Y 51-5.0(a)(7); YY 513.3.

97. Audit, *supra* note 72, at 2.

98. HPD staffed POMP leanly. At the end of Fiscal Year 1985, it had approximately 471 dwelling units per POMP coordinator. In 1991, it had 621 units per POMP coordinator. Audit, *supra* note 72, at addendum 6.

99. FIRST ANNUAL REPORT, *supra* note 24, at 39.

of City-owned housing in Manhattan and the Bronx.¹⁰⁰ These first contracts stipulated that major repairs would take place within the first three to six months. First round rent restructuring—rent increases—would take place after four to six months. Final restructuring, known as “outtake” rents, would be implemented in the month prior to sale.¹⁰¹

During 1980, four POMP contracts were signed.¹⁰² These four firms, as well as two others which were scheduled to begin their contracts during 1981, were selected from over 75 applications received since the program’s inception. Contracts from POMP’s first year continued to be processed for sale, indicating that HPD was satisfied with contractor performance. In its Second Annual Report, HPD indicated that it believed POMP’s primary goal of stabilizing, rehabilitating, and disposing of City-owned properties to responsible management firms within 12 months was being accomplished.¹⁰³

By the end of its third year, POMP had handled a total of 58 buildings with 1,902 units through contracts with five POMP firms.¹⁰⁴ POMP also completed its first sale, selling 9 buildings with 516 units for \$390,000.¹⁰⁵ This sale was completed without immediately displacing any tenants.¹⁰⁶ During 1981, rents were restructured in 800 units, bringing the cumulative POMP total to 1,215 restructured units.¹⁰⁷ Other buildings were also proceeding through the sales pipeline on schedule.¹⁰⁸

100. *Id.* Stephen Leon, Inc., the first POMP contractor, assumed management of 492 units in Central Harlem and the Bronx on August 1, 1979. Tenants of a 52-unit City-owned building, neighboring a building being managed by Stephen Leon through POMP, petitioned the City to allow that firm to manage their building as well. This request was granted on September 1. Lemle and Wolff, Inc., an established Washington Heights-based firm specializing in moderate rehabilitation, began management of 328 units in Washington Heights on September 1. *Id.*

101. *Id.* at 39-40.

102. The contracts were with two firms that had contracts the year earlier and with two new firms: Lemle and Wolff, Inc. contracted for ten buildings with 340 units; Stephen Leon, Inc. contracted for nine buildings with 510 units; Tecra Management Company, Inc., a company with substantial minority ownership and experience managing HUD-sponsored rehabilitation projects, contracted for nine buildings with 235 units; and 1700 Development Corp., which had experience working with ‘troubled’ properties, in the Bronx, contracted for five buildings with 217 units. SECOND ANNUAL REPORT, *supra* note 74, at 12.

103. *Id.* at 13.

104. NEW YORK CITY, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, *In Rem* Housing Program, Third Annual Report 20 (1981) [hereinafter THIRD ANNUAL REPORT].

105. *Id.* at 21. Stephen Leon, Inc. was the buyer. At the time of the sale, the City expected to receive \$78,180 in tax payments annually. HPD calculated that the City would recoup \$1.8 million over the following fifteen years in tax and mortgage payments, representing a return on investment of 33%. *Id.*

106. *Id.*

107. *Id.*

108. Lemle and Wolff were expected to purchase all 10 buildings with 340 units that they had managed since September, 1979. By the end of FY 1982, 10 buildings with 257 units managed by Tecra, and three buildings with 159 units managed by 1700 Development Corp. were to be sold as well. *Id.*

By its fourth year, POMP had contracted with 8 firms and rehabilitated 72 buildings with 2,500 units. POMP had sold 16 of those buildings, containing 825 units.¹⁰⁹ It still remained a relatively modest DAMP program, with the smallest number of buildings in its portfolio and with fewer units than all DAMP programs except for the soon-to-be-defunct MIPP program.¹¹⁰

In POMP's fifth year, sales continued to be strong, with 22 buildings sold and another 33 buildings in advanced stages of the sales pipeline. At the same time, POMP rent collection increased to 87%, a 10% improvement over the prior year's figure.¹¹¹ Five firms were chosen for POMP contracts that year.¹¹²

In its sixth year, the federal Department of Housing and Urban Development (HUD) presented POMP with an award for National Excellence, the highest award presented in HUD's National Recognition Program for Community Development Partnerships.¹¹³ POMP's sales exceeded \$1,000,000 for the first time as 18 more buildings with 825 units were sold.¹¹⁴ Forty more buildings with 1,467 units were in the sales pipeline.¹¹⁵

POMP sales were being made despite a legal challenge to DAMP's rent restructuring procedures. In *Laureano v. Koch*, tenants in an *in rem* building sought to review and annul rent increases ranging from 50 to 108 percent.¹¹⁶ The judge held for the tenants, determining that HPD's procedures for determining rent increases for *in rem* tenants violated the state constitution. Specifically, the decision held that raising rents without promulgating guidelines, proper notice and adequate tenant consultation was arbitrary, unreasonable, and administratively unlawful. The City responded by promulgating regulations pursuant to the City Charter, and the Court of Appeals dismissed the appeal for mootness.¹¹⁷ As a result of the lawsuit, many expected sales were delayed.¹¹⁸

109. CITY OF NEW YORK, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, *In Rem* Housing Program, Fourth Annual Report 8 (1982) [hereinafter *FOURTH ANNUAL REPORT*].

110. *Id.* at 37.

111. CITY OF NEW YORK, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, *In Rem* Housing Program, Fifth Annual Report 15-16 (1983) [hereinafter *FIFTH ANNUAL REPORT*]. Contrast this with the overall HPD rent collection rate: in 1989, HPD collected about 64% of its rents in the month they were due. SUPPORT, *supra* note 52, at 7.

112. *FIFTH ANNUAL REPORT*, *supra* note 111, at 16.

113. CITY OF NEW YORK, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, *In Rem* Housing Program, Sixth Annual Report 17 (1984) [hereinafter *SIXTH ANNUAL REPORT*].

114. *Id.* Total sales amounted to \$1,041,000.

115. *Id.*

116. *Laureano v. Koch*, 454 N.Y.S.2d 956 (Sup. Ct. 1982), *rev'd*, 473 N.Y.S.2d 445 (App. Div., 1st Dept. 1984), *rev'd as moot*, 479 N.E.2d 821 (1985). For further discussion on *Laureano*, see *supra* notes 357-365 and accompanying text.

117. The court declared the issue moot because the City agreed to promulgate rules. 479 N.E.2d 821 (1985).

118. *SIXTH ANNUAL REPORT*, *supra* note 113, at 31.

In 1985, the program's seventh year, the rent collection rate was 92%.¹¹⁹ Sales hit a new high of 31 buildings totalling 1,001 units, although starts and completions of rehabilitations of units had begun to slow down.¹²⁰

By the end of 1986, POMP had entered into 30 contracts with 23 management firms.¹²¹ In addition, a total of 100 buildings with 4,110 units had been sold through POMP.¹²² In its eighth year, the rent collection rate was 95%.¹²³

Although it began as a small part of DAMP, involving no more than 4% of HPD's occupied units from 1980-1985,¹²⁴ POMP continued to grow in terms of its funding and the number of units placed within it. After 1985, POMP's budget grew dramatically in absolute terms as well as a percentage of the total DAMP budget. By 1989, the year in which additions to POMP ended, POMP received nearly half of the total funds allocated to DAMP.¹²⁵ Nonetheless, POMP sales never matched the expectations that the program had engendered.

In 1988, the City was again sued, this time by an *in rem* tenants association contending that HPD's failure to provide written guidelines for POMP violated constitutional due process requirements.¹²⁶ The plaintiff further claimed that the tenants had no voice in the disposition of their buildings, and that POMP deprived them of affordable housing. The tenants' attorney said that "at a minimum, tenants have to be provided with adequate notice, an opportunity to be heard. We're asking the city to come up with a process of notice."¹²⁷ The court agreed that the tenants were entitled to due process and held that the City had violated the City Charter's procedures for providing the public with notice and the opportunity to be heard.¹²⁸

POMP continued to face problems in implementation. The City's Board of Estimate, responsible for approving the contracts between the City and private POMP firms, was dissolved as a result of a 1989 United States Supreme Court decision.¹²⁹ New procedures for the sale of POMP

119. CITY OF NEW YORK, DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT, *In Rem* Housing Program, ANNUAL REPORT 17 [hereinafter 85/86 ANNUAL REPORT].

120. *Id.* at 47-48.

121. *Id.* at 17.

122. *Id.*

123. *Id.*

124. Citizen's Housing and Planning Council, *The Housing Network*, Part II: Recommendations for Improving HPD's Production and Preservation Programs 26 (undated report, on file with author) [hereinafter *Network*, Part II].

125. Meier, *Mixed Evaluation*, *supra* note 82, at 6.

126. *Union of City Tenants v. Koch*, 574 N.Y.S.2d 695 (App. Div., 1st Dep't 1991). See Larry Bivins, *Tenants File Suit*, N.Y. NEWSDAY, Nov. 11, 1988, at 33.

127. Jessie Mangaliman, *Tenants Get Sale of 2 Buildings Delay*, N.Y. NEWSDAY, Dec. 2, 1988, at 33. See also, Bivens, *supra* note 126, at 33.

128. *Union of City Tenants*, 574 N.Y.S.2d at 696.

129. *Board of Estimate v. Morris*, 489 U.S. 688 (1989).

building became necessary as the responsibility of approving sales fell on the City Council and the Mayor's Office. The next year, the City's Law Department required HPD to completely redraft POMP sales documents. These two changes slowed down sales.¹³⁰

By January, 1991, POMP had sold a total of 230 buildings with 8,393 units.¹³¹ The program had another 4,350 under management.¹³² It had contracts in all five boroughs, but POMP was soon to close its doors.

C. *The End of Pomp*

By the beginning of 1991, public criticism of POMP had eclipsed enthusiasm for the program. POMP was criticized when HPD placed 9 buildings that were sold through POMP under the control of a 7-A Administrator because the landlord had maintained them in extremely poor condition.¹³³ A 7-A Administrator is appointed by a court to manage a building if the owner has failed to manage it properly. This is an extreme measure and is generally taken only if the conditions in the building are dismal.¹³⁴ Nevertheless, Joan Wallstein, the Assistant Commissioner in charge of DAMP, defended the program, claiming that "every *in rem* building is a potential candidate for POMP."¹³⁵

In April 1991, the City's Office of the Comptroller released the findings of a nearly two-year investigation of POMP.¹³⁶ The purpose of the audit was to review the policies and procedures that HPD itself used to measure the performance of POMP.¹³⁷ In other words, the audit sought to evaluate POMP on its own terms. The auditors also reviewed community concerns about excessive evictions in POMP buildings. The audit covered the period December 1979 through October 1990, reviewing nearly the entire period during which POMP existed.¹³⁸

The media highlighted the most disturbing finding of the audit: despite the fact that many POMP landlords had failed to correct dangerous

130. OFFICE OF THE MAYOR, CITY OF NEW YORK, PRELIMINARY MAYOR'S MANAGEMENT REPORT 282 (January 30, 1991).

131. Rita Giordano, *Housing Program under Tenant Fire*, N.Y. NEWSDAY, Jan. 28, 1991, at 3.

132. *Id.* The Office of the Comptroller had a different set of figures. It found that 200 buildings with 7,558 apartments had been renovated and sold through POMP. AUDIT, *supra* note 72, at 3.

133. Giordano, *supra* note 131, at 8.

134. See generally VICKI OPPENHEIM, AN EXAMINATION OF THE 7-A PROGRAM (February 1993) (report prepared for the Community Service Society, on file with author).

135. Giordano, *supra* note 131, at 3.

136. AUDIT, *supra* note 72.

137. *Id.* at 1.

138. *Id.*

building code violations in buildings bought through POMP, the City continued to award POMP contracts to the delinquent landlords.¹³⁹ Community concern over evictions from POMP buildings was also prevalent.

Mayor Dinkins ended POMP in May, 1991 and HPD announced that POMP's funding would be cut from the budget.¹⁴⁰ Although buildings in the pipeline could complete the process, there were delays in the completion of the rehabilitation of several POMP buildings due to structural and other unforeseen physical problems that were discovered after rehabilitation had begun.¹⁴¹

Neither the City nor the advocacy community was completely happy with this result because the underlying problem with *in rem* housing remained: people continued to live in substandard housing. Moreover, the City proposed no significant management model to replace POMP.¹⁴²

D. Evaluating POMP

There have been four comprehensive studies of POMP. The New York City Office of the Comptroller conducted the aforementioned audit, evaluating POMP's compliance with its own procedures and performance goals.¹⁴³ The Mayor's Private Sector Survey was conducted by the business-centered advocacy community and evaluated POMP's efficiency.¹⁴⁴ For the tenant-centered advocacy community, the Task Force on City-Owned Housing conducted two separate surveys that evaluated *in rem* tenants' evaluation of their housing.¹⁴⁵ Before reviewing these four comprehensive studies, we will first consider City officials' own assessments of POMP.

1. City Officials' Self-Assessment

There appears to be very little unadulterated praise of POMP. Diane Adler, a former POMP coordinator, characterized POMP's first years as

139. See, e.g., Manuel Perez-Rivas, *Audit Says City Rewards Lax Landlords*, N.Y. NEWSDAY, Apr. 29, 1991, at 21.

140. Rita Giordano, *Mixed News for Housing Advocates*, N.Y. NEWSDAY, May 18, 1991, at 11; Chris Yurko & Anne Sanger, *POMP Killed*, CITY LIMITS, Aug.-Sept. 1991, at 5.

141. OFFICE OF THE MAYOR, CITY OF NEW YORK, MAYOR'S MANAGEMENT REPORT 201 (September 17, 1993).

142. Giordano, *supra* note 140, at 11.

143. AUDIT, *supra* note 72, at 1.

144. Barbara M. Tillman, Irving H. Kaplan, Rosemarie A. Sabatino, & William J. Voelker, *Housing, Preservation and Development*, in CITY OF NEW YORK, THE MAYOR'S PRIVATE SECTOR SURVEY: THE NEW YORK CITY SERVICE CRISIS, A MANAGEMENT RESPONSE 57 (1989) [hereinafter PRIVATE SECTOR SURVEY].

145. Susan Saegert, *Survey of Residents of Currently and Previously City-Owned Buildings in the Bronx*, in HOUSING IN THE BALANCE: SEEKING A COMPREHENSIVE POLICY FOR CITY-OWNED HOUSING 17 (Michele Cotton ed., 1993) [hereinafter *The Bronx Survey*]; Housing Environments Research Group and The Task Force on City-Owned Property, *The Brooklyn Survey* 14 (draft manuscript, on file with author) [hereinafter, *The Brooklyn Survey*].

achieving mixed results, with 2 of the first 5 private contracts qualifying as 'successful.'¹⁴⁶ One contract in particular was considered very successful, as tenants in a nearby *in rem* building asked the POMP contractor to manage their building as well. As a result of his role in POMP, this POMP contractor was named one of the City's best landlords by *The Daily News* in 1982.¹⁴⁷

Adler argued that POMP, by minimizing red tape and relying on capable real estate firms which eagerly participated in the program, was a cost-effective and time-efficient program for the management, rehabilitation, and disposition of City-owned housing.¹⁴⁸ POMP's per unit allocation of rehabilitation funds was—at least at that time—substantially less than any other DAMP program and buildings were generally sold within sixteen months of signing the contract.¹⁴⁹ Adler stated that the operation and management costs of the POMP buildings were approximately two-thirds the cost of maintaining them by HPD. Other benefits included tax and mortgage payments to the City on these buildings.¹⁵⁰ She also noted, anecdotally, that tenants responded well to POMP landlords, offering as evidence a case where rent collection went from 36% to 80% during the first month of private ownership.¹⁵¹

Other City officials also emphasized the successful elements of POMP. In 1988, Mayor Koch stated that POMP managers "collect rents more efficiently than we do, and they manage repairs a lot better than we do."¹⁵² At the same time, Assistant Commissioner Wallstein stated that all POMP managers were current in their real estate taxes and mortgage payments. She felt that the "key to the success of the whole thing. . .[is] the quality of the selection process for the landlords."¹⁵³ Wallstein later claimed, albeit without citing support, that evictions in POMP were low and the quality of the work was high.¹⁵⁴ Kevin Alter, the director of OPM, found that the "the best thing we do is choose our firms. We want a long-term relationship with the management companies." Alter also noted that POMP had a

146. Adler, *supra* note 70, at 119-20.

147. *Id.* at 120.

148. *Id.* at 122.

149. POMP's rehabilitation monies increased dramatically after Adler wrote this article. See *supra* note 82. Remember also that POMP's selection criteria favored buildings that were in relatively good repair and in better neighborhoods. See *supra* note 76 and accompanying text.

150. Adler, *supra* note 70, at 122.

151. *Id.* at 123.

152. William Murphy, *Reluctant Landlord Wants Out: City Sees Answer in Private Managers*, N.Y. NEWSDAY, Mar. 11, 1988, at 9.

153. *Id.*

154. Rita Giordano, *Housing Program Defended*, N.Y. NEWSDAY, Jan. 29, 1991, at 8. But see AUDIT, *supra* note 72, at 17-18 (finding that POMP had a high eviction rate).

detailed monitoring system in place that included regular reports of evictions, incoming tenants, and repairs.¹⁵⁵ Yet, at least one former HPD official, Joseph Shuldiner, sounded a word of warning regarding the sale of tax-foreclosed buildings to for-profit owners: “[T]he reason why we have so many of these abandoned buildings is that their brethren landlords allowed them to run into the ground. So if you sell them privately, how do you make sure that you sell them to good guys and not bad guys?”¹⁵⁶

2. Office of the Comptroller Audit

Keeping these public statement by City officials in mind, we can now turn to the various external studies of POMP. Of these, perhaps the most comprehensive was the review of POMP conducted by the Office of the Comptroller. The audit identified POMP’s primary goals as the sale of City-owned buildings as low- and moderate-income rentals and the rehousing of homeless families.¹⁵⁷ Taking these goals as broad guidelines, auditors looked for indicators that would identify whether POMP was achieving these goals.¹⁵⁸

Reviewing HPD’s Division of Code Enforcement records, auditors found that HPD consistently entered into new contracts with firms that had serious, uncorrected Code violations issued on buildings that had been purchased through POMP.¹⁵⁹ Six of the nine firms reviewed were awarded POMP contracts subsequent to the purchase of POMP buildings that auditors found to be in gross violation of the Housing Code. The auditors noted that although POMP coordinators did visit former POMP buildings,

155. Cheuvront, *supra* note 82, at 13. For criticisms of POMP’s monitoring system, see notes 165-167 and accompanying text.

156. Giordano, *supra* note 131, at 3.

157. Audit, *supra* note 72, at 1.

158. Auditors considered the following: whether POMP contractors had corrected code enforcement violations placed on buildings purchased through POMP; whether homeless families were placed within POMP buildings; whether POMP staff members visited buildings on a regular basis to check the progress, quality and cost effectiveness of repairs and the quality of management; whether POMP buildings returned to the tax rolls; and whether there were excessive evictions from POMP buildings. *Id.* at ES-2 to ES-4.

159. *Id.* at 6. Auditors selected a sample of 36 of 133 buildings with 1,004 units sold to nine contractors through POMP as of December, 1988. One of the 36 buildings was sold and excluded from the audit. 30 of the 35 remaining buildings had a total of 959 Code Enforcement violations. 102 (11%) of the violations were ‘immediately hazardous’; 627 (65%) were ‘hazardous’; and 230 (24%) were ‘nonhazardous.’ All of the contractors had buildings with hazardous violations and nearly all of the buildings had immediately hazardous violations. Some of the violations were outstanding for over four years. One firm owned a building with 196 violations. That firm was subsequently awarded a POMP contract to manage an additional 17 buildings. *Id.* at 6-7. In response to these findings, HPD noted that the 959 total violations represented less than one (0.96) violation per unit. HPD also noted that four buildings contained 60% of all of the violations. HPD anticipated POMP would soon have lower violation rates, since rehabilitation funding for POMP had been recently increased. *Id.* at addendum 2.

HPD did not require that POMP coordinators obtain a list of code enforcement violations for the buildings visited. Nor did HPD require owners to correct these violations before awarding them new POMP contracts.¹⁶⁰

One of POMP's explicit goals was to re-house homeless families. The auditors found that homeless families were placed in 40% of the total number of available units during the period of the study.¹⁶¹ This was substantially higher than the 30% goal that HPD had set for POMP.¹⁶² Until July 1989, POMP did not have any criteria regarding the placement of homeless families in POMP units.¹⁶³ While this lack of criteria did not interfere with the placement of homeless families in POMP, there was a great deal of variation between buildings in achieving such placement.¹⁶⁴ The auditors found that the absence of regulations resulted in a haphazard program for homeless families.

The Audit criticized POMP's monitoring procedures. According to POMP's policies and procedures, staff members were required to "visit buildings on a regular basis to check progress, quality and cost effectiveness of repairs and quality of management."¹⁶⁵ Yet auditors found little documentation of such visits.¹⁶⁶ They found that this absence of an effective review system interfered with their evaluation of the POMP staff's effectiveness.¹⁶⁷

The auditors also evaluated the rate of return of *in rem* buildings to the tax roll by selling them to for-profit owners through POMP.¹⁶⁸ Auditors found that *all* of the buildings had returned to the tax roll, and only a

160. *Id.* at 7. In its response to the audit, HPD noted that some of these violations may have been tenant-caused, such as illegal window gates, double cylinder locks, fire escape obstructions, etc. HPD deemed it nearly impossible to compel tenants to correct such violations. In HPD's own analysis of the 35 buildings sampled, 119 (16%) of the hazardous and immediately hazardous violations were tenant-caused. *Id.* at 8.

161. *Id.* at 10. These figures are consistent with those compiled by the Task Force survey of tenants. The Bronx Survey, *supra* note 145, at 25.

162. Alternative Management Programs, *supra* note 75.

163. AUDIT, *supra* note 72, at 10. Auditors reviewed the records of 15 POMP buildings with contract period started at some point between December 1986 and 1988. 210 apartments became available in those 15 buildings during the various contract periods. The auditors then compared these findings with the placement records of the Homeless Referral Unit (HRU) for the same period. They found that POMP coordinators had referred 93 (44%) of the available apartments to HRU. Homeless families had been placed into 83 of these apartments (40% of the total number of available apartments). *Id.*

164. In one building, 25 of 27 apartments had been referred by POMP coordinators to HPD's Homeless Referral Unit, yet in three other buildings, only one of 18 apartments had been referred. *Id.* at 11.

165. *Id.* at 14.

166. *Id.* Auditors reviewed the records of seven POMP coordinators responsible for 90 buildings. 52 buildings were without documented inspections. Auditors noted that the regulations did not mandate the frequency of visits. They also noted that when there was documentation, it was detailed and comprehensive. *Id.*

167. *Id.* As of September, 1990, POMP required that its coordinators complete a daily route sheet in order to document all field visits. *Id.* at 15.

168. *Id.* at 16. Auditors reviewed the Department of Finance's records for 133 buildings sold to twenty-one private owners through POMP as of December 1988. *Id.*

handful were in real estate tax arrears of one year or more. None of the owners of those buildings in arrears for a year or more had a current POMP contract at the time of the audit.¹⁶⁹ The auditors found this to be clear evidence that POMP was an effective means of returning *in rem* buildings to the tax roll.¹⁷⁰

In its addendum to the audit, HPD emphasized the fact that no POMP building has ever been re-vested by the City for tax delinquency.¹⁷¹ HPD calculated that the total return to the City after the sale of POMP buildings for the 97 buildings sold from December 1989 through December 1990 would amount to \$22 million. These returns included property taxes, water and sewer charges, sales taxes, down payment, debt service, mortgage taxes, recapture from the federal government of Federal Section 17 grants (which can occur only after the sale of the building), repayments by the POMP contractor of certain rents and interest, and cost avoidance by HPD.¹⁷²

Finally, responding to community and activist concerns, the auditors evaluated the rate and type of evictions in POMP buildings.¹⁷³ The media had highlighted some extreme examples: one POMP manager, Henry Sachs, boasted that he evicted 32 of 34 tenants from a building he managed in the Bronx.¹⁷⁴ HPD kept informed of legal proceedings against tenants through the MMR, which distinguished between proceedings initiated because of nonpayment of rent, those initiated in response to squatting, and those initiated for all other reasons.¹⁷⁵ Auditors found that there were 955 legal proceedings against tenants in the 1,433 units studied (66.6%). 162 of those proceedings ended in marshal-instituted evictions (11.3% of the total number of units; 17% of the number of proceedings initiated).¹⁷⁶

169. *Id.* As of September 19, 1990, only five buildings were in real estate tax arrears of a year or more. After the audit, HPD advised the auditors that those firms which had been in arrears had since paid their taxes. *Id.*

170. *Id.*

171. *Id.* at addendum 7. This was generally true of all DAMP buildings. As of 1989, no DAMP building had ever been returned to the *in rem* cycle. SUPPORT, *supra* note 52, at 25.

172. AUDIT, *supra* note 72, at addendum 7. It is unclear whether such savings were real or illusory because of unaccounted for indirect costs.

173. *Id.* at 17. Auditors reviewed firms' rent rolls and invoices from lawyers hired by eight contractors for a sample of forty-four buildings with 1,433 units from a population of the 133 buildings sold through POMP as of September 1988. They calculated the number of legal proceedings that POMP firms began against tenants that ended in evictions for the period between December 1979 and August 1988. *Id.*

174. Chevront, *supra* note 82, at 13.

175. AUDIT, *supra* note 72, at 17.

176. *Id.* HPD maintained that excessive turnover did not occur in POMP buildings. HPD conducted a study of 118 buildings (4,664 dwelling units) which had been sold prior to Fiscal Year 1988. Of the 118 buildings, information on turnover was returned for 100 (83.8%) buildings with 3,497 dwelling units. HPD reviewed evictions in those buildings for the period July 1, 1988 through June 30, 1989 and found that the total turnover was 10.8% (the turnover rate varied widely between buildings, from as low as 1.7% to as high as 17.4%). This overall figure was almost the same as the citywide rate of 10.4% for a comparable period and for a comparable population (HPD used the turnover rate of those who

Responding to the Audit's finding that the eviction rate in POMP buildings exceeded the City-wide rate, HPD made no apologies for this policy and noted that it was necessary to bring legal actions against alleged squatters and those tenants who, for whatever reason, continued to withhold their rent or some portion thereof.¹⁷⁷ POMP's policy was to stabilize the rent rolls of buildings in order to make them economically viable. One aspect of this stabilization was a firm policy on rent arrears.¹⁷⁸ HPD also noted that it was necessary to attempt to evict those who sold drugs, conducted other illegal activities, and otherwise disrupted the lives of their fellow tenants.¹⁷⁹ It is unclear, however, whether HPD accurately identified which tenants were involved in such activities.

The auditors criticized POMP for failing to give tenants information about potential rental or legal assistance. While POMP claimed that it contacted contractors and tenants when legal proceedings were initiated, there was no evidence of this effort in POMP's records.¹⁸⁰ In its response to the audit, HPD noted that HPD prohibited managers from initiating a nonpayment action against any tenant on a Direct Vendor Payment plan and required the manager to attempt to contact the caseworker before starting an action against a tenant who was receiving other public assistance from HRA.¹⁸¹ Furthermore, HPD stated that rental subsidies were provided to all eligible in-place tenants, although it did not define who was 'eligible.'¹⁸²

3. *The Business-Centered Advocacy Community*

The business-centered advocacy community commissioned the Mayor's Private Sector Survey to study the *in rem* housing programs.¹⁸³ The Survey viewed HPD's mandate to be the recycling of *in rem* properties

moved in during the preceding 12 months). *Id.* at addendum 17. HPD further noted that evictions only took place in 2.9% of the dwelling units. *Id.* at addendum 8. The auditors criticized the HPD study because it only reviewed legal proceedings brought against tenants *after* the buildings were sold to the contractors. The auditors reviewed legal proceedings before the buildings were sold. HPD acknowledged that most legal proceedings were brought prior to the building being sold. *Id.* at 18.

Note also that many tenants leave prior to a court judgment against them. Some may simply agree to leave; others may leave under duress, during the earlier stages of a nonpayment or holdover proceeding.

177. *Id.* at addendum 8. HPD may label licensees as 'squatters.' Note also that tenants may have good reasons for not paying their rent, such as in response to the breach of the warranty of habitability.

178. *Id.* at 17.

179. *Id.*

180. *Id.* at 18.

181. Direct Vendor Payments are paid directly to the landlord by the City's Human Resource Administration. While this practice ensures that landlords receive rents from tenants who might spend it on other legitimate or illegitimate needs, it limits a tenant's ability to exercise any leverage over a landlord who is providing substandard services.

182. *Id.* at addendum 8.

183. PRIVATE SECTOR SURVEY, *supra* note 144, at 1.

and to avoid becoming the landlord of last resort.¹⁸⁴ Specifically, HPD had a goal of reducing its portfolio of occupied buildings to an 'irreducible minimum' number of properties—approximately 10,000 units—to be managed by the City on a permanent basis and used for emergency housing.¹⁸⁵ In order to reach this 'irreducible minimum,' HPD would need to rehabilitate and dispose of 71,000 units through DAMP's existing three programs (TIL, CMP, and POMP).¹⁸⁶ The Survey noted that in 1989 HPD spent over \$134 million per year in direct operating and maintenance costs to manage its occupied properties. Adding overhead costs, the annual amount rose to nearly \$185 million.¹⁸⁷

Among other areas, the Private Sector Survey studied the on-going management of *in rem* properties, particularly as it related to information systems, energy management, and rent collections.¹⁸⁸ The Survey noted that while the vesting of *in rem* buildings had slowed, it continued and was expected to add 3,000 to 4,000 units per year over the next ten years.¹⁸⁹ Yet, DAMP had sold only 16,000 units from 1979 through 1989 and its inventory of unsold buildings continued to rise.¹⁹⁰ This build-up showed that more units were being moved out of central management and placed in the sales pipeline which reduced costs to the City. But it also revealed that HPD was having difficulty selling the buildings. The difficulties were especially acute in the POMP program, where inventory had climbed 480% from 1983 to 1989.¹⁹¹

The Private Sector Survey's authors believed that for each unit recycled, "the City can save \$2,100 in direct operating costs and also return the property to the tax rolls." HPD projected that it could save \$200 million if it recycled 35,000 units from 1990 through 1995.¹⁹²

The Private Sector Survey supported HPD's privatization strategy because its authors believed that community managers are better able to provide "the nurturing that HPD's troubled housing stock needs, and may be able to do so more cost effectively."¹⁹³ While noting that HPD had developed many innovative programs for the disposition of *in rem* buildings, the

184. SUPPORT, *supra* note 52, at 5.

185. *Id.* at 10.

186. *Id.*

187. *Id.* at 3. Costs include fuel, boiler repairs, utilities, superintendent and handy person salaries, supplies, and open market purchase orders. *Id.*

188. The Survey also studied the strategies and programs for recycling properties from HPD to community ownership and the rehabilitation of vacant buildings. "In totality, these areas cover the full life cycle of a building from the time it is vested until recycled into community management. . . ." *Id.* at 5.

189. *Id.* at 2.

190. PRIVATE SECTOR SURVEY, *supra* note 144, at 63.

191. SUPPORT, *supra* note 52, at 10-11.

192. *Id.* at 6.

193. *Id.* at 5.

Survey was skeptical about whether HPD could achieve its goal of recycling 71,000 units between 1990 and 2000.¹⁹⁴

The Survey recommended new strategies to accelerate recycling, including partnership agreements in which HPD and third parties would jointly manage properties and long-term leasing arrangements in which community or for-profit private groups assume complete responsibility for managing the properties.¹⁹⁵ The rationale for these recommendations was to increase the number of groups that could successfully rehabilitate and manage *in rem* buildings.¹⁹⁶

The Private Sector Survey also identified two major areas where all DAMP programs could improve policies and procedures: prompt payments to contractors and after-sales assistance to contractors.¹⁹⁷ The Survey noted that each POMP and CMP manager and contractor who it had interviewed had complained about the length of time it took to be reimbursed.¹⁹⁸

The Private Sector Survey recommended creating a special After-Sales Unit whose staff would be dedicated to monitoring sold TIL, CMP, and POMP buildings. This unit would not only identify buildings that are floundering to help prevent them from 'going under,' but would also document whether private POMP managers were adhering to the ten-year and fifteen-year sales restrictions.¹⁹⁹ Acknowledging the political climate, the Survey noted that the ability of POMP to achieve future sales would be jeopardized if private managers did not adhere to the sales restrictions.²⁰⁰ It was also proposed that this After-Sales Unit could become a clearing-house of information and referral for DAMP contractors.²⁰¹

This After-Sales Unit would also be able to take on an increasingly important role if HPD attempted to increase the rate of disposition. If it were to quadruple its rate of disposition, HPD would need to abandon its slow, low-risk approach to selling buildings (an approach that resulted in the foreclosure of very few buildings sold through DAMP) in favor of a faster, riskier approach.²⁰² The After-Sales Unit would then act as a monitor of this riskier approach. The Survey noted that DAMP already had the groundwork laid for such a program: its Sales Unit monitored the water, sewage, and tax payment rates of sold CMP and TIL buildings, notified

194. *Id.* at 6.

195. Other strategies included subsidy agreements in which third parties are given incentives to manage against pre-determined cost and performance standards, purchase options for partnerships between locally based non-profit housing developers, and the creation of an apprenticeship program. PRIVATE SECTOR SURVEY, *supra* note 144, at 63.

196. *Id.* at 64.

197. SUPPORT, *supra* note 52, at 21.

198. *Id.* at 22.

199. *Id.* at 26.

200. *Id.*

201. *Id.* at 24-25.

202. *Id.* at 25.

tenant associations and community non-profits of delinquencies, and urged them to approach the Department of Finance to negotiate a payment schedule if they were behind in these payments.²⁰³

The fact that so many buildings were old and in dismal condition led some pro-POMP landlords to advocate for even higher rehabilitation subsidies.²⁰⁴ Some POMP landlords explicitly stated that they were more interested in reaping potential profits from appreciation and were less interested in securing ongoing profits from rent rolls.²⁰⁵ Such an interest raises the spectre of speculation and of the higher rents that would necessarily follow from any such sales. However, this interest in subsidized rehabilitation is criticized by laissez-faire academics who, while believing that the private sector should own and operate low-income housing, also believe that subsidies to private sector landlords interfere with the existing for-profit low-income housing market, to the detriment of low-income tenants.²⁰⁶

The authors of the Private Sector Survey believed that POMP's failings were due in large part to an adversarial tenant-centered advocacy community. The Survey identified the tenants' advocates as a major impediment to the success of POMP and similar programs and reasoned that the failure to dispose of more buildings "reflects strongly held views in many communities that buildings should not be sold to for-profit groups."²⁰⁷

4. *The Tenant-Centered Advocacy Community*

The tenant-centered advocacy groups criticized by the Private Sector Survey commissioned their own exhaustive studies of POMP and the other HPD housing programs. The Task Force on City-Owned Housing (Task Force), an organization composed of pro-tenant individuals and groups, conducted two surveys of tenants living in *in rem* buildings, comprehensively analyzing conditions in the Bronx and Brooklyn.

In the Bronx Survey, the Task Force conducted a survey of over 2,700 tenants in currently and formerly City-owned buildings in the Bronx and

203. *Id.*

204. A 1989 study by the Citizen's Housing and Planning Council found that 15% of *in rem* buildings were old law tenements and 56% were new law tenements; more than 1/3 had 3 or more serious deficiencies, and 1 out of every 58 *in rem* units had indoor drug operations. Network, Part II, *supra* note 124, at 27.

205. *Id.*

206. See, e.g., PETER D. SALINS, SCARCITY BY DESIGN 5-6 (1992) (arguing that subsidized and regulated municipal housing sub-markets "undercut the viability of the remaining privately owned low income rental stock" and encourage unsustainable public support of below-market rate housing).

207. PRIVATE SECTOR SURVEY, *supra* note 144, at 63. See also, SUPPORT, *supra* note 52, at 12 (reporting that no POMP rehabilitation contracts were underway in Manhattan, "a direct reflection of political opposition. . .").

upper Manhattan to find out who these residents were, what kind of conditions prevailed in their buildings, what form of ownership they preferred, and related information.²⁰⁸ This first survey focused on the Bronx because it had many *in rem* buildings and because its buildings represented most of the DAMP sales programs.²⁰⁹ The survey reached tenants living in buildings sold through POMP or in the POMP sales pipeline, co-ops, buildings in the TIL pipeline, and buildings in HPD's Central Management.²¹⁰ Because this study did not compare satisfaction levels in the buildings prior to vesting with HPD, it could not definitively indicate whether problems were due primarily to DAMP, HPD, or pre-foreclosure conditions. Nonetheless, the survey gave a strong indication that POMP's efforts in the Bronx had not lived up to Mayor Koch's promise of "efficient management."²¹¹

The Bronx Survey found that buildings sold through POMP had the worst conditions of all HPD programs, even though POMP generally received a higher level of capital funding.²¹² Specifically, the Task Force found that buildings currently being managed through POMP or sold through POMP generally had much lower tenant-satisfaction ratings than other HPD buildings.²¹³

The Survey created a composite measure of building services, including heat, hot water, electricity, plumbing, windows, and cleanliness. Tenants in buildings sold through POMP reported the lowest levels of satisfaction of all HPD programs considered.²¹⁴ The Survey also found that

208. The Task Force Bronx survey team interviewed 2,700 Bronx residents living in 212 City-owned and formerly City-owned buildings. This sample of buildings represents 19% of the City-owned and formerly City-owned buildings in the Bronx. The breakdown of respondents and buildings by program type was:

Program Type	Respondents	Buildings
Central Management	1,065 (44%)	89 (42%)
DAMP POMP (pipeline)	177 (07%)	12 (06%)
Sold POMP	581 (24%)	53 (25%)
DAMP TIL	216 (09%)	20 (09%)
Co-ops	409 (17%)	37 (18%)
Total	2,448 (100%)	212 (100%)

The Bronx Survey, *supra* note 145, at 17-19. Data collected in Harlem as a part of this survey has not been included in this article.

209. *Id.* at 17.

210. *Id.* at 18. The survey was not able to analyze tenant satisfaction in Community Management Program buildings because it was not able to obtain a large enough sample to obtain reliable data due to the relatively small number of CMP buildings in the Bronx. *Id.* at 19.

211. What's more, the fact that POMP buildings were frequently the 'cream' of the *in rem* housing stock and the recipient of the highest DAMP subsidies may indicate that POMP did even more harm in the Bronx than even this survey indicates.

212. Harold DeRienzo, *Summary of Findings*, in *HOUSING IN THE BALANCE: SEEKING A COMPREHENSIVE POLICY FOR CITY-OWNED HOUSING*, at i (Michele Cotton ed., 1993).

213. *Id.* at i to ii.

214. In sold POMP buildings, only a third of the tenants (as opposed to two-thirds of those in co-ops) rated services as good or excellent. Even more, tenants in sold POMP buildings were the only grouping in which a majority rated their apartments and buildings as poor to fair. *Id.* at ii.

security was identified as 'good' or 'excellent' only one-third as frequently in sold POMP buildings as in tenant co-ops.²¹⁵ POMP tenants rated the services in their building as 'good' or 'excellent' less frequently than tenants in other programs. Dissatisfaction with POMP was most striking when compared to substantially higher tenant satisfaction in TIL co-ops, which are managed by tenant groups.²¹⁶ The starkest finding was that 60% of tenants wanted to move from buildings sold through POMP, whereas no more than 40% of the tenants in other programs wanted to move.²¹⁷ Only 9.4% of tenants surveyed would choose to have their building owned by a private landlord. In contrast, 54.4% preferred tenant ownership.²¹⁸

The Task Force inferred from the Bronx survey that the greatest loss of *in rem* units affordable to low-income tenants occurred in buildings sold through POMP. Tenants in POMP buildings had a much shorter average length of residence than tenants in other HPD buildings.²¹⁹ POMP buildings also showed a disparity in income distribution that suggested a significant number of low-income tenants had been displaced. The Task Force identified a 'missing middle' of tenants earning between \$5,000 and \$20,000 a year in POMP buildings.²²⁰ One explanation may be that lower-income tenants were either priced out, evicted, or harassed into leaving and replaced by a combination of higher-income tenants and highly-subsidized homeless families.²²¹

The Task Force conducted a second survey in Brooklyn that substantially mirrored the Bronx survey in format but included some additional questions.²²² The survey reached tenants living in Central Management

215. The Bronx Survey, *supra* note 145, at 28.

216. *Id.* at 27. The same trend generally can be seen in management quality ratings. *Id.* at 29. This also holds for the prevalence of drug problems in the buildings, but Centrally Managed buildings also have substantial problems. *Id.* at 33. Some of the dramatic difference between POMP buildings and TIL buildings may be explained by the fact that TIL tenants are necessarily involved in their buildings. As such, buildings that chose to go into TIL may have a head start in creating a habitable environment. On the other hand, TIL buildings have generally had lower capital repair funds than POMP buildings. DeRienzo, *supra* note 212, at ii.

217. After personal reasons, poor building conditions was the next most frequently chosen reason given for moving. POMP tenants also cited high rents as the reason for wanting to move, more so than tenants in other programs. The Bronx Survey, *supra* note 145, at 35.

218. *Id.* at 36.

219. *Id.* at 21. POMP buildings averages were 1-2 years shorter than Co-op and TIL buildings. *Id.*

220. DeRienzo, *supra* note 212, at iii.

221. *Id.*

222. The Survey data was taken from questionnaires administered to 2,975 residents of 483 currently and formerly City-owned buildings located in Brooklyn Community Boards 1 through 8 and 16. The Brooklyn Survey, *supra* note 145, at 41-42.

Buildings, POMP buildings, CMP buildings, HARP buildings, TIL buildings, and tenant cooperatives that had been sold through TIL (HDFCs).²²³

While some of the Brooklyn Survey results confirmed those of the Bronx survey, there were also substantial differences. Most notably, POMP buildings appeared to be much better run in Brooklyn than in the Bronx. While TIL and sold-TIL (HDFC) buildings remained the most praised by their tenants, POMP and CMP buildings were adjudged to be better homes than Central Management and HARP buildings.²²⁴

The Brooklyn Survey found that POMP's average composite management rating was squarely in the middle between HDFCs and TILs at one extreme and Central Management at the other.²²⁵ POMP tenants reported levels of harassment and predictions of moving well within the range of other programs.²²⁶ Unlike the Bronx survey, POMP tenants in Brooklyn had an average length of residence similar to most other programs²²⁷ and POMP tenants complained only slightly more than other tenants that their rents were unreasonable.²²⁸ This indicates that some or all of POMP's problems were not endemic, but depended on factors such as landlord, building type, and location. This was reinforced by the fact that in some Community Boards in Brooklyn, POMP performed very well, while in others it performed worse than even Central Management.²²⁹

Brooklyn's POMP buildings did have some notable negative characteristics. It appeared that POMP rents were higher than those of other programs and that POMP charged higher rents more frequently.²³⁰ POMP, along with HARP and Central Management, showed significantly lower

223. The breakdown of respondents and buildings by program type was as follows:

Program Type	Respondents	Buildings
Central Management	741	172
DAMP TIL	289	41
sold Co-ops	491	72
sold POMP	616	81
CMP	573	83
HARP	143	17

Id.

224. *Id.* at 10.

225. *Id.* at 27.

226. *Id.* at 35, 38.

227. Length of Residence (in years)

Central Management	9.0
DAMP TIL	9.1
sold Co-ops	13.5
sold POMP	10.2
CMP	10.6
HARP	5.4

Id. at 20.

228. *Id.* at 26. HDFCs did have substantially fewer complaints about rent reasonableness than the other programs. *Id.*

229. *Id.* at 7.

230. *Id.* at 14, 20.

tenant participation levels in tenant groups and community affairs.²³¹ It appeared that POMP tenants were most passive when it came to their building and community.²³²

The Task Force's second report emphasized the numerous findings that pointed to TIL as the most successful *in rem* housing program:

The Brooklyn Survey shows that the benefits of tenant cooperative ownership do not end at the doorway of the building. The dramatic reduction in crime and drugs evidenced in the tenant-owned buildings benefits the whole neighborhood. Residents in these cooperatively owned buildings also participate to a greater extent in community affairs than residents in other programs, giving more of their time and energy to the improvement of their communities.²³³

More than half of all those surveyed preferred a tenant co-op for the future of their building. Despite low ratings, the runner-up in terms of preference was City ownership. Community non-profit and for-profit landlords were rarely preferred.²³⁴

The Brooklyn Survey also noted that all forms of sold-*in rem* housing showed an increase in both tenant incomes and rental rates, indicating that they all diminished the supply of housing for the poorest New Yorkers.²³⁵ Tenant incomes averaged lowest for Central Management and HARP, POMP and CMP were in the middle, and TIL and HDFCs the highest.²³⁶

Although the 1992 Bronx Survey showed that POMP buildings appeared to displace lower-income tenants and replace them with higher income tenants, the Brooklyn Survey does not show that effect to the same degree. Rather, it is Brooklyn's HDFC tenants who have the highest incomes of those surveyed in that borough.²³⁷

In comparing data from the Bronx and Brooklyn Surveys, the Task Force report noted that in the Bronx, City ownership and management performed somewhat better overall than in Brooklyn. Conversely, private for-profit management performed somewhat better overall in Brooklyn than in the Bronx.²³⁸ Yet, it also noted that in both surveys, Central Management and HARP were most affordable to the poorest tenants.²³⁹

231. *Id.* at 41.

232. *Id.* at 44.

233. Task Force on City-Owned Housing, Brooklyn Summary 10 (undated summary of Brooklyn Survey, on file with author) [hereinafter Brooklyn Summary].

234. *Id.* at 9.

235. See The Brooklyn Survey, *supra* note 145, at 7 (noting that "all sales programs tend to show a drop off in the use of the housing for low-income residents," though the severity of the impact differed).

236. *Id.* at 14. However, the only real differences of significance were seen in HDFCs (higher) and HARPs (lower). *Id.*

237. *Id.* at 14-15.

238. Brooklyn Summary, *supra* note 233, at 9.

239. The Brooklyn Survey, *supra* note 145, at 16.

The Task Force report concluded that the City was misallocating housing dollars because TIL, the most preferred program, was getting the fewest dollars. The Task Force also argued that tenant organizing itself, regardless of ownership model, improves the quality of housing and argued that the City's recent decision to decrease funds for organizing was counter-productive.²⁴⁰

Though not emphasized by the surveys' final analysis, the survey results suggest POMP was not a uniformly badly run program. While POMP failed to achieve its goal of maintaining apartments as a resource for the poorest New Yorkers, the same could be said of TIL. Only Centrally Managed and HARP housing maintained the availability of low-income apartments. In short, no one model has simultaneously achieved maximum affordability, quality, and financial stability.

5. *Other Voices*

Others in the tenant-centered advocacy community found little to praise in POMP buildings. A *City Limits* editorial outlined many common criticisms after looking at one of the first buildings to enter POMP and evaluating POMP's goals.²⁴¹ Tenants reported evictions, harassment, warehousing of vacant units, heat and hot water shortages, and other code violations. Other advocates saw POMP as running counter to DAMP's explicit goal of providing long-term housing affordability for low-and moderate-income communities.²⁴² Critics also pointed to the heavy commitment of public funds for renovation of POMP buildings and rent subsidies given to POMP tenants in excess of those given to other *in rem* programs as evidence of cost inefficiencies.²⁴³

Some in the tenant-centered advocacy community asked whether POMP was essentially a welfare program for landlords. After receiving rent subsidies for their units, capital improvement expenditures that reached as high as \$15,000 per unit, and bargain basement sales prices as low as \$1,800 a unit, POMP landlords were not barred from ultimately selling their buildings to the highest bidders.²⁴⁴ The first buildings sold through POMP had a bar on resale of only 5 years and at least one landlord

240. Brooklyn Summary, *supra* note 233, at 16. The Task Force's regression analysis supports the argument that tenant organizing improves the quality of housing. The data does not, however, demonstrate in itself that TIL can be expanded even though tenants prefer it to other DAMP programs. *Id.*

241. Beverly Cheuvront, *Misdirected Pride*, CITY LIMITS, Aug.-Sept. 1988, at 2.

242. Coalition Against POMP, Comments On Proposed Rules Governing The Private Ownership Management Program (Jan. 1991) (unpublished memorandum, on file with author) (predicting that POMP "will actually exacerbate the problem by reducing the amount of housing affordable to low and moderate income tenants").

243. Cheuvront, *supra* note 82, at 2.

244. Giordano, *supra* note 131, at 3.

was able to sell buildings and receive profits in excess of 1000% of the original investment.²⁴⁵

E. POMP Compared to TIL

TIL has been studied sporadically,²⁴⁶ and while it is generally praised for its tenant ownership model (where tenants buy their building for \$250 per unit, with resale restrictions), it is criticized for its slow rate of sales and the fiscal instability of those buildings that are sold.²⁴⁷ In 1988, HPD Commissioner Biderman acknowledged that TIL co-ops had a "very, very good track record," but he insisted that private owners made repairs more quickly than tenants and got to the self-supporting stage more quickly as well.²⁴⁸ In 1994, HPD Commissioner Deborah C. Wright stated that there was apparently less interest in TIL than was commonly believed because the required classes for TIL tenants were underenrolled.²⁴⁹ Others have criticized the City for not planning TIL around the other responsibilities of the tenants.²⁵⁰

245. Chevront, *supra* note 82, at 16. The City reacted to this potential for profiteering by extending the period barring a resale to 10 years and a conversion into a coop or condominium to 15 years. Network, Part II, *supra* note 124, at 26.

246. Doug Turetsky, *We Are the Landlords Now*, Community Service Society (1993) (unpublished manuscript on file with author); Vicki Oppenheim, *The Mutual Support Network Model: An Evaluation of Mutual Support Networks for HDfCs in New York City* (1991) (unpublished M.S. Thesis, Columbia University, on file with author); Helene Clark, *The Future of Limited Equity Housing in New York City: Residents Struggle for Stability* (August 31, 1990) (unpublished manuscript on file with author); Settlement Housing Fund, Inc., *Nonprofit Housing Development: Ownership and Management* (March 9, 1988) (unpublished manuscript, on file with author).

247. For positive press accounts of TIL buildings, see Anthony DePalma, *The Rocky Road to Tenant Management*, N.Y. TIMES, June 26, 1988, § 10, at 1, (describing a typical TIL building's experience); Sam Howe Verhovek, *On One Woman's Grit, a Building Revives*, N.Y. TIMES, August 22, 1987, § 1, at 29 (describing leadership in TIL buildings); David W. Dunlop, *New Hope for the Abandoned Tenant*, N.Y. TIMES, Apr. 25, 1982, § 8, at 7 (describing TIL procedures). See also SUPPORT, *supra* note 53, at 12 (describing characteristics of successful TIL buildings).

For negative accounts, see Matthew Josefowicz, *New Windows Installed in Foster Mom's Apartment*, N.Y. NEWSDAY, Aug. 17, 1993 at 29 (describing a TIL building divided into factions); Matthew Josefowicz, *Not a Quick Fix: Clashes Delay Building Repairs*, N.Y. NEWSDAY, Aug. 12, 1993 at 31 (describing how conditions went from bad to worse after a centrally managed building went into TIL).

See also Johnson v. City of New York, 578 N.Y.S.2d 977, 978 (Sup. Ct. 1991) (remanding petitioner's application for an apartment to tenant selection committee due to possible discrimination on the basis of marital status); Dorothy M. Keller & Marie M. Runyon, *Tenant Managers*, N.Y. TIMES, July 17, 1988, § 10, at 20 (arguing that while tenant ownership is good, mandatory tenant management is not).

248. DePalma, *supra* note 247, at 1 (describing a typical TIL building's experience).

249. Andrew White, *City for Sale*, CITY LIMITS, June-July 1994, at 10.

250. Advocates criticize HPD for holding TIL classes in the evening in Lower Manhattan. They note that requiring tenants to travel long distances at night in high crime areas may act as a disincentive to even the most committed TIL participant. See Penny Loeb, *City Tops Slumlord Business: Study Shows Worst Housing Operated By Government Agency*, N.Y. NEWSDAY, Jan. 3, 1993, at 6 (reporting criticisms that the City does not help tenants enter TIL). The Brooklyn Survey also indicates that many tenants are not aware of TIL as

TIL advocates note that some of these problems are attributable to the fact that the City has historically underfunded TIL buildings when compared to those in other DAMP programs. They also note that the City gave POMP contractors more time than TIL lessees to decide to enter the program and to take ownership of the building. Recently, the City has put TIL buildings on a much longer rehabilitation schedule than other DAMP programs, meaning that potential TIL participants must wait longer for necessary repairs.²⁵¹ Despite all of its flaws, TIL has sold more units than any other DAMP program.²⁵²

III.

NEIGHBORHOOD ENTREPRENEURS PROGRAM (NEP)

On September 14, 1994, the Giuliani Administration announced a new initiative, "Building Blocks!" Despite the demise of POMP, the centerpiece of Building Blocks! is the conveyance of HPD buildings to private for-profit managers.²⁵³ During his campaign, Giuliani had made the privatization of City-owned housing a focal point of his housing plan and claimed that by "saving millions through the process of divesting itself of property," the City "can, instead of trying to run property, concentrate on stimulating private ownership."²⁵⁴ Giuliani hopes that such privatization will both reduce municipal spending in the face of an immense structural budget deficit and stimulate the economy.²⁵⁵

A. *Expectations*

In the first stage of the plan, the City intends to shift about 250 apartment buildings, with roughly 2,500 apartments, to private managers over a nine-month period. The City has budgeted approximately \$50,000 per unit for renovating the housing prior to being sold.²⁵⁶ About 1,000 units are to be conveyed to community based non-profits under the Neighborhood Redevelopment Program (NRP), which resembles the old Community Management Program (CMP). An additional 500 units are to be allocated to

an alternative form of management. Only 16% of tenants in Central Management buildings are aware of the TIL program. The Brooklyn Survey, *supra* note 145, at 64.

251. Kim Nauer, *Soft Sell*, CITY LIMITS, Apr. 1995, at 9.

252. *Giuliani Confronts In Rem Dilemma*, THE URBAN PROSPECT: HOUSING, PLANNING AND ECONOMIC DEVELOPMENT IN NEW YORK, Jan.-Feb. 1995, at 4 [hereinafter THE URBAN PROSPECT].

253. Office of the Mayor, New York City, Press Office, *Mayor Giuliani and HPD Commissioner Wright Unveil Comprehensive Initiative to Return City-Owned Buildings to Responsible Private Owners* 1 (Sept. 14, 1994) (press release #410-94, announcing Building Blocks! program) [hereinafter *Press Release*]; Shawn G. Kennedy, *Mayor Cutting City's Roster of Buildings*, N.Y. TIMES, Sept. 15, 1994, at B1.

254. Shawn G. Kennedy, *Defaults Rise, Posing Peril for Housing*, N.Y. TIMES, May 31, 1994, at B1.

255. *Id.*

256. See *Breaking the Cycle*, *supra* note 2, at Schedule 4B.

the TIL program. The remaining 1,000 units are to be turned over to local entrepreneurs under the new Neighborhood Entrepreneurs Program (NEP).²⁵⁷

Ultimately, the Building Blocks! programs (NRP, TIL, and NEP) are slated to dispose of 3,000 buildings with nearly 28,000 units.²⁵⁸ The City plans to dispose of 8,949 occupied residential units through NRP, 7,458 through TIL, and 11,588 through NEP. The City plans to dispose of an additional 3,763 vacant residential units through NEP.²⁵⁹ These three programs, with NEP as the favorite, are meant to sell buildings prior to the start of rehabilitation "in order to minimize the period of City-ownership and to benefit the tenants with an earlier transfer to private management and a shorter, more efficient construction period."²⁶⁰

NEP is similar to POMP in that it intends to sell buildings to for-profit firms. There are, however, important differences. The first difference between NEP and POMP is that NEP's goal is to sell smaller buildings. More than third of the apartments are in buildings of four units or fewer, and 70 percent are in buildings with 10 units or fewer. NEP buildings have 8 units on average.²⁶¹

A second difference is NEP's focus on clustering buildings to be rehabilitated. Many of these buildings are old tenements, brownstones, and row houses that have been carved into rooming houses with more tenants than their systems were built to handle.²⁶² NEP is designed to improve entire blocks by clustering occupied and vacant buildings, rather than renovating individual buildings in isolation.²⁶³ These clusters will allow the City to mix potentially profitable units with those that are likely to be unprofitable.²⁶⁴ Promoting NEP, Mayor Giuliani noted that "an often uncoordinated development approach" interfered with past efforts to rejuvenate neighborhoods and "as a result, despite extensive investment in homeownership and rental housing, communities remained scarred by scattered City-owned buildings and lots."²⁶⁵

A third difference is that NEP plans to contract with a different type of landlord than POMP. A common complaint about POMP was that most of

257. Kennedy, *supra* note 254, at B1.

258. Alan S. Oser, *The Ax Is Poised on Low-Income Housing Efforts*, N.Y. TIMES, Oct. 22, 1995, § 9, at 7.

259. Breaking the Cycle, *supra* note 2, at Schedule 4B.

260. CITY OF NEW YORK, CITY BUDGET: FISCAL YEAR 1996, at 45 (1996).

261. White, *supra* note 249, at 8.

262. Shawn G. Kennedy, *Working to End Landlord Role, New York Faces Hurdles*, N.Y. TIMES, Sept. 24, 1994, § 1, at 21.

263. The New York City Housing Partnership, The New York City Neighborhood Entrepreneur Program: A New Public-Private Initiative 5 (Aug. 12, 1994) (unpublished proposal, on file with author) [hereinafter NYCHP]. These clusters, or submarket areas, are comprised of two to eight square blocks. *Id.* at 3.

264. *Id.*

265. Press Release, *supra* note 253, at 3.

the landlords were perceived as outsiders, residing in upstate New York, Long Island, New Jersey and Connecticut.²⁶⁶ HPD Commissioner Wright at one time described a potential purchaser of these small buildings not as someone who wants to buy up a thousand units, but rather as "the guy, who is a local superintendent who may want a couple of buildings and live in the ground floor of one of them."²⁶⁷ NEP is designed to minimize the legal and regulatory burdens facing the small property owner.²⁶⁸ While NEP was designed to attract locals and small minority-owned firms, known in the program as "Neighborhood Entrepreneurs," the first round suggests that they have not succeeded in doing so.²⁶⁹

NEP seeks to do more than rehabilitate and dispose of *in rem* buildings. As Commissioner Wright noted in 1994:

One of the biggest criticisms of HPD is that so much of the economic power bypasses local communities. The vendors are from outside of the community. Many times the developers are. Even some of the consultants are. People are really emphasizing local participation because we want to harness some of the power of government expenditure and attract private funds to create jobs and some economic spin-off.²⁷⁰

By linking NEP to local businesspeople, the City hopes to bypass these problems and recreate the local real estate industry of brokers, owners, and managers which was virtually wiped out in the 1960s and 1970s when buildings and neighborhoods were abandoned *en masse*. Officials expect that hundreds of local jobs will be created as a byproduct of this plan.²⁷¹

NEP is also funded somewhat differently than POMP. Construction financing will be provided by community development banks. Long-term funding will come, in part, from Section 8 subsidies, special awards to those building clusters located in the Empowerment Zone, Federal Low Income Housing Tax Credits, and federal HOME dollars used to partially finance rehabilitation.²⁷² The tax credits and HOME dollars impose ten- to fifteen-

266. Michele Cotton, *In Rem* Report 9 (Apr. 13, 1995) (unpublished draft, on file with author).

267. White, *supra* note 249, at 8-9. Preliminary studies of the first group of entrepreneurs shows that they have more in common with POMP contractors than with "local talented folks." See Summary of Application Information, Violations Printouts, and Other Information for Entrepreneurs Selected for NEP by Applications Submitted in Response to 10/94 HPD RFQ (Nov. 29, 1995) (tax arrears update report, on file with author) [hereinafter Summary of Applications].

268. See *supra* notes 12-14 and accompanying text.

269. Summary of Applications, *supra* note 267, at 2-14.

270. White, *supra* note 249, at 10.

271. Peter Grant, *Many Non-Profits Fail in City Landlord Role*, CRAIN'S NEW YORK BUSINESS, Sept. 19, 1994, at 3. See also Cotton, *supra* note 266, at 9; THE URBAN PROSPECT, *supra* note 252, at 4.

272. Neighborhood Entrepreneurs Program: General Outline 4-5 (Feb. 6, 1995) (unpublished memorandum, on file with author) [hereinafter NEP Outline].

year restrictions on some portion of tenant incomes and rents. Vacant units, financed by city capital funds, would be rented at market rates to provide a source of internal cross-subsidy.²⁷³

A final difference is NEP's public commitment to minimize tenant displacement. Commissioner Wright stated that "[t]here won't be displacement" under the new program.²⁷⁴ Although rents in occupied apartments will increase, they will be restructured according to existing DAMP guidelines.²⁷⁵ Wright claims that existing housing subsidies such as rent vouchers and tax credits will cover the difference between operating expenses and what poor tenants could afford.²⁷⁶ In addition, HPD intends to use cross-subsidies between vacant and occupied units in order to provide additional funds to protect existing tenants from displacement.²⁷⁷ Finally, HPD states that tenants have a right to return to their original building, a promise backed by a written agreement that is to be signed prior to tenant relocation.²⁷⁸

Building Blocks! is part of a larger change in *in rem* policy for HPD.²⁷⁹ The Giuliani Administration is ideologically opposed to government administered housing programs and is opposed to further vesting of properties that are in arrears. Announcing its new policy, the City noted that New

273. NYCHP, *supra* note 263, at 5.

274. White, *supra* note 249, at 9.

275. HPD & NYCHP, Request for Qualifications: Neighborhood Entrepreneurs Program 8 (Oct. 21, 1994) (on file with author) [hereinafter RFQ]. In a representative notice sent to tenants of a building that had been preliminarily selected for NEP, the rents were set at \$55.00 per zoning room (studio at \$137.50; one bedroom at \$192.50; two bedroom at \$247.50). HPD, Office of Housing Management and Sales, Division of Alternative Management Programs, NEP, Notice of Preliminary Selection Neighborhood Entrepreneurs Program 1 (Jan. 9, 1995) (unpublished document, on file with author) [hereinafter Preliminary Selection].

276. Kennedy, *supra* note 254, at B1; White, *supra* note 249, at 8. HPD will calculate reasonable rents as 30% of income. NEP Outline, *supra* note 272, at 6. Note, though, that single persons, undocumented aliens, and persons whose housing does not meet federal standards cannot receive subsidies. Nor can those who are classified as mere occupants or licensees by the courts. Squatters are also ineligible.

277. RFQ, *supra* note 275, at 3. Cross-subsidies are created by renting vacant units at area market rates in order to offset lower rents paid by existing tenants. "Vacant apartments may be rented to families earning no more than 165% of the current HUD area median income standard adjusted for family size (currently \$68,800 for a family of four)." *Id.* at 3. In addition, if the restructured rent (plus utilities) is more than 30% of the tenant's income, the tenant may apply for an Interim Payment Agreement with HPD to have the rent reduced until rental subsidies are made available. Preliminary Selection, *supra* note 275, at 1. See also, Rachelle Garbardine, *A New Program is Rehabilitating Some 1,200 Rental Apartments in New York City*, N.Y. TIMES, May 17, 1996, at D9 (some vacant apartments will be subsidized for families making less than 60% of median income in the City, with average rent for a two-bedroom apartment averaging \$525 per month; similar apartments, unsubsidized, will have an average rent of \$650 per month).

278. NEP Outline, *supra* note 272, at 7.

279. The Giuliani Administration's *in rem* policy is based on the following objectives: to maximize real estate tax revenue for City, to maximize preservation of the affordable housing stock while minimizing the City's exposure in addressing distressed buildings, and

York City is nearly unique amongst municipalities in its management and rehabilitation of tax foreclosed housing.²⁸⁰

An Arthur Andersen study calculated that as of July 1994, the overall life cycle cost of the City's *in rem* housing stock was \$10.6 billion, of which \$4.4 billion is expended to prepare properties for return to private management.²⁸¹ The study found that buildings taken through the *in rem* process has an average disposition cost of more than \$2,200,000 per building.²⁸² The study concluded that most of the *in rem* properties returned to private management "will *never* become positive revenue generators over the useful life of the capital improvements which the City has funded."²⁸³ As a result of these findings, the Giuliani Administration stopped vesting of buildings for arrearages.²⁸⁴

The City is investing \$573 million in programs to deliver financial and technical assistance to private landlords so they can better maintain and upgrade their buildings in order "to prevent abandonment of privately-owned buildings and forestall their entry into City ownership."²⁸⁵ These programs include an 'early warning system' to identify and prevent buildings from being abandoned and a Small Property Owners Advocacy Unit that will allow landlords to self-identify buildings in arrears.²⁸⁶ This change in policy is coming at the same time that Finance Department data reveals that tax foreclosure filings were up by nearly 30 percent in 1993 and that the redemption rate, which was over 90 percent for years, has plummeted.²⁸⁷ While the Giuliani policies are intended to keep the City out of the business of managing housing, they are coming at a time when the low-income housing market is particularly fragile.

B. Structure

The NEP plan divides responsibility between HPD, community organizations, tenants, Neighborhood Task Forces, Community Development Banks, the Department of Business Services, and The New York City Housing Partnership.

to seek long-term solutions to improve housing viability. PRESERVATION POLICIES, *supra* note 38, at 6.

280. Breaking the Cycle, *supra* note 2, at 5.

281. *Id.* at 10.

282. *Id.* at 8.

283. *Id.* at 9 (*italics in original*).

284. Shawn G. Kennedy, *Tenants in Limbo as New York Stops Foreclosing*, N.Y. TIMES, Sept. 9, 1995, § 1, at 1.

285. OFFICE OF MANAGEMENT AND BUDGET, MESSAGE OF THE MAYOR, THE CITY OF NEW YORK EXECUTIVE BUDGET FISCAL YEAR 1996, at 181 (1996).

286. PRESERVATION POLICIES, *supra* note 38, at 7, 11.

287. Kennedy, *supra* note 254, at B1 (reporting that the "number of buildings in which owners have fallen seriously behind in their taxes has risen sharply in the last five years, from 13,737 in 1989 to 18,003 in 1993"); THE URBAN PROSPECT, *supra* note 252, at 4.

HPD is responsible for site selection and planning, designation of Owners/Managers, rehabilitation financing, rent restructuring and rental subsidies, tax abatements, property disposition ombudsman for small property owners, operating support during the net lease period, and structure project financing.²⁸⁸

Community organizations are responsible for the stabilization of buildings in clusters, tenant training and support, and the monitoring of building progress. Tenants are responsible for the development of tenant associations, participation in neighborhood redevelopment activities, mobilization of community resources and programs, and the organization of building watches and neighborhood security. The Neighborhood Task Forces will assist in site selection and planning, assist in identifying potential owners and managers, give input on qualifications of potential owners and managers, and give ongoing feedback to participants.²⁸⁹

The Community Development Banks will underwrite the rehabilitation financing, participate in project financing, service rehabilitation loans, and inspect and monitor construction. The Department of Business Services' role is to make business loans and to reach out to potential contractors, subcontractors, and suppliers.²⁹⁰

The City has arranged with the New York City Housing Partnership (Partnership), a nonprofit development organization affiliated with the New York City Chamber of Commerce, to assist in the oversight of the Neighborhood Entrepreneurs and provide them with technical support.²⁹¹ The Partnership's involvement in affordable housing is not new. In 1988, the Partnership initiated the Neighborhood Builders Program to increase the participation of minority contractors and community-based entrepreneurs in the affordable housing industry.²⁹² The Partnership has developed a two-pronged plan for its role in NEP.²⁹³ The first component is entitled "Community Based Planning and Monitoring of Performance." The second is entitled "Technical and Financial Assistance to Neighborhood Business."²⁹⁴

The linchpins of the Community Based Planning component are the Neighborhood Task Forces. The City designed the Neighborhood Task

288. NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION & DEVELOPMENT, BUILDING BLOCKS!: THE GIULIANI ADMINISTRATION'S INITIATIVE TO RETURN CITY-OWNED PROPERTY TO RESPONSIBLE PRIVATE OWNERS (1994) (unpaginated prospectus, on file with author) [hereinafter BUILDING BLOCKS!] (providing low-interest rate loans through City Capital Budget funds and providing real property tax exemption under § 11-243 of New York City's Administrative Code or under Article 16 of the New York State General Municipal Law); NEP Outline, *supra* note 272, at 5.

289. BUILDING BLOCKS!, *supra* note 288.

290. *Id.*

291. Kennedy, *supra* note 254, at B1.

292. Hovde, *supra* note 4, at 45-47.

293. NYCHP, *supra* note 263, at 5.

294. *Id.*

Force to "incorporate community concerns and resources in planning and implementing Building Blocks!"²⁹⁵ HPD and the Partnership will convene the Neighborhood Task Forces to meet with Community Boards, community-based nonprofit groups, local boards of realtors, and business associations. The community-based nonprofits are intended to be the foundation of these Neighborhood Task Forces because of their credibility with tenants and knowledge of neighborhood problems and resources. Perhaps the most important responsibility of the Neighborhood Task Forces will be to regularly evaluate the progress of participating Entrepreneurs.

Some of the community groups in the Neighborhood Task Forces will contract with the Partnership to monitor and evaluate building progress and to facilitate the relationship between the Neighborhood Entrepreneurs, the community, and the tenants. The groups will also receive contracts to provide tenants and cluster area residents with the support necessary to participate in an employment demonstration project through which unemployed tenants may secure private sector job opportunities with Entrepreneurs and contractors.²⁹⁶

The Partnership has received funding from the Rockefeller Foundation to create the Employment Pilot Program, which will direct 75 to 100 entry level jobs created through the rehabilitation and management of NEP buildings to tenants living in the buildings. Tenants will be screened and assessed for employment readiness and training needs will be coordinated by local non-profit social service providers affiliated with Neighborhood Task Forces.²⁹⁷

The Technical and Financial Assistance component of the plan will be modeled on the Partnership's Neighborhood Builders Program.²⁹⁸ The Partnership will organize mentoring and industry support, access to financing, and other assistance to prospective owner-managers. The Partnership will also form an Industry Advisory Group, composed of bankers and representatives of the real estate industry, that will assist HPD and the Partnership in structuring the financial, technical assistance, and mentoring package.²⁹⁹

295. NEP Outline, *supra* note 272, at 3.

296. NYCHP, *supra* note 263, at 4; *Press Release*, *supra* note 253, at 3.

297. Hovde, *supra* note 4, at 48. (explaining that "selected tenants will be referred to the South Bronx overall Economic Development Corporation (SOBRO) and the Strive Employment Group, who have been contacted by the Partnership to provide a work readiness program, and assistance in job placement").

298. The Neighborhood Builder Program was designed to help minority-owned firms compete for housing construction and rehabilitation contracts in New York City. Its designer, the New York City Housing Partnership, considered it a success. COMMUNITY PARTNERSHIP DEVELOPMENT CORPORATION, MAINSTREAMING MINORITY BUILDERS: NEW YORK CITY'S PUBLIC-PRIVATE PROTOTYPE (1993).

299. NYCHP, *supra* note 263, at 4-5.

C. The Neighborhood Entrepreneurs

Neighborhood Entrepreneurs must all meet certain minimum criteria, although HPD and the Partnership may waive them at any time.³⁰⁰ These companies will be required 1) to be based in one of the communities targeted by NEP,³⁰¹ 2) to have at least 50 units under current management, or have managed an average of 50 units over the last 3 years, 3) to own or have a substantial ownership interest in no more than 250 units housing,³⁰² and 4) to be able to demonstrate a capacity to manage another 100 units in the area.³⁰³ Those applicants with histories of poor management will be disqualified.³⁰⁴ Once these criteria are met, applicants are evaluated according to the following criteria:

- management experience and capacity
- financial ability and capacity
- rehabilitation experience
- ability to work with government and community organizations
- 'other' considerations (such as whether the applicant has long-term ties to the neighborhood)³⁰⁵

300. RFQ, *supra* note 275, at 5, 8.

301. *Id.* at 5 (defining neighborhood-based as any one of the following: the Neighborhood Entrepreneur's primary business is located in one of NEP's target neighborhoods; the Neighborhood Entrepreneur has lived in a target neighborhood for at least three years; or the Neighborhood Entrepreneur's business generated at least 75% of its gross revenues from a target neighborhood during each of the last 3 years).

302. *Id.* The units owned by each principal will be counted cumulatively to arrive at the total units owned by the applicant.

303. NYCHP, *supra* note 263, at 6. Experience with multi-family housing owned and managed by the applicant, managed for private owners, or managed under contract with or employment by governmental agencies or pursuant to Court appointment may be considered relevant. The Neighborhood Entrepreneur must also have experience with rehabilitation or repair of occupied multi-family housing. Finally, the Neighborhood Entrepreneur must meet one of the following criteria regarding financial resources in full and be within 50% of the maximum limit as specified in the other criteria: maximum gross annual business revenue (3 year average) of \$1.5 million; maximum personal and corporate net worth (exclusive of primary personal residence) of \$1.5 million. The Neighborhood Entrepreneur must also have the ability to commit \$50,000 cash to the project or obtain a \$50,000 line of credit. The Partnership will provide access to financial institutions, if necessary. RFQ, *supra* note 275, at 5.

304. Automatic reasons for disqualification include arson conviction (or pending cases); tenant harassment conviction (or pending cases); City mortgage foreclosure proceedings or substantial tax arrears; previous record of default on work performed under government contract; previous de-designation pursuant to an HPD decision after award of a project or contract; *in rem* foreclosure (applies to Applicant as well as Applicant's spouse, business entity substantially controlled by Applicant, or any successor in interest); outstanding Housing Code violations of a serious nature (C violations) in properties owned or managed by the Applicant; or conviction for fraud, bribery, or grand larceny. RFQ, *supra* note 275, at 5. Note that HPD and the Partnership can waive these bars at any time. *Id.* at 8.

305. *Id.* at 6. Other considerations include anything that will promote the NEP effort. Therefore, additional weight will be given to applicants who have long term residential or business ties to the Target Neighborhood; whose principals and/or workforce include residents of Target Neighborhoods; who demonstrate a history of commitment to hiring local

HPD weighs residential management experience and capacity and ties to the neighborhood most heavily, with the other factors given somewhat less weight.³⁰⁶

The Partnership has secured private funds to contract with non-profit community organizations to assist the Neighborhood Entrepreneurs with tenant assessment, tenant orientation, and community outreach.³⁰⁷ These community organization will track the progress of buildings and the overall improvement efforts in cluster areas. The City will prepare plans and specifications for rehabilitation. Soon thereafter, HPD will turn over responsibility for building management to the Entrepreneurs, who will receive a development fee not in excess of 10% of the project cost.³⁰⁸ HPD will transfer the title of the building over to the non-profit Neighborhood Partnership Housing Development Fund Corporation created by the Partnership to temporarily hold title to the buildings.³⁰⁹

Companies selected for NEP must make a commitment of up to three years to manage properties under the supervision of HPD and the Partnership prior to taking title.³¹⁰ HPD and the Partnership will evaluate the quality and timeliness of the construction work. The Neighborhood Entrepreneur will also be required to complete a Monthly Fiscal Report to track rent billings, rent collection, legal actions, occupancy, total income, and expenses for each building. The Entrepreneur must also prepare a Monthly Management Report for each building, tracking information about tenant issues and the resolution of complaints.³¹¹

If Entrepreneurs successfully rehabilitate and manage these buildings, they will be entitled to purchase them. At the time of purchase and after rent restructuring, rent stabilization laws will again apply.³¹² HPD and the Partnership expects the package of rents, subsidies and debt will permit Entrepreneurs both adequate cash flow and a reasonable return on their investment.³¹³ Resales are subject to HPD approval for 15 years after sale

residents and are willing to participate in a pilot employment program for tenants; and whose principals, if the applicant is a joint venture, have a history of working together. *Id.*

306. HPD & NYCHP, Questions Submitted About the Neighborhood Entrepreneurs Program Request for Qualifications 13 (Nov. 21, 1994) (on file with author).

307. NYCHP, *supra* note 263, at 6. Neighborhood Entrepreneurs will be required to work with tenants during the transition period, keeping tenants informed of rehabilitation plans and providing necessary services. They are also required to work with the not-for-profit community organization that is responsible for developing the temporary relocation plan prior to construction. Finally, the Neighborhood Entrepreneur will be expected to participate in a pilot employment program for tenants. RFQ, *supra* note 275, at 3.

308. RFQ, *supra* note 275, at 4; NEP Outline, *supra* note 272, at 4. A recent article indicates that this translates into a one-time fee of \$1,500 per unit and \$35,000 annually per cluster. Garbardine, *supra* note 277, at D9.

309. NEP Outline, *supra* note 272, at 5.

310. NYCHP, *supra* note 263, at 6.

311. RFQ, *supra* note 275, at 4; NEP Outline, *supra* note 272, at 7.

312. NEP Outline, *supra* note 272, at 7.

313. NYCHP, *supra* note 263, at 5-6.

to the Neighborhood Entrepreneur in order to deter short-term speculation and to maintain the housing as a resource for the targeted populations.³¹⁴

D. Implementation

The Implementation Plan for NEP's first year demonstration project began by choosing clusters of vacant and occupied buildings for rehabilitation and disposition. HPD and the Partnership jointly issued a Request for Qualifications (RFQ) to invite potential Neighborhood Entrepreneurs to compete for the first 1,000 units.³¹⁵ HPD received 90 completed applications by the due date in November 1994.³¹⁶ Eleven companies were selected for the first round.³¹⁷ Neighborhoods chosen for the first round of NEP are located in the South Bronx, Central and East Harlem, and Brooklyn's Bedford Stuyvesant and Crown Heights.³¹⁸ Seventy-nine buildings were scheduled for entrance into NEP in April and May 1995.³¹⁹

The implementation of NEP has not been fully consistent with its design. Although the RFQ and other documents indicate that serious building code violations would act as a bar to an applicant,³²⁰ this was waived in a number of cases. NEP profiles indicate that this waiver was made in some cases where an Entrepreneur had 'inherited' violations from a previous owner and had plans to correct them.³²¹ Yet, research by the Task Force on City Owned Housing indicates that many Entrepreneurs own or manage buildings with a substantial number of serious Building Code violations that were not acknowledged by HPD and the Partnership in their profile of the first-round Entrepreneurs.³²² Several of the accepted landlords also owe tens of thousands of dollars in tax arrears on buildings that they own.³²³

Furthermore, half of the first group of Entrepreneurs have business addresses that are not located within their cluster, indicating that they are not truly 'local.' Only one Entrepreneur manages fewer than 100 units and

314. NEP Outline, *supra* note 272, at 6.

315. RFQ, *supra* note 275. As of January, 1997, there are an estimated 2,700 units in 230 buildings in NEP. J.A. Lobbia, *As the City Gets Out of the Landlord Business, Who's Taking its Place?*, VILLAGE VOICE, Jan. 21, 1997, at 41.

316. Hovde, *supra* note 4, at 82-83.

317. *Id.* at 45. That number has since increased to 22. Lobbia, *supra* note 315, at 41.

318. RFQ, *supra* note 275, at 2.

319. Nauer, *supra* note 251, at 8.

320. RFQ, *supra* note 275, at 5; NEP Outline, *supra* note 272, at 4.

321. *See, e.g.*, Neighborhood Entrepreneurs Program Description of Program Applicants Designated for the First Round 4-5 (Feb. 10, 1995) (unpublished profiles of Larry Hirschfield and C.E. Property Management, Ltd., on file with author).

322. Summary of Applications, *supra* note 267, at 2-14. *See also*, Lobbia, *supra* note 315, at 41 (some Entrepreneurs have buildings with well over 100 'C' violations and one Entrepreneur, Milton Manning, runs buildings with a total of 975 'C' violations).

323. *Id.*

at least two manage more than 2,000 units, a far cry from the 'superintendent' model that Wright had earlier proposed.³²⁴

Finally, it appears that the buildings targetted for NEP have turned out to be slightly larger on average (10 units) than the original NEP proposal (8 units). Rehabilitation costs have also been substantially higher (\$62,000 per apartment) than originally planned (\$50,000).³²⁵

Sarah Hovde, currently a researcher at the Community Service Society, has conducted a study of the first stages of NEP in Central Harlem.³²⁶ Hovde documented that the NEP model has been tentatively accepted by those community groups that are involved in the Neighborhood Task Force and that criticism has been muted when compared to that of POMP.³²⁷

In Central Harlem, Hovde reported that potential NEP clusters were identified by HPD and the Partnership by January 1995 and the Central Harlem Neighborhood Task Force chose two out of the four site clusters.³²⁸ Tenants in identified buildings received letters in late January and early February telling them they could opt out of NEP by applying to TIL.³²⁹ HPD presented its choice of Entrepreneurs to the Neighborhood Task Force as an accomplished fact. Some Neighborhood Task Force members objected to this process, but HPD did not reconsider its decision, claiming that NEP's timeframe required speedy action.³³⁰ Task Force members did not criticize HPD's choice of Entrepreneurs.³³¹

The Central Harlem Neighborhood Task Force meetings are not open to the public and Hovde reported complaints by Task Force members that HPD tightly controlled the agenda. As a result, some members have had their own monthly *ad hoc* meetings without HPD present. The members interviewed by Hovde described their relationships with HPD as cooperative, although there has been some uneasiness and some conflict. Generally, it appears that local 'players' want to stay within the NEP process in order to have some influence.³³²

324. *Id.*

325. Garbardine, *supra* note 277, at D9 (reporting on average size and costs of the first 1,196 NEP apartments).

326. Hovde, *supra* note 4.

327. The Neighborhood Task Forces studied by Hovde were composed of organizations that had both financial ties and similar agendas to HPD. HPD excluded a community organization (Action for Community Empowerment) that has taken adversarial stances to HPD policies, particularly those relating to NEP. *Id.* at 77.

328. *Id.*

329. *Id.* at 64. A building needs the assent of 60% of the units (including vacant units) to opt out. Once an application has been completed, the tenants have 90 days to fulfill all other TIL requirements including forming a tenant association, electing officers, and attending classes in building management. Apparently, this is a difficult process and severe time frame for tenants. *Id.*

330. *Id.* at 83.

331. *Id.*

332. *Id.* at 79-80.

There has been little commentary from the business-centered advocacy community about NEP, although the Citizens Housing and Planning Council has noted that there is some "skepticism about whether inexperienced entrepreneurs can handle difficult rehabilitation projects with tenants in place."³³³ A principal of one of Harlem's largest real estate companies believes that "[l]ocal entrepreneurs are best able to manage these buildings. But if it's going to work, whoever takes the buildings will have to have an easier time removing some of the tenants. Some don't pay rent; some tear up apartments. You have to get better tenants."³³⁴

The tenant-centered advocacy community, however, has many of the same criticisms it had of POMP. When NEP was first announced, Harry DeRienzo of the Task Force on City-Owned Housing asked about its long-term affordability:

What happens when the city is out of the picture? Gradually, the housing opportunities for the working poor will be lost. It is not feasible for for-profit owners to operate housing where tenants earn, on average, less than \$7,000 a year. The only way that this program can work is if much of it is eventually rented at market rates.³³⁵

Professor Saegert, also of the Task Force, "worried that there is not more tenant participation"³³⁶ in the design of NEP. Hovde's research seems to support Saegert's concerns about local participation and she cautions that HPD is implementing NEP in a top-down manner that is in conflict with its stated procedures.³³⁷ Hovde's findings should not be overstated, however, as she notes that all of those groups who have been asked to participate in the Central Harlem Neighborhood Task Force have agreed to do so, albeit with some trepidation.³³⁸

Michele Cotton, another Task Force member, has made some preliminary findings regarding the design and implementation of the Building Blocks! program as a whole.³³⁹ She notes that the Giuliani Administration has chosen to discontinue the placement of homeless families in *in rem* housing. While this may benefit other needy populations, homeless families are left with fewer and fewer available housing resources in the City.³⁴⁰

333. THE URBAN PROSPECT, *supra* note 252, at 4.

334. Kennedy, *supra* note 262, at 21. This statement by Eugene Webb is not necessarily indicative of landlord sentiment, but it appears to be a very frank assessment of their interests.

335. *Id.*

336. *Id.*

337. Of course, tenant participation and community participation are two different concepts, but the failure to include local community groups may very well indicate that tenants are excluded as well.

338. Hovde, *supra* note 4, at 93.

339. Cotton, *supra* note 266.

340. *Id.* at 19-20.

Cotton notes that the effects of this policy change are compounded by the Giuliani Administration's decision to amass vacant *in rem* apartments so as to make NEP more financially attractive. These changes combine to exacerbate the housing shortage emergency in New York City for low-income households.

Cotton also finds that the design of NEP does not differ substantially from that of POMP in key respects. In particular, she finds that NEP landlords are not required to be that much more 'local' than POMP landlords were. POMP generally required that its contractors be familiar with the characteristics of the housing stock they were interested in managing and POMP firms were only allowed to buy buildings near their currently owned properties. Cotton points out that it is unclear whether NEP standards are in fact any more stringent.³⁴¹ Monitoring standards may not be substantially different either, particularly in light of recent severe staffing cuts at HPD.³⁴²

Yet, some voices in the tenant-centered advocacy have been cautiously positive. In addition to those interviewed by Hovde, *City Limits* interviewed community organizers who indicated that they welcomed NEP and some of the Neighborhood Entrepreneurs.³⁴³ What is perhaps most striking about the reception of NEP by the tenant-centered advocacy community is that there is little stridency in its tone, and prejudgments of its success are few and far between. Besides certain structural arguments about the role of NEP within the greater housing market and other concerns about failures in its design, few commentators have dismissed NEP out of hand. Future debates, it seems, will be about whether HPD is successful in implementing the program according to its stated goals.

IV.

ANALYSIS AND CONCLUSION

While any evaluation of NEP can only be provisional at such an early stage in its implementation, it is clear that in significant ways NEP, like POMP, has failed to live up to its own criteria for success. Yet, much less is clear when POMP and NEP are compared to other HPD programs and evaluated in the broader context of *in rem* housing generally. Five areas deserve particular attention in analyzing the POMP and NEP strategy of

341. *Id.* at 8.

342. *Id.* at 8, 14-15.

343. Nauer, *supra* note 251, at 10. The article indicated that some tenants in buildings chosen for NEP were happy with the Neighborhood Entrepreneur selected for their buildings. ACORN's Helene O'Brien, an organizer working with these tenants, found that HPD and the Partnership were responsive to the concerns of tenants with whom she works. *Id.* Yet, another Task Force member who is also an employee of the Partnership indicated that at least one of the chosen Neighborhood Entrepreneurs has a "less than stellar reputation." *Id.* See also, Lobbia, *supra* note 315, at 41 (describing mixed reaction to early implementation of NEP).

selling *in rem* housing to for-profit landlord: a) the selection of buildings, tenants, and owners, b) monitoring, c) efficiency and equity, d) coordination with other government services, and e) legal issues.

A. Selection of Buildings, Tenants, and Owners

Few commentators have evaluated the criteria by which buildings were chosen for various HPD programs. The disposition strategies for POMP and NEP each have an implicit logic. Both programs presume it is desirable to return buildings to the tax rolls as quickly as possible. Given such a presumption, the City may have reasoned that large firms were best suited to manage and then purchase the many large buildings under HPD control when POMP was implemented. With NEP, there is an analogous reasoning: now that HPD has so many small buildings, it wants to tailor its disposition to less experienced managers who want to run smaller buildings.

Another aspect of NEP that deserves closer attention is HPD's practice of amassing vacant apartments in order to make buildings more attractive investments for NEP Entrepreneurs. Because vacant units and vacant buildings can command higher rents, the NEP program may actually be encouraging higher vacancy rates (at least in the short term). It is also important to consider how profit-oriented strategies selects tenants. NEP, like POMP, allows some rents to rise to market rates in order to produce profit for the landlords. The designers of NEP have chosen to deal with the tension between low-income tenants and profit seeking landlords by dividing low-income people into two classes: current, legal *in rem* tenants and everyone else. Current *in rem* tenants, if HPD deems them 'legal,' are supposed to receive the benefits of a renovated building and rent subsidies, provided by tax credits and public assistance grants. Those classified as mere occupants, licensees and squatters, however, are not offered any assistance in maintaining their current tenure. Nor do *potential* tenants receive any guarantees about the affordability of *in rem* units.

The manner in which HPD notifies tenants about the potential disposition of their buildings creates tension between its programs. In NEP, as in POMP, tenants are sent notices telling them that they have been selected for the program and that they have 60 days to opt out and enter TIL. The decision to place tenants in a reactive stance has the benefit of maximum flexibility for HPD, but may come at the cost of creating tenant apathy and antipathy.³⁴⁴ A recurring complaint of those who champion TIL as the best hope for long-term solutions to affordable housing is that tenants are given little time to organize as a cooperative and are therefore pushed into programs such as POMP and NEP.³⁴⁵ Thus, HPD's emphasis on speed in

344. Note that HPD, in contrast to its lax approach toward informing tenants about TIL, uses an extensive outreach effort to contact potential for-profit landlords about NEP and gives landlords from 1 to 3 years to make the final decision to buy an HPD building.

345. See Nauer, *supra* note 251, at 9-10.

its for-profit landlord programs (POMP and NEP) may be interfering with the long-term stability of its tenant-centered program (TIL).

The selection of buyers for POMP and NEP buildings may also be problematic. On paper, both programs require landlords experienced with similar housing stock and neighborhoods and HPD has designed NEP to maximize local participation. It is questionable whether NEP can remain local where POMP did not. By requiring certain amounts of experience and capital, NEP will exclude the local 'superintendent' proposed by Commissioner Wright as the typical participant in the program. More likely, the NEP landlords will include the larger, more experienced type of firm that POMP had attracted.

B. Monitoring

Commentators have done a comprehensive job of evaluating POMP's monitoring systems. The Office of the Comptroller audit noted that there were monitoring deficiencies relating to the correction of conditions in buildings sold through POMP, the placement of homeless families in POMP, and field inspections made by POMP coordinators.³⁴⁶

Mirroring the criticism of the Office of the Comptroller, the Private Sector Survey found that buildings sold through POMP were not monitored effectively and suggested that the City pay particular attention to ensuring that private POMP managers adhere to the ten-year and fifteen-year sales restrictions.³⁴⁷ Comprehensive monitoring would not only ensure that POMP was well run, but would also have helped POMP avoid the political blunders that interfere with HPD's long-term disposition strategy. The Survey also recommended that a more disinterested party should oversee the for-profit landlord's performance.³⁴⁸

HPD seemed to take many of these criticisms to heart when it designed NEP, which attempts to improve monitoring in a number of ways. The non-profit Partnership will act as a monitor of the entire program and local non-profit groups will have contracts to monitor local for-profit landlords. While the Partnership and some Neighborhood Task Force members receive money from HPD, those members without HPD contracts can act as independent community monitors. Currently, however, the Neighborhood Task Forces do not appear to have found a voice independent of HPD.³⁴⁹

C. Efficiency

POMP and NEP reflect a faith that the free market can provide housing in the most efficient way to low-income New Yorkers, but it is unsettled

346. AUDIT, *supra* note 72, at Schedule 2.

347. SUPPORT, *supra* note 52, at 26.

348. PRIVATE SECTOR SURVEY, *supra* note 144, at 63.

349. Hovde, *supra* note 4, at 70.

whether POMP and NEP are in fact efficient uses of City and federal funds. The costs associated with *in rem* housing are substantial, particularly the direct costs of rehabilitation and operation subsidies. On disposition, these costs may be offset by expected revenues to the City for taxes, mortgage payments, water and sewer fees, as well as by savings from reduced operating costs. However, even if the expected revenues and savings fully offset the costs, this does not mean the sales to for-profit firms are the most efficient use of public funds when compared to other options. Empirical research should replace ideology in the search for answers to the following question: do POMP and NEP landlords provide the best services at the best price or are New York City taxpayers providing these landlords with a subsidy that is euphemistically labelled 'profit'?

D. Coordination with Government and Community Efforts

Commentators have criticized HPD for failing to integrate its disposition programs with other City services and programs. Some have noted that drugs and crime have overwhelmed *in rem* buildings, particularly those that are not fully occupied.³⁵⁰ Others have suggested that various aspects of the regulatory and legal systems, including the Housing Code and landlord/tenant law, have stymied attempts to dispose of City-owned housing.³⁵¹

NEP attempts to address these problems by concentrating resources into limited areas. By clustering vacant buildings with occupied ones, NEP seeks to make the City's services more available by creating a critical mass of reinvestment in a small geographic area. Other components of the Building Blocks! program are meant to complement these efforts by assisting small landlords in the neighborhoods targeted by NEP. Whether NEP will be successful in integrating services with those delivered by other City agencies and efforts remains unclear.

E. In Rem Housing and the Law

New York State judges have had a significant role in shaping *in rem* policy, particularly in suits brought against POMP. There is every reason to believe that advocates will bring similar suits against NEP if the City fails to avoid the flaws of its predecessor program.

In a 1984 article in this journal, Andrew Scherer outlined potential legal theories that might be pursued in support of the rights of *in rem* tenants, including those based upon due process, the New York City Charter, Article 17 of the New York State Constitution, and Uniform Land Use and

350. See, e.g., The Bronx Survey, *supra* note 145, at 32; The Brooklyn Survey, *supra* note 145, at 33 (noting that HDFCs in both the Bronx and Brooklyn have significantly less of a problem with drugs than other *in rem* buildings, and that Central Management and HARP buildings in Brooklyn have significantly greater problems with drugs).

351. See *supra* notes 14-15 and accompanying text.

Review Procedures.³⁵² Tenants have indeed relied upon these theories and the New York State courts have been generally responsive to *in rem* tenants' procedural claims, although unresponsive to their substantive ones.

The New York City Charter in effect at the time that Scherer wrote his article contained provisions that required the City to allow written public comment on proposed regulations.³⁵³ The revised Charter demands an even greater role for the public: in addition to providing an opportunity to make written comments, the new Charter calls for "a public hearing unless it is determined by the agency in writing, which shall be published in the notice of proposed rulemaking in the City Record, that such a public hearing on a proposed rule would serve no public purpose."³⁵⁴ This may indicate to the courts that the City should be held to an even higher standard regarding public comment than it had been in the past.

Scherer also suggested that communities take advantage of planning procedures provided by the New York City Charter §197-a to 'pre-emptively' establish *in rem* policy in their communities.³⁵⁵ The Charter has since expanded the community's role by adding §2707, which establishes a process for community planning of service systems at the district level.³⁵⁶ Sections 197-a and 2707 offer the possibility of proactive, community-based responses to the *in rem* crisis. They are based upon the idea that a community can have a say in community planning, but only if it chooses to. As the courts seem to have limited themselves to ensuring only procedural guarantees, the City Charter may offer the only (and, as of yet, a largely unexplored) recourse for substantive community input into *in rem* policy.

As noted above, POMP's design had elicited a series of lawsuits that have highlighted its failings and interfered with its sales agenda. In *Laureano v. Koch*,³⁵⁷ the trial court referred to the New York State Constitution's 'unique' due process clause,³⁵⁸ its provision relating to housing for

352. Scherer, *supra* note 47, at 968-72.

353. N.Y.C. CHARTER § 1105-b (1985).

354. N.Y.C. CHARTER § 1043(d) (1992).

355. Scherer, *supra* note 47, at 971-72. Uniform Land Use and Review Procedures were governed by the previous N.Y. City Charter § 197-c, and regulations promulgated thereunder.

356. N.Y.C. CHARTER § 2707 (1996). Under section 2707, each agency with service districts within the community districts and boroughs must prepare annually "a statement of its service objectives, priorities, programs and projected activities within each community district and each borough for the new fiscal year, if requested by the respective community board or borough board."

357. 454 N.Y.S.2d 956 (Sup. Ct. 1982), *rev'd*, 473 N.Y.S.2d 445 (App. Div., 1st Dept. 1984), *rev'd as moot*, 479 N.E.2d 821 (1985).

358. N.Y. CONST. art. I, § 6.

low income persons,³⁵⁹ and its long history of affording enhanced due process protections to its own citizens. The court found for the tenants, extending State Constitutional due process protections beyond those granted by the United States Constitution.³⁶⁰

The Appellate Division overruled the trial court.³⁶¹ It found that *in rem* tenants had no constitutionally protected interest in their apartments which give rise to a legitimate expectation that their rents would be kept at levels permitted under rent control and rent stabilization laws.³⁶² It also found that, because rents were not set according to a standard formula, the restructuring of rents in *in rem* housing did not constitute the 'fixing of charges' forbidden by the City Charter.³⁶³ Although the Appellate Division overturned the Supreme Court, it did acknowledge, in principle, that "decent, safe and adequate low rent. . .housing at rents low income tenants can afford is an interest of the nature which merits due process protection."³⁶⁴ The tenants appealed.

The Court of Appeals of New York reversed and remitted the matter to the Supreme Court, with directions to dismiss the proceeding for mootness because the City, acknowledging the requirement to promulgate regulations pursuant to §1105(b) of the New York City Charter, had promulgated regulations.³⁶⁵

Courts soon took to the *Laureano* trial court's reading of the State Constitution and the City Charter. In *Sicherman/POMP v. Jenkins*,³⁶⁶ the court found for the tenant when the private landlord failed to follow DAMP regulations.³⁶⁷ In *Union of City Tenants v. Koch*,³⁶⁸ the court held that sales of buildings through POMP were subject to the protections of

359. N.Y. CONST. art. XVIII, § 1.

360. 454 N.Y.S.2d at 959. *See also* 157 West 123rd St. Tenants Ass'n v. Hickson, 531 N.Y.S.2d 742, 743 (Civ. Ct., NY County 1988) (holding that TIL was subject to due process limitations, as designee of City owner); Johnson v. City of New York, 578 N.Y.S.2d 977, 980 (Sup. Ct. 1991) (holding that TIL tenant organization may not discriminate against single mother applicant).

361. 473 N.Y.S.2d 445 (App. Div., 1st Dept. 1984), *rev'd as moot*, 479 N.E.2d 821 (1985).

362. 473 N.Y.S.2d at 449.

363. *Id.* at 448.

364. *Id.* at 449 (quotation marks omitted).

365. 479 N.E.2d at 821.

366. 567 N.Y.S.2d 566 (Civ. Ct. 1989).

367. *Id.* at 567 ("The City as a landlord and the petitioner as the City's managing agent are bound by the provisions of the New York State Constitution. Pursuant to Article 17 of the Constitution, the City of New York is obligated to provide assistance to the needy, including provision of shelter.") (citations omitted).

368. 574 N.Y.S.2d 695 (App. Div., 1st Dept. 1991).

City Charter §1105(b).³⁶⁹ The court reiterated that petitioners were entitled to due process protection to the extent that they, as low-income tenants, have a protected interest in decent, safe and adequate low-rent housing.³⁷⁰

NEP seems vulnerable to many of the same legal challenges brought against POMP. Tenant advocates are concerned that NEP has not yet promulgated rules of its own to comply with the new Charter's more expansive notice and opportunity to be heard provisions.³⁷¹ The Task Force on City Owned Property's *In Rem Organizer's Sourcebook* suggests that NEP's rules and regulations may not survive challenge in court.³⁷² NEP's failure to provide an official opportunity for tenants to comment on rent increases, to contest final selection into NEP, and to contest NEP's programmatic rent restructuring may violate *Union of City Tenants'* due process standards. The unofficial NEP guidelines contained in its Request for Qualifications documents grant complete discretion to HPD about such important things as the qualification of Neighborhood Entrepreneurs.³⁷³ As with POMP, courts may be inclined to invalidate guidelines that grant complete discretion to the City.

While NEP apparently shows care for current 'legal' tenants by providing rental subsidies, it makes no promises for future tenants. The fate of future tenants is a primary concern of the advocacy community, and advocates may argue that potential *in rem* tenants have standing to bring lawsuits against the City.³⁷⁴

Hovde has raised legal questions about NEP's innovative structure. The significant administrative and policy-making role of the Partnership (a non-governmental entity) in NEP (a City program) is unprecedented.³⁷⁵ The Partnership's role and its accountability to the public are not clearly defined. Without a clear position by the City, it may be left to the courts to articulate the legal boundaries of the Partnership's participation in NEP.

F. *The Future of NEP and New York City's In Rem Housing Crisis*

NEP will either be an innovative program that has addressed community and legal concerns or it will be POMP redux. Viewed from the perspective of one who primarily favors rapid disposition, it may be a effective strategy if it is not blocked by the courts or public outcry. Viewed from the

369. *Id.* at 696.

370. *Id.*

371. N.Y.C. CHARTER §§ 1043, 1045.

372. *IN REM Organizer's Sourcebook*, *supra* note 63.

373. RFQ, *supra* note 275, at 8.

374. *See, e.g.*, *In re Lee*, 574 N.Y.S.2d 695 (App. Div., 1st Dep't 1991) (holding that potential tenants have standing to request injunction against sale of certain POMP properties to known slumlords).

375. Hovde, *supra* note 4, at 7.

perspective of one who favors tenant and community participation, it shares many of the faults associated with POMP.

NEP is better funded than POMP and is designed to have more community participation than POMP. It provides explicit protection to tenants who must relocate during rehabilitation. It increases the number and types of organizations monitoring the for-profit landlords. And, perhaps tellingly, it has generally, so far, avoided negative media coverage.

But given that it has many characteristics in common with POMP, it may be similarly criticized in years to come. Like POMP, NEP does not ensure that its units will be maintained as long-term housing for low- and moderate-income tenants. The NEP program may encourage evictions of tenants paying low rents. It does not guarantee tenants adequate notice and an opportunity to be heard. HPD has already waived NEP's own guidelines in the first year. Some of NEP's first Entrepreneurs are from outside of the local community for which they have been selected. Some have poor records of maintaining housing, and some have substantial property tax arrears. In short, the first round does not engender complete faith in NEP's implementation strategy.

What is more, NEP has some new characteristics that may even make it worse than POMP. It amasses vacant apartments in a City with an overwhelming need for more low-income housing. It also ignores the needs of homeless families. These characteristics may lead to debilitating legal challenges or future unpopularity.

All HPD programs have had serious flaws: even the often praised TIL program offers no panacea. What remains most clear is that New York City's *in rem* disposition programs have not lived up to their potential and, more generally, the City is far from developing an equitable and efficient response to its acute housing crisis for low-income households.

The tenant-centered advocacy community should consider reevaluating its role as Cassandra to HPD's Troy. Tenants have interests that are clearly in conflict with those of the bureaucracy at HPD. Expecting HPD to fund tenant organizing so that tenants will be more empowered (and therefore more difficult) consumers of HPD's services is unrealistic. These advocates should agitate harder for different sources of tenant-organizing funds that are independent of HPD. *In rem* policy will benefit more from a clearly adversarial approach than an implicitly adversarial approach.

An unspoken aspect of the *in rem* debate is that nearly all of the speakers, including most of the tenant-centered advocates, are funded by HPD. Such a system clearly does not encourage the most open dialogue. Rather, we need structural changes that would maximize the independence of at least some organizations that are involved with *in rem* policy.

Studies and experience indicate that all four sectors — the City, the for-profit sector, the non-profit sector, and tenant groups — have something to offer to *in rem* housing management. The City should rely on

strong organizations whatever form they take. This may mean that different solutions work for different neighborhoods and for different buildings.

Too often, one senses that those who dominate the *in rem* policy debates are presiding over a funeral, while accusing each other of murder. In the meantime, many *in rem* tenants live in wretched housing, hoping for a solution to New York City's housing crisis that works both equitably and efficiently. In the context of such overwhelming needs, ideology should not overcome pragmatism. Abandonment has been with New York City for more than twenty years now. The real estate market has fluctuated, as have the political winds and the fortunes of numerous programs designed to combat the *in rem* problem. It is time to develop a more comprehensive response that takes into account the lessons of experience.