INITIATION OF RECEIVERSHIP PROCEEDINGS IN HOUSING CODE ENFORCEMENT

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Although municipal housing and maintenance codes continue to be enacted in large numbers, especially in response to the requirements for the federal Workable Program for Community Improvement,[1] problems of code enforcement continue to be troublesome. Often the principal means of enforcement is through criminal prosecution of landlords, which has many limitations and has usually been found unsatisfactory. In the search for more effective means of housing code enforcement, one of the latest remedies to be employed is court appointment of a receiver of the building. At least six states[2] have now enacted statutes which authorize court appointment of a receiver who takes over the management of the property, collects the rents, and uses the rental income to make needed repairs in order to bring the property up to the minimum standards of livability as prescribed by the housing code. After the repairs have been completed and all the expenses incurred have been recouped from the rental income, the building is then returned to its owner.

Most housing codes are directed toward three aspects of habitability: Structural maintenance of the building, the provision and maintenance of minimum household facilities, and minimum living space for building occupants. Since housing codes are ordinarily quite detailed and do not specify an order of priority among the myriad violations, a vexing and difficult problem in the administration of receivership programs is the description of the physical conditions or the specification of particular code violations which justify the initiation of the proceeding, since the appointment of the receiver lies within the discretion of the court having jurisdiction. Putting aside problems of constitutional adequacy in the standards that are prescribed,[3] the fundamental problem is to describe these conditions in a way which will avoid the bringing of proceedings for trivial violations,

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1. 42 U.S.C. § 1451(c) (Supp. II, 1966).

2. Connecticut, Illinois, Indiana, Massachusetts, New Jersey, and New York.

3. In Re Department of Buildings of City of New York, 251 N.Y.S.2d 441, 14 N.Y.2d 291, 200 N.E.2d 432 (1964); Central Savings Bank v. City of New York, 279 N.Y. 266, 18 N.E.2d 151, 121 A.L.R. 607 (1938).

partly to eliminate needless suits against owners of substandard buildings, and partly to avoid possible constitutional questions should the statute authorize proceedings for buildings which are not seriously substandard. Another problem is to dovetail the use of receivership proceedings with the routine enforcement of the housing code. The statute ought to be so written that deficiencies reported in the normal course of code inspection can furnish the basis for initiating receivership proceedings.

In an effort to analyze these problems, this note will examine the statutory basis for the initiation of receivership proceedings under the state receivership laws presently in force. These laws vary considerably in stating the basis; some key the receivership action directly to violations of the housing code, while others attempt an independent definition of nuisance as the basis for the action. Under both varieties of law, the statutes differ in the extent to which they require seriously substandard conditions as the basis of the receivership action.

One of the oldest receivership acts, and certainly the act with the most judicial interpretation, is in the New York Multiple Dwelling Law.[4] This act authorizes the appointment of a receiver for the repair and rehabilitation of multiple dwellings in New York City. The petitioning party is the Commissioner of the Department of Buildings, and the Commissioner of The Department of Real Estate is appointed as the receiver if the Court orders an appointment. This statute[5] authorizes filing of a petition for appointment of a receiver:

> Whenever the department shall certify that a nuisance exists in a multiple dwelling, or any part of its premises, which contitutes a serious fire hazard or is a serious threat to life, health or safety. . . .[6]

The statute then provides:[7]

> The term "nuisance" shall be held to embrace public nuisance as known at common law or inequity jurisprudence. Whatever is dangerous to human life or detrimental to health, and whatever dwelling is over-crowded with occupants or is not provided with adequate ingress and egress or is not sufficiently supported, ventilated, sewered, drained, cleaned, or lighted in reference to its intented or actual use, and whatever renders the air or human food or drink unwholesome, are also severally, in contemplation of this law, nuisances. All such nuisances are unlawful.

4. N.Y. Multiple Dwelling Law § 309 (McKinney Supp. 1966).
5. *Id.*
6. *Id.* at 1(e).
7. *Id.* at 1(a).

This statute contains several ambiguities. While the reference is to a nuisance "at common law or equity," the statute fails to recognize that the common law described different degrees of nuisance, depending upon the relief that was granted for correction of the substandard conditions. For drastic remedies, a higher degree of nuisance was required. For example, more serious deficiencies were required if the remedy was demolition, without compensation, as compared to abatement through correction.[8] Presumably, conditions warranting the appointment of a receiver would not need to be as serious as the conditions warranting demolition of the structure, but the statute makes no such distinction.

Apart from difficulties in determining what combination of conditions will justify the petition for a receivership, the statute also presents difficulties in coordinating the nuisance requirement with the multiple dwelling code as grounds for a petition. Thus, it is not clear when lack of ventilation, as specified by the code, will constitute inadequate ventilation sufficient to constitute a statutory nuisance under the law. The same point can be made about the other substandard conditions described by the statute. While the nuisance must constitute a "serious" threat, no basis is provided for determining when such a threat exists.

The Connecticut statute is quite similar to New York's in that it employs a definition of nuisance to justify the receivership action. It provides:[9]

> Whenever any order issued under (statute cited) . . . or under the provisions of any municipal charter or special act or ordinance relating to the abatement of nuisances in tenement houses is not complied with . . . the authority appointed . . . shall apply . . . for a rule requiring the owner or any mortgagees or lienors of record to show cause why the chief executive of such municipality . . . should not be appointed receiver of the rents, issues and profits of such property . . .

The statute further provides that a petition for appointment of a receiver shall contain:[10]

> A statement that a nuisance which constitutes a serious fire hazard or is a serious threat to life, health or safety continued to exist in such property after the time fixed for the removal thereof in such order . . .

8. 66 C.J.S. Nuisances § 18(a), § 118(a) (1950).

9. Conn. Gen. Stat. § 19-347b (Supp. 1965).

10. *Id.*

The statute authorizing abatement of nuisances provides as follows:[11]

> Whenever any tenement, lodging or boarding house, or any building, structure, excavation, business pursuit, matter or thing in or about such house or the lot on which it is situated, or the plumbing, sewerage, drainage, lighting or ventilation of such house, is, in the opinion of the board of health, in a condition which is or in its effect is dangerous or detrimental to life or health, such board may declare that the same, to the extent specified by such board, is a public nuisance, and may order the same to be removed, abated, suspended, altered or otherwise improved or purified, as the order specifies . . .

This statute links the initiation of receivership actions to an independent public determination that a building constitutes a public nuisance, and unlike the New York law, does not attempt to enlarge on the character of a public nuisance through independent statutory definition. Furthermore, the law by implication would allow the appointment of a receiver when conditions exist short of deficiencies which would allow demolition, since a petition for a receiver may apparently follow the failure to abide by an order for correction or abatement of a substandard building condition.

A more comprehensive definition of the basis for a receivership petition is found in the recently-enacted Indiana statute:[12]

> Whenever the commissioner of buildings . . . shall find therein any building or structure, or any part thereof, no matter for what purpose designed or used, or anything that is appurtenant thereto, to be in such impaired structural condition or state, arising from any cause or reason whatever, which renders it unsafe or dangerous either to any person or any property; or be so unsanitary, or so infested with disease, as to cause or threaten a serious hazard to public health, or to the general welfare in that locality; or to be so used, or in such condition, that thereby a dangerous fire hazard or other danger to life or property, is created or allowed to continue, or may reasonably result therefrom; or to be so constructed, maintained, or used as to result in the violation of any statute, ordinance, or regulations authorized by law and relevant thereto, or so as to constitute or be about to become a public nuisance . . .

This statute does not limit the grounds for the petition to a finding of public nuisance, and for the first time introduces a violation of a statute or ordinance, presumably only those requiring building main-

11. Conn. Gen. Stat. § 19-344 (1958).

12. Ind. Ann. Stat. § 48-6144 (Burns 1963).

tenance, as the basis for the receivership petition. However, while the nonstatutory conditions must be "dangerous" or "unsafe," apparently any violation of a statute or ordinance can furnish the basis for a receivership petition. Note also that a petition may be brought when there is a "serious hazard . . . to the general welfare of the locality." As the term "general welfare" is undefined, presumably the statutory language would permit receivership actions based on blighting influences which are not necessarily structural. For example, an unkempt and vacant building in an otherwise standard neighborhood might conceivably endanger the "general welfare" of the community, even though the building itself is not structurally unsound.

The Massachusetts law also bases the receivership action on violations of code standards, but does not permit the action to be brought for trivial violations:[13]

> Any tenant who rents space in a building for residential purposes wherein a condition exists which is in violation of the standards of fitness for human habitation established under the state sanitary code or in violation of any board of health standards, which condition may endanger or materially impair his health or well-being or the health or well-being of the public, may file a petition against the owner of said building . . .

This statute does not attempt a description of those code violations which will "materially impair" the well-being of the occupant, and also places the responsibility for initiating proceedings on the tenant rather than on the public official charged with code enforcement. Variants of the Massachusetts law, enacted in Illinois and New Jersey, shift the responsibility for initiating proceedings to the appropriate public officer, but apparently would allow proceedings for any code violation. Note that the Illinois law is explicit in requiring an official finding that a violation exists before a receivership proceeding may be instituted. This statutory approach seems preferable to statutes, like some of those quoted, which describe the conditions under which the receivership action may be brought without requiring some form of official participation in the decision leading up to initiation of the proceedings. Those statutes not requiring official participation seem particularly vulnerable to abuse when the action can be initiated by the tenant. The Illinois provision is as follows:[14]

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13. Mass. Ann. Laws ch. 111, § 127h (Supp. 1966).

14. Ill. Ann. Stat. ch. 24, § 11-31-2 (Smith-Hurd Supp. 1966).

> If the appropriate official of any municipality determines, upon due investigation, that any building or structure therein fails to conform to the minimum standards of health and safety as set forth in the applicable ordinances of such municipality . . . the municipality may make application to any court of competent jurisdiction for an injunction requiring compliance . . . or for such other order as the court may deem necessary or appropriate to secure such compliance.

The New Jersey law provides:[15]

> Upon the adoption of an ordinance pursuant to this act and in the event that any owner of a building or structure in the municipality shall violate such ordinance or fail to abate a condition harmful to the health and safety of the occupants of the building or structure and the general public in the municipality . . . municipal officer . . . may, by and with the approval of the governing body of such municipality, bring an action . . . to be appointed receiver ex officio of the rents and income . . . for the purpose of abating said conditions.

A review of the receivership statutes enacted so far has indicated that the statutory draftsmen have not given sufficient consideration to the basis for initiating the receivership action. Some of these laws confer considerable discretion upon the enforcing agency, and would permit the institution of receivership actions for building conditions which do not constitute serious or substantial violations of maintenance codes. While no one formula can be offered as a pattern for future legislation, the following criteria would seem essential:

1. Initiation of the receivership action should explicitly be keyed to violations of the housing or maintenance code. While it may not be possible to improve on language calling for "serious" violations, or violations which "materially impair" the well-being of the occupants, some improvement in language might be attempted. At the outset, a distinction might be drawn between building conditions which warrant demolition without compensation, and conditions which are considered repairable. In addition, the statutory focus might be shifted from an emphasis on the impact on building occupants, or on the general public, to an emphasis on the extent to which the code standards are violated. For example, receivership actions could be authorized for buildings which are so structurally substandard that they warrant substantial repairs requiring major capital investment. An alternative ground would authorize initiation of pro-

15. N.J.S.A. § 40:48-2.12h (Supp. 1965).

ceedings when buildings are deficient in essential household facilities, which would then be enumerated. Continued use of the "public nuisance" standard would seem undesirable in view of the vagueness of nuisance criteria and the difficulty of relating such criteria to violations of the code.

2. While tenant-initiated actions may be warranted in some instances, ordinarily the initiation of the receivership action should follow explicit findings by the enforcing agency that the building has been inspected, that violations have been found, that they have not been corrected, and that a receivership proceeding is necessary to remedy these conditions and to carry out the purpose of the code. With such a provision the use of the receivership remedy could be more carefully coordinated with more ordinary proceedings for enforcement of the housing and maintenance codes.