Managing New York City's Rental Housing Catastrophe:

The Once and Future Potential of Tax-Foreclosed Properties

John Krinsky

New York City faces a rental housing crisis, with homelessness at record levels, more than a million households spending over 30% of their incomes on rent, and the number of apartments renting for $1,000 or less plunging fast. The city has an opportunity to manage this catastrophe, argues John Krinsky, by reviving a policy it pioneered in the "dark days" after the 1974 fiscal crisis: that of taking control of tax-delinquent property neglected by private owners and transferring it to nonprofit managers who will keep it permanently affordable.

The rise of community-managed affordable housing after the fiscal crisis

During the bad old days of the 1970s and 1980s, New York City became the owner of last resort for over 100,000 vacant and occupied apartments (DeRienzo and Allen 1985; Perine, Schultz and Marazzi 2011. These apartments, in buildings concentrated in the city's poorest neighborhoods, had been abandoned by their landlords in favor of better investments, milked for rents and physically neglected, and, ultimately, foreclosed for failure to pay taxes or water and sewer fees (Bach and West 1993). In the midst of its historic fiscal crisis, the city sought to collect as much tax revenue as it could, and shortened the period of allowable tax arrears from three years to one. This "accelerated vesting" made it the unexpected owner of some of the city's most dilapidated housing stock, with its poorest tenants, and lowest rent-rolls.

In a context of shrinking federal transfers to cities, and a general climate of local austerity, the city of New York was typically no better a landlord to tenants in foreclosed or "*in rem*" buildings (after the name of the legal proceeding) than the private landlords were. The city was slow to make physical improvements and the buildings regularly had dangerous conditions, all manner of vermin, and long-vacant and unfixed apartments that were taken over by drug dealers and users.

Nevertheless, there were glimmers of hope in the gloom. Already in the early 1970s, the city had begun to work with groups of organized tenants and neighborhood residents to take over abandoned buildings and fix them up, partly through "sweat equity." Some of these urban homesteading groups became long-functioning cooperatives. And then, under pressure from tenant and neighborhood advocates, the city stopped its practice of trying to return its *in rem* stock to the private market through auctions, willy-nilly (see, for example, Angotti 2011, pp. 99–100; Saegert and Winkel 2010; Wolf-Powers 2014). Advocates convinced the city that the auctions placed tenants at the mercy of bottom-feeding landlords who would take the rents and neglect the buildings, often only to have them return to city ownership through another round of *in rem* vesting.

Instead, using federal Community Development Block Grant funds, the Low-Income Housing Tax Credit, a few smaller federal programs, and significant bank financing, and, starting in 1986, the Low-Income Housing Tax Credit, the city embarked on a 10-year program to restore the city's affordable housing stock. The city's Department of Housing Preservation and Development recruited many of the same tenant and neighborhood groups to become nonprofit landlords, and

worked with some organized groups of tenants to form low-income cooperatives (many buildings were also auctioned to private owners who were regulated to manage them responsibly). Often, in spite of the billions spent, the scopes of work were inadequate for the long-term financial and physical health of the buildings; sometimes, the community organizations and tenant groups that had become the new landlords were not organizationally prepared to do so (Turetsky 1993). Accordingly, the program, which returned more than 40,000 apartments to the affordable housing stock, was a moderate success, but not a panacea. Nevertheless, the era—now long eclipsed by successive administrations that distanced themselves from community-based nonprofits—holds some important promise for progressive housing policy today. New York City—and others—are currently being routed by gentrification pressures, fuelled by international speculation on real estate and its linked investments (e.g. Fields 2014, 2015). Even if a new crop of progressive city leaders cannot count on solving all their problems by placing community-based housing back on the agenda, rebuilding the capacity for community-based, permanently affordable housing is good policy and good politics.[1]

The demise of affordable housing under Mayors Giuliani and Bloomberg

During the 1970s and 80s, nonprofits managed much of the city's affordable housing. But in the 1990s, they became vulnerable to shifting political winds. In 1996, Mayor Giuliani decided to stop taking buildings *in rem*. Instead, the city would place tax and water liens, a right to seize possession of the property (as well as emergency repair liens, in which a landlord fails to repay the city for intervening in hazardous conditions) against a building and then, after a period of staged warnings, sell the liens to a servicer, which would then package the liens and sell them as investments. In this way, the city would get its money up front, and privatize the question of what happened to the buildings—and their tenants. Owners of delinquent buildings pay servicers representing investors to whom liens have been packaged and sold; they can pay the liens when they sell the building; or they can lose the building if the servicer forecloses (Perine, Schultz and Marazzi 2011). Worse still, there is evidence that buildings that enter the tax-lien sale—because of the interest the servicer can charge on the lien—become even more financially burdened, and are often thrown into even worse condition than they were before their liens were sold.[2] Tax-lien sales continued under Mayor Michael Bloomberg from 2002 to 2012. The practical effect for the nonprofit, community-based housing groups is that the supply of available housing has almost thoroughly evaporated.

Not *all* tax liens are put into the tax-lien sale. Some buildings are exempted. Among them are buildings that are in the worst physical condition. Including them in the tax-lien sale would be to poison the well for investors. Another exempt category—at least so far—has been the low-income cooperatives formed through the city's own program. For decades, it has become clear that the repair and financing packages these cooperatives were given at disposition from the city were inadequate to their long-term physical and financial needs. Many, like their landlords before them, have fallen into heavy tax arrears. For buildings in the most parlous condition, the city created a nonprofit, Neighborhood Restore, in 1999, which takes title to the building after an instant transfer from an *in rem* foreclosure. Neighborhood Restore runs the building and finances its repair, and then usually turns it over to a "responsible" owner, either a nonprofit, community-based organization, or a private landlord or real-estate firm with a track record in running decent affordable housing. This "third-party transfer" program is, however, sporadic, and the flow of buildings to nonprofit ownership has slowed to a trickle.

[1] An important side effect of the nonprofit partnership between the city and neighborhood-based housing advocates was the large-scale political *demobilization* of these groups. As a longtime housing advocate put it in the mid-1990s, the affordable housing advocacy sector in New York City had become reduced to "managing the crisis," leaving advocacy for larger change for another day (DeRienzo 1994).

[2] An analysis by the Urban Homesteading Assistance Board found: "Of the 111 buildings with rent-stabilized units that went through the lien sale in June 2013, 94 of them saw an increase in distress (…) by June of 2014. These buildings are home to 2,687 families." Unpublished draft, September 25, 2015.

An opportunity to remove tax lien and revive community-controlled housing

Today, New York City faces a dire housing crisis. Half of all renters in the city—or more than a million households—are "rent-burdened," paying more than 30% of their incomes on rent. Nearly 30% of all renters are "severely rent-burdened," and pay more than half their incomes on rent, a figure that rises to over 46% for low-income households (Furman Center 2015). Homelessness is at record levels, with 58,000 people staying in city shelters every night, and more than 100,000 per year experiencing homelessness. Over the past decade, the number of apartments renting for $1,000 or less plunged by a third and, of the 165,000 apartments developed or preserved by the city's "affordable housing" policy, only one third were affordable to the median renter in the neighborhoods where they were developed (Stringer 2014; ANHD 2013). In some neighborhoods with large numbers of new affordable units, the number was closer to 5%. In the meantime, gentrification pressures are strong, and especially so in once-marginal neighborhoods where there remain relatively high concentrations of vacant property and which produce disproportionate numbers of homeless households.

Mayor Bill de Blasio, who has tried to tout his "progressive" bona fides nationally, has made the creation or preservation of 200,000 units of affordable housing a cornerstone of his administration. The principal vehicle for his plan is "mandatory inclusionary zoning" (MIZ). MIZ means that, as the city changes, the zoning in neighborhoods across the city (often the ones creating the most homelessness) also changes in order to increase density and to allow more housing to be built. It will require developers to provide a percentage—25% to 30%—of their units as "affordable," usually at 80% or 60% of the area median income (AMI) of $63,700 for the city and two suburban counties. While it is true that people at this income level have a difficult time finding housing—even hundreds of unionized city workers are homeless (Calder 2015)—the situation is most dire in those neighborhoods where the *median income* for the neighborhood is below 50% of AMI, like much of the South Bronx. The de Blasio plan has little housing planned for these households, which means that, as under his predecessor's administration, "affordable" housing will effectively gentrify the city's poorest neighborhoods, while using public policy to enrich private developers (see, for example, Stein 2014; Savitch-Lew 2015).

The city's tax-lien sales are often in the same neighborhoods, meaning that the city is not taking advantage of the leverage it has over property-owners to gain land and housing resources to stabilize these neighborhoods for their low-income residents.

It is important to understand that this is the culmination of Giuliani's housing politics, rather than an alternative to them. By shutting off the pipeline through which the city seized property neglected by private, for-profit owners and transferred it to nonprofit ownership—i.e. the *in rem* process—the city stopped investing in the nonprofit housing sector. To be sure, there were problems in turning neighborhood tenant organizers into community development corporations (not least, politically, for the groups themselves), but the 20 years in which these groups were increasingly shut out of affordable housing policy have resulted in a hegemonic view in the "progressive" administration that it is mainly for-profit developers who can be trusted with affordable housing. That these developers' business models do not include housing for very low-income people is a price the de Blasio administration seems willing to pay.

Yet because of the overlapping geography of housing problems, rezoning, and tax liens, the city *could* rebuild and reinvest in its neighborhood-based nonprofits, and structure property-transfer packages that are larger, more financially viable, and yet which provide deeper affordability than for-profit, inclusionary zoning deals. It could do this by excluding more housing from the tax-lien sale, using it—and what little vacant, city-owned land is left—to create resident- and community-controlled ownership entities that are in permanent partnership with the city, and which provide permanent affordability, such as mutual housing associations (large, resident-majority nonprofits with government and housing-specialist representation) and community land trusts (community-

controlled, nonprofit owners of land that decide on allowable uses and use a ground lease to enforce permanent affordability; see, for example, Hovde and Krinsky 1997; Saegert 2015).

Doing so would certainly cost money; it would also cost the city in terms of forgone tax revenue. Nevertheless, the city already spends a *billion* dollars on homeless shelters and services per year. The only way that it can begin to put a dent in this figure is by finding ways to provide more deeply affordable housing, and to do so by stabilizing housing in the most vulnerable neighborhoods, rather than by exacerbating their churn, as current policies do. Further, rebuilding a community-based, nonprofit sector for permanently affordable housing, based on the city's removal of housing from neglectful landlords, would not be a return to the bad old days. Rather, if the current administration devotes proper resources to such an effort, it would be an investment in a more progressive city.

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