BEST PRACTICES FOR EFFECTING THE REHABILITATION OF AFFORDABLE HOUSING

VOLUME 2: TECHNICAL ANALYSES AND CASE STUDIES

BEST PRACTICES FOR EFFECTING THE REHABILITATION OF AFFORDABLE HOUSING

Volume 2: Technical Analyses and Case Studies

Prepared for:
U.S. Department of Housing and Urban Development
Office of Policy Development and Research

SEPTEMBER 2006

Best Practices for Effecting the Rehabilitation of Affordable Housing

—

Volume II:
TECHNICAL ANALYSES AND CASE STUDIES

JUNE 2005

Prepared for:

U.S. Department of Housing and Urban Development
Office of Policy Development and Research

***Prepared by*:**

Center for Urban Policy Research (CUPR)
Edward J. Bloustein School of Planning and Public Policy
Rutgers, The State University of New Jersey
New Brunswick, New Jersey

and

National Trust for Historic Preservation

The Enterprise Foundation

National Center for Healthy Housing

***Primary Author* (CUPR):**

DAVID LISTOKIN

***with* (CUPR):**

Alan Cander
Tim McManus
Matthew Camp
David Downs
Mary Uschak
Ian Litwin
Zachary Kushel

***Research Assistance Provided by*:**

National Trust for Historic Preservation
Public Policy Department
Laura Skaggs, Patrick Lally, Sydney Becker
Northeast Office
Wendy Nicholas, Elaine Finbury, Adele Fleet Bacow (NE Office Consultant)
Community Revitalization Department
Constance E. Beaumont, Elizabeth Pianca, Harry K. Schwartz, Erica Stewart
Nixon Peabody LLP
Andrew Potts

The Enterprise Foundation
Planning, Design, and Development
Peter Werwath

National Center for Healthy Housing
Jonathan Wilson

Heritage Preservation Services, National Park Service
Elizabeth Moore Rossi

Building Technology, Inc.
David Hattis

Building Futures Institute, Ball State University
Steven Kendall

ACKNOWLEDGMENTS

We would like to acknowledge the critical assistance of the National Rehab Study Housing Resource Group who aided the identification of both the challenges to rehab and best practices to foster renovation:

Robert Adams, VMH, Inc.
Randall P. Alexander, The Alexander Company
DeWayne H. Anderson, Anderson Development Company
Bennett Applegate, Applegate & Thorne-Thomsen
Alfred Arezzo, Hoboken, New Jersey
William Asdal, Asdal Builders
James E. Babbitt, Flagstaff, Arizona
Richard Baron, McCormack Baron & Associates
Eddie Belk, Belk Architects
Peter Bell, National Housing & Rehabilitation Association (NHRA)
Bruce Block, Milwaukee, Wisconsin
Jim Bonar, Skid Row Housing Trust
William Brenner, National Institute of Building Sciences (NIBS)
Thurman Burnette, Rural Development
Andrew Chaban, Princeton Properties
William Connolly, New Jersey Department of Community Affairs, Division of Codes and Standards
Karen A. Danielsen, Director of Housing Policy and Practice, Urban Land Institute (ULI)
William F. Delvac, Latham & Watkins
Linda Dishman, LA Conservancy
Dan Dole, Scottsdale, Arizona
Carl Dranoff, Dranoff Properties
Mel Ellis, Rural Development
David Engel, Office of Policy Development and Research
Dan Falcone, New Economics for Women
Mario Fonda-Bonardi, Fonda-Bonardi & Hohman, Architects
Joan Galleger, Garsten Management Corporation
Terry Goddard, Law Offices of Terry Goddard
Tony Goldman, Goldman Properties, Inc.
Dean Graves, FAIA
Frank Grey, Chattanooga Neighborhood Enterprise (CNE)
Cissy Gross, Kansas City, Missouri
George Haecker, Bahr Vermeer & Haecker, Architects
David Harder, Executive Director, Little Haiti Housing Association (LHHA)
James Harger, Winn Management
David Hattis, Building Technology, Inc.
Curt Heidt, Federal Home Loan Bank
Michael Hervey, Jackson, Mississippi
Darryl Hicks, National Housing and Rehabilitation Association (NHRA)
Kitty Higgins, National Trust for Historic Preservation
Bill Huang, Community Partners (National Trust)
Lawrence Jacobsen, Mortgage Bankers Association
Marty Johnson, Isles, Inc.
Anthony Jones, Clearwater, Florida
Will Jones, Research Officer, National Association of Housing and Redevelopment Officials
Wendall C. Kalsow, McGinley Hart & Associates
Kevin Kelley, Leon Weiner Associates
C. Theodore Koebel, Center for Housing Research, Virginia Tech
Karl K. Komatsu, AIA Komatsu Architecture
John Kromer, University of Pennsylvania's Fels Institute of Government
Richard Kuchnicki, International Code Council
Robert Kuehn, Keen Development Corporation
Michael Lappin, The Community Preservation Corporation (CPC)
John Leith-Tetrault, Community Partners (National Trust)
Aaron Lewit, Enterprise Foundation
Kelley Lindquist, Artspace Projects, Inc.
Stanley Listokin, Executive Director, Masada Construction
Stanley Lowe, Executive Director, Pittsburgh Housing Authority
Weiming Lu, Lowertown Redevelopment Corporation
Alan Mallach, City of Trenton, New Jersey, Department of Housing and Development
Daniel Mackay, Preservation League of New York State
Christy McAvoy, Historic Resources Group
Bob McLoughlin and Helen Lopez, Albuquerque Housing Services
Michael Mills, Ford Farewell Mills & Gatsch Architects
D. Thomas Mistick, Mistick Construction
Susan West Montgomery, Preservation Action
William Mosher, Mile High Development
Ronald F. Murphy, Stickney Murphy Romine Architects
Jerry Myers, Pocatello, Idaho
James Paley, Executive Director, Neighborhood Housing Services of New Haven
Bryan Park, Northwest Housing Resources (NHR)
Sharon Park, Heritage Preservation Services, National Park Service
Brian Patchan, National Association of Home Builders (NAHB)
Mary Helen Petrus, Cleveland Neighborhood Development Coalition
Perry Poyner, Alley Poyner Architects
Paula Robinson
Jonathan F. P. Rose, Affordable Housing Construction Corp.
Donovan Rypkema, Washington, D.C.
Jacques Sandberg, Pusateri Development
Ken Sandler, U.S. Environmental Protection Agency
Susan Schlanlaber, The Landmark Group of Companies
Bruce Schiff, Friduss, Lukee, Schiff & Co.
Clark Schoettle, Providence Preservation Society Revolving Fund
Howard B. Slaughter, Jr., Pittsburgh, Pennsylvania
Kennedy Smith, National Main Street Center (National Trust)
Robin Snyder, U.S. Environmental Protection Agency
Gary Stenson, MetroPlains Properties, Inc.
Kathleen Taylor, Owner, Taylor Construction Services
Pat Tiller, National Park Service
Stephen Turgeon, Memphis, Tennessee
Mike Turner, Professional Remodeler
George Vallone, West Bank Realty
Ronald Wells, Spokane, Washington
Kathleen H. Wendler, Southwest Detroit Business Association
Jim Wheaton, Chicago Neighborhood Housing Services (NHS)
Bradford J. White, Esq., Project Management Advisors, Inc.
David Wood, Professional Remodeler
Eric Youngberg, Neighborhood Reinvestment Corporation

We also gratefully acknowledge the patience and critical assistance provided by Edwin Stromberg, GTR at the U.S. Department of Housing and Urban Development, Office of Policy Development and Research. Mr. Stromberg is a consummate professional. Importance assistance was also provided by Laura Skaggs of the National Trust for Historic Preservation; Peter Werwath of the Enterprise Foundation; Jonathan Wilson of the National Center for Healthy Housing; as well as other contributors to the study (Elizabeth Moore Rossi of the National Park Service, Steven Kendall of Ball State University, and David Hattis of Building Technology, Inc). We also thank numerous unnamed professionals who attended two national review panels held in conjunction with the annual conference of the National Trust for Historic Preservation as well as the National Housing and Rehabilitation Association.

Lastly, we thank those working in the case study organizations for participating in this study. They gave generously of their time and expertise.

Final responsibility for the contents of this report, however, rests with the authors alone.

TABLE OF CONTENTS

Introduction

Technical Analyses and Case Studies

Our study of best practices to effect the rehabilitation of affordable housing relied on multiple sources of information and data. These included the existing literature; the study's resource group, often contacted by telephone; the research team's considerable rehab experience; and technical and case study analyses. This volume presents the more critical technical analyses and case studies.

The technical studies presented here consider four subjects: national rehab need and affordability, rehab and tax credits, the building code and rehab, and receivership as a rehab strategy.

Chapter 1 utilizes the 2003 American Housing Survey (AHS) to estimate rehab need and affordability. It posits how AHS measures of housing quality can be employed to flag varying degrees of rehab need (minor, moderate, and substantial), assigns costs to these different rehab interventions, and estimates to what degree the necessary renovation is affordable.

Chapter 2 analyzes how a variety of tax credits can support rehab. These include the Low-Income Housing Tax Credit, Historic Tax Credit, and the recently enacted New Markets Tax Credit. The latter is offered by the federal government only while the other credits are available from the federal government as well as some states. This chapter describes each of the credits, documents how these aids are currently being used to support housing renovation, and concludes with policy recommendations to enhance the utility of the various credits to encourage affordable rehab.

Building codes regulate the myriad required construction specifications (e.g., for means of egress, structural loads, and fire protection) for both new construction and rehab. While regulating both types of activities, building codes are largely oriented to new construction, and that perspective creates problems for renovation. The building code, in practice, sometimes mandates a new-construction standard for rehab, and such required retrofitting of an existing building to a new-building standard is technically problematical and expensive. Chapter 3 analyzes this building code challenge and most importantly documents efforts to make building regulations more supportive of rehab through such means as adopting a "smart code."

Property acquisition can challenge rehab, and Volume I of the study explored ways to overcome this hurdle. Receivership is one such property control strategy. Chapter 4 of this volume analyzes the statutory framework for receivership in the United States (e.g., seventeen states have enabling legislation), considers how receivership is being effected, and discusses how its implementation can be improved.

Chapters 5 through 9 of this volume present best practice case studies. Case studies were conducted to expand the research methods utilized by the study (e.g., review of the literature, discussions with the resource group, and conducting technical investigations). These multiple sources provided an extensive base of information on the best practices for affordable-housing renovation; however, the sources had limits as to the amount and nature of information that could be covered. For example, because of time and other constraints, the telephone discussions with the resource group were not suitable for ascertaining the numerous modifications to, or evolution of, a specific rehab program. In addition, the telephone discussions did not allow for the face-to-face rapport that encourages a rehab developer or lender to give a candid, introspective evaluation of the best practices that were learned. Accordingly, the study included a series of case studies to assess the experiences of those doing rehab on a day-to-day basis.

The purpose of the case studies is to add qualitatively to our understanding of the best practices for affordable-housing rehab. Over and above the information obtained from the telephone discussions, literature, and other sources, the case studies provide an in-depth and "real world" look at the solutions to problems that were crafted in a variety of rehab projects.

The resource group nominated many candidates for the case study investigations. The fourteen programs chosen for study were selected on the basis of the following considerations:

1. *Solutions.* The cases chosen all achieved considerable measures of success in their renovation activities. We focus on the creative solutions that were formulated.

2. *Strategic range.* As described in Volume 1, barriers to and solutions for affordable-housing rehab can be grouped substantively into economic, development, construction, and occupancy hurdles. The fourteen cases selected for the in-depth examination were chosen so that there was a representation of examples of a majority of the types of barriers and solutions. We also sought variety in the types of specific major issues encountered. Thus, some case studies predominantly involve the building code, others historic preservation issues, and yet others lead-paint challenges.

3. *Range of institutions*. In selecting institutions for investigation the research team sought variety in type, size, and geographic location.

4. *Availability*. The candidates were asked whether they would be willing to participate in the on-site case studies. Although we sought a variety of case studies, there is still a limited range. Only one investigation involved a local, private remodeler. The cases also lack rural representation. Study resources inhibited the ability to expand the case study range.

The fourteen case studies are listed below by location, name of organization, and the best practice solutions to effecting affordable housing rehab that were crafted. Because of space limitations, only about half of the case studies are contained in this volume. Chapter 6 reports on the Seattle, Washington, experience; Chapters 7 and 8 present national examples of projects combining affordable housing and historic rehab; and Chapters 8 and 9 consider best practice solutions to dealing with lead paint in St. Paul, Minnesota, as well as expanding accessibility in Chicago, Illinois, respectively.[1]

[1] Portions of the Isles, South Brunswick, and Capital City case studies are contained in the technical building code chapter (Chapter 3).

THE FOURTEEN CASE STUDIES

Case Study Location	*Topic/Organization*	*Selected Best Practice Solutions Considered*
Chester, NJ	Asdal, Inc.	*Building code* (New Jersey "Smart Code")
Chicago, IL	Ch. 11 of City building code, Mayor's Office for People with Disabilities	*Information on and flexibility in satisfying accessibility mandate* (centralized review, predictable timetable, knowledgeable administrators), *coordinated accessibility regulation* (single legislation incorporating all regulations)
Detroit, Michigan (Kales Building)	Open Building Approach to Conversion	Examines a new strategy for converting older buildings based on *lean construction* and *open building* principles
Illinois (state)	Illinois Energy Efficiency Affordable Housing Program	Grants cover the costs of improving the *energy efficiency* through the upgrading of standard rehab procedures, such as insulation, air sealing, and high-efficiency heating equipment
Miami, FL	Little Haiti Housing Association (LHHA)	*Property acquisition* (negotiated bulk purchase), *cost estimation* (LHHA "checklist" and estimating software), *financing* (layered subsidies), *other* (combining housing and social services)
National	Affordable Housing and Historic Preservation	*Financing* (twenty projects utilizing layered subsidies)
National	Historic Rehabilitation Tax Credit (HTC) Standards	*Historic preservation* (creative integration of historic authenticity and affordability while using HTC)
New Haven, CT	New Haven Neighborhood Housing Services (NHNHS)	*Historic preservation and affordable housing* (Secretary of Interior Standards pilot program), *property acquisition* (donor program, eminent domain), *financing* (layered subsidies)
Seattle, WA	Historic District Commission Review	*Historic preservation* (flexibility in administrative review; innovative practices in producing affordable housing units in historic structures)
Seattle, WA	Varied	*Property acquisition* (Seattle and LISC provide bridge loans), *financing* (common loan application for city, county, and state funding; State of Washington QAP (proactively encourages rehab), *land use* (Seattle does not require off-street parking in downtown)
South Brunswick, NJ	Rural farmhouse conversion to cultural center	*Building code* (flexible code administration)
St. Paul, Minnesota	Implementation of HUD Sec. 1012 regulations on lead-based paint	Partnerships with health departments familiar with *lead-based paint* treatments, to educate rehab programs on federal and local requirements and affordable treatment solutions
Trenton, NJ	Capital City Redevelopment Area	*Building code* (New Jersey "Smart Code"; rehab issues and solutions involving reuse of upper-story space)
Trenton, NJ	Isles	*Building code* (New Jersey "Smart Code"), *property acquisition* (eminent domain)

1

Estimate of the Need for, and Affordability of, Housing Rehab in the United States

INTRODUCTION

This chapter estimates the need for, and the affordability of, housing rehab in the United States. Prior literature on the topic is considered, and the methodology employed in estimating renovation need, cost, and affordability is described. Results and implications are presented, and the limitations of the current investigation are noted. Our findings are preliminary and represent the start of a process that will be refined over time.

PRIOR LITERATURE

Most prior studies of rehab need and affordability focus on a single building or a group of buildings. For example, in their *Tenement Landlord* investigations, George Sternlieb and Robert W. Burchell considered whether Newark multifamily housing could be renovated given prevailing construction costs and owner and tenant resources (Sternlieb 1969; Sternlieb and Burchell 1972). Michael Stegman examined similar issues with respect to older Baltimore housing (Stegman 1973). This earlier case study literature does not lend itself to the estimate of nationwide renovation need and affordability.

There is also a body of literature that considers when rehab is economically more desirable than new construction (Brochner 1978; Segsworth and Wilkinson 1967). Much of this work builds from the A. H. Schaaf and Lionel Needleman investigations of the 1960s (Schaaf 1960, 1969; Needleman 1965). This type of literature is largely theoretical, however, and focuses on economically optimal housing investment. Our intent is to empirically identify when housing rehab is needed and when it can be afforded.

It is reasonable, given our interest in housing rehab, to consider the literature on the condition of housing in the United States. In the 1960 census, enumerators attempted to identify physically deficient housing from field surveys. Follow-up investigation, however, casts doubt on the reliability of this approach (U.S. Bureau of the Census 1967), and the decennial census ceased measuring physically substandard housing.

Various measures of housing quality are included in the *American Housing Survey* (AHS). Researchers often turn to the AHS when measuring housing condition. The Joint Center for Housing Studies defines a “severely inadequate unit” as an AHS-identified housing unit with severe problems in plumbing, heating, electrical systems, upkeep, or hallways (Joint Center for Housing Studies 1999, 36). The U.S. Department of Housing and Urban Development (2000), in identifying worst-case housing needs, includes what it calls “inadequate housing”—housing with severe or moderate physical problems as defined in the AHS.

The AHS housing-quality data is a helpful reference when trying to estimate rehab need. A 1981 study by Abt Associates (hereinafter Abt study) used AHS data and housing inspectors to measure and predict rehab need (Phipps, Feins, and Kirlin 1981). The Abt study was applied on a pilot basis to 290 dwellings in Boston, Massachusetts.

There is also a relevant body of literature that examines different rehab levels and their respective costs. Rehab can encompass many different activities. One early study differentiated between four levels of rehab: code compliance, minimal rehab, modernization, and remodeling (New York Temporary State Housing Rent Commission 1960). Most investigators prefer a three-tier division: (1) minor rehab or repair, (2) moderate rehab, and (3) substantial rehab (Kristof 1967; Sternlieb and Listokin 1976). Not surprisingly, costs differ significantly depending on the scope of rehab; repairs will tend to be relatively modest in cost, while substantial rehab can be almost as expensive as a new housing unit.

Estimating the precise cost of renovation is more art than science, and the literature on this subject is sparse. A statistical approach to cost estimating has been attempted in a few studies: for example, Albert Schaaf's formulation of a multiple-regression equation for estimating rehab expenses based on a structure's deteriorated condition, specifically, its American Public Health Association (APHA) penalty scores (Schaaf 1960).[1] APHA data are not widely available, however, nor is other information from which a reliable rehab cost–predictive model can be formulated. More typical than a macrostatistical approach is a building-by-building estimate of rehab cost by knowledgeable construction officials, who often use industry cost guides, such as those published by Marshall and Swift (1999). The building-by-building approach does not lend itself, however, to an estimate of rehab need, cost, and affordability nationwide.

This review of the literature helps frame our approach, which is detailed below.

PILOT METHODOLOGY FOR ESTIMATING HOUSING REHAB NEED, COST, AND AFFORDABILITY NATIONWIDE

Our analysis is based on the 2003 AHS and other sources. The methodology was developed in consultation with the Enterprise Foundation and employs the following steps applied by the Rutgers University Center for Urban Policy Research (CUPR):

1. From the housing literature, we posit several rehab interventions, ranging from the least extensive, labeled "minor rehab," to the most extensive, labeled "substantial rehab." A midrange strategy is labeled "moderate rehab." Not every housing unit immediately needs minor rehab, moderate rehab, or substantial rehab—at least as calibrated in this study; in that instance, inaction, which we label "no (rehab) intervention," is warranted.

2. The next step is to estimate which renovation strategy (minor, moderate, substantial rehab, or no intervention) is appropriate for each occupied housing unit in the AHS. The most accurate way of accomplishing that is for an expert to examine the exterior and interior conditions of a housing unit and specify what needs to be remediated. As that on-site investigation is costly, time-consuming, subject to error, and, in any event, not practical in our nationwide investigation, we instead turn to a proxy of that process by referring to the best and most current available data on housing quality, namely that contained in the AHS.

[1]The APHA assigned penalty scores for housing deficiencies: for example, six penalty points for inadequate sewer connections, eight penalty points for inadequate washing facilities.

3. The AHS includes many descriptors of housing quality. For example, a housing unit might have "severe" or "moderate" physical problems (these conditions are defined in Exhibit 1.1). Thus, a severe electrical problem is indicated by a particularly incapacitating condition, such as a unit with no electricity or a multitude of electrical "failures" (e.g., three blown fuses in the last 90 days) or electrical "deficiencies" (e.g., exposed wiring). There is no obvious empirical relationship between these various AHS housing descriptors and the need for rehab (or, for that matter, the cost of the renovation). Nonetheless, the AHS data can be tapped to suggest, on an order-of-magnitude basis, whether a housing unit requires rehab, and if so, to what extent.

4. CUPR assigns one of the four rehab strategies to each occupied housing unit in the AHS using the AHS's overall and individual item descriptors of housing condition (Exhibit 1.2). The sorting strategy was developed by CUPR and the Enterprise Foundation. The most extensive renovation, substantial rehab, is assigned to housing units with the worst (i.e., severe physical) problems or to those that exhibit so many failures and deficiencies (at least four) that the most pressing housing problems are suggested. We add the four or more failures and deficiencies to the severe physical problem designation (which itself includes individual failures and deficiencies) to flag units that appear to have much physical distress even if they do not meet the AHS definition of severe physical problem (Exhibit 1.1). We also add an answer of 1, 2, or 3 to the question of how you would rate your unit as a place to live (where a 10 is the best answer) to the severe rehab category.

   Moderate rehab is linked with housing units that exhibit moderate physical problems or three individual failures or deficiencies. Minor rehab is appropriate for units that are not characterized by severe or moderate physical problems but that nonetheless exhibit some (one or two) housing-unit failures or deficiencies. We also add an answer of 4, 5, or 6 to the question of how you would rate your unit as a place to live (where a 10 is the best answer) to the moderate rehab category.

   Minor Rehab is indicated for units which lack severe or moderate physical problems *but* have one to two housing-unit failures or deficiencies *or* an answer of 7, 8, or 9 to the question of how you would rate your unit as a place to live.

   Only those housing units that avoid any of the above AHS-indicated measures of inadequacy are identified as needing "no rehab."

5. The next step is to determine whether the rehab is affordable. As was the case in assigning the appropriate renovation intervention, we can only approximate affordability. First, we relate the "current" (pre-rehab) relationship of monthly housing cost to income for all occupied units in the AHS. Once a housing unit has undergone minor, moderate, or substantial rehab, its monthly cost will increase. We estimate this post-rehab housing expenditure, which is then related to the income available to the occupants of the housing units requiring renovation. The costing and affordability analysis process is shown in steps 6 through 12 below.

EXHIBIT 1.1

Severe and Moderate Physical Problems as Defined in the 2003 AHS

Severe Physical Problems. A unit has severe physical problems if it has any of the deficiencies cited in the following categories.

Plumbing: The unit lacks hot or cold piped water or a flush toilet, or it lacks both a bathtub and a shower, all inside the structure for the exclusive use of the unit.

Heating: The unit was uncomfortably cold in the past winter for 24 hours or more because the heating equipment broke down, or the heating equipment broke down at least three times in the past winter for at least six hours each time.

Electric: The unit has no electricity or exhibits all of the following three electric problems: 1) exposed wiring; 2) a room with no working wall outlet; and 3) three blown fuses or tripped circuit breakers in the last 90 days.

Upkeep: The unit has any five of the following six maintenance problems: 1) water leaks from the outside, such as from the roof, basement, windows, or doors; 2) leaks from inside the structure, such as pipes or plumbing fixtures; 3) holes in the floors; 4) holes or open cracks in the walls or ceilings; 5) more than 8 inches by 11 inches of peeling paint or broken plaster; or 6) signs of rats or mice in the last 90 days.

Moderate Physical Problems. A unit has moderate physical problems if it has any of the deficiencies cited in the following categories.

Plumbing: On at least three occasions during the past three months, or while the household was living in the unit if less than three months, all the flush toilets were broken down at the same time for six hours or more.

Heating: The unit has unvented gas, oil, or kerosene heaters as the primary heating equipment.

Upkeep: The unit has any three or four of the six maintenance problems listed under severe physical problems.

Kitchen: The unit lacks a kitchen sink, a refrigerator, or a stove inside the structure for the exclusive use of the unit.

Source: U.S. Department of Commerce and U.S. Department of Housing and Urban Development (2004).

EXHIBIT 1.2

AHS Housing-Unit Condition and Suggested Rehab Strategy

Rehab Strategy	*AHS Housing Unit Condition*
Substantial rehab	Severe physical problems *or* at least *four* individual housing-unit failures or deficiencies[a] *or* an answer of 1, 2, or 3 to the question of how you would rate your unit as a place to live (where 10=best).
Moderate rehab	Moderate physical problems *or three* individual housing-unit failures or deficiencies[a] *or* an answer of 4, 5, or 6 to the question of how you would rate your unit as a place to live.
Minor rehab	Severe or moderate physical problems *not* indicated *but* presence of one to two housing-unit failures or deficiencies[b] *or* an answer of 7, 8, or 9 to the question of how you would rate your unit as a place to live.
No (rehab) intervention	*None* of the above AHS housing-unit conditions and an answer of 10 (the best code) to the question of how you would rate your unit as a place to live.
	If a unit fell in different rehab strategies the most severe strategy was used.

[a]As defined in Exhibit 1.1.

[b]There are many such AHS descriptors. With the assistance of the Enterprise Foundation, we selected what were deemed to be more critical conditions. These include breakdown in the past three months of water supply/sewage disposal; fuses or breakers blown in the past three months; uncomfortably cold for 24 hours or more last winter; water leakage from inside/outside the structure during past 12 months; and selected "deficiencies"—signs of rats in the past three months, holes in the floors, open cracks, or holes (interior), broken plaster or peeling paint (interior), no electrical wiring, exposed wiring, and rooms without electric outlets. Some of these conditions overlap, while others differ from the individual failures and deficiencies that define severe and moderate physical problems (see Exhibit 1.1).

6. Exhibit 1.3 shows the 2003 nationwide per-housing-unit cost of effecting the various levels of rehab. The figures shown are Enterprise Foundation estimates.

EXHIBIT 1.3

Costs of Effecting Rehab

Rehab Strategy	*Cost Per Housing Unit*
Minor rehab	$8,500
Moderate rehab	$30,000
Substantial rehab	$80,000

7. The three renovation intervention costs are adjusted by a factor, which related the median house value in an area to the U.S. median house value. The areas considered were the larger standard metropolitan statistical areas as defined in the AHS and the four AHS regions (Northeast, Midwest, South, and West) with separate factors for the smaller metropolitan areas in each region and the nonmetropolitan areas of each region. Thus, a moderate rehab might cost $39,000 in the Northeast but $23,000 in the South.

8. The various renovation expenditures are likely to be financed over time, rather than paid outright. Financing terms typically vary by the extent of the outlay (i.e., a longer repayment period for larger loans) and whether or not the improvement is made by a homeowner or an investor (i.e., homeowners pay less). In consultation with the Enterprise Foundation, we

developed a variable financing matrix, shown in Exhibit 1.4, from which we assign a principal and interest (PI) cost sufficient to pay for the rehab. This PI is added to the current (pre-rehab) housing cost indicated for each occupied housing unit in the AHS.

EXHIBIT 1.4

Assumed Financing Terms for Rehab Expenditures

	Financing Terms	
Rehab Intervention	***Homeowner***	***Renter***
Minor	6 yrs.—8%	6 yrs.—9%
Moderate	10 yrs.—8%	10 yrs.—9%
Substantial	25 yrs.—6%	25 yrs.—7%
Given the above terms, the added monthly payments per $1,000 of rehab intervention are as shown below.		
Rehab Intervention	***Homeowner***	***Renter***
Minor	$17.53 per $1,000	$18.03 per $1,000
Moderate	$12.13 per $1,000	$12.69 per $1,000
Substantial	$6.43 per $1,000	$7.68 per $1,000

9. Other adjustments are made to the current housing costs. Following renovation, the value of the housing unit is likely to increase, and as a result so will property taxes (*T*). Taxes will typically increase according to the property tax rate found in the AHS for each housing unit. For example, a $75,000 substantial rehab would add $750 in annual property taxes (or $62.50 monthly) if the AHS indicated a property tax rate of $100 per $1,000 of value. The $62.50 would be added to the current (pre-rehab) housing cost.

   In contrast, by making a housing unit more efficient, renovation would likely lower costs for utilities (*U*). We are interested in *U* because the monthly housing cost indicated in the AHS includes expenditures for electricity, piped gas, and/or fuel oil. We do not know exactly how rehab affects utility outlays, as that will depend on each individual situation (e.g., the R-rating of a home's insulation pre-rehab versus post-rehab). Thus, we can only estimate the change in utility expense ensuing from renovation. We do that by following the field experience of the Enterprise Foundation: greater levels of energy efficiency are realized with more extensive rehab.[2]

10. The calculations in steps 5 through 9 allow a comparison of current (pre-rehab) housing cost to the post-rehab housing expenditure. The latter changes because *PI* and *T* expenses increase and *U* decreases[3] following renovation. Since *PI* and *T* far exceed *U*, the housing cost will

[2]Utility costs for electricity, piped gas, and/or fuel oil (all included in the AHS-indicated monthly housing costs) are assumed to be reduced after rehab as follows:

Rehab Intervention	***% Reduction in Monthly Utility Costs***
Minor	-10%
Moderate	-30%
Substantial	-50%

[3]We do not adjust the insurance (*I*) cost because of countervailing influences resulting from rehab. By increasing value through rehab, *I* might increase; yet by correcting hazardous conditions through rehab, *I* might decrease. In any event, the *I* cost is much less than the *PI*, *T*, and *U* outlays, so not adjusting *I* has very little impact on our final results.

increase for units undergoing improvement. In this fashion, we derive a current (pre-rehab) versus post-rehab housing expenditure for every occupied housing unit in the United States monitored by the AHS.

11. To make the current versus post-rehab housing cost comparison more meaningful, we relate these respective expenses to a percentage of the current income of the occupants of the housing units—(housing expense to income ratio, or HEIR)—as reported by the AHS. A high percentage of HEIR will indicate an unaffordable or excessive cost situation. We use a 40 percent HEIR cutoff rather than the traditional front-end housing expense to income threshold of about 30 percent because the AHS housing cost includes utility expenses, whereas traditional housing expense to income ratios do not factor utility outlays. Thus, if the post-rehab housing cost is 40 percent of income or higher, it is considered unaffordable or excessive.

12. In estimating rehab need, we focus on occupied, year-round housing. We also focus on permanent housing as opposed to mobile homes. We focus on occupied housing because many of the AHS variables used in estimating the rehab need, cost, and affordability (e.g., housing tenure, utility cost, and occupant income) are unavailable for unoccupied housing. We consider year-round housing for similar reasons, and because the AHS housing condition data is more readily related to this stock as opposed to, for example, vacation homes where a "rougher" housing ambience may be tolerable, at least temporarily. We also do not consider mobile homes because we believe that our data does not capture the rehab need for that type of unit. In focusing on occupied, year-round permanent housing, we acknowledge that the total United States housing rehab need is not being counted and that the omitted housing may very well have a significant need for renovation. Therefore, our research must be viewed as a beginning in the process of comprehensively tracking the national need for rehab.

FINDINGS

Estimated Rehab Need for All Studied Housing Units

As of 2003, there were 121 million housing units in the United States. As noted, our estimate of rehab need focuses on occupied housing units that are identified in the AHS as year-round houses or apartments. Thus, from the 121 million total, we delete 3 million seasonal units, 11 million vacant units, 9 million mobile homes, and several other categories (for example, units in boarding houses and non-transient hotels). That leaves 99 million year-round houses or apartments.

Of these 99 million housing units, we estimate that 3.9 million, or slightly less than one in 20 (4 percent), require substantial rehab; 13.7 million housing units, or about one in 7 (13.8 percent), need moderate rehab; approximately 58 million housing units, or slightly less than six in 10 (58 percent), can make do with minor rehab; and 23.5 million housing units, or slightly less than one in four (23.7 percent), require no rehab (Exhibits 1.5 and 1.6).[4]

[4] In fact, every housing unit needs some measure of repair each year. Our determination of rehab need, based on AHS data, is a crude gauge that better captures the need for improvements, replacements, and alterations as opposed to ongoing repairs and maintenance. We are also not including the rehab need for unoccupied housing, mobile homes, vacation homes, and certain other types of units. Thus, our estimates of rehab need in this section are very conservative and understate the true need for renovation.

EXHIBIT 1.5

Estimated U.S. Rehab Need by Property Profile, 2003
(Number of Occupied Housing Units)

	Rehab Intervention					
Property Profile	***Minor Rehab***	***Moderate Rehab***	***Substantial Rehab***	***Total Rehab Intervention***	***No Intervention***	***Total***
Tenure						
Renter occupied	17,101,294	7,520,084	2,358,226	26,979,604	5,302,603	32,282,207
Owner occupied	40,854,921	6,164,020	1,577,107	48,596,048	18,140,024	66,736,072
Location						
All metropolitan	46,684,596	10,866,368	3,257,280	60,808,244	18,301,135	79,109,379
Central city	17,351,873	5,612,729	1,824,416	24,789,018	6,096,423	30,885,441
Suburbs	29,332,723	5,253,639	1,432,864	36,019,226	12,204,712	48,223,938
Non-metropolitan	11,271,619	2,817,736	678,053	14,767,408	5,141,491	19,908,899
Region						
Northeast	11,192,586	2,678,863	1,013,129	14,884,578	4,714,818	19,599,396
Midwest	14,056,621	2,824,076	839,706	17,720,403	5,627,092	23,347,495
South	19,628,452	5,071,431	1,289,830	25,989,713	8,307,365	34,297,078
West	13,078,555	3,109,733	792,667	16,980,955	4,793,351	21,774,306
Income status[a]						
Very low income	10,596,181	4,022,555	1,560,094	16,178,830	5,635,741	21,814,571
Low income	8,461,027	2,691,229	745,398	11,897,654	3,625,134	15,522,788
Moderate income	5,521,812	1,412,533	342,214	7,276,559	2,160,140	9,436,699
Middle income	4,862,446	1,164,564	259,031	6,286,041	1,701,499	7,987,540
High income	28,373,209	4,354,841	1,017,700	33,745,750	10,257,566	44,003,316
Race						
Non-Hispanic white	43,426,882	8,249,797	2,224,203	53,900,882	17,870,652	71,771,534
Non-Hispanic black	6,068,916	2,519,527	881,717	9,470,160	2,444,639	11,914,799
Hispanic	5,695,088	2,036,075	600,987	8,332,150	2,253,618	10,585,768
Other	2,765,329	878,704	228,425	3,872,458	873,718	4,746,176
Householder Age						
Under 35	13,614,912	4,385,022	1,231,522	19,231,456	3,725,542	22,956,998
35-64	33,877,978	7,278,995	2,129,223	43,286,196	12,640,428	55,926,624
65-74	5,380,669	976,515	279,529	6,636,713	3,351,712	9,988,425
75+	5,082,656	1,043,572	295,059	6,421,287	3,724,944	10,146,231
Education of Head						
8th grade or less	2,638,406	1,153,083	345,176	4,136,665	1,701,776	5,838,441
Some high school	5,079,063	1,968,570	661,876	7,709,509	2,910,040	10,619,549
High school grad	15,153,376	3,809,509	1,036,990	19,999,875	6,797,074	26,796,949
Some college or associate	16,746,850	3,829,843	1,103,985	21,680,678	6,145,679	27,826,357
Bachelors or more	18,338,519	2,923,099	787,305	22,048,923	5,888,059	27,936,982
Monthly Maintenance Costs						
<$25	16,634,143	2,515,416	628,434	19,777,993	8,160,567	27,938,560
$25-49	9,821,167	1,357,463	321,723	11,500,353	3,286,046	14,786,399
$50+	10,121,750	1,497,729	409,891	12,029,370	3,258,077	15,287,447
Age of unit						
1980–2003	18,108,887	2,511,745	563,186	21,183,818	8,696,190	29,880,008
1970–1979	10,979,453	2,547,076	651,448	14,177,977	4,388,042	18,566,019
1940–1969	18,831,354	4,982,301	1,428,087	25,241,742	6,911,772	32,153,514
1939 or earlier	10,036,521	3,642,982	1,292,612	14,972,115	3,446,621	18,418,736
All	57,956,215	13,684,104	3,935,333	75,575,652	23,442,627	99,018,279

Source: Author's analysis of 2003 AHS data.

EXHIBIT 1.6

Estimated U.S. 2003 Rehab Need by Property Profile, 2003 (% of Occupied Housing Units)

	Rehab Intervention (% of Occupied Housing Units)					
Property Profile	***Minor Rehab***	***Moderate Rehab***	***Substantial Rehab***	***Total Rehab Intervention***	***No Intervention***	***Total***
Tenure						
Renter occupied	53.0	23.3	7.3	83.6	16.4	100.0
Owner occupied	61.2	9.2	2.4	72.8	27.2	100.0
Location						
All metropolitan	59.0	13.7	4.1	76.9	23.1	100.0
Central city	56.2	18.2	5.9	80.3	19.7	100.0
Suburbs	60.8	10.9	3.0	74.7	25.3	100.0
Non-metropolitan	56.6	14.2	3.4	74.2	25.8	100.0
Region						
Northeast	57.1	13.7	5.2	75.9	24.1	100.0
Midwest	60.2	12.1	3.6	75.9	24.1	100.0
South	57.2	14.8	3.8	75.8	24.2	100.0
West	60.1	14.3	3.6	78.0	22.0	100.0
Income status						
Very low income	48.6	18.4	7.2	74.2	25.8	100.0
Low income	54.5	17.3	4.8	76.6	23.4	100.0
Moderate income	58.5	15.0	3.6	77.1	22.9	100.0
Middle income	60.9	14.6	3.2	78.7	21.3	100.0
High income	64.5	9.9	2.3	76.7	23.3	100.0
Race						
Non-Hispanic white	60.5	11.5	3.1	75.1	24.9	100.0
Non-Hispanic black	50.9	21.1	7.4	79.5	20.5	100.0
Hispanic	53.8	19.2	5.7	78.7	21.3	100.0
Other	58.3	18.5	4.8	81.6	18.4	100.0
Householder Age						
Under 35	59.3	19.1	5.4	83.8	16.2	100.0
35-64	60.6	13.0	3.8	77.4	22.6	100.0
65-74	53.9	9.8	2.8	66.4	33.6	100.0
75+	50.1	10.3	2.9	63.3	36.7	100.0
Education of Head						
8th grade or less	45.2	19.7	5.9	70.9	29.1	100.0
Some high school	47.8	18.5	6.2	72.6	27.4	100.0
High school grad	56.5	14.2	3.9	74.6	25.4	100.0
Some college or associate	60.2	13.8	4.0	77.9	22.1	100.0
Bachelors or more	65.6	10.5	2.8	78.9	21.1	100.0
Monthly Maintenance Costs						
< $25	59.5	9.0	2.2	70.8	29.2	100.0
$25-$49	66.4	9.2	2.2	77.8	22.2	100.0
$50+	66.2	9.8	2.7	78.7	21.3	100.0
Age of Unit						
1980-2003	60.6	8.4	1.9	70.9	29.1	100.0
1970–1979	59.1	13.7	3.5	76.4	23.6	100.0
1940–1969	58.6	15.5	4.4	78.5	21.5	100.0
1939 or earlier	54.5	19.8	7.0	81.3	18.7	100.0
All	58.0	13.8	4.0	76.3	23.7	100.0

Source: Author's analysis of 2003 AHS data.

It is important to reiterate that our calculations are gross estimates and that our investigation is a pilot study. The procedure used for flagging rehab need is reasonable, but it is *not* empirically based. For instance, while it is likely that housing units identified in the AHS as having severe physical problems will tend to need more extensive renovation, we do not know this for certain. The only way to verify this would be through field study, a recommendation discussed later. Also, as noted, we are not tracking the rehab need of unoccupied, seasonal, mobile, and certain other units.

Although we cannot empirically verify our estimate of rehab need at this time, we nonetheless tried to obtain feedback on our figures. The substantial rehab, moderate rehab, and minor rehab estimates were reviewed by 10 housing experts. These included state, local, and federal housing officials; representatives of housing industry associations; private remodelers; and nonprofit groups. Their feedback supported that our figures are "reasonable."

We also tried to compare our results with those of other studies. We cannot find comparable national research. The closest effort employing AHS data to estimate rehab need was the 1981 Abt study described earlier. The Abt analysis was a pilot investigation in Boston and used 1981 AHS data. For the purposes of comparison, we apply the 1981 Abt approach to 2003 national AHS data and obtain the results shown in Exhibit 1.7. We estimate that 4 percent of the nation's housing units require substantial rehab; the equivalent Abt figure, 5.3 percent, is close to our estimate. Our moderate rehab estimate of 13.8 also closely mirrors the figure derived in the Abt analysis. On an aggregate order-of-magnitude basis, the results for a pilot investigation bear an order of similarity.

EXHIBIT 1.7

Comparison of 2003 Estimated Substantial and Moderate Rehab Need Nationwide (% of Occupied Housing Units)

Rehab Intervention	***Rutgers–Enterprise Methodology Applied to 2003 AHS***	***1981 Abt Methodology Applied to 2003 AHS***
Substantial rehab[a]	4.0%	5.3%
Moderate rehab[b]	13.8%	16.3%
Substantial or moderate rehab	17.8%	21.6%

Source: See text.
[a]For the Abt study, results are for housing units needing "major rehab."
[b]For the Abt study, results are for housing units failing "Section 8—low standards."

We examined the correlation between housing units in the United States identified in our methodology as needing either substantial or moderate rehab and those so designated by Abt. The correlation coefficient is 0.434 (with a 0.00001 standard error). For a pilot investigation of renovation need nationwide, that correlation is reasonably close. It shows that there is a broad, rough association between our approach and that of the Abt study.

We also estimated the dollar value of needed rehab investment. Nationwide, an estimated $1,310 billion of renovation (minor rehab, moderate rehab, or substantial rehab) is needed. We do not have a readily comparable figure of other dollar estimates of national rehab need.

The remainder of this chapter will explain our rehab estimates. First, differing rehab need is related to various housing-unit and household characteristics. Then the affordability of the indicated rehab need is detailed in a parallel two-step process: (1) affordability is examined for all housing units, and (2) affordability is examined by housing-unit and household characteristics.

Estimated Rehab Need by Housing Unit and Household Characteristics

Compared with the overall nationwide figures cited in the previous section, somewhat greater renovation need is suggested for renter- as opposed to owner-occupied units, for units occupied by minorities and the poor, for older housing units, and—by a very small margin—for central-city units. For example, we estimate that 76.3 percent of all occupied housing units require some type of rehab. That rehab percentage increases to 79.5 percent for units occupied by non-Hispanic black residents and 78.7 percent for units occupied by Hispanic residents (Exhibit 1.6). An estimated 81.3 percent of housing units built in 1939 or earlier require some type of rehab—about 5 percent higher than the figure cited for all housing. Furthermore, while 7 percent of the pre-1939 units are considered in need of substantial rehab, the substantial rehab share drops to 1.9 percent for housing units built recently (i.e., 1980 through 2003). Units occupied by black households are estimated to require substantial rehab at twice the level of units occupied by white households (7.4 percent versus 3.1 percent). Differentiation in the needed level of renovation is also suggested by household income; 25.6 percent of housing units occupied by very low income households require substantial or moderate rehab, compared with 12.2 percent of housing units occupied by high-income households.

Estimated Rehab Affordability for All Studied Housing Units

There are 99 million occupied, non-mobile-home units in the United States for which the 2003 AHS housing-condition and housing-cost data necessary for our calculations are available. We can summarize the monthly housing cost of these housing units in the United States under two conditions: (1) current, or before any minor rehab, moderate rehab, or substantial rehab is effected, and (2) post-rehab (Exhibit 1.8). The pre-rehab figures are those reported in the AHS; the post-rehab figures are those calculated by us as described earlier. The current median monthly housing cost is $727; after renovation, the median cost rises to $916.

Those figures alone reveal little. A more significant consideration is the monthly housing cost as a share of income. The higher that share, the more difficult it is to afford the housing cost. As noted earlier, we shall designate a monthly housing expense of 40 percent or more of income as excessive or burdensome.

The percentages-of-income figures are shown in Exhibit 1.9. Currently, or without factoring added expenses for renovation, the median monthly housing cost as a percentage of current income is a low 20.9 percent; post-rehab, that median rises to 25.6 percent, still a rather low share. Focusing on the median masks the fact that many households have to commit a large portion of their resources to shelter. Currently, approximately 20 million housing units, or 20.4 percent of the 99 million total, have an excessive cost burden, as defined earlier. Households experiencing excessive burdens rise to 28.8 million, or 29 percent of the total, when factoring the added costs for rehab. Thus, there is an affordability gap even before considering rehab need, and that affordability problem is worsened if the estimated rehab is effected.

As we shall detail below, rehab affordability is an even greater problem for certain types of housing units and households.

EXHIBIT 1.8

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units)

	Number of Occupied Housing Units[a]	
Monthly Housing Cost	***Current***	***Post-Rehab Intervention***
Less than $200	7,326,786	2,330,456
$200 to $299	8,352,727	4,084,638
$300 to $399	8,033,764	6,282,530
$400 to $499	8,227,598	7,119,834
$500 to $599	8,120,987	7,236,553
$600 to $699	7,987,194	7,179,947
$700 to $799	7,476,446	7,271,604
$800 to $899	6,286,437	7,583,162
$900 to $999	5,369,248	7,083,577
$1,000 to $1,199	8,286,687	11,392,652
$1,200 to $1,499	8,427,212	11,711,452
$1,500 to $1,999	7,539,929	10,282,779
$2,000 or more	7,583,262	9,459,094
Total	99,018,277	99,018,277
Median monthly housing cost[b]	$727	$916

Source: Author's analysis of 2003 AHS data.

[a]Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.

[b]Excludes no-cash rent.

EXHIBIT 1.9

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units)

Monthly Housing Cost as Percentage of Current Income	*Occupied Housing Units*[a]			
	Current		*Post-Rehab Intervention*	
	Number	*%*	*Number*	*%*
Less than 5%	6,459,381	6.5	3,611,692	3.6
5% to 9%	11,674,415	11.8	8,558,207	8.6
10% to 14%	14,038,065	14.2	11,176,937	11.3
15% to 19%	14,421,471	14.6	12,356,962	12.5
20% to 24%	12,088,426	12.2	11,564,625	11.7
25% to 29%	8,977,393	9.1	9,670,761	9.8
30% to 34%	6,638,759	6.7	7,468,448	7.5
35% to 39%	4,485,507	4.5	5,844,177	5.9
40% to 49%	5,593,175	5.6	7,572,603	7.6
50% to 59%	2,988,653	3.0	4,580,065	4.6
60% to 69%	1,878,758	1.9	2,991,578	3.0
70% to 99%	3,011,482	3.0	4,754,511	4.8
100% or more	4,542,652	4.6	6,647,570	6.7
Zero or negative income	2,220,142	2.2	2,220,142	2.2
Total	99,018,277	100.0	99,018,277	100.0
Excessive-cost units[b]				
- Number	20,234,861		28,766,469	
- Percentage	20.4		29.1	
Median monthly housing cost as percent of current income[c]	20.9%		25.6%	

Source: Author's analysis of 2003 AHS data.

[a]Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.

[b]Units for which monthly housing cost is 40 percent or more of current household income.

[c]Excludes zero or negative income and no-cash rent.

Estimated Rehab Affordability by Type of Housing Unit and Household Characteristics

Rehab Affordability by Housing-Unit Tenure

Pre-rehab, renters in the United States currently spend less per month on housing ($655 median) than their homeowner counterparts ($807 median). Were minor rehab, moderate rehab, or substantial rehab effected as needed, monthly housing costs would rise to a median of $878 for renters and $952 for homeowners (Exhibit 1.10). Renters would still be paying less. Of much greater import than the expenditure itself is what it represents as a share of income (Exhibit 1.11). Pre-rehab, renters must commit a median of 27.5 percent of their income for housing; homeowners must commit a much lower 18.2 percent. This is explained by the fact that while homeowners pay more in absolute dollars for housing than renters, they have much higher incomes. That remains the case post-rehab. The median monthly housing cost as a share of current income rises to 36.8 percent for renters and 21.7 percent for homeowners (Exhibit 1.11).

A disproportionately high share of renters are cost burdened. That is true both pre- and post-rehab. Currently, 30.9 percent of renters (compared with 15.4 percent of homeowners) pay 40 percent or more of their income for housing. Were minor rehab, moderate rehab, or substantial rehab effected as needed, the percentage of excessively burdened renters would rise to 45.8 percent, or almost one in two. That compares with the 21.0 percent of homeowners, or roughly one in five, who are cost burdened post-rehab. Thus, there is a significant affordability gap for renters. Many already face financial strain in paying for housing, and that situation is aggravated when renovation demands are addressed.

Rehab Affordability by Housing-Unit Location

Both pre- and post-rehab, monthly housing costs are lowest in non-metropolitan areas and highest in the suburban portion of metropolitan areas (Exhibit 1.12). In the central-city portion of the metropolitan area, monthly housing costs, both pre- and post-rehab, are lower than those in suburban areas by approximately 12 percent to 19 percent. Since incomes relative to housing costs are lowest in central cities, however, we find the highest incidence of cost burden there (Exhibit 1.13). Pre-rehab, occupants of 25.4 percent of central-city housing units pay 40 percent or more of their income for housing. In comparison, occupants of 16 percent and 19.1 percent of nonmetropolitan and suburban housing units, respectively, pay 40 percent or more of their income for housing. Post-rehab, the incidence of excessively burdened households living in central-city housing units rises to more than three in 10 (36.7 percent). That compares with approximately one in 4 for their suburban (25.9 percent) and nonmetropolitan (24.8 percent) counterparts. Thus, many central-city residents are already facing financial strain in payment for housing; that situation would worsen if needed rehab were effected.

EXHIBIT 1.10

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units by Tenure)

	Number of Renter-Occupied Housing Units		Number of Owner-Occupied Housing Units[a]	
Monthly Housing Cost	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***
Less than $200	2,901,517	925,853	4,425,268	1,404,603
$200 to $299	1,678,463	1,138,147	6,674,264	2,946,491
$300 to $399	2,197,422	1,347,832	5,836,343	4,934,697
$400 to $499	3,497,831	1,630,206	4,729,768	5,489,628
$500 to $599	4,205,768	2,361,422	3,915,218	4,875,131
$600 to $699	4,230,617	3,049,121	3,756,577	4,130,825
$700 to $799	3,705,101	3,486,725	3,771,345	3,784,879
$800 to $899	2,754,787	3,752,483	3,531,650	3,830,680
$900 to $999	1,874,888	3,439,453	3,494,360	3,644,123
$1,000 to $1,199	2,421,561	4,693,236	5,865,126	6,699,416
$1,200 to $1,499	1,506,026	3,664,668	6,921,186	8,046,784
$1,500 to $1,999	487,271	1,753,381	7,052,658	8,529,398
$2,000 or more	820,953	1,039,679	6,762,309	8,419,414
Total	32,282,205	32,282,206	66,736,072	66,736,069
Median monthly housing cost[b]	$655.0	$878.0	$807.0	$952.0

Source: Author's analysis of 2003 AHS data.

[a]Includes occupied housing units that are houses or apartments for which the current and post-rehab monthly housing costs are available.

[b]Excludes no-cash rent.

EXHIBIT 1.11

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units by Tenure)

Monthly Housing Cost as Percentage of Current Income	*Renter-Occupied Housing Units*[a]				*Owner-Occupied Housing Units*[a]			
	Current		*Post-Rehab Intervention*		*Current*		*Post-Rehab Intervention*	
	Number	***%***	***Number***	***%***	***Number***	***%***	***Number***	***%***
Less than 5%	1,140,025	3.5	422,148	1.3	5,319,356	8.0	3,189,544	4.8
5% to 9%	1,751,778	5.4	957,030	3.0	9,922,637	14.9	7,601,178	11.4
10% to 14%	3,242,295	10.0	1,899,700	5.9	10,795,770	16.2	9,277,237	13.9
15% to 19%	4,072,734	12.6	2,748,341	8.5	10,348,737	15.5	9,608,621	14.4
20% to 24%	4,140,996	12.8	3,094,442	9.6	7,947,430	11.9	8,470,183	12.7
25% to 29%	3,402,422	10.5	3,208,235	9.9	5,574,971	8.4	6,462,526	9.7
30% to 34%	2,711,699	8.4	2,786,267	8.6	3,927,060	5.9	4,682,181	7.0
35% to 39%	1,854,507	5.7	2,392,191	7.4	2,631,000	3.9	3,451,986	5.2
40% to 49%	2,606,261	8.1	3,245,705	10.1	2,986,914	4.5	4,326,898	6.5
50% to 59%	1,438,513	4.5	2,311,989	7.2	1,550,139	2.3	2,268,076	3.4
60% to 69%	919,959	2.8	1,646,510	5.1	958,799	1.4	1,345,068	2.0
70% to 99%	1,539,377	4.8	2,591,016	8.0	1,472,105	2.2	2,163,495	3.2
100% or more	2,346,436	7.3	3,863,429	12.0	2,196,216	3.3	2,784,141	4.2
Zero or negative income	1,115,204	3.5	1,115,204	3.5	1,104,938	1.7	1,104,938	1.7
Total	32,282,206	100.0	32,282,206	100.0	66,736,072	100.0	66,736,072	100.0
Excessive-cost units[b]								
- Number	9,965,750		14,773,853		10,269,111		13,992,616	
- Percentage	30.9		45.8		15.4		21.0	
Median monthly housing cost as percentage of current income[c]	27.5%		36.8%		18.2%		21.7%	

Source: Author's analysis of 2003 AHS data.
[a]Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.
[b]Units for which monthly housing cost is 40 percent or more of current household income.
[c]Excludes zero or negative income and no-cash rent.

EXHIBIT 1.12

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units by Location)

	All Metropolitan[a] *Number of Occupied Housing Units*[b]		*Central City* *Number of Occupied Housing Units*[b]		*Suburbs* *Number of Occupied Housing Units*[b]		*Nonmetropolitan* *Number of Occupied Housing Units*[b]	
Monthly Housing Cost	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***
Less than $200	4,361,450	1,425,417	2,017,359	599,881	2,344,091	825,536	2,965,336	905,040
$200 to $299	5,418,605	2,537,662	2,173,341	949,653	3,245,264	1,588,009	2,934,122	1,546,976
$300 to $399	5,561,245	3,889,214	2,346,399	1,477,379	3,214,846	2,411,835	2,472,520	2,393,315
$400 to $499	6,283,305	4,831,402	3,042,637	1,980,035	3,240,668	2,851,367	1,944,294	2,288,432
$500 to $599	6,394,560	5,253,922	3,139,116	2,268,679	3,255,444	2,985,243	1,726,426	1,982,631
$600 to $699	6,483,359	5,394,753	2,964,762	2,463,586	3,518,597	2,931,167	1,503,835	1,785,194
$700 to $799	6,179,401	5,710,461	2,739,173	2,723,810	3,440,228	2,986,651	1,297,045	1,561,143
$800 to $899	5,366,089	6,094,752	2,068,808	2,698,289	3,297,281	3,396,463	920,349	1,488,410
$900 to $999	4,500,167	5,779,067	1,761,838	2,600,212	2,738,329	3,178,855	869,080	1,304,509
$1,000 to $1,199	7,134,803	9,667,838	2,510,145	4,042,398	4,624,658	5,625,440	1,151,884	1,724,815
$1,200 to $1,499	7,497,222	10,336,589	2,313,457	3,739,529	5,183,765	6,597,060	929,991	1,374,862
$1,500 to $1,999	6,780,648	9,303,591	1,731,866	2,785,474	5,048,782	6,518,117	759,280	979,189
$2,000 or more	7,148,525	8,884,711	2,076,541	2,556,516	5,071,984	6,328,195	434,737	574,382
Total	79,109,379	79,109,379	30,885,442	30,885,441	48,223,937	48,223,938	19,908,899	19,908,898
Median monthly housing cost[c]	$788.0	$984.0	$698.0	$917.0	$862.0	$1,040.0	$496.0	$662.0

Source: Author's analysis of 2003 AHS data.

[a]Includes central-city and suburban portions.

[b]Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.

[c]Excludes no-cash rent.

EXHIBIT 1.13

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units by Location)

Monthly Housing Cost as a Percentage of Current Income	All Metropolitan[a]				Central City				Suburbs				Nonmetropolitan			
	Number of Occupied Housing Units[b]				Number of Occupied Housing Units[b]				Number of Occupied Housing Units[b]				Number of Occupied Housing Units[b]			
	Current		*Post-Rehab Intervention*		*Current*		*Post-Rehab Intervention*		*Current*		*Post-Rehab Intervention*		*Current*		*Post-Rehab Intervention*	
	Number	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*
Less than 5%	4,577,782	5.8	2,666,107	3.4	1,567,939	5.1	803,463	2.6	3,009,843	6.2	1,862,644	3.9	1,881,599	9.5	945,586	4.7
5% to 9%	8,537,281	10.8	6,304,964	8.0	2,933,219	9.5	2,016,888	6.5	5,604,062	11.6	4,288,076	8.9	3,137,134	15.8	2,253,243	11.3
10% to 14%	10,727,638	13.6	8,449,120	10.7	3,859,811	12.5	2,819,740	9.1	6,867,827	14.2	5,629,380	11.7	3,310,427	16.6	2,727,817	13.7
15% to 19%	11,534,529	14.6	9,737,804	12.3	4,249,389	13.8	3,313,873	10.7	7,285,140	15.1	6,423,931	13.3	2,886,942	14.5	2,619,158	13.2
20% to 24%	9,826,228	12.4	9,248,114	11.7	3,686,126	11.9	3,285,870	10.6	6,140,102	12.7	5,962,244	12.4	2,262,198	11.4	2,316,510	11.6
25% to 29%	7,475,108	9.4	7,790,662	9.8	2,974,533	9.6	2,919,569	9.5	4,500,575	9.3	4,871,093	10.1	1,502,285	7.5	1,880,099	9.4
30% to 34%	5,547,769	7.0	6,212,365	7.9	2,213,431	7.2	2,456,918	8.0	3,334,338	6.9	3,755,447	7.8	1,090,989	5.5	1,256,083	6.3
35% to 39%	3,824,011	4.8	4,867,665	6.2	1,555,634	5.0	1,929,013	6.2	2,268,377	4.7	2,938,652	6.1	661,496	3.3	976,511	4.9
40% to 49%	4,757,041	6.0	6,251,306	7.9	2,081,458	6.7	2,687,742	8.7	2,675,583	5.5	3,563,564	7.4	836,133	4.2	1,321,297	6.6
50% to 59%	2,554,676	3.2	3,754,769	4.7	1,096,836	3.6	1,732,422	5.6	1,457,840	3.0	2,022,347	4.2	433,977	2.2	825,296	4.1
60% to 69%	1,619,606	2.0	2,578,984	3.3	718,506	2.3	1,291,175	4.2	901,100	1.9	1,287,809	2.7	259,152	1.3	412,594	2.1
70% to 99%	2,553,032	3.2	4,009,110	5.1	1,160,765	3.8	1,863,021	6.0	1,392,267	2.9	2,146,089	4.5	458,450	2.3	745,400	3.7
100% or more	3,787,737	4.8	5,451,468	6.9	1,873,562	6.1	2,851,514	9.2	1,914,175	4.0	2,599,954	5.4	754,915	3.8	1,196,102	6.0
Zero or negative Income	1,786,939	2.3	1,786,939	2.3	914,231	3.0	914,231	3.0	872,708	1.8	872,708	1.8	433,202	2.2	433,202	2.2
Total	79,109,377	100.0	79,109,377	100.0	30,885,440	100.0	30,885,439	100.0	48,223,937	100.0	48,223,938	100.0	19,908,899	100.0	19,908,898	100.0
Excessive-cost units[2]																
- Number	17,059,031		23,832,576		7,845,358		11,340,105		9,213,673		12,492,471		3,175,829		4,933,891	
- Percent	21.6		30.1		25.4		36.7		19.1		25.9		16.0		24.8	
Median monthly housing cost as percentage of current income[d]	31.7%		26.4%		23.2%		29.8%		20.2%		24.7%		17.5%		22.8%	

Source: Author's analysis of 2003 AHS data.

[a]Includes central-city and suburban portions.

[b]Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.

[c]Units for which monthly housing cost is 40 percent or more of current household income.

[d]Excludes zero or negative income and no-cash rent.

Rehab Affordability by Household Race

A similar affordability gap is discerned when we consider the race of the households occupying the housing unit. Despite the fact that they often pay less for housing than their majority counterparts (Exhibit 1.14), minorities' lower incomes result in their being disproportionately challenged to afford housing. Even without factoring renovation demands and costs, almost 3 in 10 non-Hispanic black households (29 percent) and Hispanic households (28 percent) pay 40 percent or more of their income for housing. That compares with about 2 in 11 (17.6 percent) non-Hispanic white households (Exhibit 1.15). The situation is made worse with the added expense of renovation. Post-rehab, about 4 in 10 minority households (43 percent of non-Hispanic black and 41.3 percent of Hispanic households) would be cost burdened, compared with about 1 in 4 non-Hispanic white households (24.5 percent).

Rehab Affordability by Household Income

Much of the affordability strain experienced by renters and minorities is due to their relatively low incomes, compared with the incomes of their homeowner and majority counterparts, respectively. We find a particularly acute affordability problem among the lowest earners when household income is the criterion for determining housing affordability.

Households are categorized in one of five income groups according to their relationship to the median household income (Exhibit 1.16).

EXHIBIT 1.16

Income Groups by Median Household Income

Household Income Category	***Household Income Relative to Median Household Income***
Very low income	<0.5
Low income	>0.5 to ≤0.8
Moderate income	>0.8 to 1.0
Middle income	>1.0 to 1.2
High income	>1.2

Households with modest earnings expend much less for housing. For instance, pre-rehab, very low income households spend a median of $459 monthly—less than half the $1,019 median monthly outlay of their high-income counterparts (Exhibit 1.17). However, the extremely constrained resources cause many modest earners to experience affordability problems. Currently, more than six in 10 (61.8 percent) very low income households pay 40 percent or more of their income for housing. Pre-rehab, excessive cost is experienced by approximately 2 in 10 (22.9 percent) low-income households, 1 in 9 (11.6 percent) moderate-income households, 1 in 10 (9 percent) middle-income households, and even fewer (3 percent) high-income households (Exhibit 1.18).

EXHIBIT 1.14

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units by Race)

	Non-Hispanic White Number of Occupied Housing Units[a]		*Non-Hispanic Black* Number of Occupied Housing Units[a]		*Hispanic* Number of Occupied Housing Units[a]		*Other* Number of Occupied Housing Units[a]	
Monthly Housing Cost	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***
Less than $200	4,942,338	1,691,299	1,344,405	319,530	706,248	233,215	333,764	86,413
$200 to $299	6,452,606	3,152,645	1,037,899	527,382	636,694	280,078	225,528	124,533
$300 to $399	6,262,833	5,001,831	939,652	698,677	620,387	437,448	210,892	144,573
$400 to $499	5,775,845	5,430,973	1,207,723	952,742	892,893	528,265	351,137	207,853
$500 to $599	5,524,133	5,334,933	1,207,143	966,872	1,042,064	661,810	347,647	272,938
$600 to $699	5,284,732	5,091,686	1,222,411	1,021,870	1,111,594	777,564	368,457	288,827
$700 to $799	5,024,992	4,879,224	1,086,582	1,192,981	1,035,484	928,915	329,388	270,484
$800 to $899	4,277,603	5,090,444	857,039	1,172,878	829,309	989,089	322,487	330,751
$900 to $999	3,873,251	4,821,116	625,437	995,047	624,863	902,624	245,697	364,789
$1,000 to $1,199	5,952,361	7,778,667	884,985	1,526,083	1,017,859	1,521,209	431,483	566,693
$1,200 to $1,499	6,484,387	8,348,571	646,455	1,290,464	822,707	1,442,574	473,663	629,844
$1,500 to $1,999	5,949,410	7,773,545	444,417	738,206	665,743	1,097,704	480,358	673,325
$2,000 or more	5,967,044	7,376,601	410,651	512,068	579,923	785,273	625,644	785,152
Total	71,771,535	71,771,535	11,914,799	11,914,800	10,585,768	10,585,768	4,746,175	4,746,175
Median monthly housing cost[b]	$741.0	$914.0	$623.0	$831.0	$734.0	$957.0	$870.0	$1,116.0

Source: Author's analysis of 2003 AHS data.

[a]Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.

[b]Excludes no-cash rent.

EXHIBIT 1.15

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units by Race)

Monthly Housing Cost as Percentage of Current Income	Non-Hispanic White Occupied Housing Units[1]				Non-Hispanic Black Occupied Housing Units[a]				Hispanic Occupied Housing Units[a]				Other Occupied Housing Units[a]			
	Current		Post-Rehab Intervention		Current		Post-Rehab Intervention		Current		Post-Rehab Intervention		Current		Post-Rehab Intervention	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
Less than 5%	5,286,189	7.4	3,076,302	4.3	539,028	4.5	236,303	2.0	395,644	3.7	194,300	1.8	238,521	5.0	104,788	2.2
5% to 9%	9,459,369	13.2	7,185,302	10.0	919,843	7.7	580,848	4.9	834,069	7.9	486,486	4.6	461,133	9.7	305,571	6.4
10% to 14%	11,074,534	15.4	9,083,619	12.7	1,392,339	11.7	936,595	7.9	1,060,971	10.0	771,525	7.3	510,221	10.8	385,198	8.1
15% to 19%	11,069,755	15.4	9,821,268	13.7	1,482,217	12.4	1,086,150	9.1	1,248,105	11.8	976,539	9.2	621,394	13.1	473,005	10.0
20% to 24%	8,834,788	12.3	8,862,828	12.3	1,327,378	11.1	1,097,486	9.2	1,284,174	12.1	1,045,714	9.9	642,085	13.5	558,596	11.8
25% to 29%	6,266,078	8.7	7,014,547	9.8	1,123,635	9.4	1,108,419	9.3	1,143,341	10.8	1,040,449	9.8	444,339	9.4	507,346	10.7
30% to 34%	4,333,470	6.0	5,302,760	7.4	972,883	8.2	909,456	7.6	931,258	8.8	865,273	8.2	401,147	8.5	390,959	8.2
35% to 39%	2,797,706	3.9	3,827,397	5.3	697,446	5.9	835,932	7.0	713,541	6.7	834,562	7.9	276,814	5.8	346,286	7.3
40% to 49%	3,485,235	4.9	4,826,133	6.7	869,865	7.3	1,189,742	10.0	961,424	9.1	1,121,129	10.6	276,651	5.8	435,599	9.2
50% to 59%	1,825,261	2.5	2,872,201	4.0	443,671	3.7	663,285	5.6	523,380	4.9	792,210	7.5	196,341	4.1	252,370	5.3
60% to 69%	1,151,576	1.6	1,740,783	2.4	280,732	2.4	530,619	4.5	297,361	2.8	533,606	5.0	149,088	3.1	186,569	3.9
70% to 99%	1,940,201	2.7	2,829,337	3.9	510,029	4.3	792,932	6.7	421,032	4.0	840,186	7.9	140,220	3.0	292,056	6.2
100% or more	2,866,126	4.0	3,947,812	5.5	865,017	7.3	1,456,315	12.2	548,236	5.2	860,556	8.1	263,273	5.5	382,887	8.1
Zero or negative income	1,381,245	1.9	1,381,245	1.9	490,717	4.1	490,717	4.1	223,233	2.1	223,233	2.1	124,947	2.6	124,947	2.6
Total	71,771,533	100.0	71,771,534	100.0	11,914,800	100.0	11,914,799	100.0	10,585,769	100.0	10,585,768	100.0	4,746,174	100.0	4,746,177	100.0
Excessive-cost units[b]																
- Number	12,649,644		17,597,511		3,460,031		5,123,610		2,974,666		4,370,920		1,150,520		1,674,428	
- Percentage	17.6		24.5		29.0		43.0		28.1		41.3		24.2		35.3	
Median monthly housing cost as percentage of current income[c]	19.4%		23.4%		25.5%		33.9%		26.8%		34.1%		23.7%		25.6%	

Source: AHS 03.

[a]Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.

[b]Units for which monthly housing cost is 40 percent or more of current household income.

[c]Excludes zero or negative income and no-cash rent.

If minor rehab, moderate rehab, or substantial rehab were effected as needed, housing expenses would increase. By coincidence, the post-rehab increase is about $185 monthly for all the household income groups (Exhibit 1.17). A $185 monthly increase for renovation, however, is a proportionately greater addition to the pre-rehab monthly shelter cost for the modest-earner households. A $185 monthly increase is also more significant for those at the bottom of the economic spectrum. Those factors explain the following. Post-rehab, the incidence of households paying 40 percent or more of their income for shelter rises to about eight in 10 (79.5 percent) for the very low income households and four in 10 (40.7 percent) for the low-income households (Exhibit 1.18). Post-rehab, the share of those excessively burdened rises more modestly to about 1 in 5 (21.1 percent) and 1 in 7 (14.5 percent) for moderate-income and middle-income households, respectively. Very few of their high-income counterparts (4.3 percent) would be burdened post-rehab. Thus, the poorest households face a daunting affordability challenge even before rehab need and cost are factored. That situation is tremendously aggravated by the added expense of renovation.

Rehab Affordability by Housing-Unit Age

A similar situation is observed for older housing units. We assign housing units to age-group cohorts by their year of construction: (1) 1939 or earlier; (2) 1940 to 1969; (3) 1970 to 1979; and (4) 1980 to 2003. On the whole, older housing is less expensive than younger housing. Pre-rehab, the monthly costs for the four housing age groups are $634, $639, $691, and $941, respectively (Exhibit 1.19). Poorer people tend to cluster in the older housing units. As such, even pre-rehab, there are more cost-burdened households in the oldest stock (see Exhibit 1.20). Pre-rehab, 23 percent of the units built in 1939 or earlier have households spending 40 percent or more of their incomes on housing, compared with 18.6 percent of the units built during the period 1980 to 2003.

That situation is aggravated post-rehab. There is a greater need for rehab in older units, and that renovation tends to cost proportionately more. For example, renovation increases the monthly housing cost of units built 1939 or earlier from $634 (pre-rehab) to $851 (post-rehab), a gain of $217, or 34 percent. For the newest housing units, those built in the period 1980 to 2003, renovation increases the monthly housing cost from $941 (pre-rehab) to $1,093 (post-rehab)—a gain of only $152 monthly, or 16 percent (Exhibit 1.19). The impact of the higher renovation cost for the older housing units is compounded because these units tend to be occupied by the less affluent. Post-rehab, 34 percent of the 1939 or earlier units are cost burdened; that incidence of excessive cost is approximately one-third less (24.3 percent) for the newest housing, units built in the period 1980 to 2003. The post-rehab incidence of housing units whose occupants pay 40 percent or more of their income for shelter is about one in three for units built in the periods 1940 to 1969 and 1970 to 1979 (Exhibit 1.20).

EXHIBIT 1.17

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units by Income Status)

	Very Low Income[a] Occupied Housing Units[b]		*Low Income[a] Occupied Housing Units[b]*		*Moderate Income[3] Occupied Housing Units[b]*		*Middle Income[a] Occupied Housing Units[b]*		*High Income[a] Occupied Housing Units[b]*	
Monthly Housing Cost	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***
Less than $200	3,894,373	1,195,145	1,378,375	428,628	501,230	206,077	407,439	120,354	1,138,240	380,253
$200 to $299	3,188,799	1,848,146	1,643,424	773,419	810,329	337,257	518,820	212,351	2,176,243	906,357
$300 to $399	2,626,077	2,343,270	1,666,773	1,310,271	831,714	577,819	572,606	442,918	2,323,551	1,595,797
$400 to $499	2,608,566	2,297,192	1,688,822	1,393,410	890,134	722,728	571,358	522,019	2,438,592	2,173,996
$500 to $599	2,320,940	2,417,280	1,691,840	1,328,248	978,390	751,093	632,300	461,684	2,467,292	2,263,039
$600 to $699	1,834,373	2,241,973	1,690,140	1,497,756	1,044,149	776,257	765,312	530,449	2,624,711	2,101,796
$700 to $799	1,418,293	1,938,275	1,310,510	1,456,365	970,558	926,517	885,220	645,517	2,869,415	2,280,047
$800 to $899	989,262	1,728,763	1,071,798	1,480,609	719,666	944,934	710,462	760,373	2,768,950	2,652,886
$900 to $999	670,397	1,378,878	765,172	1,278,845	602,069	847,947	530,447	767,282	2,778,195	2,785,682
$1,000 to $1,199	822,680	1,778,674	1,023,296	1,797,493	762,181	1,231,253	829,394	1,221,977	4,830,777	5,319,601
$1,200 to $1,499	600,924	1,325,138	705,654	1,412,093	611,378	1,022,674	721,667	1,025,658	5,767,419	6,889,119
$1,500 to $1,999	402,068	762,888	479,097	826,770	403,315	671,189	507,187	818,131	5,732,257	7,180,019
$2,000 or more	437,855	558,950	407,885	538,878	311,587	420,954	335,328	458,827	6,087,676	7,474,725
Total	21,814,571	21,814,572	15,522,786	15,522,785	9,436,700	9,436,699	7,987,540	7,987,540	44,003,318	44,003,317
Median monthly housing cost[c]	$459.0	$649.0	$592.0	$785.0	$677.0	$851.0	$765.0	$949.0	$1.019.0	$1.185.0

Source: Author's analysis of 2003 AHS data.

[a] Very low income: < 0.5 median household income.

Low income: ≥0.5 to 0.8 median household income.

Moderate income: > 0.8 to 1.0 median household income

Middle income: > 1.0 to 1.2 median household income.

High income: > 1.2 median household income.

[b] Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.

[c] Excludes no-cash rent.

EXHIBIT 1.18

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units by Income Status)

Monthly Housing Cost as Percentage of Current Income	*Very Low Income[3] Occupied Housing Units[b]*				*Low Income[a] Occupied Housing Units[b]*				*Moderate Income[a] Occupied Housing Units[b]*				*Middle Income[a] Occupied Housing Units[b]*				*High Income[a] Occupied Housing Units[b]*			
	Current		*Post-Rehab Intervention*		*Current*		*Post-Rehab Intervention*		*Current*		*Post-Rehab Intervention*		*Current*		*Post-Rehab Intervention*		*Current*		*Post-Rehab Intervention*	
	Number	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*
Less than 5%	199,415	0.9	42,446	0.2	315,651	2.0	77,467	0.5	189,630	2.0	66,849	0.7	313,892	3.9	93,167	1.2	5,437,195	12.4	3,331,762	7.6
5% to 9%	373,475	1.7	106,393	0.5	1,090,394	7.0	360,756	2.3	1,010,672	10.7	425,172	4.5	909,319	11.4	479,979	6.0	8,278,036	18.8	7,184,610	16.3
10% to 14%	891,807	4.1	264,919	1.2	1,758,876	11.3	912,225	5.9	1,213,624	12.9	831,797	8.8	1,075,469	13.5	865,236	10.8	9,082,410	20.6	8,281,352	18.8
15% to 19%	1,158,866	5.3	410,861	1.9	1,776,142	11.4	1,294,412	8.3	1,369,791	14.5	1,084,014	11.5	1,391,616	17.4	1,079,509	13.5	8,682,811	19.7	8,465,764	19.2
20% to 24%	1,366,355	6.3	717,672	3.3	1,935,679	12.5	1,526,972	9.8	1,633,528	17.3	1,205,765	12.8	1,468,952	18.4	1,229,056	15.4	5,649,522	12.8	6,862,279	15.6
25% to 29%	1,570,088	7.2	932,536	4.3	1,960,058	12.6	1,627,117	10.5	1,342,501	14.2	1,446,178	15.3	1,099,404	13.8	1,416,751	17.7	2,961,424	6.7	4,209,239	9.6
30% to 34%	1,474,634	6.8	981,569	4.5	1,818,261	11.7	1,706,202	11.0	1,011,255	10.7	1,357,749	14.4	644,966	8.1	977,655	12.2	1,659,889	3.8	2,410,471	5.5
35% to 39%	1,288,731	5.9	1,017,921	4.7	1,306,479	8.4	1,699,422	10.9	574,950	6.1	1,031,855	10.9	366,177	4.6	684,273	8.6	931,805	2.1	1,385,298	3.1
40% to 49%	2,225,274	10.2	2,007,677	9.2	1,656,840	10.7	2,653,229	17.1	516,925	5.5	1,062,636	11.3	397,639	5.0	683,647	8.6	766,173	1.7	1,136,429	2.6
50% to 59%	1,555,310	7.1	2,004,784	9.2	808,857	5.2	1,549,793	10.0	209,034	2.2	414,365	4.4	139,135	1.7	226,121	2.8	265,467	0.6	357,491	0.8
60% to 69%	1,186,558	5.4	1,647,798	7.6	383,286	2.5	877,115	5.7	130,366	1.4	189,951	2.0	58,415	0.7	91,293	1.1	116,930	0.3	178,759	0.4
70% to 99%	2,141,791	9.8	3,310,742	15.2	469,662	3.0	911,137	5.9	161,231	1.7	235,237	2.5	85,254	1.1	110,513	1.4	146,823	0.3	169,711	0.4
100% or more	4,162,124	19.1	6,149,110	28.2	242,602	1.6	326,939	2.1	73,194	0.8	85,130	0.9	37,302	0.5	50,340	0.6	24,832	0.1	30,153	0.1
Zero or negative income	2,220,142	10.2	2,220,142	10.2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total	21,814,570	100.0	21,814,570	100.0	15,522,787	100.0	15,522,786	100.0	9,436,701	100.0	9,436,698	100.0	7,987,540	100.0	7,987,540	100.0	44,003,317	100.0	44,003,318	100.0
Excessive-cost units[c]																				
- Number	13,491,199		17,340,253		3,561,247		6,318,213		1,090,750		1,987,319		717,745		1,161,914		1,320,225		1,872,543	
- Percent	61.8		79.5		22.9		40.7		11.6		21.1		9.0		14.5		3.0		4.3	
Median monthly housing cost as percentage of current income[4]	49.8%		69.1%		27.6%		36.2%		23.0%		29.0%		21.2%		25.9%		14.6%		17.0%	

Source: Author's analysis of 2003 AHS data.

[a]Very low income: < 0.5 median household income.

Low income: ≥0.5 to 0.8 median household income.

Moderate income: > 0.8 to 1.0 median income.

Middle income: > 1.0 to 1.2 median household income.

High income: > 1.2 median household income.

[b]Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.

[c]Units for which monthly housing cost is 40 percent or more of current income.

[d]Excludes zero or negative income and no-cash rent.

EXHIBIT 1.19

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units by Age of Unit)

	1980–2003 Number of Occupied Housing Units[a]		*1970–1979* Number of Occupied Housing Units[a]		*1940–1969* Number of Occupied Housing Units[a]		*1939 or earlier* Number of Occupied Housing Units[a]	
Monthly Housing Cost	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***	***Current***	***Post-Rehab Intervention***
Less than $200	1,386,799	562,125	1,409,640	492,711	3,023,751	882,903	1,506,595	392,717
$200 to $299	1,567,034	908,307	1,606,188	808,595	3,377,781	1,684,443	1,801,724	683,293
$300 to $399	1,603,961	1,340,641	1,600,903	1,315,351	3,016,535	2,420,194	1,812,364	1,206,344
$400 to $499	1,636,256	1,480,008	1,628,025	1,390,605	3,037,667	2,733,455	1,925,651	1,515,765
$500 to $599	1,858,815	1,510,195	1,661,360	1,397,827	2,769,553	2,736,470	1,831,258	1,592,061
$600 to $699	2,108,161	1,649,560	1,588,733	1,357,498	2,685,148	2,540,165	1,605,152	1,632,724
$700 to $799	2,067,271	1,769,652	1,472,939	1,443,281	2,422,987	2,467,323	1,513,249	1,591,347
$800 to $899	2,049,566	2,016,725	1,150,024	1,494,371	1,989,490	2,452,768	1,097,357	1,619,299
$900 to $999	1,839,614	2,031,268	937,725	1,377,079	1,665,824	2,250,545	926,086	1,424,684
$1,000 to $1,199	3,175,232	3,646,109	1,548,773	2,066,733	2,330,123	3,645,873	1,232,559	2,033,937
$1,200 to $1,499	3,536,175	4,420,975	1,570,107	2,187,842	2,193,056	3,239,283	1,127,874	1,863,352
$1,500 to $1,999	3,371,343	4,231,732	1,346,646	1,856,967	1,883,847	2,728,363	938,092	1,465,717
$2,000 or more	3,679,781	4,312,710	1,044,955	1,377,158	1,757,751	2,371,728	1,100,775	1,397,497
Total	29,880,008	29,880,007	18,566,018	18,566,018	32,153,513	32,153,513	18,418,736	18,418,737
Median monthly Housing cost[b]	$941.0	$1093.0	$691.0	$878.0	$639.0	$835.0	$634.0	$851.0

Source: Author's analysis of 2003 AHS data.

[a]Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.

[b]Excludes no-cash rent.

EXHIBIT 1.20

Monthly Housing Cost: Current and Post-Rehab Intervention (All Occupied Units by Age of Unit)

	1980–2003				*1970–1979*				*1940–1969*				*1939 or earlier*			
	Occupied Housing Units[a]				*Occupied Housing Units*[a]				*Occupied Housing Units*[a]				*Occupied Housing Units*[a]			
Monthly Housing Cost as Percentage of Current Income	***Current Number***	***%***	***Post-Rehab Intervention Number***	***%***	***Current Number***	***%***	***Post-Rehab Intervention Number***	***%***	***Current Number***	***%***	***Post-Rehab Intervention Number***	***%***	***Current Number***	***%***	***Post-Rehab Intervention Number***	***%***
Less than 5%	1,917,610	6.4	1,295,332	4.3	1,165,221	6.3	650,226	3.5	2,203,024	6.9	1,118,394	3.5	1,173,526	6.4	547.741	3.0
5% to 9%	3,098,318	10.4	2,554,964	8.6	2,265,032	12.2	1,699,700	9.2	4,132,691	12.9	2,847,500	8.9	2,178,374	11.8	1.456.043	7.9
10% to 14%	4,075,685	13.6	3,448,859	11.5	2,647,087	14.3	2,115,069	11.4	4,749,151	14.8	3,677,658	11.4	2,566,142	13.9	1.935.351	10.5
15% to 19%	4,785,690	16.0	4,178,903	14.0	2,553,370	13.8	2,274,763	12.3	4,477,040	13.9	3,934,781	12.2	2,605,371	14.1	1.968.515	10.7
20% to 24%	4,015,267	13.4	3,831,511	12.8	2,298,142	12.4	2,117,117	11.4	3,656,184	11.4	3,517,819	10.9	2,118,832	11.5	2.098.178	11.4
25% to 29%	2,905,669	9.7	3,156,546	10.6	1,775,105	9.6	1,783,177	9.6	2,769,798	8.6	3,076,692	9.6	1,526,821	8.3	1.654.347	9.0
30% to 34%	2,124,808	7.1	2,496,218	8.4	1,261,202	6.8	1,361,784	7.3	2,102,198	6.5	2,294,627	7.1	1,150,551	6.2	1.315.819	7.1
35% to 39%	1,404,930	4.7	1,656,781	5.5	829,933	4.5	1,105,284	6.0	1,388,230	4.3	1,908,859	5.9	862,414	4.7	1.173.253	6.4
40% to 49%	1,592,498	5.3	2,120,732	7.1	1,046,309	5.6	1,434,464	7.7	1,818,960	5.7	2,509,928	7.8	1,135,408	6.2	1.507.479	8.2
50% to 59%	799,276	2.7	1,156,300	3.9	532,701	2.9	874,859	4.7	1,088,932	3.4	1,599,808	5.0	567,743	3.1	949.097	5.2
60% to 69%	484,613	1.6	675,499	2.3	357,019	1.9	576,893	3.1	616,007	1.9	1,023,064	3.2	421,119	2.3	716.122	3.9
70% to 99%	824,602	2.8	1,109,041	3.7	608,005	3.3	937,244	5.0	966,152	3.0	1,639,052	5.1	612,723	3.3	1.069.173	5.8
100% or more	1,285,920	4.3	1,634,202	5.5	779,599	4.2	1,188,147	6.4	1,468,304	4.6	2,288,488	7.1	1,008,829	5.5	1.536.733	8.3
Zero or negative Income	565,121	1.9	565,121	1.9	447,292	2.4	447,292	2.4	716,844	2.2	716,844	2.2	490,884	2.7	490.884	2.7
Total	29,880,007	100.0	29,880,009	100.0	18,566,017	100.0	18,566,019	100.0	32,153,515	100.0	32,153,514	100.0	18,418,737	100.0	18.418.735	100.0
Excessive-cost units[b]																
- Number	5,552,030		7,260,895		3,770,925		5,458,899		6,675,199		9,777,184		4,236,706		6.269.488	
- Percentage	18.6		24.3		20.3		29.4		20.8		30.4		23.0		34.0	
Median monthly housing cost as percentage of current income[c]	20.9%		24.2%		20.9%		25.5%		20.5%		26.2%		21.2%		28.1%	

Source: Author's analysis of 2003 AHS data.

[a]Includes occupied housing units that are houses or apartments and for which the current and post-rehab monthly housing costs are available.

[b]Units for which monthly housing cost is 40 percent or more of current income.

[c]Excludes zero or negative income and no-cash rent.

Rehab Affordability by Dollar Magnitude

Of the $1,309.79 billion in estimated national rehab need, $741.25 billion, or 57 percent, is affordable (i.e., the post-rehab HEIR is less than 40 percent) and $568.54 billion, or 43 percent, is unaffordable (i.e., the post-rehab HEIR is 40 percent or more). Of the $1,309.79 billion, the greatest rehab investment is indicated for such groups as the following:

- Rental housing units need $619.25 billion in rehab and owned units require $690.54 billion in renovation. Rental units therefore need 47 percent of the total national rehab need of $1,309.79 billion—higher than renters' one-third share of the total housing stock. Of the $619.25 billion in renter-unit housing need, $362.54 billion, or 58.5 percent, is unaffordable—far higher than the 30 percent of the owned-unit rehab need that is unaffordable.

- Units in central cities need $514 billion in rehab or 39 percent of the national total—somewhat higher than the central-city 31.2 percent share of all occupied year-round housing. We also find that almost half of the $514 billion in central-city rehab need is unaffordable—far higher than the unaffordable share for other areas (e.g., only 37 percent of the suburban rehab need is unaffordable.

- Older housing units (i.e., those built 1939 or earlier) require 25 percent of the national rehab need ($320.82 billion of $1309.79 billion)—higher than the older units' 18.6 percent share of the housing studied here. A higher share of the older units' total $320.82 billion rehab need is unaffordable ($156.45 billion or 49 percent), compared with younger housing (e.g., only about a third of the rehab need for units built in the period 1980 to 2003 is unaffordable.

- Minority-occupied housing units (i.e., units occupied by non-Hispanic blacks and Hispanics) require $392 billion in rehab, or 30 percent of the national need ($1309.79 billion), a higher proportion than their 22.7 percent representation of the housing examined here. About 59 percent of the minorities' $392 billion rehab need is unaffordable, compared with
- 35.7 percent of unaffordable rehab for non-Hispanic whites.

Summary of the Ability to Afford

Even without factoring the need for and cost of renovation, many households currently face an affordability problem. Those most at risk in this regard are renters, central-city residents, minorities, the poor, and residents of older housing. Many of these characteristics are interrelated. For instance, a higher share of minorities are renters and poor. The ability of these at-risk groups to afford housing would be even more compromised if moderate rehab and substantial rehab were to be effected as needed. At-risk populations tend to live in housing with the greatest need for renovation, and they can least afford it.

REFERENCES

Brochner, Jan. 1978. *Economic Aspects of Housing Rehab: Modernizing Flats in Sweden, 1971–1975.* Stockholm, Sweden: Swedish Council for Building Research.

Joint Center for Housing Studies of Harvard University. 1999. *Improving America's Housing: The Remodeling Future's Program.* Cambridge, MA: Joint Center for Housing Studies of Harvard University.

Kristof, Frank. 1967. *A Large-Scale Rehab Program for New York City*, New York: Housing and Redevelopment Administration Bureau and Program Research. Report No. 14.

Marshall and Swift. 1999. Local (Cost) Multipliers. *Repair and Remodel Cost Book 1999*. New York: McGraw Hill.

Needleman, Lionel. 1965. *The Economics of Housing*. London: Staples Press.

New York State Temporary State Housing Rent Commission. 1960. *Prospects for Rehab.* New York: New York State Temporary State Housing Rent Commission.

Phipps, Antony A., Judith D. Feins, and John A. Kirlin. 1981. Final Report on the Measurement and Prediction of Housing Condition and Rehabilitation Need. Report prepared for U.S. Department of Housing and Urban Development. Washington, D.C.: Office of Policy Development and Research.

Schaaf, A. H. 1960. *Economic Aspects of Urban Renewal: Theory, Policy, and Area Analysis.* Berkeley: Real Estate Research Program, Institute of Business and Economic Research, University of California.

_____. 1969. Economic Feasibility Analysis for Urban Renewal Housing Rehabilitation. *Journal of the American Institute of Planners* 6, 35: 399–404.

Segsworth, E. M., and R. K. Wilkinson. 1967. Building or Renovation? *Urban Studies* (June).

Stegman, Michael A. 1973. *Housing Disinvestment in the Inner city: The Dynamics of Decline.* Cambridge, MA: MIT Press.

Sternlieb, George. 1969. *The Tenement Landlord*. New Brunswick, NJ: Rutgers University Press.

Sternlieb, George, and Robert Burchell. 1972. *Residential Abandonment: The Tenement Landlord Revisited.* New Brunswick, NJ: Center for Urban Policy Research, Rutgers, The State University of New Jersey.

Sternlieb, George, and David Listokin. 1976. Rehab versus Redevelopment: Cost-benefit Analyses. In *Housing in the Seventies.* Vol. 2. U.S. Department of Housing and Urban Development. Washington, DC: U.S. Government Printing Office.

U.S. Department of Commerce, Bureau of the Census. 1967. *Measuring the Quality of Housing: An Appraisal of Census Statistics and Methods.* Working Papers No. 25. Washington, DC.

U.S. Department of Commerce and U.S. Department of Housing and Urban Development. 2004. *American Housing Survey for the United States in 2003.* Washington, DC: Government Printing Office.

U.S. Department of Housing and Urban Development. 2000. *Rental Housing Assistance—The Worsening Crisis.* Washington, DC: Government Printing Office.

2

Tax Credits and Housing Rehab

INTRODUCTION

As affordable housing rehab is often challenged by daunting economies, securing subsidies is of paramount importance. Tax credits of various types are an important economic prop for affordable housing, both new construction and rehabilitation. To illustrate, the federal government funds about $3.6 billion annually from major programs to support rehabilitation (Exhibit 2.1). That aid leverages about $8.5 billion annually in private moneys for a total rehab investment of about $12 billion yearly. The combined funds provide for about 115,000 housing units annually receiving support for rehab. As is evident from Exhibit 2.1, tax credits figure prominently in that major program support for renovation. The low-income housing tax credit (LIHTC) and the historic (rehabilitation) tax credit (HTC) combined account for about $2 billion of the total $3.6 billion in major federal government aid for rehab. These two credits further account for $7 billion of the total $12 billion rehab investment and about 50,000 of the total 115,000 housing units aided annually.

The LIHTC and HTC have recently been joined by a third tax credit, the new markets tax credit (NMTC). While not focused on housing, the NMTC can creatively be applied to support affordable housing renovation. Further, the NMTC is of particular value in fostering mixed-use development, of particular import to smart growth.

This chapter considers the topic of tax credits and rehab and discusses the LIHTC, HTC, and NMTC. Each tax credit is introduced, its association with housing rehab is described, and suggestions are made for improving the tax credit's usefulness for housing rehab.

EXHIBIT 2.1

Annual Averages 1997–1999 for Primary Block Grant and Tax Credit Housing Rehabilitation Programs

Program	*Total Funding ($ million)*	*Share Allocated to Rehab*	*Total Rehab Funding ($ million)*	*Leverage Ratio*	*Leveraged Rehab Funding ($ million)*	*Total Directed to Rehab*	*Units Receiving Rehab Funds Annually*
HOME	1,117.6	0.484	570.0	2.45	1,396.4	1,996.4	23,846
CDBG	4,243.8	0.219	928.1	2.31	2,143.9	3,072.1	43,362
Historic Credit	1,680.0	0.485	799.3	4.00	3,197.1	3,996.4	13,404
LIHTC	5,262.8	0.239	1,257.8	1.40	1,760.9	3,018.7	33,818
Total	12,932.2		3,555.2		8,498.3	12,053.6	114,430

Source: Duda 2001.

LIHTC BACKGROUND

LIHTC Legislation and Housing Production

Created by the Tax Reform Act of 1986, the LIHTC gives states the authority to issue tax credits to owners or developers who construct, rehabilitate, and acquire rental housing for lower-income households. Originally, each state was granted a tax-credit allocation of $1.25 per capita. The allocation was raised to $1.75 per capita as of 2002 (Garbarine 2001). Beginning in 2003, the allocation was adjusted for inflation. Since its adoption, the LIHTC has been one of the most significant programs for the production of affordable housing in the United States. LIHTC housing production far exceeds that of direct housing subsidies, such as the HOME program administered by the U.S. Department of Housing and Urban Development (Wallace 1995, 1998). From the beginning of the program in 1987 through 2003, the LIHTC has allocated $6.3 billion for federal tax credits granted for the production of 1,374,163 units of affordable housing (Danter 2004).

LIHTC Administration and Provisions

The LIHTC is jointly administered by the Internal Revenue Service (IRS) and state agencies. The process of securing tax credits is competitive. Awards are based on the project criteria specified in the Qualified Allocation Plan (QAP) prepared by each state, following IRS guidelines. QAPs take into account such factors as proposed project location, cost, amenities, and other characteristics. States must reserve a minimum of 10 percent of the credits for nonprofit developers.

To qualify for tax credits, project developers successful in the QAP-based selection process must reserve a specified proportion of units for lower-income households for a *mandatory compliance period* (a minimum of 15 years). The minimum set-aside within a given project must equal or exceed one of two possible targets: at least 20 percent of the units are reserved for households at or below 50 percent of the area median household income (the *20/50 Test*), or at least 40 percent of the units are set aside for households at or below 60 percent of the area median household income (the *40/60 Test*). In both cases, the income cutoff is adjusted for family size. The LIHTC program is intended, in part, to support mixed-income developments, although that goal is often not achieved in practice. Rents on the affordable units may not exceed 30 percent of household income (i.e., the rent may not exceed 30 percent of the elected 50 percent or 60 percent of area median household income). Investors may claim the credits annually against their federal income tax over a 10-year period, as long as the specified minimum number of units in the project are rented to low-income households within the rent limits described above for the compliance period.

The first step in calculating the amount of tax credit available to a project is to determine the appropriate *tax-credit rate*, which is either 9 percent or 4 percent. To receive the 9 percent federal tax credit, the low-income units must be either newly constructed or substantially rehabilitated (at least $3,000 in improvements per unit or 10 percent of the building's *adjusted basis*),[5] and the property must not be otherwise subsidized by the federal government (Abravanel

[5]The adjusted basis is equal to the sum of the purchase price of the property (less land cost) and improvements less depreciation.

and Johnson 1999, 4). If federal subsidies are used at the property, a tax-credit rate of 4 percent is applicable.[6]

The amount of tax credit available to a project is equal to the tax-credit rate (9 percent or 4 percent) multiplied by the project's *qualified basis*. The qualified basis is determined through a series of calculations (Danter 2001). First, total (project) development costs (TDC) are calculated. Next, the *eligible basis* is determined by subtracting nondepreciable expenses (e.g., land, permanent financing expenses, rent reserves, and marketing costs) from the TDC. The eligible basis is increased by 130 percent if the project is located in either a *Qualified Census Tract* (QCT)[7] or a *Difficult Development Area* (DDA).[8] Finally, to determine the qualified basis, the eligible basis is multiplied by the *applicable fraction*, which takes into account the share of project units that are low-income (i.e., the percentage of low-income units to total project units). For example, a $1.2 million project that had $0.2 million in nondepreciable expenses (producing an eligible basis of $1.0 million), that was located in a DDA (therefore qualifying for an increase of 130 percent in the eligible basis), and was fully occupied by low-income tenants (producing a 100 percent applicable fraction) would have a qualified basis of $1.3 million. If the project involved new construction and was not receiving federal subsidies, its tax-credit rate would be 9 percent. Therefore, $0.117 million ($1.3 million × .09) in tax credits would be available annually; $1.17 million in total tax credits would be available over the 10-year period.

Because of various IRS regulations and program restrictions, the owner of a property is often not able to use all of the tax credits earned. Therefore, syndicators create groups of limited partners who buy the LIHTC properties and use the credits to offset their federal tax liability. The limited partners are typically corporations who receive a $1.00 tax credit for an investment of approximately $0.75.[9] Thus, in the example project described above, an investor would contribute about $0.88 million ($1.17 million × .75) for the tax shelter. The tax credits are appealing because they provide a dollar-for-dollar reduction in taxes and, as noted by the Related Capital Company (one of the nation's largest LIHTC syndicators), "there are not many good tax shelters for corporations" (Garbarine 2001). The ability to offset construction costs through the sale of tax credits enables LIHTC developers to lease apartments at lower rents. In many instances, LIHTC projects tap subsidies in addition to the federal tax credit in order to reach the poor.[10] The additional subsidies include state tax credits, tax-exempt financing, HUD HOME and Section 8 vouchers, and subsidized mortgages, such as Section 515 loans from the Rural Housing Administration (RHS, formerly the FmHA). A U.S. Government Accounting Office (GAO 1997; renamed the Government Accountability Office in 2004) report estimated that 75 percent of LIHTC units receive various types of assistance other than tax credits.

---

[6]The Millennial Housing Commission (2002, 60) has recommended that federally assisted new construction and substantial rehabilitation projects also be made eligible for the 9 percent credit.

[7]QCTs include any tract where at least 50 percent of the households have incomes less than 60 percent of the area median household income.

[8]DDAs include metropolitan or nonmetropolitan counties where construction, land, and utility costs are high relative to incomes.

[9]The investment relative to the tax credit has varied over time. When the LIHTC program began in the late 1980s, investors paid about $0.50 for a $1.00 tax credit. As investors became more familiar with and confident in the LIHTC program, they bid up the amount to about 80-85 cents on the dollar.

[10]Utilization of certain subsidies, such as tax-exempt financing and a federally subsidized below-market interest rate, can reduce the tax-credit rate from 9 percent to 4 percent.

LIHTC NATIONAL DATA AND PROFILE

Despite the fact that the LIHTC is one of the nation's premier programs for producing affordable housing, there has been, until recently, relatively modest empirical LIHTC research (Abravanel and Johnson 1999). Yet research on the LIHTC has expanded in recent years as more data has been compiled and as interest in and knowledge of the program have increased.[11]

In 1996, HUD commissioned Abt Associates to prepare a data file on LIHTC activity. That file contained information on most LIHTC projects initiated in 1990 and 1991 and virtually all the projects from 1992 through 1994. The 1996 Abt database covered 3,987 projects and 168,046 housing units and contained many fields of general project data, such as project location, project size, and project construction type (new or rehab). Limited LIHTC financial information (e.g., tax-credit rate) was also assembled. Abt updated its compilation of data in 2000, again under HUD sponsorship. The data prepared in 2000 covered LIHTC activity from 1987 through 1998 and included 16,283 projects and 701,734 housing units.

Exhibit 2.2 details the profile of LIHTC activity in the United States from 1987 through 1998 as revealed in the 2000 Abt data. In brief, about half of the LIHTC projects are located in Sunbelt census regions, 39 percent in the South and 13 percent in the West. Fifteen percent are located in the Northeast, and 34 percent are located in the Midwest. Relatively lower real estate development costs in the South may explain why this region garners the greatest LIHTC activity. About 60 percent of both LIHTC projects and housing units involve new construction; most of the remainder entail rehab. About one-fifth of the LIHTC projects and housing units have a nonprofit sponsor—double the minimum required by the IRS. Only a small portion of LIHTC activity uses tax-exempt bonds, which explains, in part, why the majority of LIHTC activity applies the 9 percent as opposed to the 4 percent credit amount. Finally, almost all LIHTC units are occupied by low-income families. That occupancy pattern helps those most in need, but it hinders the goal of mixed-income housing.

[11]Recent research includes studies by ICF, Inc. (1991); the Congressional Budget Office (1992); the U.S. General Accounting Office (1990, 1997); Abt Associates (1996, 2000); and Cummings and DiPasquale (1998).

EXHIBIT 2.2
Profile of LIHTC Activity for the Nation

	Nation	
	Projects	***Units***
Number of projects/units	16,607	701,734
Distribution by region		
Northeast	15%	13%
Midwest	34%	28%
South	39%	43%
West	13%	16%
Distribution by metropolitan location		
Central city	42%	48%
Suburb	28%	32%
Nonmetropolitan	31%	20%
Distribution by project size		
0–10 Units	28%	
11–20 Units	12%	
21–50 Units	36%	
51–99 Units	12%	
100+ Units	11%	
Average number of units per project	44	
Average qualifying ratio		
Distribution by qualifying ratio		
(% of units low income)		
0%–89%	7%	13%
90%–99%	5%	8%
100%	89%	79%
Average %	97%	93%
Distribution by number of bedrooms		
0 bedrooms (studio)		4%
1 bedrooms		33%
2 bedrooms		43%
3 bedrooms		18%
4 bedrooms		2%
Average number of bedrooms per unit		1.8
Year placed in service		
1987–1990	38%	27%
1991–1994	32%	31%
1995–1998	39%	43%
Median year	1992	1994
Nonprofit sponsor		
Yes	17%	20%
No	83%	80%
Was tax-exempt bond received?		
Yes	5%	15%
No	95%	85%
Were FmHA (RHS) Section 515 loans used?		
Yes	27%	19%
No	73%	81%
Distribution by type of construction		
New construction	61%	60%
Acquisition and rehab (A/R)	38%	39%
Both new construction and A/R	1%	1%
Distribution by type of credit percentage		
4 %	32%	32%
9 %	57%	56%
Both 4% and 9%	11%	12%
Difficult development area		
Yes	13%	16%
No	87%	84%
Qualified census tract		
Yes	29%	26%
No	71%	74%
Difficult Development Area and/or Qualified Census Tract		
Yes—DDA and/or QCT	38%	37%
Neither	62%	63%

Source: Abt Associates (2000).

EFFECTS OF QAP SCORING CRITERIA ON REHAB

States participating in the LIHTC program are required by the IRS to prepare a QAP. Federal expectations for the QAP include the low-income occupancy tests (20/50 and 40/60); procedures for monitoring the long-term compliance of the LIHTC projects in terms of affordability; a mandated 10 percent minimum allotment of tax credits to projects involving nonprofits; and general categories of selection criteria (e.g., project location and project characteristics). The state QAPs include the federal mandates and specific criteria that reflect each state's affordable-housing priorities. The synthesis of the federal and state requirements results in scoring or other selection criteria used in the evaluation of LIHTC project applications. This competition is popularly referred to as a "beauty contest." The scoring method for each state varies. Some states rely on a point system throughout the qualifying process. Others require projects to embody all the elements of their "threshold criteria" and then rank the successful projects based on a point allocation system. The threshold requirements often carry more weight than the various point allotments or the state housing priorities. In some states, in order to advance in the "beauty pageant," the threshold requirements must first be met in full. The points given projects are clearly most important in those states with no threshold criteria (beyond the requirements of the tax code). In states that do set threshold criteria, the point system is important in prioritizing projects after the threshold criteria have been met.

How do the state QAP scoring criteria either encourage or discourage LIHTC rehab projects? A study authored by Alison Barr[12] (1998) examined a variation of the above query—namely, how the state QAP criteria affected *historic* rehab projects. Barr found that certain criteria either directly benefited historic rehab projects (e.g., extra points for historic rehab) or indirectly aided such projects (e.g., point awards for smaller-scale projects benefit historic rehab since it is often of smaller scale). Conversely, Barr noted various criteria that could hinder historic rehab, such as states awarding additional points for low project costs (historic projects tend to offer enhanced amenities and to incur higher costs). The Barr report summarized these findings and also reported the QAP criteria on a state-by-state basis. A recent study by The Urban Institute (Gustafson and Walker 2002) examined the QAP criteria as of 1990 and 2001. The findings of that study are shown in Resource Guide, section A.

Drawing on the Barr and Urban Institute studies, we have researched the ways in which state scoring criteria may more generally influence selection of LIHTC applications by overall construction category—namely, new construction versus rehab. Like Barr, we find countervailing influences.

Our national review finds 10 state QAP criteria that may either encourage or hinder rehab projects in the LIHTC "beauty contests." Only four of the 10 criteria either directly or indirectly favor rehab. The remaining six criteria will tend to favor new construction, perhaps making rehab LIHTC applications somewhat less competitive.

---

[12]The Barr study, conducted for Preservation Action, funded by Preservation Action, came out of initial research conducted by the National Park Service as part of the June 1998 Symposium on Affordable Housing.

Scoring Criteria That Favor Rehab

Points for rehab. Thirteen states have set-asides or preferences for rehab (Resource Guide, section A) This criterion directly assists rehab projects in competing with their new-construction counterparts. Many states, however, give an equal number of points or more points to new construction, thus putting rehab at a disadvantage. Therefore, what appears at first glance to be a positive for rehab is often less effective than it seems.

Points for historic rehab. At least eight states give points for historic rehab, in addition to the points granted for rehab in general: Indiana, Louisiana, Oklahoma, Rhode Island, Texas, Vermont, Virginia, and Washington. The historic criterion is directly supportive of the rehab of existing historic buildings.

Points for small-scale projects. States sometimes award points for smaller-scale projects. Rehab experts have informed CUPR that rehab jobs generally account for fewer units compared with new construction.[13] Points for smaller-scale projects thus may indirectly favor LIHTC rehab proposals. Also, bonus points for smaller scale may somewhat offset the rehab-hindering influence of limitations on fees and overhead, to be discussed below.

Points for location in challenging areas. Many states (Resource Guide, section A) award points for projects located in such challenging locations as targeted community revitalization or improvement areas, Qualified Censors Tracts (QCTs), and/or Difficult to Develop Areas (DDAs). While these locations do not *exclusively* host rehab as opposed to new construction, it is likely that they are the setting of much rehab work (Barr 1998, 4). Therefore, the points awarded for projects in challenging locations may favor the LIHTC rehab applications.

Scoring Criteria That Favor New Construction

1. *Points for new construction.* Some states give points specifically for new construction. This QAP scoring criteria directly adds to the competitiveness of new construction.

2. *Points for lowest cost per unit.* In an attempt to maximize the LIHTC, many states give additional points to those applications showing the lowest cost per unit. Because rehab can be costlier than new construction, this criterion may negatively affect rehab in the LIHTC competition. In many states, this variable is one of the threshold criteria, which immediately hinders rehab applications. If project costs are too high, rehab applications are immediately disqualified from further consideration.

3. *Limitations on fees and overhead.* In addition to considering total cost per unit, states commonly (Resource Guide, section A) set a maximum allowable percentage of costs for fees and overhead. Unfortunately, rehab projects often incur high soft costs because of their smaller scale (overhead is amortized over

[13]The opposite is the case with respect to LIHTC projects, where the average number of rehab units is greater (47 units) than the number of new-construction units (38 units). This result, however, is likely influenced by the QAP competition itself, as is noted in our description in the text.

fewer units) and the need for greater individualization (higher fees and overheard may be charged). Therefore, the limitation on soft costs may have a negative impact on rehab. Some states, however, set a limit on soft expenses but will allow exceptions for rehab. Colorado, for example, provides a range from 10 percent to 15 percent, depending on whether the project is new construction or rehab. Other states set a very high maximum, which allows rehab projects to be considered for the credits. Indiana, for example, provides for a maximum of 20 percent for soft costs for projects costing up to $1 million.

4. *Points for large units.* States sometimes award points for projects with a higher share of larger (e.g., two- and three-bedroom) units. Providing more family-size units is a laudable housing goal, but it can be problematic if one is rehabilitating existing buildings with mainly smaller apartments (e.g., studio and one-bedroom units).

5. *Points for amenities.* Many states give additional points for projects that provide extra amenities for residents, such as high energy efficiency, central air-conditioning, and two bathrooms and provisions for special needs. Such features are often easier and cheaper to accomplish in new construction, perhaps placing rehab at a disadvantage.

6. *Points for "ready to go."* Some states give points for this criterion. Few LIHTC projects can be easily "ready to go." New construction is often subject to challenges related to NIMBYism and other obstacles. It may be even harder for rehab to be "ready to go." For example, raw land in new construction can often be secured with an option. However, for an existing building, where purchase–rehab is contemplated, an option may not be available (the owner may demand an outright sale); or if an option can be obtained, it may be of limited duration and/or relatively expensive. Building code and other regulations may make the rehab effort more complicated compared with new construction. These and other issues make closure on rehab projects more difficult. As a result, "ready to go" points can negatively affect rehab projects in the LIHTC "beauty contest."

In short, the QAP criteria may "stack the deck" for or against rehab. States wishing to support rehab activity should therefore consider adopting rehab-supportive QAP and should eliminate, or at least reconsider, QAP criteria that either directly or indirectly discourage rehab. The success of the federal LIHTC to promote production of affordable housing prompted some states to offer state incentives to realize the same. This strategy is briefly considered in the following section.

STATE LOW INCOME HOUSING TAX CREDITS

There are three affordable housing tax credit models administered through state housing finance agencies. These are: the investment tax credit, the tax-linked bonus, and the charitable tax credit (Flisrand 2004a). The investment tax credit is modeled after the federal Low Income Housing Tax Credit in both form and function. The tax-linked bonus is a one-time grant or loan from a state based on a formula tied to federal tax credits. The charitable tax credit provides state tax credits to charitable donors who donate money to housing projects effected by nonprofits. Each tax credit model is summarized below with examples of state programs that comport with the different models.

The Investment Tax Credit Model

In the investment tax credit model, a developer who submits an application for federal tax credits to a state housing finance agency (responsible for administering federal LIHTCs) is also eligible to receive state credits. These credits are then sold to investors as an incentive to invest in low-income housing projects. Because state investment tax credits are modeled after the federal LIHTC, they are simple to administer. Since state housing finance agencies are already responsible for administering the federal LIHTC, it follows that state credits are administered according to the same process. However, state investment tax credits are not as fiscally efficient as their federal counterparts because of the interactions between state and federal tax laws. Since state taxes reduce federally taxable income, tax credits that reduce state tax liability lead to increased federal tax liability. Therefore, state credits command much lower prices than federal credits when transferred. For example, Flisrand (2004b) found that state investment tax credits typically sell for between 30 and 50 cents for one dollar of credit, but can sell for as little as 25 cents or as high as 62 cents.

State investment tax credits are currently used in California, Hawaii, Massachusetts, Utah, and Oregon (see Resource Guide, section C). In California, state credits are available to projects that receive federal tax credits. The tax credits level is 13% for projects that are federally subsidized and 30% for those not federally subsidized. California utilizes a formula to divide the money proportionally between the twelve geographic regions within the state. In addition, 10% of the money allocated is reserved for nonprofits, 20% is allocated for projects in rural areas of the state, and 2% is allocated for smaller projects with twenty or fewer housing units. The demand for low-income housing tax credits in California exceeds supply by a ratio of 3 to 1 (California Tax Credit Allocation Committee 2004). In addition to any returned credits, $70 million will be available for state tax credits in 2004.

California has a comprehensive competitive scoring process that includes points for projects that adhere to the state’s smart growth policies and that utilize energy-efficient building materials. Points are awarded for projects with densities greater than 25 units per acre that are part of a transit-oriented development strategy within a quarter-mile of a transit stop. Projects that are in a locally designated revitalization area or are within a quarter mile of a public park, grocery store, library, medical clinic, hospital, or pharmacy also receive points. To encourage energy efficiency, projects that utilize materials that increase energy efficiencies by at least 15% above Title 24 standards are awarded points. In addition, points are awarded for use of specific items such as energy-efficient appliances with the Energy Star® rating, use of natural gas for space heating, extensive use of fluorescent light fixtures, use of specific water conserving technologies such as dual flush toilets, and low VOC emitting paints and carpeting (California Code of Regulations 2004).

Hawaii and Massachusetts utilize income restrictions similar to those used for federal LIHTCs. In both states, projects are eligible for state tax credits if either 20% of the units in a project are rented to households with incomes of 50% or less of the area median income or if 40% of the units are rented to households of 60% or less of the area median income. Hawaii's state credit is equal to 30% of the federal credit in addition to a waiver of the 4% state general excise tax. Hawaii reserves 10% of its $13 million annual allocation for projects involving nonprofit developers.

In contrast to Hawaii and California, Massachusetts typically allocates its state credits in lieu of a portion of the federal credit, which a project might otherwise receive, according to a competitive scoring process (Massachusetts Department of Housing and Community Development 2004). Of the $4 million annual allocation, Massachusetts allocates 65% for projects that build new housing units, 35% for rehab projects, and 10% for nonprofits.

The investment tax credit program in Utah is not as ambitious as the programs in California, Hawaii, or Massachusetts. Utah's annual allocation is $300,000. State credits are paired with the application for and awarding of federal LIHTCs. The maximum allocation for a project is 10% of the maximum federal allocation.

The Tax-Linked Bonus

Currently, only North Carolina uses a tax-linked bonus program in which money is transferred directly from the state to the developer of a housing project. The program, although not a tax credit, is administered through the tax code. It is paired with the application for federal tax credits; however, North Carolina uses more restrictive income-targeting guidelines based on a county's income designation (North Carolina Housing Finance Agency 2003 and Flisrand 2004b). If a project meets certain criteria, then the state housing authority utilizes a formula to decide the amount of the grant or loan the project receives. The North Carolina Department of Revenue issues a check for the amount determined. This "bonus" is available either as a grant or a loan. The credit level is equal to 10% of development costs in "high" income counties, 20% of development costs in "moderate" income counties, and 30% of development costs in "low" income counties (North Carolina Housing Finance Agency 2003).

The nature of the tax-linked bonus program promotes fiscal efficiency. Every dollar spent by the state equals one dollar aiding a housing project (Flisrand 2004a). In addition, since the tax linked bonus does not increase federal tax liability; federal tax credits sell for a higher price on projects that receive a tax-linked bonus than on projects that receive either investment tax credits or charitable tax credits (Flisrand 2004b).

The Charitable Tax Credit

Connecticut, Illinois, Minnesota, and Missouri have charitable tax credit programs. These programs provide state tax credits to donors who invest in housing projects carried out by nonprofit developers and neighborhood organizations. This arrangement encourages cooperation between nonprofit and for-profit developers (Flisrand 2004b). In most cases, these credits are transferable. "The ability to sell credits makes them useful to a broader range of donors, including those with little or no tax liability" (Flisrand 2004a).

In Missouri, 100% of donations eligible for tax credits must be used to build housing affordable to families with a household income less than 50% of the area median income. The tax credit is equal to 55% of a donation, and the credit per firm cannot exceed $1 million. Missouri has no guidelines for minimum contributions, and many contributions range from $100 to $1,000 each year (Flisrand 2004b). There was $11 million worth of tax credits available statewide in 2002, which funded 798 units at a cost of $10,025 per unit (Flisrand 2004b).

In contrast, projects in Minnesota are eligible for tax credits if they are affordable to households below 80% of the statewide median income. The tax credit in Minnesota is equal to 50% of contributions with a minimum contribution of $1,000 and a maximum contribution of $250,000. Both rental and homeownership projects qualify for tax credits. The charitable tax credit program in Minnesota is fiscally efficient "because the value of the tax credit is worth 50% of the donation, more money goes into housing than it costs the state in lost taxes to administer the program" (Housing Minnesota 2003).

Illinois also provides tax credits equal to 50% of donations. Illinois has a minimum donation of $10,000. Of the $13 million annual allocation, a portion of the credits are reserved for projects outside of the City of Chicago and for Employer Assisted Housing. Like Missouri, the credits in Illinois are transferable and are currently selling for approximately 80 cents for each $1 credit. In 2003, 1,346 units were funded at a cost of $9,110 per unit (Flisrand 2004b).

The competition for housing subsidies in Connecticut is very intense. The Connecticut State Housing Tax Credit Contribution (HTCC) Program is used to write down about $25,000 to $30,000 per unit. State tax credit vouchers offering a dollar-for-dollar tax liability reduction are distributed to qualified businesses making cash contributions to specific housing programs of nonprofit corporations. HTCC credits may be applied to a variety of taxes.

In 1999, only $1 million was available annually for such credits for the entire state. The Connecticut Housing Finance Authority has since increased its allocation for this program to about $5 million annually. Nonprofits continue to apply for allocations from this statewide pool through a competitive process in which applications are rated and then ranked to determine funding priority, yet few succeed.

Comparisons

The different models have their respective advantages and disadvantages. A study prepared by Janne K. Flisrand for the Minnesota Housing Partnership and Housing Minnesota analyzed the three models on the principles of funding and dependability, administrative simplicity, program flexibility, fiscal efficiency, and program effectiveness. The study found that "the investment tax credit model was the most complicated for developers and investors and the least efficient use of state resources" (Flisrand 2004a).

The results of the analysis based on the five principles are shown below:

COMPARISON OF THE THREE MODELS

Investment Tax Credits	***Tax-Linked Bonus***	***Charitable Tax Credits***
▪ Builds rental housing ▪ Administratively simple ▪ Complicated for developers and investors ▪ Fiscally inefficient ▪ Undependable	▪ Builds rental housing ▪ Administratively simple ▪ Simple for developers ▪ Fiscally efficient ▪ Dependable	▪ Builds any type of housing ▪ Requires some administration ▪ Simple for developers if direct donation, more complicated with transfer of credits ▪ Fiscally efficient plus leverages private dollars ▪ Dependable ▪ Flexible regarding donations

Source: Flisrand 2004, 3

Flisrand (2004a) found that a state's individual needs and goals determine whether to pursue the tax-linked bonus or charitable tax credits. The tax-linked bonus is better suited "to increase production of and lower rent for federal tax credit developments," and the charitable tax credit is a flexible tool that leverages additional funding to meet varied housing needs (Flisrand 2004a, 3).

In sum, the success of the federal LIHTC has led some states to provide state tax credits and other varying state incentives to promote private-sector production of affordable housing. This effort is echoed in states providing state tax credits for historic rehab—again a strategy modeled on federal tax credit support for historic preservation. These federal and state tax programs to encourage investment in historic rehab are reviewed below.

HISTORIC REHABILITATION TAX CREDIT (HTC) BACKGROUD

Until 1976, the tax code in the United States favored new construction. The fastest depreciation schedule—a 200 percent declining balance (DB) write-off[4]—was available only for new construction, whereas existing buildings were limited to a 125 percent declining balance schedule. The 1976 Tax Act introduced some historic preservation–supportive measures, such as counting preservation easements as charitable donations. Much more significant was the Economic Recovery Tax Act (ERTA) of 1981. ERTA introduced a three-tier investment tax credit (ITC). A 15 percent ITC was allowed for the rehab of nonresidential income-producing properties at least 30 years old; a 20 percent ITC could be taken for the renovation of the income-producing nonresidential property at least 40 years old; and a 25 percent ITC was available for the rehab of historic, income-producing properties, both residential and nonresidential. These ITCs could be applied against wage and investment income, and syndications to affluent investors were common. For example, a $1 million rehab of a historic apartment building would qualify for a $250,000 ITC, which investors could deduct dollar for dollar against their federal

[4] This tax write-off schedule is twice the straight-line depreciation on the declining balance being depreciated.

income tax liability according to their pro rata ownership of the historic renovation project.

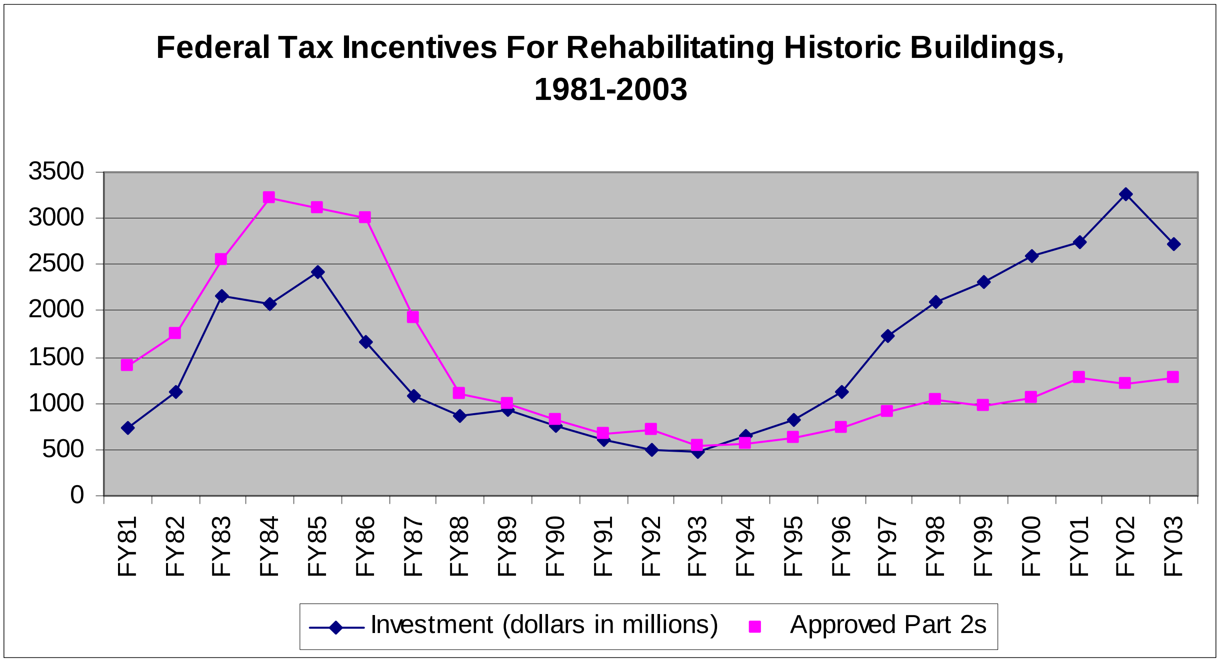
The 1981 historic preservation ITC was a powerful lure. Historic rehab tax credit (HTC) investment grew from $738 million in FY 1981 to $1.128 billion in FY 1982 to $2.165 billion in FY 1983 and a high of $2.416 billion by FY 1985 (Exhibit 2.3). There was a spectacular increase in the number of HTC projects as well (U.S. Department of the Interior 1997a).

The 1986 Tax Reform Act (TRA) dramatically changed the ITC's provisions. Instead of a 15 to 20 percent ITC for income-producing nonresidential properties 30 to 40 years old, respectively, the 1986 act reduced the ITC and applied it only to buildings built prior to 1939. In addition, the 25 percent ITC for rehab of historic, income-producing properties[5] was reduced to 20 percent. To qualify for the 20 percent historic ITC, the rehabilitated property had to be a "certified historic structure" (i.e., a building individually listed on the National Register of Historic Places, or located in, and contributing to, the historic significance of a registered historic district);[6] a rehab had to be "substantial" (i.e., more than $5,000 or the adjusted basis of the renovated property, whichever was greater); and finally, the rehab had to be certified. To be certified, the rehab must be approved by the National Park Service (NPS) as being consistent with the historic character of the property and, where applicable, the district in which it is located, using the Secretary of the Interior's Standards for Rehabilitation as a guide. The same three provisions were in place under the 1981 ERTA historic rehab ITC; however, the Tax Reform Act capped the ITC at 20 percent and severely restricted application of the ITC against earned income. Investment in real estate limited partnerships was classified by the 1986 Tax Reform Act as "passive income," and under the 1986 "passive activity loss limitation," the passive ITC could generally not be applied against "nonpassive" income (i.e., wages, interest, and dividends). Yet it was precisely the ability to apply the ITC against wages, interest, and dividends that prompted wealthy individuals to invest in a historic rehab limited partnership.

The 1986 Tax Reform Act changes caused investment to plummet. From a high of 3,117 projects with an aggregate $2.4 billion investment in FY1985, historic (rehab) tax credit (HTC) activity dropped to a low of 538 projects with an aggregate $547 million investment in FY1993. It has subsequently rebounded, in part due to generally reinvigorated real estate investment, to 1,250 projects totaling $2.7 billion in FY 2003, but it is still below ERTA-era levels (Exhibit 2.3). To date, the HTC has generated over $31 billion dollars in historic preservation investment, proving it one of the most effective tools for rehab.

[5] There have been numerous proposals to extend the federal 20 percent HTC to historic, owner-occupied (not income-producing) properties, but to date this change has not been made. Numerous states, however, that grant state HTCs do extend the credit to owner-occupied historic properties.
[6] A registered historic district includes both those districts listed on the National Register and any state or local historic districts in which the district and enabling statue are certified by the Secretary of the Interior.

EXHIBIT 2.3



Source: U.S. Department of the Interior, National Park Service (2004).

Since its inception, the HTC has been available for both housing and nonresidential projects. In fact, one of the features distinguishing the HTC from the nonhistoric ITC is that the former can be used for housing while the latter cannot. In practice, the HTC has often involved housing or mixed-use (housing and nonresidential) investment. Although data are not readily available on the dollar distribution of HTC investment by type, we can track the type of projects. This distribution indicates that about half of the HTC projects were exclusively housing and another 20 to 30 percent were in the mixed-use/other category. The remainder were commercial/office renovations.

Exhibit 2.4 tracks the number of housing units produced under the auspices of the HTC. In the heady ERTA years, 15,000 to 20,000 units were created annually under the HTC. That fell to an annual level of 5,000 to 10,000 units in the years immediately following the 1986 Tax Reform Act. Activity has rebounded somewhat in the past few years to a HTC production of 10,000 to 15,000 units yearly.

EXHIBIT 2.4

Historic Rehabilitation Tax Credit Projects Involving Housing
Fiscal Year 1978 to Fiscal Year 2003

Fiscal Year (FY)	*Total Number of Housing Units Completed*	*Number of Units Rehabilitated*	*Number of Units Created*	*Total Number of Low/Moderate Units*	*Percentage of Low/Moderate Units to Total Number of Housing Units Completed*
FY1978	6,962	3,876	3,086	1,197	17
FY1979	8,635	4,807	3,828	1,485	17
FY1980	8,349	4,648	3,701	1,435	17
FY1981	10,425	6,332	4,093	3,073	29
FY1982	11,416	6,285	5,131	2,635	23
FY1983	19,350	12,689	6,661	3,792	20
FY1984	20,935	16,002	4,933	142	1
FY1985	22,013	16,618	5,395	868	4
FY1986	19,524	12,260	7,264	640	3
FY1987	15,522	11,306	4,216	1,241	8
FY1988	10,021	7,206	2,815	592	6
FY1989	11,316	7,577	3,739	2,034	18
FY1990	8,415	6,098	2,317	1,993	24
FY1991	5,811	4,081	1,730	1,288	22
FY1992	7,536	5,523	2,013	1,762	23
FY1993	8,286	5,027	3,259	1,546	19
FY1994	10,124	6,820	3,304	2,159	21
FY1995	8,652	5,747	2,905	2,416	28
FY1996	11,545	5,537	6,008	3,513	30
FY1997	15,025	5,447	9,578	6,239	42
FY1998	13,644	6,144	7,500	6,616	48
FY1999	13,833	4,394	9,439	4,815	35
FY2000	17,266	5,740	11,530	6,668	38
FY2001	11,546	4,950	6,596	4,938	43
FY2002	13,886	5,615	8,271	5,673	41
FY2003	15,374	5,715	9,659	5,485	36
FY1978–2003	325,411	186,444	138,971	74,245	23

Source: Dodge (2004).

Since the inception of federal historic preservation tax incentives, 325,411 units have been completed. Of that total, 186,444, or 57 percent, were existing housing units that were rehabilitated, and 138,971, or 43 percent, were “newly” created housing units (e.g., housing resulting from the adaptive reuse of once-commercial space).

Of the 325,411 total housing units completed under federal historic preservation tax incentive auspices since the late 1970s, 74,245 or 23 percent, were affordable to low- and/or moderate-income (LMI) families. That averages to about 2,855 LMI units per year. In FY 2003, 5,485 LMI units were produced under the HTC. While these figures are not large in an absolute sense, given national LMI housing needs, they are noteworthy when compared with some better-known affordable housing production programs, such as the 5,000 new public housing units authorized in 1993 and the 8,300 HOME program units supported in 1994 (Wallace 1995, 795). The HTC is largely invisible in the housing literature, yet it deserves much greater attention, given its total and LMI housing unit production. The LMI share of HTC housing units is growing. From FY 1994 through FY 2003, 36 percent, on average, of all HTC housing has been at LMI levels. In FY 2002, the LMI share of all HTC units rose to 41 percent (Exhibit 2.4).

One way developers use the HTC to create affordable units for LMI households is by "piggybacking" the HTC's benefits with other subsidies. Piggybacked financing packages can include reduced or exempt local property taxes, a federal tax benefit from creating a preservation easement, and housing subsidies such as the low-income housing tax credit (LIHTC).

The gain in equity yielded from combining the LIHTC with the HTC is shown in Exhibit 2.5—as an example, $2.5 million mixed-use ($2 million housing, $0.5 million nonresidential) rehabilitation project. With the LIHTC alone, $1,147,550 in equity is created from the $2 million in housing rehabilitation; combining the LIHTC and HTC yields $1,368,000 in equity for the mixed-use project, or $220,500 more. Although the federal tax code requires that the credit from the HTC be subtracted from the housing expenditures in calculating the LIHTC (see "less HTC calculation" in Exhibit 3.4), this is more than offset by two features of the HTC unavailable with the LIHTC: (1) the HTC is applicable to the nonhousing portion of the project; and (2) the HTC's credit allowance—20 percent—can be taken in the first year after project completion, whereas the LIHTC's maximum annual credit allowance—9 percent—is taken over 10 years. Given the time value of money, the decade length of the LIHTC reduces its current value. (The LIHTC's total maximum credit over the decade is greater, however, than the HTC's one-time deduction.)

STRUCTURAL IMPEDIMENTS TO INCREASING THE EFFECTIVENESS OF THE REHABILITATION TAX CREDITS AS TOOLS FOR PRODUCING AFFORDABLE HOUSING

To recap, the Tax Reform Act of 1986 established in Section 47 of the Internal Revenue Code (IRC) a 20% income tax credit for "qualified rehabilitation expenditures" incurred in connection with the "substantial rehabilitation" of a "certified historic structure" (the "20% Credit" or the HTC) and a 10% credit for expenditures incurred in the rehabilitation of nonresidential (i.e., commercial) structures built before 1936 (the "10% Credit"). The 20% Credit and the 10% Credit are collectively referred to in this section as the "Section 47 Credits." In terms of dollar outlay, the Section 47 Credits represent the federal government's largest historic preservation program.

The rehab and adaptive reuse of vacant or underutilized historic buildings as affordable housing has long been recognized as an important strategy for community revitalization. Combining the 20% Credit with the federal Low Income Housing Tax Credit (LIHTC) allowable under Section 42 of the IRC is an obvious means of implementing this strategy. And, in fact, many have done so, as we have reported on earlier. Even so, many well-placed observers have queried why this approach is not used even more than it is. Richard Moe, President of the National Trust, has called the combining technique "surprisingly underutilized." Still others have observed that despite successes, good opportunities are being missed to harness historic preservation in service of affordable housing.

EXHIBIT 2.5

Example of Applying the Historic Rehabilitation and Low-Income Housing Tax Credits

Item	***Financial Factors***	***Equity Amount***
Historic Rehabilitation Tax Credit (HTC)		
Commercial basis	$500,000	
Rehabilitation credit %	20%	
HTC for commercial rehab	$100,000	
Housing basis	$2,000,000	
HTC %	20%	
HTC for housing	$400,000	
Total HTC	$500,000	
Equity yield for HTC	90¢	
Equity from HTC		$450,000
Low Income Housing Tax Credit (LIHTC) combined with the HTC		
Housing expenditures	$2,000,000	
Less HTC	<$400,000>	
Eligible basis	$1,600,000	
Low-income set-aside	75%	
Qualified basis	$1,200,000	
Annual LIHTC %	9%	
Annual LIHTC amount	$108,000	
Total LIHTC	$1,080,000	
Equity Yield for LIHTC	85¢	
Equity from LIHTC		$918,000
Combined equity		$1,368,000
LIHTC alone		
Housing expenditures	$2,000,000	
Eligible basis	$2,000,000	
Low-income set-aside	75%	
Qualified basis	$1,500,000	
Annual LIHTC %	9%	
Annual LIHTC amount	$135,000	
Total LIHTC	$1,350,000	
Equity yield for LIHTC	85¢	
Equity from LIHTC alone		$1,147,000
Additional equity from combined credit		$220,500

Source: Delvac, Escherich, and Hartman (1996) as updated. The equity yield from the HTC has been increased from $.85 on the dollar (1996 study) to $.90 on the dollar. The equity yield from the LIHTC has been increased from $.50 to $.85 on the dollar.

Several teams of experts who have studied this question have concluded that certain structural features of the Section 47 Credits are actually impeding their expanded use as tools for producing affordable housing. One of these was “Affordable Housing, Combining the Tax Credits: A Symposium” (the NPS Symposium) co-sponsored by the National Park Service and Historic Preservation Education Foundation on June 1, 1998. The NPS Symposium identified the myriad of minor discrepancies between the Section 47 Credits and the LIHTC, collectively, as a key impediment to increasing the number of historic buildings that are being rehabilitated into low-income housing (see Exhibit 2.6). Utilizing a “One Set of Rules for Housing” slogan, the Symposium’s action plan proposed harmonizing many of these mismatches that drive up transaction costs and often act as traps, even for the wary.

“City Building and the Historic Rehabilitation Tax Credit” (the ULI Forum), an Urban Land Institute Policy Forum held in Washington, D.C., on February 6, 2001, reached many similar conclusions. Participants in the ULI Forum concluded that even minor structural modifications would allow the Section 47 Credits to achieve even greater results as a community revitalization and economic development tool.

It has been almost two decades since Congress has revisited Section 47 of the IRC and the machinery of the federal government’s historic preservation tax incentives. Nonetheless, both the ULI Forum and the NPS Symposium concluded that nothing short of congressional action could effectuate most of the technical corrections and other modifications needed to boost the efficiency of the Section 47 Credits. Largely with this end in mind, in 2001 the Historic Preservation Development Council (HPDC) was formed as an affiliate of the National Housing and Rehabilitation Association, in partnership with the National Trust for Historic Preservation. The mission of HPDC is to act as a leadership organization for real estate developers and professionals engaged in tax-advantaged historic rehabilitation development.

Since its inception, HPDC has held a series of town meetings and forums to gather more information from those on the front lines of historic preservation, real estate development, and community revitalization, about how the Section 47 Credits can be made more effective. In response to these meetings, HPDC has developed an eleven-point agenda of needed technical corrections and improvements. The following is a summary of seven of those points that have particular relevance to affordable housing (See also Resource Guide, section B).

Basis Reduction

Nearly every group to study the question has identified Section 50(c) as one the greatest, if not the greatest, impediment created by the IRC to increasing the amount of private investment capital available for the preservation of historic buildings as affordable housing. Section 50(c) requires that when a project benefits from investment tax credits such as the Section 47 Credits, its tax basis must be reduced by the amount of the investment credit taken. By contrast, the tax basis of a low-income housing tax credit project does not have to be reduced by the amount of the allowable LIHTC. Nonetheless, because LIHTCs are figured as a percentage of the qualified basis of a property, when

LIHTCs are combined with HTCs, Section 50(c) has the effect of significantly reducing the amount of equity that otherwise could be made available to a project

As an example, consider a property with a qualified basis of $1,000,000. Assuming a 9% LIHTC credit rate, this generates $90,000 in annual LIHTCs. Suppose further that the project is eligible for $200,000 in HTCs. After adjusting the basis of the project as required under Section 50(c), the available LIHTC drops to $72,000 ($800,000 X .09). Assuming an investor paying 75 cents for each dollar of LIHTC (and bearing in mind that the LIHTC amount is available for each of 10 years), and paying 90 cents for each dollar of HTC, the effect of this rule is that the project gets $180,000 more in equity by reason of the HTCs ($200,000 X .9) and $135,000 less from the LIHTCs ($90,000 - $72,000 x 10 x .75). This is a net gain of only $45,000, rather than a gain of $180,000 if the two credits were simply allowed together without a basis reduction.

More troublesome yet is the result that obtains if the property is located in a particularly poor neighborhood eligible for the 130% LIHTC basis boost (see the next heading for a fuller discussion of this basis boost provision). In that case, the effect of combining the basis reduction and basis boost rules is that the project gets $180,000 more in equity from the HTCs ($200,000 X .9) and $175,500 less in LIHTCs ($117,000 - $93,600 X 10 X .75). In other words, the poorer the neighborhood, the greater the disincentive created by the Internal Revenue Code to adaptively reusing historic buildings for affordable housing.

EXHIBIT 2.6

Comparison of the Section 47 and Section 42 Tax Credits

Selected Provisions	***Section 47- Historic Tax Credit (20%) and Commercial (10%) Tax Credit***	***Section 42- Low Income Housing Tax Credit***
“Deep” (versus “shallow”) subsidy	Shallow	Deep
Reduce depreciable basis by amount of credit	Yes	No
Boost credit by 130% in QCT or DDA	No	Yes
“Substantial rehab”	Greater of: $5,000 or adjusted basis	Greater of: $3,000 or 10% of adjusted basis
Boost credit in small projects	No (but shallow subsidy)	No (but deep subsidy)
“Act of God” triggers recapture	Yes	Limited
Applicable to income-producing housing	Yes—20% credit No—10% credit	Yes
Limited to properties built prior to 1936	Yes—10% credit	Not applicable

Selected Provisions of Section 47 Over Time

Selected Provisions	***ERTA-era Tax Credit (1981-1986)***	***TRA-era Tax Credit (1986+)***
Tax credit %	15,20, and 25%	10 and 20%
Reduce depreciable basis by amount of credit	1981—no 1982—1986, reduce by 50%	Reduce by 100%
Apply tax credit to active income (for individuals)	Yes	With qualifications

The rule that the basis of property subject to the investment tax credit be decreased dollar-for-dollar by the amount of the credit earned was introduced to the IRC in 1982 by the Tax Equity and Fiscal Responsibility Act (TEFRA). TEFRA, however, also created a special exception for certified historic structures that reduced by 50% the required decrease in basis. The Tax Reform Act of 1986 removed this preference so that the basis of a certified historic structure is now decreased dollar-for-dollar by the amount of HTC taken.

The legislative history surrounding the elimination in 1986 of this preference for certified historic structures suggests that it was a revenue enhancement measure designed to reduce cost recovery deductions. As has been demonstrated, however, when applied in the LIHTC combination context, the penalty imposed by Section 50(c) is far greater than simply the loss of some deductions. This loss of LIHTCs has itself been defended as an equitable way to prevent taxpayers from excessively benefiting from the Code. The HTC, however, is designed to mitigate the extra costs associated with rehabilitating a building in a historically sensitive way while the LIHTC is designed to address certain conditions that had made adequate debt financing of affordable housing difficult to obtain. These phenomena act independently upon affordable housing located in historic buildings, and a strong case can be made that the full benefit of each credit should be available to such projects.

Both the ULI Forum and the NPS Symposium addressed this issue and included recommendations that Section 50(c) be left intact but that the LIHTC rules be amended to provide that any basis reduction required by Section 50(c) be ignored for purposes of calculating LIHTC. This approach has the benefit of preserving the depreciation reduction intended by Congress in 1986 but eliminating the affordable housing disincentive, which presumably Congress did not intend.

Others, however, have proposed eliminating Section 50(c) or reducing the basis reduction to 50% as was the case prior to 1986. The former approach would increase not only LIHTCs available to a combined project but the amount of depreciation as well. As to the latter, it is worth noting that Section 50(c) applies not only to the HTCs but also to two other types of investment tax credits, an energy credit and a reforestation credit. Both the energy and reforestation industries have succeeded in inserting provisions into Section

50(c) which provide that their credit projects are subject to only a 50% basis reduction. As a result, historic preservation projects are now the only investment credit–eligible activities that continue to suffer from TEFRA's dollar-for-dollar basis reduction.

Historic Tax Credit Insufficient to Stimulate Rehabilitation of Historic Buildings Located in Difficult-to-Develop Areas

Section 42(d)(5)(C) of the IRC contains the so-called "130% basis boost" provision of the LIHTC. This provision provides that the actual eligible basis of an LIHTC project is boosted by 30% if the project is located in a difficult development area (DDA) or a designated qualified census tract (QCT). A DDA is an area with high construction, land, or utility costs relative to area median gross income and fair market rent levels. A QCT is a census tract where at least 50% of the households have an income of 60% or less of the area median gross income. HUD designates DDAs and QCTs. Assuming an LIHTC project with an eligible basis of $1,000,000, a 9% LIHTC credit rate, and an investor pay-in rate of 75 cents, the effect of the 130% basis boost provision would be to increase investor equity available to the project by $202,500 ($1,300,000 - $1,000,000 X .09 X 10 X .75). Commentators agree that this provision has significantly strengthened LIHTC projects located in poorer or higher-cost neighborhoods. Section 47 contains no comparable provision.

In the rehab context, the LIHTC basis boost is meant to address the cost differential between a conventional rehabilitation and a conventional rehab undertaken in poorer or higher-cost neighborhoods. Regardless of whether a property is located in a poorer or higher-cost neighborhood, however, there is often also a cost differential between a historically sensitive rehabilitation and a "conventional" rehab. According to the legislative history of the HTC, it was needed, among other reasons, because "market forces might otherwise channel investments away from such projects because of the extra costs of undertaking rehabilitations of older or historic buildings" (S. Rep. No. 313, 99th Congress, 2d Sess. 753).

The Section 47 Credits address this differential with a targeted and relatively "shallow" subsidy reflecting only 10 or 20 percent of the qualified rehabilitation expenditures incurred. This formula does not in any way take account of the cost differential between undertaking a historically sensitive rehabilitation in a poorer or higher-cost neighborhood versus undertaking such a rehabilitation in a neighborhood where costs are closer to the median. It is for this reason that both the ULI Forum and many other commentators have recommended that Section 47 be amended to provide that the qualified rehabilitation expenditures of a Section 47 project be "boosted" by 30% if the project is located in a DDA or a QCT. In combination HTC/LIHTC projects, this would allow both the HTC and the LIHTC to be computed on boosted bases. This approach would more fully address the impediments confronting efforts to create affordable housing in higher-cost or poorer neighborhoods through historically sensitive rehabilitation.

Historic Tax Credit Underserves Small Projects

One of the most frequently expressed concerns regarding the efficacy of the Section 47 Credits relates to the difficulties associated with using these credits in smaller projects. As discussed earlier, the Section 47 Credits create a comparatively shallow subsidy. The shallowness disproportionately affects smaller developments because the potential tax credit from such projects (particularly net of transaction costs) is simply too small to warrant syndication to institutional investors. Meanwhile, the passive-loss rules and other limitations often prevent community businesses and individuals from claiming the credit themselves. The result is a credit that no one can or will take.

One proposed solution would be to make Section 47 Credits *attributable to smaller developments* freely transferable. The transaction costs associated with syndication are often prohibitively expensive for smaller projects. Several states have had good experiences with assignable or transferable credits. Another proposed solution is to increase the HTC to 40 percent for small historic projects (under $2.5 million in total development costs) to ensure that there can be enough equity raised to cover the related transactions costs. The ULI Forum endorsed this view but would limit it to the first $1,000,000 of QREs and to projects located in DDAs or QCTs. It has been suggested that projects made eligible for this 40% credit not also be eligible for a 130% boost were that feature to be built in to the HTC.

Any of the foregoing provisions would be useful in convincing the developers of smaller affordable housing projects to do so in a historically sensitive manner, notwithstanding the complexities of the Section 47 Credits. Of course, the 40% credit approach would need to be paired with the repeal of the requirement that HTCs reduce LIHTC basis in order to achieve the desired purpose.

The Tax-Exempt Use Rules

The Tax-Exempt Use Property rules contained in Section 168(h) of the IRC severely complicate efforts to utilize the Section 47 Credits in the rehab of properties owned by or leased to schools, churches, or other nonprofits. Properties owned by or leased to state, local, and federal government entities are similarly affected. At best, such projects suffer higher transaction costs, while many simply are never done. Failing to properly structure such transactions can invalidate the entire Section 47 Credits. The availability of LIHTCs, on the other hand, is not affected by the triggering of the tax-exempt use rules.

It is particularly ironic that Section 168(h) disproportionately hinders the most worthy projects and hits especially hard in the affordable housing context where nonprofits are most active. Take, for example, a project that involves the rehab of a five-story historic downtown YMCA into SRO housing for the homeless. Imagine that, in addition to transferring its historic building to the partnership that intends to rehab it, the YMCA also hopes to lease back the bottom two floors of the building and to operate in that space athletic programs for the project's formerly homeless residents. Surprisingly, these good intentions are heavily discouraged by the IRC, which will penalize the partnership for permitting such an arrangement by reducing its HTCs. Curiously, if the partnership were to rent that same space to Starbucks Coffee, the IRC would levy no penalty. This odd result occurs because the IRC requires that Section 47 Credits be reduced in proportion to the amount of a building leased to certain nonprofits.

Section 168(h) was enacted by Congress in 1984 in response to the IRS's concern that dealings between taxable and tax-exempt parties were creating opportunities for the party liable for taxes to shift its burdens to the one that is not. Section 168(h) is designed to stop this practice by limiting the tax benefits flowing from certain types of business arrangements between taxable and tax-exempt entities. Under Section 168(h), both property leased to a tax-exempt entity in a "disqualified lease," and the proportionate share of property owned by a partnership that has both tax-exempt and taxable partners and does not allocate its taxable items in a "qualified" way, are deemed tax-exempt use property that is then made subject to disadvantageous depreciation rules. Leases are "disqualified" if they have certain characteristics, including (as in the YMCA example) the "lease back" of space to a nonprofit (or a party related to it) that had formerly owned and used the very same property.

On its face, Section 168(h) requires only a reduction in the depreciation deductions attributable to tax-exempt use property—a relatively modest penalty. Thus, in the LIHTC context, the parties will sometimes agree to trigger the Section 168(h) rules and simply accept a less advantageous depreciation schedule. The Tax Reform Act of 1984, however, imposed another, much more drastic penalty on Section 47 projects. Under Section 47(c)(2)(B)(v), in addition to less-advantageous depreciation, it is also provided that investment credits (including the Section 47 Credits) cannot be claimed on QREs attributable to tax-exempt use property. Thus, in the YMCA example, preservation expenses that otherwise would constitute QREs eligible for HTCs are made ineligible in proportion to the amount of the building leased back to the YMCA. This rule, which has no analogue in Section 42, renders arrangements such as the YMCA proposal discussed above prohibitively disadvantageous for the owners of most historic properties developed under Section 47.

Several public policy arguments exist in favor of repealing the rule of Section 47(c)(2)(B)(v). Most obvious of these is the eminent suitability of many historic buildings for common tax-exempt uses including office space for nonprofits and community and arts spaces. Moreover, permitting a nonprofit such as the YMCA to finance the rehab of a historic building it has owned by means of Section 47 while still maintaining its historical attachment to that building seems fully consistent with Congress's purposes in enacting Section 47. And, while the IRS might argue that such a change would encourage transactions that were not engaged in "for profit," these concerns should be viewed as inapposite in the context of a program like Section 47 that fundamentally was designed to raise capital for historic rehab that otherwise would not be viewed as economically feasible by many investors.

The ULI Forum, in calling for the amendment of the tax-exempt use rules, observed that these rules give rise to an especially acute missed opportunity with respect to the rehabilitation of surplus historic federal property. Many surplus historic military, veterans affairs, and other federal properties would make excellent affordable housing facilities. In fact, federal law identifies affordable housing as a preferred use of surplus federal property in certain contexts., However, the relevant federal agency often wishes only to lease (and not to sell) the property or wishes to retain some presence in the building. Both of these fact patterns are made needlessly complicated by the tax-exempt use rules. Moreover, Section 50 (a)(h), another provision of the Code, further complicates those transactions involving properties leased from government entities. These two rules work together to frustrate the federal policy of utilizing surplus property for affordable housing where the property is historic.

The ULI Forum also noted that an amendment to the tax-exempt use rules would be consistent with the Bush Administration's faith-based organizations initiative. Community services in many older urban neighborhoods are delivered by nonprofit organizations that require facilities from which to operate. The current rules can preclude use of the Section 47 Credit in cases where historic properties are leased to such organizations. Liberalization of the rules governing the use of the Section 47 Credits on properties leased to tax-exempt entities would facilitate their location in renovated historic structures in urban neighborhoods.

Several fixes for these problems have been proposed. An obvious proposal is simply to exempt Section 47 Credits transactions from the tax-exempt use rules. Another proposal is to exempt only transactions involving units of government while putting all other Section 47 projects on the same footing as LIHTC transactions (i.e., a depreciation but not a credit penalty).

Some have argued that the enlargement of existing tax-exempt use rules safe harbors and exemptions might provide a more palatable although less complete legislative solution. Among the more important of these exceptions is the rule that property is not considered tax-exempt use property until 35% of its net rentable floor space is subject to disqualified leases, and the exception for short-term lease (generally fewer than three years). [See Section 168(h)(1)(b) and Regulation 1.168(j)]. Thus, for example, the YMCA would not be willing to incur the expensive tenant buildout needed to equip the proposed athletic facilities when the partnership can offer it, at most, a three-year lease on the space, whereas if the exemptions from the tax-exempt leasing rules were broader, they might.

Secondary Market Currently Impossible

The disposition and recapture rules applicable to Section 47 Credit projects require that the original investor in a transaction hold most of its investment throughout the recapture period. There is no similar prohibition on transfers of interests in LIHTC properties (although in certain circumstances a bond must be posted). As a result, a secondary market in Section 47 properties is currently impossible. This depresses investor interest and also prevents the pooling of transactions. Pooling, if permitted, could be another solution to the current small development problem. Making the HTC transferable to a new investor, similar to the way the LIHTC can be resold, would facilitate a secondary market for combination LIHTC/HTC deals. This, in turn, would make combination deals more attractive to investors and increase the availability of investment capital for the adaptive reuse of historic resources as affordable housing. This view was endorsed by the NPS Symposium, which also recommended that Right of First Refusal provisions of Section 42(I)(7) of the IRC explicitly be extended to the Section 47 Credits context.

Adjustment to the Substantial Rehabilitation Test

Current law creates a mismatch between the substantial rehabilitation requirements of Section 42 and Section 47. Both the HTC and the LIHTC require that a building must be substantially rehabilitated in order to qualify for the respective credits. Under Section 47, a building is deemed to have been substantially rehabilitated if, during a 24-month period selected by the taxpayer (which must end during the year the rehabilitation will be placed in service), qualified rehabilitation expenditures exceed the greater of the adjusted basis of the building and its structural components or $5,000. The basis of the land is not taken into consideration. Under Section 42, however, an owner need only expend the greater of $3,000 per unit or 10% of adjusted basis in order to be eligible for the rehabilitation prong of the LIHTC. This mismatch has the effect of precluding a category of the LIHTC projects (that is, those with “lighter” rehabilitation programs) from also benefiting from the HTC. More generally, it is but another in a long series of departures from the One Rule for Housing principle.

Of course, correcting the current mismatch could be achieved by replacing the LIHTC rule with the HTC rule. Most commentators seem to agree, however, that the HTC rule is ill-considered. These commentators are generally of the view that sound public policy does not support the particular high bar established by Section 47. Instead, they argue that the program would be more effective if it were revised to allow the use of the credit on moderately rehabilitated buildings. The current requirement that rehabilitation expenditures exceed 100% of adjusted basis has a particularly harsh result in the case of buildings in areas with very high real estate values. Where a party acquires such a building, their basis in the building and its structural parts may be very high (depending somewhat on the allocation of value between land and building). If the building is in relatively good condition, the owner is then foreclosed from using Section 47 Credits as it is unlikely that their rehab expenditures will exceed their basis. This requirement perversely leads such owners to disinvest in their buildings, and wait until a gut rehab is in order, rather than continuously performing more modest rehabilitation projects.

Harnessing the 10 Percent Credit for Affordable Housing

The 20% Credit can be claimed on all income producing property, including rental housing. As a result of a quirk in the wording of Section 50(b)(2) of the IRC, however, the 10% Credit can be claimed only on income producing property not used in connection with the furnishing of lodging. In other words, the 10% Credit can not be claimed on rental housing projects. This result has appreciable consequences for the production of housing. But for this provision, the structure of the 10% Credit is well suited to allow it to play an important role in financing the adaptive reuse of older, non-historic buildings into affordable housing.

Moreover, if made available for housing, the 10% Credit could play a role in solving the nation's housing preservation crisis. The Millennial Housing Commission has described the need to preserve the existing stock of federally assisted affordable housing as "the most pressing crisis in the history of federal involvement in affordable housing." Much of that inventory was constructed beginning in the 1960s. An appreciable portion of this inventory, the Commission found, cannot command rents sufficient to finance needed repairs or is at risk of deterioration and, ultimately, abandonment. The 10% Credit could be a useful tool in assisting existing or new owners of such housing to finance needed repairs if only it (like the 20% Credit) were available for rental housing.

Another key change is needed to the 10% Credit to truly make it useful to those developing and, particularly, preserving affordable housing. Currently, in order to be eligible for the 10% Credit, the law requires that the rehabilitated building must have been first placed in service before 1936. It appears that when this provision was written in 1986, Congress selected 1936 out of a belief that an old building was one that was at least 50 years old. Because the 1936 date was used (rather than a general requirement that the building be at least 50 years old), the effect is that some two decades later, buildings must now be 70 years old in order to qualify. Under current law, no building from the 1940s and later will ever be eligible, no matter how old they become. Obviously, this problem will only grow greater as time passes, and fewer and fewer buildings remain eligible. A simple solution to this problem is to "index" the age requirement and allow the 10% credit on any building that is at least 50 years old as of the year in which the credit is claimed.

In sum, there are numerous structural impediments to increasing the effectiveness of the rehabilitation tax credits as tools for producing affordable housing. These impediments can be addressed through changes in the provisions governing the tax credits, with many of these changes aiming to eliminate the current discrepancies between the HTC and LIHTC (Exhibit 2.6). These structural impediments and potential changes to address the constraints are synopsized in Volume I of this study, in the Resource Guide, section B.

STATE HISTORIC PRESERVATION TAX CREDIT

Before the 1986 Tax Reform Act, numerous states had enacted state investment tax credits of their own. (Many states had also authorized property tax incentives for historic preservation investment—as is detailed in Volume I's Resource Guide, section E). After all, if the federal tax credits were successful, why not replicate the same model at the state level? With the changes wrought by the 1986 Reform Act, which reduced the benefits of the federal tax credits, even more states stepped into the breach and adopted investment tax credits of their own to encourage rehabilitation, especially historic renovation. A selected listing of states with such programs includes Colorado, Indiana, Maryland, New Mexico, Rhode Island, Utah, Virginia, West Virginia, and Wisconsin (see Volume I's Resource Guide, section D, for a full list). The specific state provisions vary. For example, they offer from a 10 to 50 investment tax credit and have varying required investment amounts, property eligibility, and other characteristics (see Resource Guide, section D). The state of Missouri has one of the most extensive tax credits for historic rehabilitation. To demonstrate what a state can do in this arena, we report on this program below.

Missouri Historic Preservation Tax Credit Program:
Background

With the intent to create incentives for historic preservation and rehabilitation activities, the Missouri General Assembly passed Senate Bill 1 in September of 1997. Pursuant to this bill, the Historic Preservation Tax Credit Program was put into effect on January 1, 1998.

The program allows Missouri taxpayers (except not-for-profit entities) a state tax credit for costs associated with the rehab of certified historic structures located in Missouri. Unlike the federal tax credit program, the site may be a personal residence as well as an income-producing property. The credit amounts to 25 percent of the total cost of rehab projects undertaken after January 1, 1998. It applies only to substantial projects that cost the taxpayers more than 50 percent of the taxpayer's basis in the subject property. Furthermore, the tax is applicable only to a rehab project that conforms to the historic rehab standards issued by Secretary of the United States Department of the Interior as determined by the Missouri Department of Natural Resources' State Historic Preservation Office (SHPO).

The program is administered by the Missouri Department of Economic Development (DED) in cooperation with the SHPO. The DED issues the tax credits based upon certification by the SHPO.

As is evident from Exhibit 2.7, the Missouri Historic Tax Credit is, in many respects, more generous than the historic tax credits offered by the federal government. In practice, the state and federal tax credits are combined to create a powerful incentive that has prompted historic rehab in Missouri, especially in this state's urban areas.

EXHIBIT 2.7

Comparison of Federal and Missouri and Historic Rehabilitation Tax Credits

Characteristic	***Federal Credit***	***Missouri Credit***
Per-Program Maximum	None	None
Annual Credit Limitations	None	None
Commercial Buildings	Qualify	Qualify
Residences	Do Not Qualify	Qualify
Restoration Period	24 Months or 60 Months	24 Months
Holding Period	5 Years	None
Reduction of Basis by Amount of Credit	Yes	No
Recapture	Yes	No
Carry-Back Period	1 Year	3 Years
Carry-Forward Period	20 Years	10 Years
Partnership Allocations	Pro-Rata	Pro-Rata or Based on Agreement
Transferable	No	Yes
Subject to Post-Issuance Audit	Yes	No
Requires Audit of Expenses <$500,000	No	Yes

Source: Lohman et al. 2000. *The Missouri Business Law Quarterly* 5:4 (fall).

Missouri Historic Preservation Tax Credits Program (MHPTC) Profile and Impacts

As of August 2001, almost $295 million ($294,301,643) of historic rehab had cumulatively been effected under MHPTC auspices. A 25 percent state tax credit amounting to about $74 million ($73,614,423) encouraged the MHPTC investment.

Completed MHPTC projects are concentrated in the City of St. Louis and to a lesser extent Kansas City, Lexington, and Jefferson City. Projects outside of these cities are located in 20 other towns, dispersed throughout the state. MHPTC projects are concentrated in areas with higher population densities, significant minority presence, and lower household incomes. MHPTC recipient areas tend to have an older housing stock, higher vacancy rates, and lower owner occupancy than the state of Missouri as a whole. Many MHPTC locations are classified by the Missouri Department of Economic Development as “distressed.” Credit-inspired historic preservation investment in these areas is thus quite welcome.

The MHPTC has economic effects from both the historic rehab (i.e., construction) it engenders and from the historic tourism it supports (i.e., renovating Missouri’s historic resources fosters visitation from history-oriented tourists).

The total national economic impacts from the $295 million cumulative MHPTC historic rehab investment included the following: 11,789 person-years of work; $391 million in income; $578 million in gross domestic product; and $122 million in taxes. From the cumulative MHPTC historic rehab, the state of Missouri garnered 6,871 person-years of work; $212 million in income; $283 million in gross state product; $60 million in total taxes (including $25 million in Missouri state and local taxes); and $249 million in in-state wealth (Exhibit 2.8).

EXHIBIT 2.8

Total Economic Impacts of the Cumulative MHTC-Supported Historic Rehabilitation ($295 million)

	In Missouri	*Outside Missouri*	*Total (U.S.)*
Jobs (person-years of work)	6,871	4,918	11,789
Income ($million)	212	179	391
GDP/GSP ($million)	283	295	578
Total taxes ($million)	59	63	122
Federal ($million)	34	33	67
State/Local ($million)	25	30	55
In-State Wealth ($million) (GSP Minus Federal Taxes)	249	—	—

Note: GDP/GSP = Gross Domestic Product/Gross State Product

The economic benefits from the MHPTC-supported historic rehab are enjoyed throughout the Missouri economy. For instance, of the $283 million in gross state product, the construction, services, and manufacturing sectors of the Missouri economy gained $116 million, $47 million, and $34 million, respectively.

In addition to the above construction-driven consequences, the MHPTC historic tourism support will realize the following benefits. National (over 20 years) impacts include: 4,018 person-years of work; $103 million in income; $181 million in GDP; and $43 million in taxes (Exhibit 2.9). State of Missouri historic tourism gains from the MHPTC include: 3,407 person-years of work; $55 million in income; $97 million in gross state product; and $25 million in taxes (including $13 million in state–local taxes).

EXHIBIT 2.9

Total Economic Impacts of the Cumulative MHPTC-Supported Heritage Tourism ($112 million)

	In Missouri	*Outside Missouri*	*Total (U.S.)*
Jobs (person-years of work)	3,407	611	4,018
Income ($million)	55	48	103
GDP/GSP ($million)	97	84	181
Total taxes ($million)	25	18	43
Federal ($million)	12	9	21
State/Local ($million)	13	9	22
In-State Wealth ($million) (GSP Minus Federal Taxes)	85	—	—

Note: GDP/GSP = Gross Domestic Product/Gross State Product.

The *total* economic impacts from the MHPTC, including *both* the rehab and tourism benefits, are shown in Exhibit 2.10. There are benefits to both the nation and state. Missouri garners 10,278 jobs; $267 million in income; $381 million in gross state product; $85 million in taxes (including $39 million in state/local taxes); and $335 million in in-state wealth. These effects are felt throughout the Missouri economy.

In summary, the MHPTC is a program that has aided mainly urban core areas that have relatively lower incomes, high minority presence, older housing stock, and higher rates of housing unit vacancy. Besides being of programmatic importance to these areas, the MHPTC is an economic pump-primer to the state of Missouri with respect to the jobs, income, and wealth ensuing from its historic rehabilitation and tourism effects.

The economic and tax gains from the historic rehab and heritage travel supported by the MHPTC offset much, if not all, of the $74 million of the state cost of the program.

EXHIBIT 2.10

Total Economic Impacts of the Cumulative MHPTC-Supported Heritage Tourism

	In Missouri	***Outside Missouri***	***Total (U.S.)***
Jobs (person years)	10,278	5,529	15,807
Income ($million)	267	247	494
GDP/GSP ($million)	381	379	760
Total Taxes ($million)	85	81	166
Federal ($million)	46	42	88
State–Local ($million)	39	49	78
In-State Wealth ($million) (GSP Minus Federal Taxes)	335	—	—

Note: GDP/GSP = Gross Domestic Product/Gross State Product

Other states can learn from the Missouri perseverance. Missouri's tax credit for historic rehab has realized significant urban revitalization and economic gains. Indeed, many states have joined Missouri in providing their own state tax credits for historic renovation (see Volume I's Resource Guide, section D).

Further Thought on State (and Local) Tax Incentives

Much can be gained from the addition of state tax credits to the federal tax credits for rehab. Harry Schwartz (2001, 6), an astute observer of rehabilitation in the United States, makes the following point, however, that deserves mention:

> All state (and local) tax incentives suffer from an inefficiency which derives from the deductibility of state income taxes and local property taxes under the federal income tax code. Because state and local taxes are deductible for federal income tax purposes, an incentive that reduces local or state and local taxes also reduces a taxpayer's federal income tax reduction (assuming the taxpayer itemizes his or her deductions). That means that a taxpayer who uses a local or state tax incentive winds up paying more federal taxes. How much depends on the taxpayer's federal income tax bracket. Thus a taxpayer in the 28 percent income bracket who receives a $10,000 local or state tax break loses a $10,000 deduction and winds up paying $2,800 more in federal income taxes. As a result, the local tax incentive, after giving effect to the federal income tax consequences, is worth only $7,200.

Harry Schwartz makes a similar point concerning the issue of federal taxation of the transfer of state historic tax credit certificates (Schwartz 2001, 6). A number of states permit historic tax credits to be freely transferred by means of a tax certificate, among them Missouri, Kansas, Rhode Island, and Delaware. The Internal Revenue Service at one point was taking the position that the transfer of such a certificate triggers a capital gain (typically short term) to the transferor. Since the seller of the certificate would have a zero basis, the full amount received in exchange for the credit/certificate would be taxed to the seller at the taxpayer's marginal rate. Efforts were made to address this matter in a bill introduced in Congress in 2002 (H.R. 4933—107th Congress, 2d Session), but no legislative action was ever taken. The question was also raised as to whether state income tax paid with a state historic tax credit certificate by the transferee of the certificate would be deemed "paid," and hence deductible, for federal income tax purposes. When Harry Schwartz looked into this matter, the Internal Revenue Service was reported to be making an effort to sort this all out.

The above discussion points to the many complexities in layering federal and state tax credits for historic rehab. The complexity does not disqualify, however, the need for aggregating multiple subsidies in order to realize affordable housing credit. We are also likely to see, yet again, complexities when the existing tax credits are further combined with the recently adopted New Markets Tax Credit.

NEW MARKETS TAX CREDIT

Background

The New Markets Tax Credit (NMTC) was created by Congress in 2000 to stimulate long-term investment in the economic development of low-income communities. It is a 39 percent credit (earned over seven years) for investors in commercial projects in qualifying commercial districts. The federal program is projected to generate $15 billion in new investment by 2012.

The Basics

Unlike the rehabilitation tax credit, the NMTC is capped and allocated through certified, private, for-profit entities called certified "Community Development Entities" (CDEs). CDEs must apply for an allocation of NMTCs from the administering body, the Community Development Financial Institutions (CDFI) Fund of the U.S. Treasury. The first round of allocations was awarded in March 2003, and four subsequent rounds occurred as of this writing.

Once the CDE has received its allocation award from the CDFI Fund, it creates a legal partnership with an investor to facilitate the exchange of tax credits for the investor's equity. Companies and individuals invest in the CDE, which, in turn, invests that equity in or loans it to businesses in qualifying districts. The investor earns a dollar-for-dollar reduction in taxes owed over a seven-year period, equal to 5 percent of the equity investment for each of the first three years and 6 percent for the remaining four, for a total of 39 percent. In this way, the tax credit serves as an incentive for attracting new sources of capital to underserved communities, namely communities as poor in capital but rich in historic properties.

For example, Our Town Community Development Corporation becomes a certified CDE and is awarded an allocation from the federal CDFI Fund. Friendly Neighborhood Bank invests $1,000,000 in the Our Town CDE. The CDE then makes a $1,000,000 loan to Downtown Department Store to enable it to rehabilitate and expand its location on Main Street. In addition to earning a return of its principal and interest on its $1,000,000 loan, Friendly Neighborhood Bank will receive $50,000 in tax credits in 2003-2005 and $60,000 in 2006-2009, for a total of $390,000 in credits.

For an investment to earn the NMTC, the investment must be made in a "qualifying, active low-income community business." To meet this definition, a certain percentage of the business's physical assets, income, and services must be tied to a low-income community (entities not typically thought of as businesses, such as nonprofit organizations and real estate limited partnerships, qualify if they meet this test). A low-income census tract is one in which 1) the poverty rate is at least 20 percent, or 2) the median family income is 80 percent or less of the statewide or metropolitan median family income, whichever is greater (statewide applies for rural areas).

Qualifying investments include those that finance start-up business costs, inventory expansion, business expansion or acquisition costs, rehab of commercial space, location of small-scale industries in upper stories, and stimulation of mixed-use commercial/residential space. The NMTC may be coupled with the 20 percent or the 10 percent rehab tax credit, but not the low-income housing tax credit.

The Benefits

The NMTC brings more investment dollars to a qualifying project. If the NMTC is earned on an equity investment (such as when an investor purchases the historic tax credits generated by a qualifying historic rehab project), NMTC financing can bring 20-25 percent more equity to the project. A combined historic/New Markets investment is referred to as a "twinned" investment. This additional equity financing could reduce the size of the project`s debt, thus reducing the drain on the property's or the business's cash flow.

When the NMTC is earned on a loan, the lender is expected to pass along this benefit in the form of lower interest rates (1.5 to 2 percentage points). The lower interest rate may lead to increased cash flow that can be put toward other expenses such as additional reserves for the project. This helps to increase investor confidence, which may lead to approval of "marginal" deals—those that do not fully satisfy conventional underwriting guidelines. The new capital that is attracted by the NMTC and the lower interest rates serve to increase the lending and equity investments that CDEs are able to provide to areas in economic need. This helps create jobs, increase assets, and achieve community stability. Treasury regulations also provide that some fee revenues (up to 15 percent) can be retained by the CDE to sustain its operations.

Although the NMTC was intended primarily for business development and expansion, it is being used more frequently for real estate development. Rental residential real estate is excluded unless it is part of a mixed-use project and the commercial portion generates at least 20 percent of the building's total revenue.

Although the NMTC is generally not thought of as a vehicle for subsidizing housing, it can be used in mixed-use projects involving condominium housing ownership. The following illustrates the application of the NMTC and other subsidies for mixed-use projects containing housing.

EXHIBIT 2.11

Examples of Mixed-Use Projects Utilizing NMTC

Location	***Project***	***Description***
Rock Island, IL.	McKessow Building	$7.5 million mixed-use retail (first floor) and residential (second and third floors) condominium project will utilize $2 million in NMTC allocation
Auburn, WA.	Heritage Building	A former bank building is being adapted to be reused, with NMTC, to provide 5,500 square feet of first-floor retail space and 36 upper floor residential units
St. Louis, MO.	Old Post Office	A $13.5 million NMTC was instrumental in enabling the adaptive reuse of this building

NMTC-linked projects may utilize other subsidies. The Old Post Office in St. Louis illustrates some of the many available sources of financing for adaptive reuse (Exhibit 2.12).

EXHIBIT 2.12

St. Louis, Missouri, Old Post Office Sources of Financing

Source	***Amount***
ESIC First Mortgage Loan-New Market Tax Credits	$9,100,000
MDFB Second Mortgage (from Corporate Contributions)	$11,000,000
Federal/City Grant	$1,500,000
Federal/State Historic Tax Credit Equity	$13,500,000
National Trust-New Markets Tax Credit Equity	$4,300,000
Total	$39,400,000

The Old Post Office project stimulated the rehab of five adjacent historic properties, including the Frisco Building and the Syndicate Building. Once they were combined, they created 400 market rate and affordable housing units; 1,130 parking spaces; 65,000 square feet of retail space; and 220,000 square feet of office space. The total cost of all of these projects amounted to about $250 million.

While the NMTC can be combined with the HTC, it cannot be used with the LIHTC. NMTC's ability to aid housing in general, and affordable housing in particular, is a subject of ongoing discussion.

REFERENCES

Abravanel, Martin, and Jennifer Johnson. 1999. *The Low-Income Housing Tax Credit Program: A National Survey of Property Owners.* A study prepared by the Urban Institute for the U.S. Department of Housing and Urban Development. October.

Abt Associates. 1996. *Development and Analysis of the National Low-Income Housing Tax Credit Database.* A study prepared for the U.S. Department of Housing and Urban Development. July.

———. 2000. *Updating the Low-Income Housing Tax Credit (LIHTC) Database*. A study prepared for U.S. Department of Housing and Urban Development. November.

Barr, Alison. 1998. *Under One Roof: Combining Affordable Housing and Historic Preservation.* A joint policy research project prepared by Preservation Action, the Boasberg Historic Preservation Fund, and the Center for Preservation Initiatives. Washington, D.C.: National Conference of State Historic Preservation Officers.

California Code of Regulations. 2004. California Tax Credit Allocation Committee regulations implementing the federal and state low income housing tax credit laws. Title 4, Division 17, Chapter 1. Accessed 11/9/2004 from: http://www.treasurer.ca.gov/CTCAC/programreg/100504_adopted.pdf

California Tax Credit Allocation Committee. 2004. A description of California Tax Credit Allocation Committee programs. Accessed 11/9/2004 from: http://www.treasurer.ca.gov/CTCAC/program.pdf

Congressional Budget Office. 1992. The Cost-Effectiveness of the Low-Income Housing Tax Credit Compared with Housing Vouchers. CBO staff memorandum. Washington, D.C.

Cummings, Jean L., and Denise DiPasquale. 1998. *Building Affordable Rental Housing: An Analysis of the Low-Income Housing Tax Credit.* Washington, D.C.: City Research.

Danter Company. 2004. *Statistical Overview of the LIHTC Program, 1987–2001*. Online at http:www.danter.com/TAXCREDIT/stats.htm (accessed July 6, 2004).

———. 2001. *Low-income Tax Credit Units Authorized By State*. Online at http://www.danter .com/TAXCREDIT/tcalloc.htm (accessed January 1, 2002).

Delvac, William; Susan Escherich; and Bridget Hartman. 1996. *Affordable Housing Through Historic Preservation: A Case Study to Combining the Tax Credits.* Washington, DC: U.S. Government Printing Office.

Dodge, Karen. 2004. Data provided to the authors by Karen Dodge of the U.S. Department of the Interior, National Parks Service, Historic Preservation Service. September.

Duda, Mark. 2001. Federally Sponsored Rehabilitation Activity. Working Paper W01-8. Joint Center for Housing Studies. Cambridge, Massachusetts: Harvard University.

Flisrand, Janne K. 2004a. Executive Summary: Affordable Housing State Tax Credit Models for Minnesota. *HousingMinnesota*. Accessed 11/9/2004 from: http://www.housingminnesota.org/downloads/TaxCreditExecutiveSummary8-04.pdf

Flisrand, Janne K. 2004b. *Affordable Housing State Tax Credit Models for Minnesota.* Housing Minnesota and Minnesota Housing Partnership. Accessed 11/9/2004 from: http://www.housingminnesota.org/downloads/FinalTaxCreditReport8-04.pdf

Garbarine, Rachelle. 2001. Increase in Tax Credits May Mean More Low-Income Housing. *New York Times*, April 20, Metro section.

Gufstason, Jeremy, and J. Christopher Walker 2002. *Analysis of State Qualified Allocation Plans for the Low Income Housing Tax Credit.* Washington, DC. The Urban Land Institute.

ICF, Inc. 1991. *Evaluation of the Low-Income Housing Tax Credit.* Fairfax, VA: ICF, Inc.

Lohman, et. al. 2000. The Missouri Business Law Quarterly. 5: 4(Fall).

Massachusetts Department of Housing and Community Development. 2004. Massachusetts low-Income Housing Tax Credit Program. Accessed 11/9/2004 from: www.mass.gov/dhcd/regulations/7600054/760cmr54.htm

Millennial Housing Commission. 2002. *Meeting Our Nation's Housing Challenges*. Washington, DC: U.S. Government Printing Office.

North Carolina Housing Finance Agency. Overview of the 2003 North Carolina State Low-Income Housing Tax Credit Program. 2003. Accessed 11/9/2004 from: http://www.nchfa.com/lib/html/rental/Tax%20Credit/2003_QAP_Appendix_H.pdf

Schwartz, Harry. 2001. State Tax Incentives for Historic Preservation. *Forum News*. Volume VII, No. 3. January/February, p. 6.

U.S. Department of the Interior, National Park Service. 1997a. *Federal Tax Incentives for Rehabilitating Historic Buildings: Annual Report for Fiscal Year 1997.* Washington, DC: U.S. Department of the Interior.

U.S. Department of the Interior, National Park Service. 2004. *Federal Tax Incentives for Rehabilitating Historic Buildings: Statistical Report and Analysis for Fiscal Year 2004.* Washington, DC: U.S. Department of the Interior.

U.S. General Accounting Office (GAO). 1990. *Low-income Housing Tax Credit Utilization and Syndication.* Statement before the Subcommittee on HUD/Moderate Rehabilitation Investigations of the Senate Committee on Banking, Housing, and Urban Affairs. April 27. GAO/T-RCED-90-73. Washington, D.C.: GAO.

———. 1997. *Tax Credits: Opportunities to Improve Oversight of the Low-Income Housing Program.* GAO/GGD/RCED-97-55. Washington, D.C.: GAO.

———. 1999. *Tax Credits: Reasons for Cost Differences in Housing Built by For-Profit and Nonprofit Developers.* GAO/RCED-99-60. Washington, D.C.: GAO.

Wallace, James E. 1995. Financing Affordable Housing in the United States. *Housing Policy Debate* 6: 785–814.

———. 1998. Evaluating the Low-Income Housing Tax Credit. In *Evaluating Tax Expenditures: Tools and Techniques for Assessing Outcomes*. San Francisco: Jossey-Bass.

3

Building Code Standards and Rehab

INTRODUCTION

Building codes regulate the myriad required construction specifications (e.g., for means of egress, structural loads, and fire protection) for both new construction and rehab. While regulating both types of activities, building codes traditionally have been largely oriented to new construction, and that perspective creates problems for renovation. The building code, in practice, sometimes mandates a new-construction standard for rehab. Such required retrofitting of an existing building to a new-building standard is technically problematical and expensive.

Two building code provisions in particular, the "25–50 percent rule" and "change-of-occupancy rule," have often proven most difficult for rehab. This chapter draws and quotes extensively from research conducted by NAHB Research Center, Inc., and Building Technology, Inc. (BTI) (1997) as well as an article written for HUD and jointly authored by David Listokin of Rutgers University and David Hattis of BTI (2005). The chapter explains the provisions of the "25–50 percent rule" and the "change-of-occupancy rule," describes the evolution of each, and summarizes the current regulatory climate and recent efforts to revamp the building code to make it supportive of rehab.

25–50 PERCENT RULE

Provision

There are several variations of the "25–50 percent rule"; however, all versions seem to set the following requirement: If the total estimated cost of the proposed project over some stated period of time exceeds 50 percent of the estimated cost to replace the existing building, the end result must be a building that is in complete compliance with the building code. The requirement applies to all existing portions of the building, renovated areas as well as areas not undergoing rehab. Variations of the rule come into play when the estimated cost of the proposed project is less than 50 percent of the estimated cost to replace the existing building:

- If the cost of the proposed work falls between 25 percent and 50 percent of the estimated cost to replace the existing building, one variation requires only the new work to comply with the code for new construction. A different approach leaves the extent of compliance required for the new work to the professional judgment of the local building official.

- If the estimated cost of the proposed work falls below the 25 percent threshold, one of two approaches is used. Under the first, the new work is generally allowed to comply with the code enforced at the time of construction of the existing building. There are a number of exceptions to this either explicitly stated in the code (e.g., structural renovations might be required to comply with the present code) or covered by the overriding requirement that the building official use his or her judgment in determining that the building will not be more hazardous as a result of the new work. The second approach requires the building official to determine the extent to which the new work must comply with the present code.

Historical Background

According to research conducted by the National Conference of States on Building Codes and Standards (NCS/BCS), the “25–50 percent rule” first appeared in building codes as part of provisions dealing with nonconforming buildings within fire districts (U.S. Dept. of HUD 1986). As population and building density increased in urban areas, several fire disasters alerted communities to the danger of fire literally consuming entire areas of a city where many buildings were of wood-frame construction. The demolition or replacement of frame exterior walls with conforming construction was required when the value of work to be undertaken exceeded 50 percent of the building’s value. The original purpose of the rule, therefore, was to prevent rather than promote the rehabilitation of certain classes of buildings.

In the late 1970s, the “25–50 percent rule” could be found in each of three model codes: the National Building Code (NBC) 1978, of the Building Officials and Code Administrators International (BOCA); the Standard Building Code (SBC) 1979, of the Southern Building Code Congress International (SBCCI); and the Uniform Building Code (UBC) 1976, of the International Conference of Building Officials (ICBO). In all three codes, the rule applied to work done in a 12-month period, and required current code compliance for the *entire* building when the cost of the work exceeded 50 percent of the building’s value. The codes used the “physical value of the building” as determined by the building official. The NBC stated that this value was to be based on “replacement costs.” The SBC stated that it was “the then physical value.” Each of the codes differed slightly in the requirements for work in the 25 percent to 50 percent range and for work below 25 percent.

HUD became concerned about the issue of building regulations for rehab in the 1970s. This concern led to the development of a series of documents entitled *Rehabilitation Guidelines* (National Institute of Building Sciences 1981a, 1981b, 1981c), the intention of which was to encourage and facilitate housing rehab. The guidelines addressed both administrative and technical issues, including the “25–50 percent rule.” The *Rehabilitation Guidelines* also recommended changes with respect to the “change-of-occupancy rule.”

Exhibit 3.1 provides a chronology of events from the late 1970s through the late 1980s that affected the “25–50 percent rule.”

EXHIBIT 3.1

Chronology of Changes in "25–50 Percent Rule"

1979	The UBC drops the "25–50 percent rule" and requires that additions and alterations comply with the code and not cause the building to become "unsafe and overloaded." In 1985, the UBC expands the meaning of "unsafe." These provisions remain virtually unchanged into the late 1990s.
1980	The *HUD Rehabilitation Guidelines* are published. They recommend modifying or eliminating the "25–50 percent rule" in cases where it is determined that the rule discourages rehabilitation. Also included are technical guidelines for meeting the intent of the building code in noncomplying existing buildings.
1981	The NBC drops the "25–50 percent rule," requires that a building not become unsafe. It also requires that egress, fire protection, and light and ventilation be addressed when a building is expanded.
1982	The SBC drops the "25–50 percent rule," but requires that a building not become unsafe. The SBC gives building officials the authority, subject to appeal, to determine the extent to which the building must conform to the code. With minor editorial and format changes, and the elimination of specific reference to the right to appeal (1985), these provisions remain in the code into the late 1990s.
1984	BOCA publishes the *Existing Structures Code*, which includes maintenance requirements (the earlier maintenance code) and improvements for existing buildings that become "unsafe." The *HUD Rehabilitation Guidelines*, nos. 5–8 (technical guidelines) and portions of nos. 2 and 3 (administrative and statutory), are included in the appendix. The *Existing Structures Code* is referenced in the NBC section on existing structures.
1985	The ICBO publishes the *Uniform Code for Building Conservation* (UCBC) as a code ". . . to encourage the continued use or reuse of legally existing buildings and structures." It constitutes ". . . the minimum standards for change of occupancy, alteration, or repair of existing buildings. . . ." Unlike the BOCA *Existing Structures Code*, the UCBC does not include the maintenance requirements, which remain in a separate code. The *HUD Rehabilitation Guidelines*, nos. 5–8, are included as UCBC guidelines at the end of the document. The UCBC is reissued in 1987, 1991, and 1994 with changes primarily in the seismic requirements.
1987	BOCA modifies the *Existing Structures Code* by eliminating all the rehabilitation provisions and returning it to a maintenance code (with a name change to *Property Maintenance Code* in 1990). Article 32 is added to the NBC as an alternative to compliance with new-construction requirements (in all buildings existing before a date to be defined) where ". . . there is work involving repairs, alterations, additions, or changes of use." Changes are made to Article 32 in 1989 and 1990, and in 1993, it becomes Chapter 34.
1988	The SBCCI publishes the *Standard Existing Building Code* (authorized in 1986) as a rehabilitation code (similar to the UCBC); it does not include maintenance provisions (which remain in the housing code). Appendix 5 includes technical guidelines from the *HUD Rehabilitation Guidelines* (nos. 5–8 plus structural assessment guidelines).

Source: Research provided to authors by Building Technology, Inc.

CHANGE-OF-OCCUPANCY RULE

Provision and Historical Background

Building codes address a change of use or occupancy in existing buildings because such a change may introduce new or greater hazards. Generally, the three model building codes require that the entire building comply with the new-construction requirements for the new occupancy. For instance, if industrial space was adaptively reused for housing, then the new-building code standard for housing would have to be satisfied.

In the late 1970s, each of the model codes (the National Building Code [NBC], the Standard Building Code [SBC], and the Uniform Building Code [UBC]) addressed this issue in a slightly different manner (Exhibit 3.2).

EXHIBIT 3.2

"Change-of-Occupancy Rule" Provisions

NBC 1978	The building official must certify that the " . . . structure meets the intent of the provisions of law governing building construction with a proposed new use and occupancy, and that such change does not result in any greater hazard to public safety or welfare." This language remained virtually unchanged in the NBC until the late 1990s.
SBC 1979	A change of use or occupancy requires that " . . . the building be made to conform to the requirements of this code for the new occupancy." This remained in place until 1982.
UBC 1979	A change of occupancy requires that " . . . such building is made to comply with the requirements of this code for such division or group of occupancy." However, the UBC added the following exception: The building need not conform " . . . to all the requirements of this code . . . , provided the new or proposed use is less hazardous, based upon life and fire risk, than the existing use." This language remained virtually unchanged in the UBC until the late 1990s.

Source: Research provided to authors by Building Technology, Inc.

The *HUD Rehabilitation Guidelines* prompted some changes with respect to the "change-of-occupancy rule." The historical chronology of modifications is shown in Exhibit 3.3.

EXHIBIT 3.3

Chronology of Modifications to "Change-of-Occupancy Rule"

1980	The *HUD Rehabilitation Guidelines* are published. They recommend modifying or eliminating the change-of-occupancy trigger where it is determined that it discourages rehabilitation. Included are several examples of jurisdictions that have developed new requirements for changes in occupancy, based on risk reduction. Also included are technical guidelines for meeting the intent of the building code in noncomplying existing buildings.
1982	The SBC modifies its change-of-occupancy requirements to compliance with the "intent of the code." This has remained virtually unchanged into the late 1990s.
1984	BOCA publishes the *Existing Structures Code* which includes maintenance requirements (the earlier maintenance code) and improvements for existing buildings that become "unsafe." The *HUD Rehabilitation Guidelines*, nos. 5–8 (technical guidelines) and portions of nos. 2 and 3 (administrative and statutory guidelines), are included in the appendix, presumably as a guide to "the intent of the code." The *Existing Structures Code* is referenced in the NBC section on existing structures.
1985	The ICBO publishes the *Uniform Code for Building Conservation* (UCBC) as a code " . . . to encourage the continued use or reuse of legally existing buildings and structures." It constitutes " . . . the minimum standards for change of occupancy, alteration, or repair of existing buildings. . . ." Presumably the UCBC is intended as a guide for the analysis of "life and fire risk." Unlike the BOCA *Existing Structures Code*, the UCBC does not include the maintenance requirements, which remain in a separate code. The *HUD Rehabilitation Guidelines*, nos. 5–8, are included as UCBC Guidelines at the end of the document. The UCBC is reissued in 1987, 1991, and 1994 with changes primarily in the seismic requirements.
1987	BOCA modifies the *Existing Structures Code* by eliminating all the rehabilitation provisions, and returning it to a maintenance code (with a name change to *Property Maintenance Code* in 1990). Article 32 is added to the NBC as an alternative to compliance with new-construction requirements (in all buildings existing before a date to be defined) where " . . . there is work involving repairs, alterations, additions, or changes of use." Changes are made to Article 32 in 1989 and 1990, and in 1993, Article 32 becomes Chapter 34.
1988	The SBCCI publishes the *Standard Existing Building Code* (authorized in 1986) as a rehabilitation code (similar to the UCBC); it does not include maintenance provisions (which remain in the housing code). It also includes in Appendix 5 technical guidelines from the *HUD Rehabilitation Guidelines* (nos. 5–8 and structural assessment guidelines), which, presumably, are intended as guidance for the "intent of the code."

Source: Research provided to authors by Building Technology, Inc.

MID-1990s BUILDING CODE REGULATORY SYSTEM AS APPLIED TO REHABILITATION

Exhibits 3.4 and 3.5 summarize how the building code regulatory system as of the mid-1990s applied to rehab. As further background, we cite the following report.

> All three codes address work in existing buildings in their respective Chapters 34. While each code addresses existing buildings using the same basic terminology ("repair," "alteration," "additions," and "change of occupancy"), a close examination shows that each code is different. All three require alterations to comply with the building code. However, while the NBC and UBC specify that this be done without requiring the rest of the building to comply, the SBC allows the building official to determine the extent to which the rest of the building shall be made to comply. The differences between the three codes are more extensive in the case of change of occupancy, where the UBC requires compliance with the building code with an exception based on risk analysis, the SBC requires compliance with the intent of the building code, and the NBC requires compliance with the intent of the code and provides a detailed rating system that is intended to establish compliance alternatives that meet the code's intent.
>
> In addition, two of the three model code organizations publish separate model codes that address existing buildings: the SBCCI *Standard Existing Building Code* (SEBC) and the ICBO *Uniform Code for Building Conservation* (UCBC). These two codes also differ from each other.
>
> When the model building codes are adopted by states and local jurisdictions, Chapter 34 is frequently and extensively amended. This leads to nonuniformity at the local level even within a single model code region.
>
> This situation of diversity among jurisdictions is further compounded because the model codes (to varying degrees) leave much of the regulation of work in existing buildings to the discretion of the local building official. There is evidence that local officials, in exercising this discretion, sometimes fall back on the "25–50 percent rule," or some other cost-based trigger, in requiring compliance with the code for new construction. And while the SEBC and UCBC were developed to provide uniform guidance to officials in exercising discretion, neither code is widely adopted and there is little information indicating the extent of their use, even as reference materials.
>
> (NAHB Research Center, Inc. and Building Technology, Inc., 1997, viii)

EXHIBIT 3.4

Building Code Regulation of the Rehabilitation of Existing Buildings: National Model Codes (1995)

	Model Code Regulations				
	NBC/BOCA[1]	***ICBO/UBC***[2]		***SBCCI/SBC***[3]	
Provisions	***Chapter 34***	***Chapter 34***	***UCBC***[4]	***Chapter 34***	***SEBC***[5]
Applicability	Applied to all buildings, except that Section 3408 (Compliance Alternatives) is applicable to buildings existing before a date to be specified by the local jurisdiction	All buildings	All buildings	All buildings	All buildings
Regulations governing additions/alterations	Additions and alterations must conform to new-construction requirements, and portions not affected need not. Building cannot be made less safe in accordance with the compliance alternatives PLUS a few general requirements	Additions and alterations must conform to new-construction requirements; nonstructural and non-fire-safety-related alterations allowed with same materials. Building cannot become more hazardous based on life safety, fire safety, and sanitation considerations	Additions must conform to new-construction requirements. Alterations may not reduce the degree of safety required by the code under which the building was constructed. Alterations must conform to several specific requirements	Additions and alterations must conform to new-construction requirements. A building official determines the *extent* to which the rest of a building must comply with the code	Same as SBC Chapter 34, with the addition of reasonable means of egress and fire safety requirements. Nonstructural and non-fire-safety-related alterations allowed with same materials
Regulations governing change of use	Building must meet the *intent* of the code for new construction, or meet or exceed mandatory safety scores in accordance with the compliance alternatives	Building must comply with new construction requirements, unless the new use is less hazardous based on life and fire risk considerations	Compliance with alteration requirements and a few additional requirements; compliance with other code requirements determined by five occupancy hazard scales	Meet the *intent* of the code for new construction; seismic requirement triggered by occupancy hazard scale	Same as SBC Chapter 34
Compliance alternatives	Scoring for each of 17 parameters provides a detailed methodology for arriving at compliance alternatives	Not specifically addressed	Acceptance of alternatives encouraged. See Rehabilitation Guidelines (National Institute of Building Sciences 1981a,b,c).	Not specifically addressed	Building official is allowed to accept alternatives. Acceptance of alternatives encouraged. See Rehabilitation Guidelines (National Institute of Building Sciences 1981a,b,c).

Source: Detailed analyses of the respective model codes by the Center for Urban Policy Research (CUPR) and Building Technology, Inc.

[1]NBC = National Building Code published by the Building Officials and Code Administrators, International (BOCA).
[2]UBC = Uniform Building Code published by the International Conference of Building Officials (ICBO).
[3]SBC = Standard Building Code published by the Southern Building Code Congress International (SBCCI).
[4]UCBC = Uniform Code for Building Conservation (UCBC).
[5]SEBC = Standard Existing Building Code.

Continued on next page

EXHIBIT 3.4 (continued)

	Model Code Regulations				
	NBC/BOCA	***ICBO/UBC***		***SBCCI/SBC***	
Provisions	***Chapter 34***	***Chapter 34***	***UCBC***	***Chapter 34***	***SEBC***
Minimum requirements of all existing buildings	BOCA National Property Maintenance Code and BOCA National Fire Prevention Code, and a few general requirements	Uniform Fire Code, Uniform Housing Code, Uniform Code for the Abatement of Dangerous Buildings, and UBC Appendix Chapter 34 (separately adopted), which includes retroactive life safety requirements	See UBC	Standard Housing Code, Standard Fire Prevention Code, and Standard Unsafe Building Abatement Code	See SBC
Ordinary repairs	Permit not required if safety and services are not affected	Nonstructural and non-fire-safety-related alteration allowed with same materials	Nonstructural and non-fire-safety-related alteration allowed with same materials	Repairs may be made without permit with the approval of a building official	Nonstructural and non-fire-safety-related alteration allowed with same materials
Special historic building provisions	Exempt from requirements of the code if judged to be safe	Exempt from requirements of the code if changes make the building no more hazardous than before	Chapter 6, Historic Structures provides general guidance	Exempt from requirements of the code if building judged to be safe	Same as SBC Chapter 34

EXHIBIT 3.5

Building Code Regulation of the Rehabilitation of Existing Buildings: Illustrative State Approaches (1995)

	Illustrative State Regulations			
Provisions	***New Jersey (Before Adoption of the Rehab Code)***	***Massachusetts (Article 32)***	***Georgia (Article 3)***	***New York (Article E)***
Applicability	All buildings	Buildings 5 years or older	Buildings built in 1979 or earlier	Buildings 10 years or older or applicant can elect to use Chapter B (Building Construction)
Regulations governing additions and alterations	25–50% Rule Under 25%—Code official determines standards to be met 25%–50%—Items added or altered must meet new-construction code standards (remainder of existing building not affected) 50%—Entire building must meet new-construction code standard	Existing building becomes the minimum standard and minimum requirements (e.g., removal of hazardous conditions and providing for safe loads) must be maintained. Further, the degree of compliance after rehab must not be below that existing before the rehab See also “change of use”	Existing building is the minimum standard. Hazardous conditions must be removed, and degree of compliance following rehab must not be below that existing prior to rehab. See also “change of use”	Minor alterations (excluding modifications to structure, egress, equipment, etc.) not required to meet new-construction code standards 50% rule—If additions or alterations exceed 50%, entire building must meet new-construction code standard 50% rule excludes an addition if it is separated with a 2-hour wall
Regulations governing change of use	If there is a change of use, the new use must meet new-construction code standards	Article 32 rates buildings by use group with a “Hazard Index Scale” from 1 to 8: 1. If there is a reduction or no change in hazard, then there are minimal requirements (e.g., safe loads maintained) 2. If the hazard scale goes up by 1, then requirements increase 3. If the hazard scale goes up by 2 or more, then new-building standards must be met	There is an implicit but not defined hazard scale: 1. If the proposed use after rehab is of equal or lesser hazard, then new-construction standards do not have to be met 2. If the proposed use is more hazardous, then the new-construction standards have to must be met	Most conversions required to meet new-construction code standards, except 5 specific use changes to a lower-hazard use. Sprinklers required if a building becomes a public assembly (occupancy greater than 100 persons). Places of worship are exempt

Source: Center for Urban Policy Research (CUPR) and Building Technology, Inc. detailed analyses of the respective state regulations.

Continued on next page

EXHIBIT 3.5 (continued)

Provisions	Illustrative State Regulations			
	New Jersey (Before Adoption of the Rehab Code)	***Massachusetts (Article 32)***	***Georgia (Article 3)***	***New York (Article E)***
Compliance alternatives	Not specifically, but variations can be granted that allow for “life safety equivalent”	Alternatives allowed and encouraged with examples noted in Article 32	Alternatives allowed with examples given	Some alternatives provided in Special Conditions section (fire area; space requirements; exits; int. finishes; some mixed uses; transient dwelling of less than 8 units)
Minimum requirements of all existing buildings	Uniform Fire Code; Housing Code; State; hotel/multiple dwelling regulations	Separate fire prevention laws. Article 32 (3200.4) requires removal of certain hazardous conditions such as “hazardous stairways”	Fire housing; other codes	Fire prevention; housing maintenance; Multiple Residence Law (less than 3 units)
Ordinary repairs	Can be made without application or notice to the construction official	Do not have to comply with Article 32 and can be performed without permit (3200.3.6)	Can be performed without permit	Can be performed without permit if alteration cost is less than $10,000 and if project will not affect structure; fire safety features; electrical and fuel-burn assemblies and their chimneys
Special historic building provisions	Full code provisions on historic buildings can be waived by the construction official if the building is “safe” and allows for public safety	Extensive “special treatment” of historic buildings under Section 635	Yes, museum buildings are exempt from other than basic requirements in the building code	When the primary purpose is the preservation or display of the building, relocations or conversions to museums are not required to meet new construction code standards. State Preservation Office must approve, and fire protection requirements apply Exception to 50% rule for alterations
Other				Additional compliance alternatives exist for structures that qualify as “minor buildings” Alternative requirements exist for evaluating existing structures, or existing building equipment and systems. 1- and 2-family residences can be relocated without full compliance

Source: Center for Urban Policy Research (CUPR) and Building Technology, Inc. detailed analyses of the respective state regulations.

In summary, while the model codes had made progress in developing a building code regulatory climate more supportive of rehab, both technical (i.e., code provisions) and practical (i.e., continued field-level utilization of the 25–50 percent rule), impediments remained. Some states, such as Massachusetts, New York, and Georgia (see Exhibit 3.5) attempted reforms of their own; however, these efforts, while welcome, often did not entirely resolve the challenges.

Massachusetts is illustrative. Article 34 replaced the rigid "25–50 percent rule" with a much more flexible standard. Rehab requirements are determined by the extent of increase in hazard rating involved in the rehab. If there is no increase (or a decrease) in the hazard involved in the rehab, then Article 34 mandates few changes in the building. If the rehab significantly increases the hazard rating, then new-construction standards have to be met but "compliance alternatives" are permitted (see Exhibit 3.5).

Regulation of additions to, and repair, alteration, and change of use of existing buildings under Article 34 is proceeding with relative success in Massachusetts. Following are some of the comments made by experts interviewed by the authors: "Article 34 provides an effective framework for looking at each project and an avenue to work out solutions"; "Article 34 generally works well, especially compared to the 25–50 percent rule that was absolutely wrong"; and "Article 34 provides latitude in making decisions."

While Article 34 and its accomplishments are to be lauded, the article does have limitations:

- *Lack of Awareness/Need for Trainin*g. One problem regarding the use of Article 34 is that building officials are frequently not fully aware of its provisions and how it works. Coupled with this is the overall need for more training for building officials at the local level and more staff at state and local levels.

- *Unnecessary Requirements*. When an extensive rehabilitation project (in terms of expense) is contemplated, code officials sometimes demand building improvements that go beyond the standards specified in Article 34. Thus, the "25–50 percent rule" in effect sometimes lingers.

- *Coordination with Fire Protection Regulations*. Better coordination with fire officials and linkage of the fire code requirements and Article 34 would result in an improved system in Massachusetts. As things stand now, there is some conflict.

The drawbacks of the above-described model code and state-level reforms led to contemporary (latter part of the 1990s) reforms at both the national and state levels to make the building code more supportive of rehab.

CONTEMPORARY CHANGES CONCERNING THE REGULATORY SYSTEM AS APPLIED TO REHABILITATION

The Emergence of Two Model Codes

In the 1990s, the three regional model code groups merged into the International Code Council (ICC), and the ICC began the production a single family of codes: the International, or I-codes.

The first complete set of I-codes was promulgated in 2000. Since then, states and local jurisdictions have begun adopting them in place of one of the models previously developed. The I-codes most relevant to our purposes concern the International Building Code (IBC) and the International Existing Building Code (IEBC).

The National Fire Protection Association (NFPA) decided to develop its own building code, NFPA 5000, the first edition of which was created in 2003. An overview of the current ICC-NFPA regulatory framework, with respect to both new construction and rehabilitation, is provided in Exhibit 3.6. In short, building codes in the United States are in the process of shifting from regionally influenced multiple model codes (e.g., BOCA, ICBO, and SBCCI), to a system influenced by two competing national codes promulgated by the ICC and NFPA. This evolution represents an important change from the system that prevailed for decades.

Thus far, many more jurisdictions have adopted the I-codes. An important exception is California, which has opted for NFPA regulations. There has been an effort by the National Conference of States on Building Codes and Standards, Inc. (NCSBCS) to bring together the ICC and NFPA so that one national code would be ensue—instead of two competing regulations (National Conference of States on Building Codes and Standards 2001). However, this integrative effort has not proven fruitful thus far.

EXHIBIT 3.6

Overview of Contemporary National Model Building Code Regulation of New Construction and Rehabilitation (2004)

	ICC		***NFPA***
	International Building Code (IBC)	***International Existing Building Code (IEBC)***	***NFPA 5000***
New Construction	Applicable to all buildings	NA	Applicable to all buildings
Existing Buildings	Chapter 34, applicable to repairs, alterations, additions, and change of use (unless IEBC is adopted)	Applicable to all buildings undergoing repairs, alterations, additions, and change of use. Based on NARRP, with added requirements	Chapter 15, applicable to repairs, alterations, additions, and change of use. Based on NARRP and Maryland Bldg. Rehab. Code

ICC = International Code Council.
IRC = International Residential Code.
NA = Not applicable.
NFPA = National Fire Protection Association.

The Adoption of Rehabilitation Codes

As noted earlier, rehab was historically regulated by reference to the building code (e.g., Chapter 34 of the model codes)—the vast bulk of which was addressed to new construction. In the 1990s, it became clear that this form of regulation was often arbitrary, unpredictable, and constrained the reuse of older properties. Beginning with the State of New Jersey, states and local jurisdictions began to develop new ways to regulate work in existing structures, using what came to be known as rehabilitation codes, and in some jurisdictions as "smart codes." New Jersey adopted its rehabilitation subcode in January 1998. In May 1997, HUD published the Nationally Applicable Recommended Rehabilitation Provisions (NARRP) to serve as a model for the development of rehabilitation codes. The NARRP and New Jersey Rehabilitation subcode are described below.

Federal Nationally Applicable Recommended Rehabilitation Provisions

HUD has a long involvement in attempting to foster public building regulations that would be supportive of rehabilitation. Research it sponsored some 20 years ago led to the publication of the *Rehabilitation Guidelines*. In 1995, it sponsored a National Symposium on the Status of Building Regulations for Housing Rehabilitation that was convened by the NAHB Research Center. The meeting included representatives from the agencies that administer the three national model codes, code enforcement officials operating under the codes, and other knowledgeable individuals. The symposium participants recommended that HUD sponsor a self-contained, national model rehab code. That work was done by the NAHB Research Center, Inc.; Building Technology, Inc.; Koffel Associates, Inc.; and Melvyn Green and Associates, Inc. The Nationally Applicable Recommended Rehabilitation Provisions (NARRP) were released in May 1997.

The purpose of the NARRP is to set forth a regulatory framework that will encourage the continued use or re-use of legally existing buildings through a predictable system of requirements that will maintain or improve public health, safety, and welfare. The intention is to clarify the requirements that apply when different types of work are performed in existing buildings, and to establish proportionality between the work an owner of an existing building intends to do on a voluntary basis and the additional improvements required to accompany that work as matter of regulatory policy. A regulatory framework that achieves such proportionality will go far toward ensuring that building rehabilitation work will be both affordable and cost-effective.

The NARRP implements this proportionality by expanding the term "alteration," currently used by the model codes to cover work in an existing building, into three terms: "renovation," "alteration," and "reconstruction."

By way of background, the model codes currently address work in existing buildings under four categories:

- Repair
- Alteration
- Change of occupancy
- Addition

Thus the NARRP, which expands the model term “alteration” into the three terms of “renovation,” “alteration,” and “reconstruction,” establishes six categories of work in existing buildings:

- Repair
- Renovation
- Alteration
- Reconstruction
- Change of occupancy
- Addition

(NAHB Research Center, Inc., and Building Technology, Inc., 1997, vii, xiii)

The NARRP assigns requirements that increase both in nature and in scope as the rehab work changes from one category to the next. The requirements are assigned according to need as opposed to the often arbitrary mandates that characterized the historical application of the “25–50 percent rule” and the “change-of-occupancy rule.” Exhibit 3.7 summarizes how the NARRP regulates repair, renovation, alteration, and reconstruction. “The NARRP approach to change of occupancy adopts the concept of use group hazard indices from the UCBC. A change of occupancy in a building, or portion thereof, to an equal or lower hazard rating is generally treated like a reconstruction throughout the portion or building. A change of occupancy to a higher hazard rating also triggers compliance with related building code requirements, with some exceptions.” (NAHB Research Center, Inc., and Building Technology, Inc., 1997, xiii)

EXHIBIT 3.7

Overview of NARRP for Repair, Renovation, Alteration, and Reconstruction

<table>
<tr><th rowspan="2">Building Element or System</th><th colspan="2">Repair</th><th colspan="2">Renovation</th><th colspan="2">Alteration</th><th colspan="2">Reconstruction</th></tr>
<tr><th>Planned Work</th><th>Triggered Work</th><th>Planned Work</th><th>Triggered Work</th><th>Planned Work</th><th>Triggered Work</th><th>Planned Work</th><th>Triggered Work</th></tr>
<tr><td>Structural system</td><td>Like material</td><td>None</td><td>Refinishing of load-bearing elements (including fire resistance), or changing, strengthening, or addition of load-bearing elements: materials and methods</td><td>No reduction in design capacity

Accessibility per building code

When area > 50%: reinforce URM buildings in high seismic zones</td><td>NA</td><td>No reduction in design capacity</td><td>NA</td><td>Design loads at time of construction</td></tr>
<tr><td>Architectural spaces</td><td>Like material except safety glazing</td><td>None</td><td>Replacement: materials and methods

Code wall covering and carpeting</td><td>Accessibility per building code

When reroofing: parapet work in seismic zones</td><td>Reconfiguration of spaces of tenancies: Materials and methods</td><td>Accessibility per building

When area > 50%: treat as reconstruction</td><td>NA</td><td>Comply with renovation and alteration requirements</td></tr>
<tr><td>Shared egress spaces</td><td>Like material except safety glazing</td><td>None</td><td>Replacement: materials and methods</td><td>Accessibility per building code</td><td>NA</td><td>NA</td><td>Reconfigura-tions of egress spaces</td><td>Improvements in work area, floor, or building</td></tr>
<tr><td>Fire protection systems</td><td>Like material</td><td>None</td><td>Replacement of component: materials and methods</td><td>Accessibility per building code</td><td rowspan="2">Reconfiguration or extension of a system, or installation of a new system: materials and methods</td><td rowspan="2">Accessibility per building code

Few selected improvements

When area > 50%: treat as reconstruction</td><td>NA</td><td>Improvements in work area, floor, or building</td></tr>
<tr><td>Mechanical, electrical, and plumbing</td><td>Like material With some exceptions</td><td>None</td><td>Replacement of component: materials and methods</td><td>Accessibility per building code</td><td>NA</td><td>Comply with renovation and alteration requirements</td></tr>
</table>

Note: NA = not applicable.

Source: NAHB Research Center, Inc. and Building Technology, Inc. 1997, p. xiv.

New Jersey Rehabilitation Subcode

The starting point for the development of the NARRP is New Jersey's *Code for Rehabilitation of Existing Buildings*. Before the new New Jersey code was promulgated, rehab in New Jersey was governed by BOCA's National Building Code. New Jersey had not adopted the NBC's Chapter 34 but followed the 25–50 percent and change of occupancy rules (see Exhibit 3.5). This system proved unsatisfactory, and New Jersey developed a new rehab subcode so as to foster a more effective regulatory system for rehab that would be characterized by:

- Timeliness (i.e., few projects handled as special cases),

- Predictability (i.e., due process—people need to know the law applicable to them and be free from arbitrary treatment), and

- Reasonableness (i.e., provide a reasonable level of safety without imposing excessive additional costs).

New Jersey analyzed several current approaches to the regulation of work in existing buildings in light of these criteria. The analysis focused on three approaches:

- Article 32 of the Massachusetts building code,

- The *Uniform Code for Building Conservation*, and

- Chapter 34 of the BOCA *National Building Code* (NAHB Research Center, Inc., and Building Technology, Inc., 1997, ix)

New Jersey's *Code for Rehabilitation of Existing Buildings* works to combine the best features of each of these three approaches. That rehab subcode is summarized in Exhibit 3.8. In brief, the New Jersey rehab regulations applies to all buildings as opposed to just "older" buildings as is the case of Massachusetts' Article 32 and New York's Article E (see Exhibit 3.5). At the heart of the New Jersey approach is a sliding scalar of requirements depending on the work category as follows:

- Repairs
- Renovations
- Alterations
- Reconstruction
- Additions

EXHIBIT 3.8
New Jersey Code for Rehabilitation of Existing Buildings

<table>
<tr><th>Provisions</th><th colspan="7">New Jersey Rehab Code</th></tr>
<tr><td>Applicability</td><td colspan="7">All existing buildings</td></tr>
<tr><td rowspan="7">Regulations governing construction work</td><td colspan="7">A sliding scale of requirements is established depending on the work category as per the following matrix:</td></tr>
<tr><td>Requirements</td><td>A
Repairs</td><td>B
Renovations</td><td>C
Alterations</td><td>D
Reconstruction</td><td>E
Additions</td><td>F
Change of Use</td></tr>
<tr><td>1. Do not add hazard/violations</td><td>X</td><td>X</td><td>X</td><td>X</td><td>X</td><td>X</td></tr>
<tr><td>2. Certain materials prohibited/required</td><td>X</td><td>X</td><td>X</td><td>X</td><td>X</td><td>X</td></tr>
<tr><td>3. Materials/methods required</td><td></td><td>X</td><td>X[1]</td><td>X[1]</td><td>X[1]</td><td>X[1]</td></tr>
<tr><td>4. Basic requirements (work area)</td><td></td><td></td><td>(Cannot reduce compliance with basic)</td><td>X</td><td>X</td><td>X</td></tr>
<tr><td>5. Supplemental requirements (beyond work area)</td><td></td><td></td><td></td><td>With triggers by use group</td><td>X</td><td>X</td></tr>
<tr><td>Regulations governing change of use</td><td>6. Additional requirements (for change of use)</td><td colspan="5">Change of use must satisfy additional requirements if the new use places a building in a higher hazard category. Determination of “relative hazard” encompasses 3 elements: life safety and exits, heights and areas, and exposure of exterior walls and exterior stairway enclosures</td><td>X</td></tr>
<tr><td></td><td colspan="7"></td></tr>
</table>

[1]Newly constructed elements comply with the UCC.

Source: Center for Urban Policy Research (CUPR) and the New Jersey Department of Community Affairs.

As indicated in Exhibit 3.8, as one ascends the above scalar from the most minor work (repairs) to the most extensive change (reconstruction), increasingly more demanding specifications have to be met.

In parallel, the New Jersey rehab subcode establishes varying provisions for a change of use. That change must satisfy additional requirements if the new use places a building in a higher hazard category. The determination of the "relative hazard" that is associated with the varying requirements encompasses three elements: life, safety, and exits; heights and areas; and exposure of exterior walls and exteriors stairway enclosures.

Adoption of the New Jersey subcode evoked various estimates on the impact of this change. The New Jersey Division of Codes and Standards estimated that its smart code shaved between 10 and 40 percent from the cost of building renovation (Fisher 2001, 15). There was a spurt of rehabilitation activity in New Jersey, from $176 million in 1996 and $179 million in 1997 to $287 million in 1999, and part of that increase was attributed to the code reform and the potential savings it allowed (Forest 1999). Illustrative was the rehabilitation and adaptive reuse of a building in Jersey City that cost $1,145,000 under the new smart code, or 25 percent less than the $1,536,222 it would have cost under the former New Jersey code (Forest 1999).

There was a genre of similar studies. The NAHB Research Center (1999) compared the material and labor costs of an illustrative New Jersey rehabilitation project before and after the smart code. The NAHB report concluded, "the total cost of the project under the old code could have come in as much as 20 percent over the total project cost" (NAHB Research Center, Inc. (1999, 20). A Michigan State University Study claimed that New Jersey's new rehabilitation code decreased rehabilitation costs in the state by 25 percent and increased rehabilitation activity by approximately 25 percent (Syal, Shay and Supanich-Goldner 2001).

The most comprehensive study on the impact of smart codes is currently being conducted at the University of North Carolina at Chapel Hill for the Fannie Mae Foundation (Burby, Salvesen, and Creed 2003). This analysis considers rehabilitation activity and investment in New Jersey and statistically examines the effect of smart codes reform, as well as "facilitative" code enforcement (i.e., flexible/reasonable application of regulations). This detailed analysis has not yet been released, but the overall conclusions are that smart code reform in New Jersey and facilitative code enforcement both have a moderate effect in promoting rehabilitation activity.

Other Rehab or Smart Codes

Inspired by the NARRP and New Jersey Rehabilitation Subcode, rehab or smart codes have been adopted by several states and local jurisdictions, including Maryland; New York; Rhode Island; Minnesota; Wilmington, Delaware; and Wichita, Kansas. As noted, in 2003, the International Existing Building Code (IEBC) was added to the family of I-codes, and the NFPA 5000 code developed a rehabilitation code as its Chapter 15 (see Exhibit 3.6). The extent of local adoption of these model rehabilitation codes is unknown at this time. These new codes are based on two principles. The first is predictability, namely that clear rehabilitation code regulations would foster the accurate prediction of improvement standards and costs. The second principle is that of proportionality, in that a sliding scale of requirements is established depending on the level and scope of the rehabilitation activity, from repairs to reconstruction. The overall goal of the rehabilitation codes is to encourage the reuse of older buildings. The different rehabilitation codes are considered below.

Analysis of the Contemporary Building Code Regulation of Rehabilitation

Volume I's Resource Guide, section H, considers how rehabilitation is regulated by the IBC (Chapter 34 and IEBC), NFPA (Chapter 15), as well as smart codes developed by New Jersey (Rehabilitation Subcode) and HUD (NARRP). (There are interrelationships between the above, such as the NFPA's Chapter 15 being based on the NARRP and Maryland's smart code.) In addition to their comparisons of the respective regulations, Resource Guide, section H contains a column briefly noting potential cost implications. In brief, the following may have significant cost impacts—that is, cost increases—in the regulation of building rehabilitation when compared to the earlier model codes:

- The adoption of a modern rehabilitation code is intended to improve the predictability of the applicable regulations while establishing proportionality between voluntary and mandated work. The differences between the four prototypes—New Jersey, NARRP, IEBC, and NFPA 5000 Ch. 15—are subject to further study. Potentially, New Jersey and NARRP may have the greatest impact on cost reduction, while IEBC may have less impact than NFPA.

The following may have significant cost impacts from differences *between* the current national codes:

- Potentially different sprinkler requirements for townhouses between the IBC and NFPA 5000, with the latter being more restrictive.
- Different plumbing requirements under the IBC (International Plumbing Code) and NFPA 5000 (Uniform Plumbing Code), with the latter being more restrictive.

One would need to do further empirical research to understand better the potential cost impacts cited above. Research could identify and analyze the impact of adoption of a rehabilitation code; analyze the impact of rehabilitation code adoption on removal of barriers to rehabilitation; analyze the impact of rehabilitation code adoption on the cost of housing rehabilitation; and compare the rehabilitation code impacts in New Jersey, Maryland, New York, and Rhode Island.

This research would begin with identification of locations where rehabilitation codes have been adopted and enforced for at least two years. Of the four states mentioned, New Jersey and Maryland are definitely in this category. The other two states, along with other possible states and local jurisdictions, would be surveyed to determine if they meet the criteria. Prior or current rehabilitation code studies performed in New Jersey and elsewhere (e.g., NAHB/RC and University of North Carolina) would be reviewed. Potential measures of the removal of barriers to rehabilitation and cost impacts would be generated, tested, and validated. If possible, differential impacts related to specific rehabilitation code differences among the jurisdictions would also be identified and analyzed.

Another research possibility would be to identify and analyze the potential impact of flood insurance criteria promulgated by the Federal Emergency Management Administration (FEMA) on the rehabilitation of affordable housing. In brief, FEMA has added "substantial improvement" criteria which have found their way into both the IEBC and NFPA 5000 Ch. 15. These "substantial improvement" criteria may have inadvertently recreated the classic 25–50 percent rule problem, namely that greater rehabilitation investment may trigger questionable improvements. For example, doing re-roofing or lead-based paint abatement on housing in the flood plane (and covered by FEMA insurance) may trigger under the "substantial improvement" criteria very expensive flood migration work (e.g., raising a first-floor porch). This potential issue needs to be investigated further.

CASE STUDY ANALYSIS OF BUILDING CODE REFORM IN NEW JERSEY

To begin the process of considering the effects of building code reform in New Jersey, the following section presents three case studies.

The first case study examines a number of affordable housing rehabilitations effected by Isles, Inc., a nonprofit operating in Trenton, New Jersey. These renovations took place *before* the adoption of the New Jersey smart code, and Isles encountered many building code problems, often involving the "25–50 percent rule," that added to the time and cost of the rehab. We then examine how and to what effect the New Jersey smart code addresses the building code issues that had arisen in the Trenton rehabilitations. Our finding is that many, but not all, of the building code challenges are resolved by the New Jersey smart code.

A second case study involves the planned conversion of nonresidential buildings to mixed-use structures with upper-floor housing. This Trenton project was also considered *before* the adoption of the New Jersey smart code. It never materialized, in large part due to building code barriers relating to the "25–50 percent" and change-of-use rules. We find again in this instance that the New Jersey smart code resolves many but not all of the building code hurdles.

Administration of a building code is always important, and this point is illustrated by our third case study involving the adaptive reuse of a farm building in South Brunswick, New Jersey, to a cultural (museum) use. Again, this conversion took place *before* New Jersey adopted its smart code. At that time, the New Jersey building code contained both the "25–50 percent" and change-of-use rules. Applied literally, both of these regulations could have stopped the farmhouse conversion. What saved the day, however, was flexible code administration, namely the willingness of the local code official to grant variances. This case study demonstrates the importance of good code administration—important, whether or not a smart code is adopted. Many of the problems confronted in the Trenton renovations could have been avoided had code officials been more flexible.

In sum, the case studies illustrate the tremendous regulatory improvement realized by New Jersey opting for a smart code. Yet, even with this new improved generation of regulation, building codes still may pose some challenge to those effecting rehab. The challenges are not as daunting as in the past, however, and coupled with flexible administration, building codes can today further rather than discourage affordable housing rehab.

ISLES REHABILITATION IN TRENTON, NEW JERSEY

Organizational Background

Isles, short for "Islands of Redevelopment," is a nonprofit community development and environmental organization active in Trenton, New Jersey, and its environs. Since its founding in 1981, Isles has completed about 500 total housing units. This housing is offered for sale or rent to very-low-income households. Roughly 70 percent of Isles' completed housing units were rehab rather than new construction projects. We consider two buildings rehabilitated by Isles, 31 Sheridan Avenue and 108 Passaic Street.[14]

ISLES CASE STUDY #1—31 SHERIDAN AVENUE

Background

Location

The subject property, 31 Sheridan Avenue, was part of a six-unit, scattered-site rehab project that was designed to provide homeownership opportunities for very-low or low-income families. This house is located in the East Ward in a small enclave of similar homes, surrounded by light industrial and mercantile businesses. This property was purchased from the city at a nominal fee.

Type of Building

The houses in the immediate neighborhood are inner-city, row-type homes built before the turn of the century. 31 Sheridan is a two-story, three-bedroom home with full basement and attic area. The building measures 13' wide by 36' in depth with a one-story dogleg addition of 8' by 12' that serves as the kitchen. The construction was stud with brick infill covered in plaster.

Condition

Structurally, the building needed replacement of 30 percent of the floor joist due to water damage. The front two-story wall had dropped four inches and needed removal and replacing. The bathroom, kitchen, and three bedrooms needed new Sheetrock because of water damage. The roof needed substantial replacement and repair, as did the soffits and stick gutters. The electrical, plumbing, and heating services were all substandard. Windows and doors were damaged and in need of replacement.

[14] This case study is partially based on research originally conducted by Rutgers University for the New Jersey Department of Community Affairs. It includes comments related to the New Jersey Rehabilitation subcode prepared by John N. Terry of the New Jersey Department of Community Affairs, Division of Codes and Standards.

Scope of Work

The original approach was to do “selective” repair as needed throughout the building in an attempt to stay below the 50 percent threshold under the then prevailing New Jersey building code (the Uniform Construction Code—UCC, itself based on 1993 BOCA). If the rehab exceeded 50 percent of the building’s value, the entire building would have to meet new building standards. The architectural plan and specifications approved by Trenton’s building department allowed for that approach and were supported by the scope-of-work description and bids provided by the subcontractors.

The original “selective repair” scope of work was opted for as an economizing strategy—important if Isles was to be able to deliver affordable housing to very-low-income families. It was further critical to repair selectively because the 50 percent threshold (rehab costs as a share of property value) was very tight—given that the total value of the property as measured by city officials was quite low ($68,810). Isles planned to effect $31,000 in rehab—to stay under the 50 percent trigger of the total value of the property ($34,405, or half of the $68,810 total property value). This work was scheduled to be completed in 3 to 4 months. Ultimately Isles expended $46,100 in a job that took 7 months—and much of the cost and time overrun was caused by code problems.

The Building Code Challenge and Response

To keep the rehab lean and to not breach the 50 percent threshold, every attempt was made to be as efficient as possible.

The brick infill separating 31 Sheridan from its neighbors already offered some fire protection. This existing condition, plus the undisturbed plaster that covered it, was tested (rated) by Underwriters Laboratories at a 1.5-hours rating. The original architect’s plans called for the placement of an additional layer of 5/8" fire code-x Sheetrock™ to be placed over the existing plaster walls common between the houses on each side of the project. The added layer of Sheetrock would comfortably provide a total (with the existing brick infill and plaster) of a two-hour fire rating here as well.

This “efficient” approach to meeting fire safety standards was contemplated in still other areas. For instance, 31 Sheridan shared a common attic with the adjacent properties; walls would be built to isolate the attic spaces. These walls were to be covered on the 31 Sheridan side with a two-hour treatment (two layers of 5/8" fire code-x Sheetrock).

In reality, as the project progressed there was ongoing difficulty with code administration and excessive requirements. The original architect’s plans provided an accurate picture of the existing conditions and a realistic and commonsense plan for upgrading the project while satisfying code requirements, particularly as they related to fire safety. The end result was different. For instance, Isles’ plan to add one layer of Sheetrock to provide a two-hour rating in the walls was denied. Isles had already shown that the existing structure had brick infill at all of the points where studs and joists met. The existing condition, along with the undisturbed plaster that covered it, were ratable at 1.5 hours of fire protection, according to Underwriters Laboratories. With one layer of Sheetrock added, a two-hour fire rating would be provided. This efficient strategy was denied in stages. First, the code official demanded that Isles install *two* layers of Sheetrock to the walls of the properties being rehabilitated. Then the code official demanded full brick infill installation in *all* of the walls (from the foundation sill to the roofline) and the addition of a so-called "DCA treatment"—all this in addition to the two layers of Sheetrock. Finally, the code official required that the two-layer treatment (two layers of 5/8" fire code-x Sheetrock) be installed on the walls of the adjoining property as well—in addition to the Isles building being rehabilitated.

All of these "extras" were expensive and problematical. The full brick installation from foundation to roofline was a major and difficult construction job. There were also practical hurdles. For instance, it was very time-consuming to do the required work on the neighbor's property (e.g., installing the double layers of Sheetrock). Isles went next door and was denied entry by the occupant, who was renting the house. The renter was also not willing to identify the owner of the property. Isles had to search title records to determine who owned the neighboring property and then spend time tracking down this person. The owner reluctantly agreed to allow the installation of the double Sheetrock—but only if Isles would do some additional repairs unrelated to the Sheetrock. In short, there was a great deal of time and money spent and aggravation incurred in fulfilling the code official's demand that the neighboring property be upgraded as well as the Isles building being rehabilitated.

All told, the extra costs related to excessive code requirements added an additional $16,000 to an original estimated job of $31,000 and a doubling of the projected construction period (from an estimated three to four months to an actual seven months).

Best Practice Solutions to Building Code Issues Provided by the New Jersey Rehabilitation Subcode

Under the new Rehabilitation subcode, a "smart building code" for rehabilitation, many of the problems encountered at 31 Sheridan Avenue could have been avoided. To start, the New Jersey Rehabilitation Subcode does not base any code requirements on the cost of the project. The concept of determining code compliance based on the cost of the project versus the value of the property no longer exists.

Additionally, the only requirement in the Rehabilitation Subcode regarding fire walls in these types of uses is for continuity. As per N.J.A.C. 5:23-6.27(e), "Where adjacent dwelling units have communicating space in the attic, a wall shall be constructed to provide a continuous one-hour fire separation using construction materials consistent with the existing wall or complying with the requirements for new structures. All work shall be performed on the side of the wall of the dwelling unit that is undergoing the reconstruction." Based upon the text of this section, the wall in question is required to be constructed through the attic space in the unit undergoing the reconstruction using materials consistent with the existing wall. However, the remainder of the existing wall is permitted to remain unchanged. Thus, under the new Rehabilitation Subcode, Isles would have avoided many of the costs and difficulties that is encountered (e.g. a full brick installation from foundation to roofline and obtaining permission to work on the neighbors' property).

ISLES CASE STUDY #2—108 PASSAIC STREET

Background

Location

This property was part of a six-unit, very-low-income, scattered-site rehab project that was designed to provide for homeownership. 108 Passaic Street is located in the East Ward in a small enclave of similar homes, surrounded by light industrial and mercantile businesses. This property was purchased from the city for a nominal fee.

Type of Building

108 Passaic Street—an inner-city row house built before the turn of the century—is a three-story, four-bedroom home with partial basement and a walk-up attic area that was converted to a den. The building measures 16' wide by 46' in depth, with a one-story addition of 16' by 12' that serves as a bedroom. The construction was primarily stud, with brick infill covered in plaster in the interior.

Condition

Structurally, the building needed replacement of the kitchen and bathroom floors and joists. All rooms needed new Sheetrock because of poor plaster and fire rating. The roof covering needed replacement, as did the soffits and stick gutters. The electrical, plumbing, and heating services were all substandard. Kitchen and bath fixtures needed replacement. Windows and doors were damaged and in need of replacement. The entire exterior needed repair to the sheathing and new siding.

Scope of Work

The original approach was to do “selective” repair as needed throughout the building in an attempt to stay below the 50 percent threshold. Isles’ plan to do moderate rehab was motivated by a desire to economize (e.g., to utilize as much of the salvageable building and its systems as possible) and to stay below the 50 percent threshold.

The 50 percent threshold was a tight expenditure ceiling since the value of 108 Passaic was low ($89,034). The 50 percent threshold (rehab as percent of value) for 108 Passaic Street was therefore one-half of the $89,034 building value, or $44,517. The original rehab work was scoped below that level ($41,000).

The final scope of the work was a much more extensive gut rehab costing $49,000. Again, much of the cost increase resulted from code issues.

Barriers to Affordable Housing Rehabilitation: Building Code Issues

In this project there was difficulty with code administration and requirements. The original architect's plans provided an accurate picture of the existing conditions. The plans were a realistic and commonsense plan for upgrading the project to comply with code requirements, particularly as they related to fire safety and finishes.

Even though Isles worked off an approved set of plans, once construction had started and was substantially completed, the code officials requested changes to the plan.

To illustrate, 108 Passaic Street had a common breezeway access between it and the house next door. The distance between buildings was 4' 10"—just under the required 5' setback. The other side of 108 Passaic Street abutted a public park and dedicated green space area with no building potential.

The architect's original plan was to proceed as follows: If there had been a 5' separation in the breezeway, the UCC would have required a one-hour fire rating on the exterior wall. Isles' architect proposed to install two layers of 5/8" fire code-x Sheetrock over the existing interior plaster walls on both sides of 108 Passaic Street—on the walls facing the slightly undersized (4' 10" versus 5') breezeway and the walls abutting the park area. The two layers of 5/8" Sheetrock would provide a two-hour fire rating.

With the two-hour rating offered by the Sheetrock, the architect proposed to install standard (not fire-rated) siding. This approach was accepted on an approved set of plans. Isles provided the usual cut sheets and testing information for all the products it intended to use, including the exterior siding. The siding specifications as submitted were approved for use.

These plans included other proposed work items. For instance, they encompassed upgrading the existing walk-up attic for use as a third bedroom. This involved raising the roof and installing additional framing and egress windows.

Work started on these different items. The standard siding was largely installed and the work on the walk-up attic begun. Code officials then requested changes to the plan, including:

1. Installing two-hour fire-rated siding and ripping out what had been installed. This cost $7,000 and pushed the job above the 50 percent threshold (from $41,000 to $48,000—above the $44,517 threshold).
2. With the 50 percent threshold breached, the code official ruled that the bedroom in the walk-up attic would now have to meet new building code standards—including, for example, the installation of a fire escape (a fire escape was actually not required by code because the property was a one-unit, not a two-unit, structure). This change was not feasible to Isles, so it worked to transform an area on the first floor of the building for bedroom use. This took time, architectural drawings, and a redo of some work that had been started (e.g., work begun in the kitchen was now lost because the kitchen area had to be redesigned to accommodate the third bedroom).

These and other code-related items added about $8,000 to the original rehab estimate (from $41,000 to $49,000) and significantly extended the construction period from an anticipated four to five months to seven months.

Solutions to Building Code Issues Provided by the New Jersey Rehabilitation Subcode

The new New Jersey Rehabilitation Subcode would alleviate many of the code-related issues described above. First, the new subcode does not have a 25–50 percent rule. Other code-relevant issues include:

1. *Does the Rehabilitation Subcode require exterior walls to be analyzed for fire resistance ratings in a building that is not undergoing a change in use group?*

The scope of the project in question at 108 Passaic Street is a reconstruction. There are no requirements under the Rehabilitation Subcode for the existing exterior walls to be analyzed or altered to provide for a fire resistance rating that may or may not exist. The existing wall is permitted to remain. The underlying premise of the Rehabilitation Subcode is not to leave the building "less safe" than it was before the project was undertaken. The exterior walls in question have been in existence for 80-100 years. The fact that a building owner chose to undertake a project does not mean that it is the time to require the building to be altered to the same standards as if it were new.

2. *Under the Rehabilitation Subcode, in a single-family dwelling, is it permissible to convert an existing walk-up attic to a bedroom without providing an additional means of egress fr*om the attic?

The issue of the "required" second means of egress from the attic of a single-family dwelling is not one that needs to be resolved by the Rehabilitation Subcode. The 25–50 percent rule did not require the installation of the fire escape; therefore, this was not an issue that needed to be "fixed" by the Rehabilitation Subcode. The Rehabilitation Subcode does not require the construction of a second means of egress for the attic in question. The only requirement that the Rehabilitation Subcode has with regard to newly created sleeping rooms is the installation of a hard-wired smoke detector inside of the new bedroom and one in the immediate vicinity of the new bedroom. There is an amendment that is being proposed for the Rehabilitation Subcode that will require the installation of a window in a new bedroom. The new window will be required to be operable, have sill height of 44 inches, a total width of at least 20 inches, a total height of 24 inches, and a total area of 5.7 square feet. All of the dimensions are measured from head to sill and from side to side; there are no requirements for the size of the opening.

CAPITAL CITY REDEVELOPMENT IN TRENTON, NEW JERSEY

Background[15]

The State of New Jersey, through its Capital City Redevelopment District, an area basically comprising the downtown of Trenton and encompassing numerous existing nineteenth-century buildings, proposed a program to determine if the vacant space on the floors above grade could be used for residential apartments. There are a substantial number of these buildings, and their use in this manner would help meet the city's goals of increasing both the number of housing units in the downtown and the population and activity there. The program involved analysis of three buildings in the Capital City Redevelopment District.

Location

(1) 16 North Broad Street

(2) 9 East State Street

(3) 107 East State Street

Type of Building/Project Description

Sixteen North Broad Street is a four-story building with 1,320 square feet per floor. Nine East State Street is a four-story building with 644 square feet per floor. One Hundred and Seven East State Street is a three-story building with 1,300 square feet per floor.

All three buildings are nineteenth-century structures connected in rows (they are landlocked in the rear) with brick bearing walls between each building. The buildings are of historical importance and are prominently located in Trenton's downtown. Their original use was for office and mercantile; their current use is mercantile on the first floor with the upper floors vacant. The rehab plan was to convert the upper vacant floors to residential use, or at least study the feasibility of such a change.

The general condition of the interior of the buildings is fair to poor on the floors above grade; more than 50 percent rehab is needed, most having to be completely renovated to change them from their prior use of office space to residential. The floor area of these buildings ranged in size from 644 square feet to 1,320 square feet, which would allow them to be renovated into one- to three-bedroom apartments (on the upper floors). Sixteen (16) North Broad and 107 East State Street would have three residential units on the upper levels, and 9 East State Street would have two residential apartments.

[15] This case study is based on research originally conducted by Rutgers University for the New Jersey Department of Community Affairs, and also draws on the comments of John N. Terry of DCA's Division of Codes and Standards

Costs/Time Frame

Rehab costs were estimated at an average of $160,000 per building: $10,000 for cosmetic work on the mercantile space, and the bulk of the expenditure—$150,000—for the residential reuse.

The buildings were examined in 1992, but construction work never started for various reasons—primarily code issues and costs, explored below.

The Building Code Challenge and Response

Under the then prevailing New Jersey building code (the Uniform Construction Code, itself based on 1993 BOCA), the buildings would have to meet the standards for new construction. First, there was a proposed change of use in the upper floors from office space to residential. Second, the proposed rehab cost exceeded 50 percent of the value of the buildings. In short, all three structures would have to meet new-building specifications under the then prevailing standards.

Egress

One major issue concerned meeting the new-building standard involving egress. The then prevailing New Jersey Uniform Construction Code (essentially, the 1993 BOCA code) required that buildings of this size and proposed use have two means of egress. A fire escape costing about $20,000 could be put on the front of the building, but it would not be compatible with a nineteenth-century facade. The three buildings in question were designated as historic landmarks, and as such, constructing a fire escape on their facades would be prohibited. There were also some legal issues preventing the installation of a fire escape that are not detailed here. Alternatively, a second means of egress could be provided by installing a second stair in the interior, but given the narrow width of the buildings, the plan configuration became awkward, with a lot of space used up for hallways for the second stairway. For instance, 9 East State Street, with 644 square feet per floor, was restricted to the point that installing two interior stairs would produce an unworkable plan—even for a studio apartment.

If a fire escape or stairway could not be added to provide egress, an alternative strategy, namely the installation of a full fire-suppression (sprinkler) system, was considered. This system would cost about $30,000 per building and would make the feasibility of the rehab economically marginal at best. Putting aside the cost factor, the code issues in this instance warrant elaboration.

The then prevailing standards imposed other requirements:

Construction type-height

The three buildings, assuming a construction type of 3B, would not be permitted to be constructed three or four stories in height. The then prevailing standards required the construction type to be upgraded. This would consist of providing a fire resistance rating on structural elements.

Fire Rating

The then prevailing standards required the floor/ceiling assembly between the first and second floor to be rated two hours.

Fire Suppression

The then prevailing standards required that all three buildings be provided with a fire suppression system.

Other

The then-prevailing standards required that many building dimensions (e.g., stair width and tread and risers of the stairs) adhere to new building standards.

The new New Jersey Rehabilitations Subcode, a "smart building code" for renovation, relaxes many but not all of the above-described requirements that discouraged the rehab of the Capital City buildings.

Egress

As per N.J.A.C. 5:23-626(a), a minimum of two exits is required for the three buildings in question. The Rehabilitation Subcode does not provide any relaxation for this major life safety feature.

Construction Type-Height and Fire Suppression

The Rehabilitation Subcode does not concern itself with construction type for a change of use group to an equal or lesser hazard, as is the case for a change of use group from a B (business) to a R-2 (multi-family) in table E of N.J.A.C. 5:23-6:31. The use group of the building would be permitted to be changed and the buildings would be permitted to be reconstructed without additional fire resistance ratings provided. Additionally, under the old code, the floor/ceiling assembly between the first and second floor would have been required to be rated two hours. The Rehabilitation Subcode would require a one-hour rating only if there was a reconstruction project in excess of 50% of the floor area of the nonresidential use on the first floor. While under the old code, all the buildings in question would have been required to be provided with a fire suppression system, the Rehabilitation Subcode would require the four-story buildings to be provided with a fire suppression system; however, the three-story building would not be required to be suppressed.

Other

Issues regarding the width of the stairs, the tread and risers of the stairs, and many other arbitrary dimensional issues are addressed and resolved by the Rehabilitation Subcode. Therefore, there are many advantages to the use of the Rehabilitation Subcode for these types of projects—but some building code challenges remain, primarily those relating to egress.

WETHERHILL-MOUNT HOUSE ADAPTIVE REUSE IN SOUTH BRUNSWICK, NEW JERSEY

Background[16]

Wetherhill-Mount House, George Road, Wetherhill Plantation, South Brunswick, New Jersey, was originally a 150-year-old farmhouse. It consists of a two-story, five-bay, clapboard-frame main block with a rear two-story lean-to wing and attached shed. The floor area totals approximately 2,700 square feet. The house is representative of the architecture of South Brunswick's agrarian past. Some major exterior and interior features include:

Exterior—The facade consists of two stories set on a shallow brick foundation with a center entrance and evenly spaced windows on each side. The windows, which are original, consist of large-paned 6/6 sash sets in original frames. The windows have their original louvered shutters and other details.

Interior—The first floor consists of five rooms in the main block and a kitchen in the lean-to. Interior walls and ceilings throughout the house are constructed of sawn lath and plaster. The main block includes a narrow stair hall flanked by parlors and two rooms to the rear of the parlors. A cellar lies under the entire main block of the house; there is a narrow wooden stair leading from it to the first floor.

In 1986, the Township of South Brunswick, concerned by the rapid loss of physical evidence of its agricultural past, acquired the property for adaptation by the South Brunswick Heritage Foundation. The building would be adaptively reused as a cultural center for the township. The center would include a small meeting area, a display area, a tearoom, and a lavatory on the first floor, a staff office on the second floor, and a storage space in the basement.

The reuse would involve alteration, fire protection, and systems upgrades (e.g., plumbing, electrical), as well as selective demolition. Specifically, the exterior of the building would be restored, retaining as much of the existing fabric as possible. Replacement material, where required, would replicate the appearance of the existing. A wood ramp at the rear of the building would provide barrier-free access.

The floor plan of the house would remain essentially the same. The former kitchen area would be divided into a service entry, kitchenette, barrier-free lavatory, and storage space. The other first-floor spaces would be renovated to serve as display and meeting areas.

[16] This case study is based on research originally conducted by Rutgers University for the New Jersey Department of Community Affairs, and also draws on the comments of John N. Terry of DCA's Division of Codes and Standards.

Finally, the addition of new electrical, plumbing, structural, and heating/cooling systems would allow the old house to function in its new capacity.

The project cost about $216,000, including mechanical equipment costs of $125,000. The rehabilitation began in May 1991 and was completed in May 1994.

The Building Code Challenge and Response

As described earlier in this chapter, New Jersey's "previous" building code had a "25–50 percent" rule modeled on the national BOCA code. If the rehabilitation cost exceeded 50 percent of the underlying property's value, then the rehabilitated property would have to meet the standards for new construction.

According to the BOCA valuation table, the "value" of Wetherhill-Mount House is approximately $50 per square foot, so the 2,700 square feet in this structure would have a total worth of almost $135,000. The renovation amounted to $216,000 ($91,000 without mechanical equipment costs); thus, the 50 percent threshold of value (.5 of $135,000, or $67,500) was exceeded. Also, the conversion of the farmhouse to a municipal cultural center was clearly a change of use. Thus, on both the "25–50 percent" rule and the change-of-use standard, the rehabilitation would have to comply with all the standards for new construction for a building of its type (construction class 5B) and use (assembly).

Compliance would be impossible without considerable expense and destruction of the historic fabric of the Wetherhill-Mount House. For instance, the stairway in the house did not have a fire-rated enclosure, and stair and door widths were undersized by modern code standards.

What could have been a major problem—retrofitting of a 150-year-old farmhouse to a modern structure—was avoided in this instance by the sensitive and flexible approach of the township's code official. Take, for instance, the nominal requirement that the stairs from the first to the second floor must be enclosed in an assembly with a one-hour fire rating. Installing this would change the character of Wetherhill-Mount House. The code official allowed a variance to the stairway enclosure requirement under the following conditions:

1. The two existing doors to the stairwell were upgraded to a one-hour fire rating by adding a layer of fire-resistant Sheetrock. This was done on the door's back side, which was not ordinarily seen by the public and did not have the raised-paneling detail. The doors were then connected to hold-open devices that would close them if a fire alarm sounded. A full fire and smoke alarm system was installed in the property.
2. To further reduce fire risk from stairwell conditions (i.e., the fact that it would not be enclosed), occupancy on the second floor was severely restricted. In short, the second floor would not be open to the public, but to staff only.

This same sensitive approach was followed with respect to the inadequate size of the stairs and doorways. Variations were allowed in exchange for reducing occupancy (e.g., the basement would be used for maintenance only, not by staff or the public), providing for fire alarms and smoke detection systems, and providing for more than one means of exit (on the first floor there was a second egress through a side door).

A flexible and commonsense approach was applied in other areas. The upstairs floor loading was not up to code standard; rather than requiring a costly floor-loading upgrade, second-floor occupancy was simply restricted. (This gave a further “comfort factor” to the code official not requiring that the stairway be enclosed.) Similarly, in installing emergency lights, rather than placing a standard emergency light unit on the wall—where it would be stylistically inappropriate in a 150-year-old house, the emergency lights were placed unobtrusively in the ceiling.

There were many instances, however, where full code compliance to new-building standards was required by the code official in the rehabilitation of Wetherhill-Mount House. This was true for all the new mechanical systems that were installed. A new-building standard was required here because it added to safety and could be met without undue difficulty.

Credit for making the rehabilitation work must also be given to the architect who suggested some of the flexible approaches noted above and, in general, followed a preservation-sensitive strategy. For instance, replacement exterior ornamentation was to match, as closely as possible, the original.

Ultimately, however, the rehab of Wetherhill-Mount House would have not worked had all new code standards been mandated—as they would have been under the literal application of the 25–50 percent and change-of-use rules. What saved the day was the local code official’s willingness to grant a series of variances. These variances allowed for the preservation of the ambiance of a 150-year-old farmhouse while at the same time providing for the safe use of the structure. The major variances granted, some of which were summarized above, follow:

1. *Interior stairs from 1st to 2nd floor must be enclosed in a (1) hour assembly including doors and frame. BOCA 816.9.2 and Table 401 #3.* Compliance would destroy interior appearance. An alternative was introduced. One-hour-rated doors are installed at first- and second-floor landings, connected to hold-open devices, and connected to a fire alarm system. Doors close if alarm sounds. Also, it is understood that a full fire alarm system will be installed in the building with additional smoke-activated devices. Combined with the low occupancy on the second floor with posting provided, and sprinklers in the basement, adequate warning will be provided to second-floor occupants to exit. This variation allows the existing design to be maintained in good condition. Moreover, a creative way of adding fire protection to the doors on the first floor allows the additional Sheetrock not to be seen unless doors are activated by sounding alarm.

2. *BOCA 816.3.1 requires minimum landing for stairs to be 36".* The existing landing for the stairway to the basement was only as wide as 28". The size of existing stair enclosure limits space available for expansion, so shorter landing allows greater safety in step configuration. A variation to the requirement was granted on the condition that signs must be provided to prevent access by the public to the basement area, and all employees must be fully advised of

the condition. Access would be allowed only for maintenance personnel. The variation was considered acceptable because the use of the basement was limited to storage and equipment.

3. BOCA *812.3 requires door width of 32" (referred to as door 3A).* The existing door width was only 28" wide. It would require structural change to meet the requirement. The change would then lead to change of historic character of the building. A variation to this code requirement was granted in considering that (1) posting of second-floor level shows this to be low occupancy; (2) there is a low load requirement for occupants to pass through; and (3) first floor has other additional means to exit.

4. *BOCA 812.3 requires doors to be 32" clear in width.* Three pre-existing doors did not meet this requirement (indicated by doors #18, 19 and 20). To comply with this code, structural change would be needed. A variation was granted to preserve as much as possible the historical character of the building. This decision also took into account that doors in the second level should adequately handle the extremely low occupancy indicated. It was suggested that signs be set up to keep occupancy to a low level. Accordingly, posting the second-floor level for low-occupancy loads should ensure very small impact to these doors in a panic situation.

5. *BOCA requires door height to be a minimum of 6 2/3' as per Section 812.3.* The existing headroom was too low. Again, to meet this requirement, major structural change would be required, which would affect the historical character of the building. A variation proposed appropriate markings at the door to show occupants the presence of low headroom. Also, the rehab plan indicated other facility to exit was available and there was limited access need through this area by the general public. This alternative was accepted.

6. *Basement stair to be rated BOCA 816.9.2 and Table 401.* Compliance would impact historical character, and major structural change would be required. Since the basement is not to be used, a variation to the code was granted on the condition that the basement would not be occupied at any time except to service the furnace and read meters. It is required that a sign must be posted to keep all but maintenance personnel out of the area.

7. *Supplemental stairway off hall 208 to first floor requires (1) hour rating - BOCA 816.9.2 and Table 401.* To preserve existing historic character and avoid major costly structural change, compliance is being provided by main exit stairway, and second floor is to be used sparingly. In addition, an alarm system is to be installed.

8. *N.J.A.C. 5:23-7.87 (a)3. Barrier-free listening system for assembly area.* The code states that public building requires installation of amplification sound device. This community is very committed to providing barrier-free access. Thus, any variations on this requirement need good reason(s). Nonetheless, the gathering place is small. It is difficult to install the device in a small room. Noted rooms are all very small, so hearing should not be a problem for the hearing-impaired in any of these areas.

In short, demanding full compliance with every requirement of the code for new construction would have made it impossible to adaptively reuse Wetherhill-Mount House in a historically appropriate manner. What made the rehab work was a series of sensible variations allowed by the local code official and a sound preservation approach by the building's architect. This flexibility and partnership approach was decidedly not present in the two Trenton case studies presented earlier. Thus, even with a smart code, such as the New Jersey Rehabilitation Subcode, flexible administration and professionals working to craft creative solutions in dealing with existing buildings are important practices.

REFERENCES

Building Technology, Inc. 1981a. *Building regulations and existing buildings: Improved techniques for regulation of existing buildings.* Report prepared for the U.S. Department of Housing and Urban Development. Silver Spring, MD: Building Technology, Inc.

_____. 1981b. *Building regulations and existing buildings: Problems with existing building regulatory techniques.* Report prepared for the U.S. Department of Housing and Urban Development. Silver Spring, MD: Building Technology, Inc.

_____. 1981c. *Building regulations and existing buildings: Techniques for assessing safety and health in buildings.* Report prepared for the U.S. Department of Housing and Urban Development. Silver Spring, MD: Building Technology, Inc.

_____. 1982. *Building regulations and existing buildings: Final report.* Report prepared for the U.S. Department of Housing and Urban Development. Silver Spring, MD: Building Technology, Inc.

_____. 1987. *Rehabilitation technology: A state of the art overview.* Report prepared for U.S. Department of Housing and Urban Development. Silver Spring, MD: Building Technology, Inc.

Burby, Raymond J., David Salvesen, and Mike Creed. 2003. *Beating the Building Code Burden with Smart Codes.* Power Point Presentation.

Commonwealth of Massachusetts. 2000. *Bringing Down the Barriers: Changing Housing Supply Dynamics in Massachusetts*. Boston, MA: Executive Office for Administration and Finance.

Euchner, Charles C. and Elizabeth G. Frieze. 2003. *Getting Home: Overcoming Barriers to Housing in Greater Boston*. Boston, Mass: Pioneer Institute for Public Policy Research, Rappaport Institute for Greater Boston.

Ferro, Maximilian L. 1993. Building codes and older structures: The Massachusetts experience. In David and Barbara Listokin, eds., *Preservation and affordable housing: Accomplishments, constraints, and opportunities.* New Brunswick, NJ: Center for Urban Policy Research, Rutgers, The State University of New Jersey. (Manuscript of papers submitted at a conference sponsored by the National Trust for Historic Preservation in Newark, New Jersey, May 1990.)

Fisher, Richard. 2001. Rehabilitation Subcode Success. *Public Management.* March 12-17.

Forest, Ben. 1999. New Jersey Revs Up its Rehabs. *Planning*: 10-12.

Listokin, David, and David B. Hattis. 2005. Building Codes and Housing. *Cityscape: A Journal of Policy Development and Research* 8, 1. Washington, DC: U.S. Department of Housing and Urban Development, Office of Policy Development and Research.

National Association of Home Builders (NAHB) Research Center. 1999. *Innovative Rehabilitation Provisions: A Demonstration of the National Applicable Recommended Rehabilitation Provisions*. Washington, D.C.: U.S. Department of Housing and Urban Development.

National Association of Home Builders (NAHB) Research Center; Building Technology, Inc.; Koffel Associates, Inc.; and Melvyn Green and Associates, Inc. 1997. *Nationally Applicable Recommended Rehabilitation Provisions*. Washington, D.C.: U.S. Department of Housing and Urban Development. May.

National Conference of States on Building Codes and Standards, Inc. 2001. *Enhancing Public Safety and the States' Role in the Global Economy through Uniform Construction Codes and Standards.* A Report to the National Governors Association. Washington, DC: U.S. Department of Commerce.

National Institute of Building Sciences. 1981a. *Rehabilitation guidelines 1980: Egress guideline for residential rehabilitation.* Report prepared for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research. Washington, DC: U.S. Government Printing Office.

National Institute of Building Sciences. 1981b. *Rehabilitation guidelines 1980: Electrical guideline for residential rehabilitation.* Report prepared for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research. Washington, DC: U.S. Government Printing Office.

National Institute of Building Sciences. 1981c. *Guideline for approval of building rehabilitation.* Report prepared for the U.S. Department of Housing and Urban Development, Office of Policy Development and Research. Washington, DC: U.S. Government Printing Office.

Syal, Matt; Chris Shay; and Faron Supanich-Goldner. 2001. Streamlining Building Rehabilitation Codes to Encourage Revitalization. *Housing Facts and Findings* 3, 2: 3–5.

U.S. Department of Housing and Urban Development. 1982. *Building Affordable Homes: A Cost Savings Guide for Builder/Developers*. Washington, D.C.: U.S. Department of Housing and Urban Development.

_____. 1986. *Rehabilitation Guidelines: Setting and Adopting Standards for Building Renovation.* Washington, D.C.: U.S. Department of Housing and Urban Development.

4

Receivership and Housing Rehab

INTRODUCTION

This chapter examines the present application and potential of housing receivership. Receivership is a mechanism whereby a receiver—either public or private—is appointed as a responsible caretaker of deteriorated properties. The chapter is divided into two sections. The first considers state and local governments' traditional responses to the problem of neglected urban buildings, the drawbacks of these techniques, and the advantages of remediation offered by housing receivership. A review of receivership's legal framework follows, including an analysis of state-enabling legislation.

THE ADVANTAGE OF HOUSING RECEIVERSHIP AS A STRATEGY FOR RESPONDING TO PROBLEM PROPERTIES

Housing Code Enforcement

Problem urban properties in the United States—poorly maintained structures that ultimately may be abandoned—are a long-standing dilemma dating from the slums of the nineteenth century (Friedman 1968). These conditions led to the nation's first response to problem buildings: the enactment of housing codes. A housing code is an application of the state's police power, authorized by a local ordinance or state statute, setting the minimum standards for safety, health, and welfare of the occupants of housing (National Commission on Urban Problems 1968). The first housing codes in the United States date from the mid- to late-nineteenth century, although it was not until the mid-twentieth century that housing codes became commonplace.

How effectively have housing codes achieved their objective of forcing building maintenance? The track record is mixed. Some of the most successful examples of "gray area" stabilization occurred in intensive code enforcement areas (McGrew and Bates 1982). Yet, housing code enforcement often has proved inadequate as a mechanism for dealing with problem properties. Despite the nominal penalties of refusing to abide by housing code standards, owners of problem properties have frequently not changed their wasteful behavior (Gribetz and Grad 1966). Because housing codes and their sanctions were ineffective against problem properties abandoned by their owners, a new class of more responsible owners was needed. Therefore, cities turned to property tax foreclosure as a major means of acquiring and controlling problem properties.

Property Tax Foreclosure as a Strategy for Responding to Problem Properties

Property tax foreclosure is a procedural remedy for tax delinquency. It consists of three major components: l) an initial proceeding or tax sale; 2) redemption; and 3) title perfection. Delinquent taxes constitute a lien on the real property against which they are assessed. After a period of time, interest in the property is transferred through an initial proceeding or public notification commonly referred to as a tax sale. After the sale, there is a specified redemption period during which the delinquent taxpayer may redeem his property by paying back taxes together with any required interest, penalties, and costs. If redemption is not exercised, title passes from the delinquent taxpayer to the person that holds the tax lien through a title perfection or foreclosure procedure. The subsequent titleholder may be a private party, the municipality, the county, or the state (Listokin 1973).

Problem properties may be tax delinquent and hence tax foreclosure would appear to be a useful strategy of acquiring control of those parcels. By divesting the title from negligent owners, foreclosure effectively reallocates the problem parcel to a new, more responsible owner or caretaker that will provide proper maintenance. Numerous municipalities have used foreclosure for this control purpose. Yet, tax foreclosure has many disadvantages as a strategy for dealing with problem properties (Listokin 1973).

First, foreclosure is not always acceptable because the owner of problem properties may pay the minimum required taxes to avoid losing their buildings via foreclosure. Second, foreclosure is a passive strategy. Foreclosure must "wait" for tax delinquent properties and hope that the condition of these parcels as well as their location will be conducive for stabilization or reuse.

Third, foreclosure is a time-consuming method. Even with the fastest procedures for effecting foreclosure—the so called *in rem* action (against the tax delinquent property) as opposed to the *in personam* action (against the delinquent owner)—a period of at least one to three years can elapse from initial tax delinquency to final title perfection. The ability to recondition the problem property may be lost during this time period.

Fourth, large-scale foreclosures can impose significant management operation demands since selective use of foreclosure often is not permitted because this practice raises legal questions concerning equal treatment of property owners. If foreclosure is employed, it must be employed against all delinquent parcels. Because cities often have thousands of these properties, many of which need substantial repair or do not generate enough rent to cover their expenses, foreclosure can occasion the municipality to become the "owner of last resort" of a large, economically marginal property portfolio.

Local Resident and Neighborhood Group Response to Problem Properties

The discussion of responses to problem properties thus far has focused on the public sector: local government's code enforcement and foreclosure proceedings. It has not touched upon private responses by local residents and neighborhood groups. Their role also is important (McLaughry 1978).

Local residents have been potent players in the urban revitalization scene in recent years. Concerned residents, often organized in neighborhood development organizations, engage in a multiplicity of activities ranging from housing rehabilitation to economic development and job training (HUD 1979).

While neighborhood groups are important contributors to urban revitalization, their role vis-à-vis problem properties often must follow the public sector's responses. With few exceptions, initiation of code enforcement is at the discretion of a public agency. Similarly, local neighborhood groups typically must await city property tax foreclosure or similar taking action before they can manage, rehabilitate or deal with problem properties in other ways. Further, even after the owner of the problem property is identified, that owner may not be willing to sell the parcel for various reasons. In the absence of public response, private action often is difficult. A neighborhood group's attempt to purchase an abandoned yet still privately owned building is illustrative. Private acquisition of problem parcels cannot even commence until the owner is identified and located—a difficult task with inner-city reality (McLaughry 1978). Because of barriers to private action, neighborhood group and local resident frustration in acquiring problem properties is very real.

Because all of the approaches discussed thus far have had limited success, additional techniques should be considered. Any new proposal obviously should not include the drawbacks of existing strategies. In sum: 1) The program should offer control of the problem parcel; 2) such control should be effected in a relatively expeditious fashion; 3) control should be selective and targeted rather than universal; and 4) resident and neighborhood group initiative and input should be encouraged. Housing receivership may offer these attributes. Housing receivership, therefore, deserves consideration as an additional strategy for dealing with problem parcels, namely to repair and rehab such properties.

Housing Receivership as a Strategy for Dealing with Problem Properties

In the case of problem buildings, receivership represents an attempt to preserve a deteriorating asset while protecting the rights of tenants, the general public, and other interested parties (Levi 1966). In instances of severe building disrepair, when the parcel was a danger or a nuisance to its occupants or nearby residents, a petition for the appointment of a receiver would be filed with the court. If a receiver were appointed, he or she would manage the property in their care and abate the hazardous conditions. Expenses would be paid from the building's profits with any shortfall constituting a lien on the property. The property owner would be asked to satisfy the receiver's claim; refusal could result in the receiver foreclosing the lien and, therefore, assuming ownership. Receivership offers a number of significant advantages as a strategy for responding to problem buildings (Grad 1968, Marco and Mancino 1969, and Rosen 1968).

Property Control

A receiver retains a significant level of control over a problem parcel. The receiver may enter the premises and abate the hazardous conditions, collect rents and profits, and generally manage and maintain the building (for example, provide heat, services, repairs, and pay taxes, insurance, and other expenses). In certain instances, the receiver may move beyond merely abating code violations and improve and rehabilitate the parcel. Thus, a receiver retains nearly as much power as the actual property owner. If the property owner fails to repay the receiver, the receiver can foreclose and become the actual, not just the de facto, owner. In sum, receivership affords a considerable level of control, and possibly even ownership, of problem parcels.

Expeditious Control

Property tax foreclosure also affords control over, and ownership of, problem buildings. Foreclosure, however, is inapplicable to properties current in their taxes. Even when foreclosure is applied, it is a time-consuming process, taking at least one to two years. This span is too long for vulnerable, inner-city real estate. In contrast, receivership can be effected more expeditiously. Appointment of a receiver should take no more than a few months rather than years. Consequently, receivership can be applied quickly to stem further deterioration of problem parcels.

Selective Control

If receivership were applied to the full universe of deteriorated properties, receivers soon would be overwhelmed by the financing of residential units. This is the same shortcoming that occurs with property tax foreclosures; it acts upon so many properties that the taking becomes unmanageable.

Appointment of a receiver, however, is an extraordinary remedy. Specific hazardous conditions in each case must be described, a separate application submitted, mortgage lenders and other interested parties notified, a special court order issued, and a careful accounting of expenses made. This item-by-item specification discourages the mass processing of buildings and stems from the courts' willingness to grant a receivership only when fully justified, procedurally correct, and sensitive to extant property rights. Given this framework, receivership is applied on a case-by-case basis. At one time, tailored application of receivership was viewed as a drawback, but today, with the volume of tax foreclosure as a sobering lesson, the limited scale of receivership is an asset. Receivership lends itself to a targeted and tailored approach befitting existing resources.

Local Resident and Neighborhood Input

Receivership encourages initiative and vigor on the part of local residents and neighborhood groups. Many parties can initiate receivership. In addition to city officials, a petition for receivership can be brought by tenants in the problem building, by neighboring owners or residents affected by the neglected property, as well as by neighborhood organizations. Service as a receiver also is open to city departments, tenants, neighborhood not-for-profit groups, and the like. Unlike code enforcement and tax foreclosure, where the initiative and implementation are largely in the hands of local government, receivership encompasses more neighborhood input.

These advantages merit the consideration of receivership as an additional strategy for dealing with problem buildings. The next section describes receivership's legal framework; the final section introduces model receivership legislation and administrative practice.

HOUSING RECEIVERSHIP: THE LEGAL FRAMEWORK

This section examines the body of statutory law regarding housing receivership of deteriorated properties. Details of the overall framework and procedural provisions as well an analysis of the case law that has developed within this statutory framework are discussed.

NATIONAL STATUTORY SURVEY

A 1985 study found that ten states had enacted a total of sixteen statutes authorizing housing receivership (Listokin, Allewelt and Nemeth, 1985). The ten were Connecticut, Delaware, Illinois, Indiana, Maryland, Massachusetts, Minnesota, Missouri, New Jersey, and New York. We have updated this research and find that seven additional states (California, Michigan, Ohio, Oregon, Rhode Island, Texas and Wisconsin) have adopted statutes that provide for housing receivership of deteriorated properties.[17] In addition, many of the original ten states that already possessed housing receivership statutes have revised or expanded their statutes to increase the efficiency of receivership as a tool. For example, Massachusetts and Illinois have altered procedures and requirements within the original statutes, and the original receivership statutes in Minnesota and New Jersey had been repealed and new ones enacted.

Our 2004 national statutory survey thus finds that a total of seventeen states have enacted an aggregate of twenty[18] statutes authorizing receivership in the United States. Geographically, the states with the receivership statutes are situated in the Midwest and Northeast, with the exception of Texas, California, and Oregon. All seventeen states have pockets of deteriorated housing that could benefit from receivership. As might be expected, there is much disparate detail among the twenty statutes. To study them thematically, we analyze the statutes according to the following steps of the receivership process: (1) *triggering conditions*—the applicable circumstances bringing about receivership; (2) *triggering agent*—the person who initiates the process; (3) *receivership agent*—the person appointed as the receiver; 4) *receivership process and notification*—the specific procedural steps for the appointment of a receiver, including adequate notification to interested parties; 5) *receivership duties and powers*—the receiver's obligations and authorized activities; 6) *receivership financing and compensation*—reimbursement for the receiver's expenses; and 7) *receivership discharge*—the process for terminating receivership. Each of these elements is examined in detail.

Applicable Circumstances

In defining the conditions under which an action may be brought, some receivership statutes define building type and, more importantly, building condition. Receivership laws commonly limit the remedy to certain building types, typically multifamily or rental structures. Connecticut

[17] Our national statutory analysis began with the receivership statutes in the ten states identified in the 1985 study (Listokin, Allewelt and Nemeth, 1985). After updating the information on receivership in these jurisdictions, the research was expanded to identify new jurisdictions that had enacted receivership statutes. State-by-state searches of statutes on Lexus Nexus™ using key words including "receiver", "housing", "health and safety", "nuisance", and "administrator" resulted in the identification of the seven additional states that have receivership statutes.
[18] Connecticut, Illinois, and Wisconsin have two separate receivership statutes each.

specifies tenements; Delaware, rental properties; Maryland, leased dwellings.[19] Texas authorizes receivership if the property is either "residential" or a designated "historic" property.[20] Indiana, interestingly, allows receivership for vacant and abandoned structures.[21]

The receivership statutes also specify the building condition under which an action may be brought. In some cases, these statutes are relatively general or open-ended; in others, they are not. Oregon permits receivership if a "threat to public health, safety or welfare" exists.[22] Among Minnesota's statutory requirements for the appointment of a receiver is the violation of a covenant of a landlord to a tenant that promises that the building will be kept in habitable or sanitary condition as defined by the laws of the state.[23] Ohio authorizes receivership for buildings that constitute a "menace to public health."[24]

Receivership can often be initiated in response to a violation of the housing code or a similar code violation. Massachusetts permits receivership when a residential building "is or may become a nuisance," and Connecticut authorizes receivership when "housing code violations" exist.[25] One Illinois statute allows receivership where the building is "in violation of local codes," whereas the other Illinois statute authorizes the appointment of a receiver to remove "dangerous conditions" that exist on a property "because of the violation of statute or ordinance concerning building condition or maintenance."[26] Similarly, both of Wisconsin's statutes authorize receivership where code violations exist.[27] However, in some jurisdictions, receivership is authorized only if code violations are of a magnitude that they seriously threaten health and safety.

Receivership is a drastic remedy. It is a taking—even for a limited time period—of private property and has serious civil rights repercussions. Therefore, it is not surprising that most states limit its application to extreme situations when a building is in an advanced state of disrepair and immediate action is necessary. Michigan requires structures to be an "imminent danger to heath and safety."[28] New York requires the conditions to be "dangerous to life, health or safety" to prompt the appointment of a receiver.[29] Massachusetts law also indicates that the action may be triggered when a residential building is "unfit for human habitation," or may endanger or materially impair the health of the public.[30] California further limits the conditions that can trigger a receivership by applying the remedy only to properties where the owner has failed to comply with a standing court order to abate threatening, substandard, or dangerous conditions.[31]

---

[19] CONN. GEN. STAT. § 47A-14 (2003), DEL. CODE ANN. tit. 25, §5901 (2004), MD. CODE ANN. REAL PROP. § 8-211 (2003).
[20] TEX. LOC. GOV'T CODE ANN §214.003 (West 2002).
[21] IND. CODE § 36-7-9-4.5 (2003).
[22] OR. REV. STAT. § 105.430 (2001).
[23] MINN. STAT. § 504B.001 (2002).
[24] OHIO REV. CODE ANN. § 3737.41 (2004).
[25] MASS. GEN. LAWS ch. 111, § 127B (2003), CONN. GEN. STAT. § 47A-14A (2003).
[26] 65 ILL. COMP. STAT. ANN. 5/11-13-15 (2003), § 65 ILL. COMP. STAT. ANN. 5/11-31-1 (2003).
[27] WIS. STAT. § 823.23 and §254.595 (2002).
[28] MICH. COMP. LAWS § 125.534 (2002).
[29] NY. C.P.L.R. MULT. DWELL. LAW § 769 (2004).
[30] MASS. GEN. LAWS ch. 111, § 127B (2003).
[31] CAL. CIV. PROC. CODE § 564 (2003)

All the laws referred to thus far view receivership as a remedy to correct advanced property disrepair, although they contain diverse interpretations of what constitutes such a state of disrepair.

Receivership Triggering

A receivership action, typically in the form of a complaint that a building is poorly maintained, may be brought by a government agency or by private individuals. In seventeen of the twenty receivership statutes, a government entity must or may initiate the action.[32] In another thirteen of the twenty statutes, private individuals may or must initiate the receivership process.[33] Obviously there is some overlap in the statutes; some that enable governmental agencies to initiate a receivership proceeding also allow private individuals to do so. Illinois, Massachusetts, Michigan, Minnesota, Missouri, New York, Ohio, Rhode Island, and Wisconsin all have statutes that simultaneously allow both public authorities as well as private citizens to initiate a receivership action.[34]

Private citizens empowered to bring receivership actions are usually tenants. Ten of the twenty receivership statutes explicitly give tenants the right to initiate receivership action.[35] In jurisdictions allowing tenant-initiated receivership, a provision sometimes exists that limits nuisance actions by requiring that a significant share of the tenants support the application: Connecticut requires that a majority of a building's tenants request receivership; New York and Missouri require a one-third consensus.[36]

Municipal authorities and tenants are logical candidates to trigger receivership actions. There are, however, other possible groups. Tenants in, and owners of, buildings adjacent to a deteriorating structure certainly are affected if the structure continues to be neglected or is ultimately abandoned. Illinois, Ohio, and Rhode Island recognize the right of these neighboring residents or landowners to request receivership.[37] Minnesota grants neighborhood and private housing groups the right to initiate receivership action, and Wisconsin allows "any interested person" to do so, as well.[38]

In sum, while it is clear that local public agencies usually initiate receivership actions, tenants and other private citizens also are frequently empowered to bring an action.

---

[32] California, Connecticut (2), Illinois (2), Indiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oregon, Rhode Island, Texas, Wisconsin (2).

[33] Connecticut, Delaware, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Rhode Island, Wisconsin.

[34] 65 ILL. COMP. STAT. ANN. 5/11-13-15 (WEST 2003), MASS. GEN. LAWS ch. 111, §127C (2003), MINN. R. § 504B.395 (2002), MO. REV. STAT. § 441.530 (2003), NY. C.P.L.R. MULT. DWELL. LAW § 770 (2004), NJ. STAT. ANN. §2A:42-116 and 117 (West 2004), OHIO REV. CODE ANN. § 3737.41 (2004), R.I. GEN. LAWS § 34.44-3 (2003), WIS. STAT. § 823.23 and § 254.595 (2002).

[35] Connecticut, Delaware, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Wisconsin.

[36] CONN. GEN. STAT. § 47A-14A (2003), NY. C.P.L.R. MULT. DWELL. LAW § 770 (2004), MO. REV. STAT. § 441.530 (2003).

[37] 65 ILL. COMP. STAT. ANN. 5/11-13-15 (2003), OHIO REV. CODE ANN. § 3737.41 (2004), R.I. GEN. LAWS § 34.44-3 (2003).

[38] MINN. R. §504B.395 (2002), WIS. STAT. § 823.23 and § 254.595 (2002).

Receivership Agent

Once a building has qualified for the appointment of a receiver, the court appoints a receiver in a manner consistent with provisions of the state statute. In general, receivership statutes specify who may act as a receivership agent; however, six of the twenty receivership statutes do not specify who the agent may be, or what qualifications they must have. For instance, in New Jersey "the mortageholder, lienholder, or a qualified entity" may serve as a receiver. The New Jersey statute specifically defines the qualified entity as "any person or entity registered with the [Department of Community Affairs] on the basis of having demonstrated knowledge and substantial experience in the operation, maintenance and improvement of residential buildings."

In Delaware, a court can appoint only a public agency or public officer (health inspector, code enforcer, or housing official); in the remaining jurisdictions, a court can appoint either a public entity or another competent party, in some cases a not-for-profit corporation, to act as receiver.

Nature of the Receivership Process

While some variation exists between states regarding the details of the process for appointing a receiver, most states have adopted the following procedures. Notice of the pending receivership action is given to parties in interest (the owner, mortgagee, and other lien holders) of the deteriorating property. Following the notice of the action there is usually is a determination proceeding to ascertain whether receivership is necessary. At this proceeding, interested parties may contest the action on numerous grounds by arguing that the property is habitable, that the petitioning tenant or tenants are responsible for the violations, or that the hazardous conditions cannot be corrected due to forces outside the property owner's control.

The receivership process in Delaware illustrates this procedure.[39] Tenants bring action against all interested parties duly disclosed, or whose interest is a matter of public record, or whose interest is capable of being affected by the proceeding. Those defendants can contest the action by claiming: (1) the conditions alleged in the petition filed by tenants do not exist; (2) the conditions were caused by willful or grossly negligent acts of one or more petitioning tenants; or (3) the conditions would have been corrected were it not for the refusal of the petitioning tenant to allow reasonable access. If the court determines that receivership is appropriate, then an order for appointment is made. First, however, one last chance usually is extended to the interested parties to correct the hazardous conditions. If this remediation is not forthcoming, the mortgagee may be given the first right of refusal to act as the receiver. If the mortgagee refuses, an outside receiver is appointed as specified by law.

Receivership Notification

Appointment of a receiver affects the rights and privileges of the building's owner, mortgagees, and remaining lienors. Consequently, it is very important that the courts give notice of the pending action to these individuals.

[39] DEL. CODE ANN, tit. 25 § 5901-07.

Who should be given notice? Most of the state receivership statutes refer generally to "interested parties," but some contain a more specific reference that includes a short list of the property owner, mortgagee, and other lienors of record. Some statutes set forth a more detailed elaboration. Indiana provides that notice be served to owners or others with "substantial property interest."[40]

How is notice given to the "interested parties?" Sixteen of the statutes require personal or certified mail service of the motion to be served on the parties to the action.[41] Three statutes authorize "record notice"—where the notice of the action is filed with the local recorder of deeds.[42] Notice is a fundamental concern and therefore California, Connecticut, Ohio, New York, Minnesota, Missouri, Illinois, and Indiana have exigency provisions in case personal or mail service is impossible or frustrated.[43] These secondary notice provisions allow for post and mail notice, as is the case with Connecticut, or publication notice, as with the Indiana statute.[44] Ohio, for example, requires post and mail notice, coupled with publication notice if personal and certified mail service fail.[45]

Receiver's Duties and Powers

The receiver usually is empowered to: 1) enter and take control of the property in disrepair; 2) abate the nuisance, hazardous conditions, or code violations; 3) operate and manage the building, including letting contracts as necessary and paying expenses such as taxes and insurance; and 4) collect rents and take steps to finance incurred expenses. Receivership statutes differ considerably in the level of detail with which they specify the receiver's duties and powers. Most receivership statutes, like that of Massachusetts, require receivers to make an accounting to the court that appointed them of the finances and expenditures of the property under their control.[46] Some statutes, however, are very brief or general, as is the case with Connecticut's receivership statute, which enumerates only a few powers but broadly states that the appointing court may authorize the receiver to employ "such other and further relief as the court may deem proper." Essentially, such broad language entrusts the courts with broad discretion to grant the receiver the powers they deem necessary for success.[47]

Receivership Financing

Invariably, the receiver must turn to the property's rents or income first. If these funds are insufficient, then advances in the form of a loan or bond issue may be available and, in some instances, the statutes give the receiver express authority to borrow funds on the strength of a

[40] IND. CODE § 36-7-9-5 (2003)
[41] California, Connecticut (1), Illinois (2), Indiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oregon, Rhode Island, Texas, Wisconsin (2).
[42] Connecticut, Delaware, Wisconsin.
[43] CAL. CIV. PROC. CODE § 564, CONN. GEN. STAT. § 47A-14A (2003), OHIO REV. CODE ANN. § 3737.41 (2004), NY. C.P.L.R. MULT. DWELL. LAW §770 (2004), MINN. R. §504B.395 (2002), MO. REV. STAT. §441.530 (2003), 65 ILL. COMP. STAT. ANN. 5/11-13-15 (2003), IND. CODE §36-7-9-5 (2003).
[44] CONN. GEN. STAT. § 47A-14A (2003), IND. CODE § 36-7-9-5 (2003).
[45] OHIO REV. CODE ANN. § 3737.41 (2004).
[46] MASS. GEN. LAWS ch. 111, § 127B (2003).
[47] CONN. GEN. STAT. § 47A-14A (2003).

receivership certificate. The security for the receiver's loan or certificate constitutes a lien placed on the receivership property. This claim enjoys priority over other encumbrances, except property taxes. A proceeding to foreclose, as in the case of a mortgage or mechanic's lien, enforces the receiver's lien.

A notable and unique source of receivership financing established by New Jersey's recently adopted receivership statute (which replaced four older and less comprehensive receivership statutes) is the Neighborhood Preservation Nonlapsing Revolving Fund.[48] This fund specifically allocates $4 million to be disbursed in the form of loans and grants to receivers that apply for funds. The impact of this fund as a source of financing for receivership solves an inherent flaw that frustrates the effectiveness of the receivership process. While most statutes authorize the receiver to encumber the property with liens and mortgages that have priority of repayment over most other liens on the property, many lenders are reluctant to commit money to these parcels because of the risk involved in loaning money to a property that may be foreclosed. Although the receiver's lien would have priority and recover its funds, any preexisting liens would likely remain attached to the property and therefore render the property unsaleable. This phenomenon, unfortunately, results in the frustration of many receiverships. The loan fund established by the New Jersey receivership statute cures this problem by dedicating funds specifically marked for receivership properties.

Receiver Compensation and Discharge

Only a handful of the state receivership statutes address the issue of receiver compensation. Typically, they allow "reasonable" or "standard" fees.

NATIONAL CASE ANALYSIS

At this point, it would be appropriate to briefly look at how the receivership procedure, and the individual statutes that institute it, have faired in the courts. As previously discussed, receivership is a drastic remedy as it requires the government to abrogate private property rights. As a result, in its infancy—the first statutes to authorize receivership were often challenged as unconstitutional, and affirmed by the courts as such. In 1937 New York passed a law enabling a receivership program. In 1938 the New York Appellate Court declared that the program adversely affected a mortgagee's interests, violated the right to due process, and that the granting of the receiver's expenses first lien status unconstitutionally constituted a taking.[49] However, as it was demonstrated that states had a legitimate need to protect the public from unsafe, inferior, and dangerous buildings and that this need was best served by employing receivership, courts began weighing the state's need to protect its citizens against individual property holders' rights, and were willing to uphold receivership action provided that it was applied in a suitable circumstance and manner. In *In re Dept. of Buildings* the court declared:

---

[48] NJ. STAT. ANN. § 2A:42-141 (2004).
[49] *Central Savings Bank v. City of New York* 4 N.Y.2.d 543 (1938)

> When weighed against the vital public purposes sought to be achieved, the interference with the mortgagee's rights resulting from the present law may not be said to be so unreasonable or oppressive as to preclude the State's exercise of its police power.[50]

Once the legitimacy of receivership programs was established by the courts, it was stipulated that the actions authorized must be suitable in manner and circumstance. This usually requires that receivership be directed against severely deteriorated buildings in need of a caretaker, where adequate notice is given to the interested parties, and these parties are afforded the opportunity to contest the petition and/or make repairs and therefore forestall the necessity of an outside receiver's appointment. Generally, the courts have provided clear guideline for legislative bodies to follow, in order to ensure a minimal infringement on property rights.

Today's receivership cases focus primarily on defining, with a jurisdiction, the scope of the individual statute: under what circumstances and in what manner receivership is authorized by these statutes. Therefore, while the constitutionality of the process itself is rarely questioned, the scope of the authorizing statutes is consistently being clarified.

Detailed Review

From one jurisdiction to another, there is a great variety of specificity with regard to the provisions of the actual statutory language employed. While some statutes have sections defining, with great care, the terms that are used in the body of the text, others do not, and even with regard to those that do, questions often arise as to the applicability of the term, or its definition, to the facts of a situation. This results in challenges to the scope of the receivership statute.

In *City of San Francisco v. Daley*, the trial court, in considering the abatement of ongoing nuisances on a private property, applied California's broad receivership statute to remedy the conditions.[51] The California statute does not specifically authorize receivership for cases involving code violations of private property, but rather generally authorizes receivership as a tool employable by the courts "after judgment, to carry the judgment into effect," without specifying the cases and conditions whereby this remedy may be used. The Court of Appeals of California ruled "although a receivership is a drastic remedy, this was an exceptional circumstance" and the trial court had not abused its discretion in appointing a receiver. Although this was the first time the statute had been applied in such a case, as the court points out, the language of the statute does not prohibit its application in housing cases.

California's receivership statute is unique in its broad generality among the jurisdictions authorizing receivership for such cases. In these jurisdictions the scope and definition of specific words or terms is contested, instead of the general applicability of the statute to the facts at hand. The definition of "unsafe" and "dangerous" conditions and what constitutes a "reasonable" period of time to correct such conditions are issues that have been contested in multiple jurisdictions, and, for the most part, consistency is found among the rulings.

---

[50] *In Re Department of Buildings* 14 N.Y.2.d 291 (1964)
[51] *City & County of San Francisco v. Daley* 16 Cal App 4th 734 (1993, 1st District)

The issue of allowing the owner a “reasonable time” to repair unsafe conditions is one that has been before courts in several jurisdictions. In *Brown v. Anderson Bd. of Pub. Safety* the Illinois Court of Appeals dealt with the definition of “unsafe and dangerous” conditions and concluded that “the existence of numerous small fire hazards on the property dictates ‘dangerous’ conditions within the meaning of the statutory language.”[52] Similarly, in Indiana:

> Where roofing material, bricks, siding, soffits, chimneys, and gutters were either falling on the ground or in imminent danger of doing so, the potential of objects falling from the building posed sufficient danger to the passerby so as to render the building “unsafe.”[53]

In Minnesota, inadequate heating and insulation on a rental property were found to violate the standards for habitable and sanitary housing promulgated by the legislative body.[54] And a Rhode Island property owner was informed that “making surfaces weathertight was reasonably related to unsafe building conditions.”

It is clear that allowing property owners “reasonable” time periods for furnishing repairs is a statutory provision many states have adopted. What is not clear, at least from the statutory language alone, is what constitutes a reasonable time period. In *Kopinski v. City of Worthington*, the Court of Appeals of Indiana ruled that “the trial court abused its discretion by failing to give Kopinski an opportunity to repair premises prior to ordering the appointment of a receiver when the time period allowed for the repairs was incompatible with seasonal factors that contributed to Kopinski’s ability to address the cited violations.”[55] However, in a similar case, also in Indiana, the same court ruled that, although weather conditions did hinder effecting repair of the property, once these conditions had passed, the property owner made no effort to repair until he was cited once again for code violations. Many factors contribute to evaluating what is “reasonable” in terms of a time period for repairs. These factors include the nature of the repair; whether the repair can be done by the property owner themselves or if it must be hired out; seasonal weather conditions; and—sometimes—the property owners themselves. For example in *Village of Maywood v. Barrett* the property owner, Barrett, was an 84-year-old physically handicapped individual who relied on caretakers and her son.[56] While the property she owned was cited for numerous violations repeatedly, and she was taken to court, she was given three months to repair a broken sprinkler system in the rental building, and 6 months to repair the remainder of the violations on property. Her failure to do so, because of her health, after one year resulted in the appointment of a receiver. While her disability and infirmity were not in doubt and were the reasons she cited for the failure to repair, they were also the reason that compelled the court to appoint a receiver.

> While we do not deny that Gertrude Barrett has a legitimate infirmity that makes it difficult for her to effect repairs on the property, the fact remains that after 2 years since she was first informed of the code violations on her rental property she has not been able

---

[52] *Brown v. Anderson Board of Public Safety* 777 N. E. 2d 1106
[53] *Foursquare Tabernacle Church of God in Christ v. the Department of Metropolitan Development of the Consolidated City of Indianapolis* 630 N.E.2.d 1381 (1994)
[54] *Tomas v. The City Minneapolis* 450 N.W.2.d 7893 (1995)
[55] *Kopinski* at 457
[56] *Village of Maywood v Barrett* 570 NE 647 (1991)

> to find adequate help in securing repairs. We are, therefore, unconvinced that granting her additional time would be of any use… For the best interests of all parties involved, including Gertrude herself, we affirm the trial court's order to appoint a receiver.[57]

Likewise, in Delaware, the court found that:

> Here, the property was inspected in 1996 and a demolition order was issued in 1998. The trial court did not affirm the appointment of a receiver until August 2001. Although he had the opportunity, [the property owner] has done little to repair or improve the condition of the property. Because of the ample opportunity to make the required repairs and did not we are doubtful, however, that allowing Brown additional time to make the necessary repairs will result in the correction of the dangerous conditions.[58]

The procrastination of property owners in making repairs, then claiming to have been denied a "reasonable" time period, is one that also happens in California. In Daley, having been afforded years of time to repair the conditions on the property, and failing to do so, Daley challenged that she was not given sufficient time to repair. The court briefly addressed this contention in its opinion by stating that:

> Daley asserts that she was not given adequate time to repair the conditions she was recurred to address. In fact, the judgment entered three years earlier also identified the scope of repairs and ordered their completion. This contention does not merit further discussion.[59]

HOUSING RECEIVERSHIP: OPERATING REALITY

Receivership is not a theoretical procedure and has the potential to improve housing-code enforcement and housing standards (Kavanaugh 2003). Receivership has been used in over a dozen major urban centers, but with varying levels of success and intensity (Listokin, Allewelt and Nemeth 1985). This strategy has been implemented in various contexts, ranging from an adjunct to property-tax foreclosures to fostering housing-code enforcement to a tool for city-owned properties (Listokin, Allewelt and Nemeth 1985). However, receivership is far from a panacea and remains challenging to implement (Fleenor 2003; Lind 2003; Petrus 2003; Listokin, Allewelt and Nemeth 1985). The discussion below provides a brief snapshot of the operating reality of the receivership research we hope to expand on in the future.

State enabling legislation will often spark the use of receivership. This occurred in Ohio when, after a state enabling statute was passed in the 1980s, the courts periodically authorized receivers to take possession and control properties (Lind 2003). Yet, the practical process of appointing a receiver is elaborate and cumbersome and needs to be better clarified by Ohio statute (Fleenor 2003; Lind 2003; Petrus 2003). The process to appoint a receiver takes approximately 18 months, requires extensive legal knowledge, and requisite financial resources for the rehab may not be available.

---

[57] *Id.* at 650
[58] *Brown* at 778
[59] *Daley* at 73

Often, community development corporations wishing to undertake receivership are highly dependent on pro bono legal expertise like that provided through the Community Advocacy Clinic at Cleveland State University's Cleveland-Marshall College of Law (Kavanaugh 2003; Lind 2003). Nonetheless, the cost of petitioning and appointing a receiver can still be prohibitive (Lind 2003). The process of petitioning for a property to be put into receivership in Cleveland takes approximately one year, and can be extremely limited for large-scale acquisition. However, receivership in Ohio has been a very useful tool for the strategic acquisition of individual properties (Fleenor 2003; Lind 2003).

The language and structure of the receivership statutes vary state by state, thereby leading to differences in applicability and success. In Ohio, the receivership law allows a nonprofit housing corporation to file a civil action to be appointed a receiver on a deteriorated property, which cannot be pursued criminally. The receivership statute in Indiana falls under general code enforcement, not public nuisance abatement. Because of this, the issue of receivership in Indiana is often treated as a private matter, rather than one of public interest. The process is made even more cumbersome and lengthy as a result, discouraging many community development organizations and lawyers from pursuing receivership as a method for improving the standards and quality of housing units.

The Ohio receivership statute places the receiver's lien in front of all other liens except mortgage and federal liens—a situation that improves the likelihood of a receiver's lien being paid off at time of disposition. The presence of other liens on a property may make it more difficult for a receiver to finance repairs, making the process more difficult and time-consuming. Yet progress is being made. For example, the Cleveland Restoration Society was able to get a federal Social Security fraud lien written off while acting as a receiver on a property, improving its ability to secure adequate financing (Fleenor 2003). There remains, however, a significant need for bridge financing and subsidies for Ohio receivers to complete the repairs after receiving legal authority (Lind 2003).

In summary, receivership can aid the rehab of existing properties, yet successful implementation of this strategy requires a comprehensive legal, financial, and operational commitment.

REFERENCES

Drayer, Robin. 1992. Saving Housing Through Receivership: The Chicago Experience. *Shelterforce* 65. Orange, NJ: National Housing Institute.

Fleenor, Michael. 2003. Cleveland Restoration Society. Cleveland, Ohio. Interview with Kristen Crossney. July 7.

Friedman, Lawrence M. 1968. *Government and Slum Housing.* Chicago, IL: Rand McNally & Co.

Grad, Frank. 1968. Legal Remedies for Housing Code Violations. *National Commission on Urban Problems, Research Report No. 14.* Washington, DC: Government Printing Office.

Gribetz, Judah, and Frank Grad. 1966. Housing Code Enforcement, Sanctions and Remedies. *Columbia Law Review*. 66: 1254-1255.

Kavanaugh, Kirk. 2003. Community Organization Legal Assistance Project, Inc. (COLAP). Indianapolis, Indiana. Interview with Kristen Crossney. March 13.

Levi, Julian H. 1966. Focal Leverage Points in Problems Relating to Real Property. *Columbia Law Review,* Vol. 66: 275.

Lind, Kermit J. 2003. Community Advocacy Clinic, Cleveland-Marshall College of Law, Cleveland State University. Cleveland, Ohio. Interview with Kristen Crossney. May 29.

Listokin, David. 1973. *The Dynamics of Housing Rehabilitation: Macro and Micro Analyses.* New Brunswick, NJ: Rutgers University, Center for Urban Policy Research.

Listokin, David, Lizabeth Allewelt, and James J. Nemeth. 1985. *Housing Receivership and Self-Help Neighborhood Revitalization*. New Brunswick, NJ: Center for Urban Policy Research Press.

Marco, R.J., and J.D. Mancino. 1969. Housing Code Enforcement—A New Approach. *Cleveland Marshal Law Journal.* 18, 2: 368.

McGrew, Jane, and John C. Bates. 1982. Code Enforcement: The Federal Role. *The Urban Lawyer* 14, 1 (Winter): 10-11.

McLaughry, John. 1978. Recycling Declining Neighborhoods: Give the People a Chance. *The Urban Lawyer* 10, 2 (Spring): 331.

National Commission on Urban Problems. 1968. *Building the American City: Report of the National Commission on Urban Problems.* Washington, DC: Government Printing Office.

Petrus, Mary Helen. 2003. Cleveland Neighborhood Development Coalition. Cleveland, Ohio. Interview with Kristen Crossney. March 4.

Rosen, A. 1968. Receivership: a new tool for helping to meet the housing needs of low income people. *Harvard Civil Liberties Law Review*. 3, 2 (Spring): 311.

U.S. Department of Housing and Urban Development (HUD). 1979. *Neighborhoods: a self-help sample.* Washington, DC: Government Printing Office.

APPENDIX

STATE RECEIVERSHIP STATUTES IN THE UNITED STATES: DETAILED ANNOTATION

JURISDICTION—CALIFORNIA

Statute Citations—California Code of Civil Procedure § 564- § 570

Trigger—Applicable Circumstances—After a judgment (for abatement) to enforce the judgment.

Trigger—Who Initiates Proceeding—The court before which an enforcement order is being sought.

Receivership Agent—Not specified.

Type of Proceeding—Judicial Proceeding.

Receivership Appointment Process—Not specified.

Notification Requirements—Not specified.

Receivership Duties/Powers—Receiver must post a bond and swear an oath to perform duties faithfully. The receiver can "take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize."

In addition:

"(a) A receiver of real property containing rental housing shall notify the court of the existence of any order or notice to correct any substandard condition… with which the receiver cannot comply within the time provided by the order or notice.

(b) The notice shall be filed within 30 days after the receiver's appointment or, if the substandard condition occurs subsequently, within 15 days of its occurrence.

(c) The notice shall inform the court of all of the following:

(1) The substandard conditions that exist.
(2) The threat or danger that the substandard conditions pose to any occupant of the property or the public.
(3) The approximate cost and time involved in abating the conditions. If more time is needed to approximate the cost, then the notice shall provide the date on which the approximate cost will be filed with the court and that date shall be within 10 days of the filing.

The author wishes to thank Layla Rezvan, Esq., for the legal research contained in this appendix.

(4) Whether the receivership estate is likely to contain sufficient funds to abate the conditions.

(d) If the receivership estate does not contain sufficient funds to abate the conditions, the receiver shall request further instructions or orders from the court.

(e) The court, upon receipt of a notice pursuant to subdivision (d), shall consider appropriate orders or instructions to enable the receiver to correct the substandard conditions or to terminate or limit the period of receivership."

Financing of Receivership—Not specified.

Receivership Compensation—Not specified.

Receivership Discharge—Not specified.

Change since 1985—Provision was not law in 1985.

Cases—*City and County of S.F. v Daley* (16 Cal App 4th 734, 20 Cal Rptr 2d 256, 1993) established that the provision of this statute that provides for the appointment of a receiver in order to enforce a judgment applies to judgments for the abatement of public nuisances in violation of municipal codes on private property. Although the remedy is referred to as a "drastic" one for these situations.

JURISDICTION—CONNECTICUT

Statute Citations—Connecticut General Statutes § 47a-56a—§ 47a-56j

Trigger—Applicable Circumstances—Nuisance.
"A fire hazard or a serious threat to life, health or safety."

Trigger—Who Initiates Proceeding—Public authority appointed by legislative body.

Receivership Agent—Court appointed.

Type of Proceeding—Judicial proceedings in the "superior court for the judicial district where the property is located."

Receivership Appointment Process—The authority (see above) applies to the superior court for an order to show cause for why a receiver should not be appointed to rectify the hazardous conditions. The order to show cause is returnable in "not less than 5 days" except by court order in instances where the conditions on the property are such that, unless they are "immediately cured, substantial damage may be caused to the property" or if the conditions are "an imminent danger" to the occupants of the property or the occupants of adjoining properties.

The application to the superior court "shall" contain (a) proof of notice in the form of an affidavit, (b) a statement of the hazardous conditions containing "a description of the property and the conditions constituting such nuisance," and (c) a brief description of the planned remedy for the conditions.

The court then determines the merits of the application. This "determination shall have precedence over every other business" on the Superior Court's docket. Property owners are afforded the opportunity to correct the conditions of the property. If such redemption is not done, or is not done with "due diligence," a receiver is appointed.

Notification Requirements—Personal service on interested parties (owner, mortgagee of record, and lienors) is preferred. If personal service is not possible after the exercise of "due diligence," in rem notification is permitted in the following forms: (a) "by posting a copy" of the order to show cause "in a conspicuous place on the property where the nuisance exists and by sending a copy thereof by registered mail, return receipt requested," or (b) "in the case of a mortgagee or lienor, to the address set forth in the recorded mortgage or lien and by publication in a newspaper of general circulation in the judicial district where such property is located."

In instances where the conditions on the property are such that, unless they are "immediately cured, substantial damage may be caused to the property," or if the conditions are "an imminent danger" to the occupants of the property or the occupants of adjoining properties, the in rem notification methods above are sufficient without a showing of "due diligence" efforts to serve notice personally. At the court's discretion, ex parte orders to grant relief are permissible, pending a full hearing "to be held not three days after such order is issued."

Receivership Duties/Powers—Receiver must post a bond and carry liability insurance. Receiver, "with all reasonable speed," removes "hazardous condition" and during his receivership "repairs and maintains the property in a safe and healthful condition." Receiver has the power to let contracts and incur expenses. Receiver also pays building property taxes, maintenance, and management expenses. Public bidding is not required for work that either (1) costs less than $500, or 2) [is] to rectify a condition that poses an "imminent hazard."

Financing of Receivership—If the income of the property is not sufficient to cover the costs of remedying the conditions on the property 'the municipality may advance the receiver any sums required to cover such costs" after which the municipality "shall have a lien against the property." Such a lien will have priority "with respect to all existing mortgages and liens."

Receivership Discharge—1) "If the receiver shall make a finding at such time or any other time that for any reason the appointment of a receiver is not appropriate, it shall be discharged upon notification of the Court and all interested parties and shall make legal distribution of any funds in its possession." Receiver discharge shall also occur when:"[t]he condition or conditions alleged in the petition have been remedied;… [t]he property materially complies with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the building and the surrounding grounds; … [t]he costs of the above work and any other costs as authorized herein have been paid or reimbursed from the rents and profits of the property; and … [t]he surplus money, if any, has been paid over to the owner.

Change since 1985—No material change.

JURISDICTION—CONNECTICUT

Statute Citations—Connecticut General Statutes
§ 47a-14a—§ 47a-14h

Trigger—Applicable Circumstances—Nuisance.
"Housing code violations... lack of heat, running water, electricity, light or inadequate sewage disposal facilities other conditions dangerous to life, health, or safety, and infestation of rodents, vermin or other pests."

Trigger—Who Initiates Proceeding—A majority of tenants claiming under oath that the hazardous conditions (see above) they allege, exist.

Receivership Agent—Court appointed**.**

Type of Proceeding—Judicial proceedings in the "superior court for the judicial district where the property is located."

Receivership Appointment Process—Tenants bring action. Court refers complaint to referee. Referee submits findings/recommendations to court. Interested parties (owner, mortgagors, lienors of record) may: (a) contest presence of hazardous conditions, or (b) claim they were caused by tenants. If the court dismisses these two claims, a receiver is appointed.

Notification Requirements—Tenants "shall cause a notice of the pendency of such action (complaint, see above) to be filed in the local land records."

Receivership Duties/Powers—Collects rents, and applies rents to removing hazardous conditions.

Financing of Receivership—Not specified

Receivership Compensation—Not specified

Receivership Discharge—Not specified.

Change since 1985—

JURISDICTION—DELAWARE

Statute Citations—Delaware Code Annotated.
Title 25, § 5901- § 5907

Trigger—**Applicable Circumstances**—Rental buildings with lack of heat, running water, light, electricity, adequate sewerage, or other conditions "imminently dangerous to life, health, or safety of the tenant."

Trigger—Who Initiates Proceeding—Tenant or group of tenants in hazardous building (see above).

Receivership Agent—State Division of Consumer Affairs or its successor agency.

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—Tenants bring action against "defendants"—all interested parties duly disclosed or whose interest is a matter of public record and/or are capable of being affected by this proceeding. Defendants can contest action by claiming: (a) conditions in petitions filed by tenants do not exist, (b) conditions were caused by willful or grossly negligent acts by one or more of the petitioning tenants, or (c) conditions would have been corrected were it not for the refusal of the petitioning tenant to allow reasonable access. After a trial, court enters judgment. Owner or interested parties may reply to court to be permitted to remove or remedy specified conditions. On proof of such intent, a stay of judgment is granted. If such corrective action has not proceeded with due diligence and hazardous conditions exist five days after notification, then court appoints receiver. The receiver has fifteen days to make an independent finding as to whether he/she should collect rents and make repairs.

Notification Requirements—Only in the form of the receiver's findings filed with the county recorder of deed (see above) and in the filing of the receiver's repair liens (see below). Other advance notification of receivership is not specified.

Receivership Duties/Powers—Receiver has "all the powers and duties accorded a receiver foreclosing a mortgage on real property" and all other powers and duties deemed necessary by the court. Such powers and duties include, but are not necessarily limited to: (a) collecting and using all rents and profits of the property, (b) correcting the hazardous conditions evoking the receivership, (c) complying with all applicable state or local building and construction codes, (d) paying all expenses reasonably necessary for proper building operation and management (e.g., insurance, mortgage payment, taxes and assessments, receiver's fees), (e) compensating the tenants for "whatever depravation of their rental agreement rights resulted from conditions evoking receivership," and (f) paying the costs of the receivership proceeding.

Financing of Receivership—Lien for the amount of repairs is placed on receivership property. The lien is recorded at the county recorder of deeds, and notice of this action is given to all lien holders of record. The lien is released when the receiver's repairs are paid from the rents and the profits of the receivership property.

Receivership Compensation—Fees are allowed for the services of the receiver and any agent of the receiver.

Receivership Discharge—The receiver may be discharged when: (a) hazardous conditions evoking receivership are remedied, (b) the receivership property complies with all codes, (c) the receiver's expenses are reimbursed, and (d) any surplus monies are returned to the property owner.

If clauses (a) and (b) are satisfied, interested parties (owner, mortgagee, and other lienors) can discharge the receiver by paying outstanding receivership expenses which have not been reimbursed from the properties rents/profits.

If the court determines that the future profits from the property will not cover the cost of satisfying clauses (a) and (b), the court may discharge the receiver and order such action as appropriate in the situation, including, but not limited to, terminating the rental agreement and ordering the vacation of the building within a specified time. The court does not permit repairs that cannot be paid from the future profits of the property.

Change Since 1985—No material changes

JURISDICTION—ILLINOIS

Statute Citations—Illinois Compiled Statues Annotated § 65 ILCS 5/11-31-1 – § 65 ILCS 5/11-31-2.3

Trigger—Applicable Circumstances—Three triggering circumstance: a) the municipality, upon investigation, finds a building unsafe, dangerous, uncompleted, or abandoned; b) the building or structure is located within an area affected by a conservation plan and fails to conform to the standards or provisions of such plan; or c) the building fails to meet the minimum standards of safety and health established by the municipality.

Trigger—Who Initiates Proceeding—The municipal authorities of the municipality in which the property is located.

Receivership Agent—Municipality or person appointed by the municipality. Special qualifications of a receiver excuse the "surety of the receiver's bond." Special qualifications include: "(a) satisfactory past performance as a receiver, (b) prior real estate management or development experience, (c) licensure or certification in a relevant profession or occupation; or (d) specialized training as a receiver."

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—If the property owner, having been given fifteen days' written notice, fails to remedy conditions prompting application, the municipal authority applies to the circuit court for an order authorizing action to be taken with respect to the property conditions. The hearing for such application "shall be expedited by the court and . . . be given precedence over all other actions." Written notice of fifteen days may be waived or expedited upon a showing of irreparable harm upon delay.

Notification Requirements—Written notice is served to the owner and lienholder of record. If after a diligent search, the identity or whereabouts of the owner has not been found, notice is mailed to the last person whose name appears on the real-estate assessment.

Receivership Duties/Powers—The duties of the receiver are: "maintenance, repair, and rehabilitation." In order to fulfill these duties the receiver may use rent from the property, issue and sell notes or certificates; upon court approval, in return for money, material, labor, services.

Financing of Receivership—Notes or certificates authorized by the court "shall be first lien upon the real estate and the rents and issues" of the property. Costs are recoverable from property owner and constitute a lien on the building superior to all liens except taxes. To place such a lien, notice is filed with the county recorder of deeds.

Receivership Compensation—Not specified

Receivership Discharge—Not specified

Change since 1985—Material amendments have been made.

JURISDICTION—ILLINOIS

Statute Citations—Illinois Compiled Statues Annotated § 65 ILCS 5/11-13-15

Trigger—Applicable Circumstances—Building constructed, reconstructed, altered, repaired, converted, maintained, etc. in violation of local codes.

Trigger—Who Initiates Proceeding—Local municipal authorities or owners/tenants of real property within 1,200 feet (in any direction of the hazardous building) "who show that their property/person will be substantially affected by the alleged violations."

Receivership Agent—Not specified.

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—On a complaint from the parties specified above, the court may issue appropriate action to: (a) prevent the unlawful construction, reconstruction, alteration, repair, conversion, maintenance or use, (b) prevent occupancy of the building, structure or land, (c) prevent any illegal act, conduct or business, or use in or about the premises, and (d) restrain, correct, or abate the violation. Remedial action may include receivership and/or the issuance of a restraining order or preliminary/permanent injunction. If a permanent injunction is decreed, the court "may in its discretion allow the plaintiff a reasonable sum of money for the plaintiff's attorney. This allowance is part of the costs of litigation and recoverable as such."

Notification Requirements—When action is commenced by private parties, written notice of the complaint is to be served upon the municipality by serving its chief executive officer.

Receivership Duties/Powers—See Receivership Appointment Process.

Financing of Receivership—See Receivership Appointment Process.

Receivership Compensation—Not specified. Note: plaintiff's legal fees are recoverable from defendant. (See Receivership Appointment Process)

Receivership Discharge—Not specified.

Change since 1985—No material change.

JURISDICTION—INDIANA

Statute Citations—Burns Indiana Statutes Annotated
§ 36-7-9-1 – § 36-7-9-33

Trigger—Applicable Circumstances—Unsafe building structure with: (a) impaired conditions that render it unsafe, (b) fire hazard, (c) health hazard, (d) public nuisance, (e) dangerous conditions because of a violation of statute or ordinance concerning building condition or maintenance, and (f) vacant/abandoned structures of buildings unfit for human habitation.

Trigger—Who Initiates Proceeding—"Enforcement Authority" – chief administrative officer of relevant department (e.g., Department of Metropolitan Development).

Receivership Agent—The receiver may be "a not-for-profit corporation the primary purpose of which is the improvement of housing conditions in the county where the unsafe premises are located, or may be any other capable person residing in the county."

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—The enforcement authority brings civil action after an investigation is made revealing violations. In place of issuing injunctions or other remedies the court may appoint a receiver.

Notification Requirements—Notice is served to owners or others with a "substantial property interest" defined as "any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate, a future estate, a present possessory interest, or an equitable interest of a contract purchaser. In a consolidated city, this interest is reflected by a [recorded] deed, lease, license, mortgage, land sale contract or lien."

Notice to the property owner or other interested parties is given by (a) personal delivery, or (b) registered mail. If after a "reasonable effort" service by these two means cannot be obtained, service by publication in a local newspaper suffices. If, however, emergency action is required to remove "any immediate danger," notice may be waived.

Receivership Duties/Powers—collects rents and removes hazardous conditions/code violations. Receiver can let contracts and sell receivership certificates.

Financing of Receivership—Receiver must first draw from the property's rent/profits. After a hearing the court may authorize the receiver to obtain the money needed by the issuance and sale of notes or receiver's certificates bearing interest fixed by the court. These documents constitute a first lien on the hazardous property and its income. This lien is superior to all other assignments of rents, liens, mortgages and other encumbrances on the property except taxes. Note must be filed with the county recorder's office within sixty days. Lien is released on payment of note by collected rent or by owner's settlement. Lien must be acted upon within two years.

Receivership Compensation—The receiver is entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages.

Receivership Discharge—Not specified.

Change since 1985—Minor.

JURISDICTION—MARYLAND

Statute Citations—Maryland Real Property Code § 8-211.1

Trigger—Applicable Circumstances—Any leased dwelling unit (publicly or privately owned, single or multiple units) where conditions/defects which constitute, or if not promptly corrected will constitute, a fire hazard or a serious substantial threat to the life, health, or safety of occupants including: (a) lack of heat, light, electricity, or hot or cold running water, or (b) lack of adequate sewage disposal facilities, or (c) infestation of rodents in two or more dwelling units, or (d) the existence of paint containing lead pigment on surfaces within the dwelling unit, or (e) the existence of any structural defect which presents a serious and substantial threat to the physical safety of the occupants, or (f) any condition presenting a health or fire hazard.

Not included are those conditions which merely impair the aesthetic value of the premises or which are, in those locations governed by such codes, housing-code violations of a non-dangerous nature. Section 8–211.1 specifically requires the removal of lead-based paint from any interior, exterior, or any other surface that is easily accessible to a child of a residential premises.

Trigger—Who Initiates Proceeding—Tenants of dwelling unit where conditions exist.

Receivership Agent—Administrator appointed by court. Can be owner/agent, tenant, or other party.

Type of Proceeding—Judicial.

Receivership Appointment Process—The tenant notifies the landlord of the existence of the defects of conditions. The landlord has a reasonable time (e.g., 30 days or less) in which to make the repairs or correct the conditions. If the repairs are not made the tenant can bring an action of rent escrow (to pay full or partial rent, depending on property condition, to the court). After rent escrow has been established the court may: (a) allow the property owner/agent to make the repairs, (b) appoint an administrator to collect rents/make repairs, (c) return rental payments to tenant if repairs are not made, or (d) take other action.

Notification Requirements—Notice is given by: (a) a written communication sent by certified mail listing the asserted conditions or defects, or (b) a written violation, condemnation, or other notice from an appropriate state, county, municipal, or local government agency stating the asserted conditions or defects.

Receivership Duties/Powers—Collects rents, makes repairs.

Financing of Receivership—None other than the use of collected rent is specified.

Receivership Compensation—Not specified.

Receivership Discharge—Not specified.

Change since 1985—No material changes.

JURISDICTION—MASSACHUSETTS

Statute Citations—Annotated Laws of Massachusetts § 127A – § 127K

Trigger—Applicable Circumstances—Residential building (a) unfit for human habitation, or (b) in violation of any board of health standards, or (c) constituting a nuisance, or (d) that is a cause of sickness or accident to the occupant or public.

Trigger—Who Initiates Proceeding—Board of health, or in Boston or Worcester, the commissioner of housing inspection and affected tenants.

Receivership Agent—Court-appointed receiver, which may be a person, partnership, or corporation.

Type of Proceeding—If order of board is not obeyed, board applies to Superior Court for injunction to enforce. Tenant may bring petition to District Court or Superior Court or Housing courts.

Receivership Appointment Process—Board of health (see above) examines the structure and issues a written order to owner to (a) vacate, (b) put premises in clean condition, or (c) comply with applicable codes. If owner fails to comply, board of health may have (a) premises cleaned, (b) specified conditions remedied, (c) property vacated and sealed, or (d) a written order issued to the property owner of record setting forth the particulars of unfitness and requiring that the conditions be remedied. If the latter order is not acted upon, the court, on a petition in equity brought by the board of health, has jurisdiction, by injunction or otherwise, to enforce the requirements.

If action is initiated by tenant, inspection by authorities must show that (a) violations of state sanitary code exist and may endanger or materially impair the health and well-being of any tenant, and (b) the violations were not substantially caused by the tenant or anyone acting under their control.

The court reviews tenant petition and, if approved, authorizes rental payment to the court clerk. The latter may use these proceeds "for the purpose of effectuating the removal of the violation." A tenant may also file a petition in one of the above courts without stating that an inspection agency has found a violation if there is a showing that: a) sufficient evidence exists of a likely violation of sanitary codes which endangers or may endanger any tenant in the building occupied by the tenant filing the petition, b) that the condition complained of was not caused by the tenant or a person under the tenant's control, and c) that a request for inspection of the premises was made "at least twenty-four hours prior to the filing of the petition and that there has been no inspection."

Notification Requirements—If board of health examines property and demands corrective action (see above), notice is served via registered mail to the property owner and any mortgagee of record. Similar notice is given if any remedial action is taken (see above). If tenant initiates the action (see above), notice is given to the owner of record, mortgagees, and lienors via personal service or mailing to the last known address.

Receivership Duties/Powers—The receiver must post a bond or surety. Promptly repair and maintain the property after his/her appointment. The receiver has "full power" to borrow money and grant security interest or liens on the property. In addition, the receiver shall collect rents and apply them to the costs incurred for repairs and maintenance of the building in a condition that meets sanitation codes. Receiver must file an accounting to the court and all interested parties on a bimonthly basis of all funds "received by and owed to the receiver, and all funds dispersed."

Financing of Receivership—From buildings rents and profits (see above). Expenses plus interest constitute a debt and lien on the receivership property. The lien takes effect when filed and continues for two years. Lien is released when (tax) "collector" issues certificate that the debt has been repaid. The "collector has the same power or duties with respect to the receivership lien as 'in the case of the annual taxes upon real estate'" (e.g., foreclosure). If this source is insufficient, receiver may petition the court to apply for financial assistance from the state. This financing will be advanced if: (a) necessary, (b) reasonable, and (c) "not so excessive as to constitute an imprudent and unreasonable expenditure to accomplish this purpose." The amount plus interest is a debt due the state by the owner, recoverable in a contract action, and constitutes a lien on the receivership property that has priority over all other liens except municipal liens.

Receivership Compensation—"Reasonable fees" of the receiver are to be paid from the rents collected.

Receivership Discharge—Not specified.

Change since 1985—Material amendments have been made.

JURISDICTION—MICHIGAN

Statute Citations—Michigan Compiled Laws Service § 125.526- § 125.541

Trigger—Applicable Circumstances—Conditions that constitute imminent danger to the health and safety.

Trigger—Who Initiates Proceeding—Enforcing agency or occupant of building.

Receivership Agent—The municipality or a proper local agency or officer, or any competent person.

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—If, upon inspection, the premises or any part of the premises are found to be in violation of housing laws, the enforcing agency shall record the violation in the registry of owners and premises. Notice of violation of housing laws and codes or of the existence of unsafe and dangerous conditions is given to the owner of the building along with an order to comply.

If the owner fails to comply with the order contained in the notice of violation, the enforcing agency may bring an action to enforce this act and to abate or enjoin the violation. An occupant of the premises upon which a violation exists may bring an action to enforce this act in his or her own name. Upon application by the enforcing agency, or upon motion of the party filing the complaint, the local enforcing agency may be substituted for, or joined with, the complainant in the discretion of the court. If the violation is uncorrected and creates an imminent danger to the health and safety of the occupants of the premises, or if there are no occupants and the violation creates an imminent danger to the health and safety of the public, the enforcing agency shall file a motion for a preliminary injunction or other temporary relief appropriate to remove the danger during the pendency of the action.

The court may enjoin the maintenance of unsafe, unhealthy, or unsanitary conditions, or violations of this act, and may order the defendant to make repairs or corrections necessary to abate the conditions. The court may authorize the enforcing agency to repair or to remove the building or structure. A building or structure shall not be removed unless the cost of repair of the building or structure will be greater than the state equalized value of the building or structure except in urban core cities or local units of government that are adjacent to or contiguous to an urban core city that have adopted stricter standards to expedite the rehabilitation or removal of a boarded or abandoned building or structure that remains either vacant or boarded, or both, and a significant attempt has not been made to rehabilitate the building or structure for a period of 24 consecutive months.

When a suit has been brought to enforce this action against the owner, the court may appoint a receiver of the premises. At the discretion of the court, no bond need be required.

Notification Requirements—The owner shall be notified in writing of the violation. The notice shall state the date of the inspection, the name of the inspector, the nature of the violation, and the time within which the correction shall be completed. If an inspector determines that a violation constitutes a hazard to health or safety, under circumstances where the premises cannot be vacated, the enforcing agency shall order the violation corrected within the shortest reasonable time. The owner shall notify the enforcing agency of having begun compliance within 3 days. All other violations shall be corrected within a reasonable time. The enforcing agency shall reinspect after a reasonable time to ascertain whether the violation has been corrected. If an inspector determines that a violation constitutes a hazard to the health or safety of the occupants, the enforcing agency shall provide notice within 48 hours.

Upon the filing of a motion for a preliminary injunction or other temporary relief, the owners and lienholders of record or owners and lienholders ascertained by the complainant with the exercise of reasonable diligence shall be served with a copy of the complaint and a summons regarding the motion for a preliminary injunction or other temporary relief sought. The complainant shall also file a notice of the pendency of the action with the appropriate county register of deeds office where the premises are located.

Receivership Duties/Powers—The purpose of a receivership shall be to repair, renovate and rehabilitate the premises as needed to make the building comply with the provisions of the law, and where ordered by the court, to remove a building. The receiver shall promptly comply with the charge upon him in his official capacity and restore the premises to a safe, decent and sanitary condition, or remove the building.

Subject to the control of the court the receiver shall have full and complete powers necessary to make the building comply with the provisions of this act. He may collect rents, and other revenue, hold them against the claim of prior assignees of such rents, and other revenue, and apply them to the expenses of making the building comply with the provisions of this act. He may manage and let rental units, issue receivership certificates, contract for all construction and rehabilitation as needed to make the building comply with the provisions of this act, and exercise other powers the court deems proper to the effective administration of the receivership.

When expenses of the receivership are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The provisions of subsection (7) of section 134 as to the contents and filing of an order are applicable to the order herein provided for.

Financing of Receivership—Rents. Additionally, when expenses of the receivership are not otherwise provided for, the court may enter an order approving the expenses and providing that there shall be a lien on the real property for the payment thereof. The order may establish and provide for the priority of the lien as a senior lien, except as to tax and assessment liens, and except as to a recorded mortgage of first priority, recorded prior to all other liens of record if, at the time of recording of that mortgage or at a time subsequent , a certificate of compliance as provided for in this act is in effect on the subject property. The order may also specify the time and manner for foreclosure of the lien if the lien is not satisfied. A true copy of the order shall be filed with the appropriate county register of deeds office where the real property is located within 10 days after entry of the order to perfect the lien granted in the order.

Receivership Compensation—Not specified**.**

Receivership Discharge—At discretion of court.

Change since 1985—Provision was not law in 1985.

JURISDICTION—MINNESOTA

Statute Citations—
§ 504B.001, § 504B.161, § 504.B.171, § 504B.381–§ 504B.471

Trigger—Applicable Circumstances—Violations of any a) code "of any state, county or city health, safety, housing, building, fire prevention, or housing maintenance code applicable to the building," or b) covenant of landlord to tenant which promises that building will be kept in habitable and sanitary condition as defined by "applicable health and safety laws of the state," or c) covenant to "not allow illegal activities."

Trigger—Who Initiates Proceeding—(a) a residential tenant of a residential building in which a violation [as defined above] is alleged to exist; (b) any housing-related neighborhood organization with the written permission of a residential tenant of a residential building in which a violation is alleged to exist; (c) a housing-related neighborhood organization that has within its geographical area an unoccupied residential building in which a violation is alleged to exist, or (d) a state, county, or local department or authority, charged with the enforcement of codes relating to health, housing, or building maintenance.

Receivership Agent—"The administrator may be a person, local government unit or agency, other than a landlord of the building, the inspector, the complaining residential tenant, or a person living in the complaining residential tenant's dwelling unit. If a state or court agency is authorized by statute, ordinance, or regulation to provide persons or neighborhood organizations to act as administrators under this section, the court may appoint them to the extent they are available."

Type of Proceeding—Judicial Proceeding. Trial by court without a jury.

Receivership Appointment Process—If after a residential building inspection has been made, and violations found by authorities, time allotted for repairs has expired and "satisfactory repairs to remove the code violations have not been made," an action may be brought in district court by the filing of a complaint.

If the violation alleged arises out of a code violation the complaint must be accompanied by: (a) "a copy of the official report of inspection by a department of health, housing, or buildings, certified by the custodian of records of that department stating: (i) when and by whom the residential building concerned was inspected; (ii) what code violations were recorded; and (iii) that notice of the code violations has been given to the landlord"; or (b) "a statement that a request for inspection was made to the appropriate state, county, or municipal department, that demand was made on the landlord to correct the alleged code violation, and that a reasonable period of time has elapsed since the demand or request was made."

If the violation alleged results from a breech of covenant between landlord and tenant the landlord must be informed in writing of an alleged violation at least 14 days before an action is brought by: a) a residential tenant of the building; or b) a housing-related neighborhood organization, with the written permission of a residential tenant of a residential building in which there is a violation. The notice requirement may be waived if the court finds that the landlord cannot be located despite diligent efforts.

Upon the filing of the complaint the court shall prepare a summons that must be served on interested parties [see Notification Requirements below]. Upon a hearing, if the court renders judgment that the allegations set forth in the complaint have been proven, the court may appoint an administrator.

Notification Requirements—Notification requirements for service of complaint are delineated above. After the complaint has properly been served upon the landlord the court must issue a summons which: a) specifies the time and place of the hearing to be held on the complaint; and b) states that if at the time of the hearing a defense is not interposed and established by the landlord, judgment may be entered for the relief requested. The hearing must be scheduled not less than five nor more than ten days after receipt of the complaint by the court administrator. The summons and complaint must be served upon the landlord or the landlord's agent not less than five nor more than ten days before the hearing. Service shall be by personal service upon the defendant pursuant to the Minnesota Rules of Civil Procedure. If personal service cannot be made with due diligence, service may be made by affixing a copy of the summons and complaint prominently to the residential building involved, and mailing at the same time a copy of the summons and complaint by certified mail to the last known address of the landlord.

A copy of the judgment must be personally served on every residential and commercial tenant of the residential building whose obligations will be affected by the judgment. If, with due diligence, personal service cannot be made, service may be made by posting a notice of the judgment on the entrance door of the residential tenant's dwelling or commercial tenant's unit and by mailing a copy of the judgment to the residential tenant or commercial tenant by certified mail.

Receivership Duties/Powers—Administrator may collect rents from residential and commercial tenants, evict residential and commercial tenants for nonpayment of rent or other cause, enter into leases for vacant dwelling units, rent vacant commercial units with the consent of the landlord, and exercise other powers necessary and appropriate to carry out their duties. Also, they may contract for the reasonable cost of materials, labor, and services necessary to remedy the violation or violations found by the court to exist and for the rehabilitation of the property to maintain safe and habitable conditions over the useful life of the property, and disburse money for these purposes from funds available for the purpose; and provide services to the residential tenants that the landlord is obligated to provide but refuses or fails to provide, and pay for them from funds available for the purpose. In addition, an administrator may petition the court, after notice to the parties, for an order allowing the administrator to encumber the property to secure funds to the extent necessary to cover the costs.

Financing of Receivership—In addition to applying rents toward the payment of expenses, the court may allow the encumbrance of the property to secure funds to the extent necessary to cover the costs; allow the administrator to receive funds made available for this purpose by the federal or state governing body or the municipality to the extent necessary to cover the costs and pay for them from funds derived from this source.

The municipality shall recover disbursements by special assessment on the real estate affected, bearing interest at the rate determined by the municipality, but not to exceed the rate established for finance charges for open-end credit sales. The assessment, interest, and any penalties shall be collected, as are special assessments made for other purposes under state statute or municipal charter.

The Minnesota housing finance agency may establish a revolving loan fund to pay the administrative expenses of receivership administrators under section 504B.445 for properties for occupancy by low- and moderate-income persons or families. Landlords must repay administrative expense payments made from the fund.

Receivership Compensation—"Reasonable fees for administrators services" are provided for.

Receivership Discharge—The administrator may, after notice to all parties, petition the court to be relieved of duties, including in the petition the reasons for it. The court may, in its discretion, grant the petition and discharge the administrator upon approval of the accounts.

A party may, after notice to the administrator and all other parties, petition the court to remove the administrator. If the party shows good cause, the court shall order the administrator removed and direct the administrator to immediately deliver to the court an accounting of administration. The court may make any other order necessary and appropriate under the circumstances.

If the administrator is removed, the court shall appoint a new administrator, if necessary, after giving all parties an opportunity to be heard.

At any time during the administration, the administrator or any party may petition the court after notice to all parties for an order terminating the administration on the ground that the funds available to the administrator are insufficient to effect the prompt remedy of the violations. If the court finds that the petition is proved, the court shall terminate the administration and proceed to judgment.

Upon termination of the administration the administrator must submit to the court an accounting of receipts and disbursements of the administration together with copies of all bills, receipts, and other memoranda pertaining to the administration, and, where appropriate, a certification by an appropriate governmental agency that the violations found by the court to exist at the time of judgment have been remedied.

Change since 1985—Original code provisions (Minnesota Statues Annotated § 566.18- 566.33) repealed.

JURISDICTION—MISSOURI

Statute Citations—Missouri Annotated Statutes § 441.500 –§ 441.643

Trigger—Applicable Circumstances—A building is found to be in violation of local housing codes which county, municipal, or local housing authorities believe to be a threat "to the public health, safety or welfare. . . ."

Trigger—Who Initiates Proceeding—Petition filed with court must be verified by county, municipal, or local housing corporation or neighborhood association. Occupants of the building may commence the action by filing such a petition.

Receivership Agent—The code enforcement agency, owner, mortgagee, lienor of record, licensed attorney, real-estate broker , or any other qualified person may act as a receiver. "All lienholders of record shall be given right of first refusal to serve as receiver in order in which their liens occur."

Type of Proceeding—Judicial proceeding. Trial by court without a jury.

Receivership Appointment Process—Application for appointment of receiver is served on all interested parties. If no interested party acts to remedy conditions the court "shall make a determination that the property is an unsafe or unsanitary property and appoint a receiver to complete the abatement."

The application must contain: (a) "the facts constituting the nuisance"; (b) "the violations of the housing code exist as determined by a notice of deficiency"; (c) the owner of property has failed to correct nuisance; (d) "if the action is brought by occupants, the number of dwelling units occupied by plaintiffs and the number of units in the building"; and (e) the statutorily authorized remedy sought.

Notification Requirements—Tenant complaint must include application (see above).

Receivership Duties/Powers—The receiver may, on order of the court, take possession of the property, collect all rents/profits, and pay all costs of management, including all insurance premiums and general and specific real-estate assessments.

The receiver, with all reasonable speed, removes all of the housing code violations which constitute a nuisance as found by the court. The receiver has the power to let contracts in accordance with the provisions of local laws, ordinances, rules, and regulations applicable to contracts.

The receiver must post a bond.

Financing of Receivership—"The receiver may with the approval of the circuit court borrow money against, and encumber, the property as security" in amounts as may be necessary to carry out his/her responsibilities. The circuit court may authorize the receiver to issue receiver's certificates as security against such borrowings, which certificate shall be authorized investment for banks and savings and loan associations.

In addition to the issuance of receiver's certificates, the receiver may pledge the rentals from the property and borrow or encumber the property on the strength of the income.

Any receiver appointed shall have a lien for the necessary expenses upon rents. This lien has priority over all liens and encumbrances on record upon the rents except taxes, assessments and certain mortgages.

Receivership Compensation—Reasonable and necessary expenses.

Receivership Discharge—The receiver is discharged upon a full and complete accounting to the court when the conditions prompting the receivership have been removed, and the cost has been paid/reimbursed from the property's rents/income. Any surplus money is paid to the owner, mortgagee, or lienor as the court directs. At any time the receiver may be discharged upon filing is account as receiver without affecting the right of the code enforcement agency to its lien. Upon the removal of the condition prompting the receivership, the owner, mortgagee, or lienor may apply for the discharge of the receiver upon payment to the receiver of all expenses incurred.

Change since 1985—Minor.

JURISDICTION—NEW JERSEY

Statute Citations—2A:42-114 to 2A:42-142

Trigger—Applicable Circumstances—The building must be at least 50 percent residential, and if owner occupied, have more than four units. There are two triggering circumstances. Building must either have code violations that are hazardous to health and safety that have continued, unabated, for a period of 90 days after a complaint has been filed with the court or the building must be the "site of a clear and convincing pattern of recurrent code violations," and such a pattern must be established by evidence that proves the building to have been cited four times in the last year or six times in the last two years.

Trigger—Who Initiates Proceeding—Any of the following may initiate proceedings: "(1) any mortgage holder, lienholder, or secured creditor of the owner; (2) any tenant living in the building; (3) any entity designated by more than 50 percent of the tenants living in the building as their representative; (4) the public officer; or (5) a nonprofit entity providing community services in the municipality in which the building is located"; or, a qualified entity. A qualified entity is defined as a "any person or entity registered with the department on the basis of demonstrated knowledge and substantial experience in the operation, maintenance and improvement of residential buildings."

Receivership Agent—Mortgage holder, lienholder, a qualified entity, or anyone who, despite being unregistered with the department, otherwise meets the requirements of a qualified entity.

Type of Proceeding—Summary action in Superior Court.

Receivership Appointment Process—After the summary hearing, if the court has found that the allegations in the complaint justify relief it may appoint a receiver. If the owner of the building submits a plan that specifies a reasonable time period for the abatement, the court may require the owner to post a bond and allow the owner an opportunity to abate the conditions; if the conditions are not abated within the stated time period, the court may then appoint a receiver

Notification Requirements—The complaint and any accompanying documents must be served on the owner, "any mortgage holder, lienholder or secured creditor of the owner; any tenant living in the building; any entity designated by more than 50 percent of the tenants living in the building as their representative; … or a nonprofit entity providing community services in the municipality in which the building is located." The New Jersey Housing and Mortgage Finance Agency and the public officer must be given notice by registered mail or certified mail, return receipt requested, on or before the tenth day of service of the complaint to other parties.

Receivership Duties/Powers—Within 60 days the receiver must submit to the court a plan for the "operation and improvement" of the building that details the estimates of costs, time, financing and income that will be required. A copy of this plan must also be given to the owner and parties in interest to the summary hearing, as well as the clerk of the municipality in which the building is located. Receiver must also provide "regular progress reports" on the status of the building.

Receiver duties include:

Taking possession of the building and any accounts and personal property used for the building. All building management duties including collecting rents, entering into new rental contracts, and evicting tenants. The receiver may contract with professionals to appraise, repair and maintain the building, borrow funds, and sell the building with court approval.

Financing of Receivership—Rents, loans and grants from Neighborhood Preservation Non-lapsing Revolving Fund established by this statute.

Receivership Compensation—Receiver is entitled to a reasonable fee.

Receivership Discharge—Upon request of a party in interest or the receiver, the court may order the termination of the receivership if it determines:

"a. The conditions that were the grounds for the complaint and all other code violations have been abated or corrected, the obligations, expenses and improvements of the receivership, including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been fulfilled;

b. (1) The mortgage holder or lienholder has requested the receivership be terminated and has provided adequate assurances to the court that any remaining code violations or conditions that constituted grounds for the complaint will be promptly abated, the obligations, expenses and improvements of the receivership, including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been or will promptly be fulfilled;

(2) Any sums incurred or advanced by a mortgage holder or lien- holder pursuant to this section, including court costs and reasonable attorney's fees, may be added to the unpaid balance due the mortgage holder or lienholder, with interest calculated at the same rate set forth in the note or security agreement.

c. (1) A new owner who was formerly a mortgage holder or lienholder and who has obtained the property through foreclosure or through grant of a deed in lieu of foreclosure has requested that the receivership be terminated and has provided adequate assurances to the court that any remaining code violations or conditions that constituted grounds for the complaint will be promptly abated, the obligations, expenses and improvements of the receivership, including all fees and expenses of the receiver, have been fully paid or provided for and the purposes of the receivership have been or will promptly be fulfilled;

(2) The former owner of the property shall be personally liable for payment to the new owner of any costs incurred by the new owner to cover the obligations, expenses and improvements of the receiver.

d. The building has been sold.

e. The receiver has been unable after diligent effort to present a plan that can appropriately be approved by the court or is unable to implement a plan previously approved by the court or is unable for other reason to fulfill the purposes of the receivership.

In all cases under this section, the court may impose such conditions on the owner or other entity taking control of the building upon the termination of receivership that the court deems necessary and desirable in the interest of the tenants and the neighborhood in which the building is located, including but not limited to those that may be imposed on the owner under section 25 of P.L. 2003, c. 295 (C. 2A:42-138); except that a new owner who was formerly a mortgage holder or lienholder, or an affiliate thereof, and which has obtained the property through foreclosure or through grant of a deed in lieu of foreclosure and who demonstrates sufficient financial responsibility to the court shall not be required to post a bond."

Change since 1985—Original code provisions repealed.

JURISDICTION—NEW YORK

Statute Citations—New York Real Property Actions and Proceedings § 769 – §782

Trigger—Applicable Circumstances—Multiple-unit dwellings with conditions that are dangerous to life, health, or safety. (Specifically including: lack of heat, running water, light, electricity, adequate sewage facilities, or safety from crime.)

Trigger—Who Initiates Proceeding—One-third or more of the tenants occupying a multiple dwelling or the municipal commissioner charged with the enforcement of the housing maintenance code.

Receivership Agent—"A person other than the owner, a mortgagee or lienor," chosen from a list approved and maintained by the municipal housing code commissioner.

Type of Proceeding—Judicial Proceeding.

Receivership Appointment Process—Petition is issued by judge or court clerk and served upon owner, mortgagee, and other interested parties. The petition includes: a) material facts showing the existence of hazardous conditions, b) the number of petitioners and that they constitute the required one-third of buildings tenants, c) brief description of the nature of work required and estimated costs, d) the amount of rent due from each petitioner, and e) relief sought.

If the court accepts the petition's allegations and is satisfied (and owner defenses are not accepted, or if the owner has applied to the court to be permitted to repair/remedy conditions and has failed to do so after posting a security bond) the court appoints a receiver.

Notification Requirements—(New York City requirements are described) – Notice of petition is personally served upon the property owner last registered with the Department of Housing Preservation and Development. If service cannot with due diligence be made, service by registered mail and/or posting on the property suffices.

Receivership Duties/Powers—The receiver collects rents, makes repairs, keeps a full accounting, and must also, within thirty days of appointment, file a plan with the court that outlines the approximate schedule for remedying the conditions on the property. If the conditions cannot be remedied according to the filed schedule, the schedule must be amended and filed with the court.

Financing of Receivership—Limited to funds collected from rent.

Receivership Compensation—Outside New York City, the court may allow compensation from rent monies or security deposit (in the case where owner has applied to the court to be permitted to repair/remedy conditions and has failed to do so after posting a security bond).

Receivership Discharge—Not specified.

Change since 1985—Minimal.

JURISDICTION—OHIO

Statute Citations—Ohio Revised Code Annotated § 3767.41

Trigger—Applicable Circumstances—Building that is a menace to public health, welfare, or safety by reasons of inadequate maintenance, dilapidation, obsolescence, or abatement.

Trigger—Who Initiates Proceeding—A neighborhood landowner who lives within 500 feet of the nuisance building or the municipal corporation where the property is located, or a nonprofit corporation that is duly organized for such a purpose; a tenant of the building.

Receivership Agent—A nonprofit corporation that is duly organized for such a purpose, a financial institution with and interest in the property, a qualified property manager, who, prior to appointment must demonstrate their qualification for the work.

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—A complaint for Abatement of the Public Nuisance with the court. Notice is served on interested parties, hearing is conducted 28 days after notice is served. Judge determines building a public nuisance, and orders owner abatement, or the judge finds that the owner has had sufficient opportunity to abate already. If abatement order is not satisfied or the judge has found that abatement should have already occurred by the owner the judge may look to any other interested party to post a security and undertake the repair. If there is no qualified interested party the judge shall appoint a receiver. The receiver must submit a detailed repair and financial plan before they are appointed.

Notification Requirements—Civil action will commence 28 days after notice has been given. A copy of the complaint and a notice of the date and time of a hearing on the complaint shall be served upon the owner of the building and all other interested parties in accordance with the Rules of Civil Procedure. If certified mail service, personal service, or residence service of the complaint and notice is refused or certified mail service of the complaint and notice is not claimed, and if the municipal corporation, neighbor, tenant, or nonprofit corporation commencing the action makes a written request for ordinary mail service of the complaint and notice, or uses publication service, in accordance with the Rules of Civil Procedure, then a copy of the complaint and notice shall be posted in a conspicuous place on the building.

Receivership Duties/Powers—Receiver must post a bond. Receiver has the authority to take possession and control of the building, to perform or enter into contracts for labor and materials, to remove and dispose of unsafe, unsanitary or abandoned personal property, to demolish all or part of the building, to obtain financing and to issue notes and mortgages, to obtain mortgage insurance, to operate and to manage the property including leasing the property and evicting tenants, to pay all operating expenses including prior mortgages, to give custody of the property to the owner, mortgage or lienholder of record in order for them to have the opportunity to abate, to charge fees for services, and to take any other reasonable action necessary to maintaining and preserve the property. Furthermore the receiver is responsible for all real property, personal property on the premises, and the income from the property, for accounting and reporting to the court, and for anything related to construction and management of the property.

Financing of Receivership—Rents, mortgages, and liens. Liens granted under this statute have priority over all others, but do not disqualify others from collecting.

Receivership Compensation—Receiver may charge a fee for services.

Receivership Discharge—Receiver may ask to be discharged or the receiver is discharged by the court because the nuisance is abated and paid. In both instances the court must approve of the receiver's final report and accounting before the discharge is complete.

Change since 1985—Provision was not law in 1985.

JURISDICTION—OREGON

Statute Citations—Oregon Revised Statutes § 105.420 - § 105.455

Trigger—Applicable Circumstances—Residential property with violations of building or housing codes that constitute a threat to the public health, safety or welfare.

Trigger—Who Initiates Proceeding—City or county in which property is located.

Receivership Agent—A housing authority organized specifically for the purpose, an urban renewal agency organized specifically for the purpose, a private-not-for-profit corporation, the primary purpose of which is the improvement of housing conditions within the city or county, a city or county agency, bureau, similar subdivision designated by the city or county as being responsible for the rehabilitation of property.

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—Following the application for appointment of a receiver, if no interested party elects to act to abate the nuisance or fails to perform task undertaken to abate the nuisance in a timely manner the court shall declare the property unsafe or unsanitary and appoint a receiver to abate.

Notification Requirements—At least 60 days prior to filing an application for the appointment of a receiver the city or county shall give written notice by regular mail to all interested parties of its intent to file the application. The notice shall contain information relative to: the identity of the property, the violations of the code giving rise to the application, the contact information of the person or department where additional information regarding the violations and their remedy may be obtained, the identity of the city or county which may seek the appointment of the receiver unless action is taken by an interested party.

Receivership Duties/Powers—Unless specifically limited by the court, the receiver shall have the authority to take possession of the property including the right to enter, modify and terminate tenancies and to charge and collect rents derived therefrom, applying said sum to the costs incurred due to the abatement and receivership. To negotiate contracts to pay all expenses associated with the operation and the conservation of the property, including but not limited to, all utility, fuel, custodial, repair or insurance costs. To pay all accrued property taxes, penalties assessments and other charges imposed on the property by a unit of government as any accruing charge of like nature during the pendency of the receivership. The receiver also has the authority to dispose of any abandoned personal property. To enter into contracts and pay for performance of work necessary to complete abatement. In addition the receiver may, with court approval, enter into financing agreements with public or private lenders and encumber the property so as to have the moneys available to correct the conditions on the property.

Financing of Receivership—Rents from property, and liens with court approval. Liens have priority over all encumbrances except for property tax liens, some purchase money security interests. (§87.352 to §87.362)

Receivership Compensation—A receiver may charge an administrative fee at an hourly rate approved by the court or, alternately, a rate of 15 percent of the total cost of the abatement. The court will grant whichever of the two compensation options it deems appropriate.

Receivership Discharge—A receivership shall be terminated only by an order of the court after a showing by an interested party or the receiver that: the abatement has been completed; the costs and obligations incurred due to the abatement have been paid by an interested party or a lien, and the interested party will manage the property in conformance with the applicable housing codes.

Change since 1985—Provision was not law in 1985.

JURISDICTION—RHODE ISLAND

Statute Citations—General Laws of Rhode Island §34-44-1 - § 34-44-12

Trigger—Applicable Circumstances—Property must be alleged to have been abandoned by its owner and have unsafe and hazardous conditions or be in violation of any housing or building code, and be a public nuisance. A public nuisance is defined as a menace to public health, welfare, or safety, or that is structurally unsafe, unsanitary, or not provided with adequate safe exits, or that constitutes a fire hazard, existing use constitutes a hazard to public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

Trigger—Who Initiates Proceeding—municipal corporation, neighboring landowner, or nonprofit corporation that has as one of its goals the improvement of housing conditions for low- to moderate-income persons in the municipality where the property in question is located.

Receivership Agent—The receivership agent may be a financial institution that possesses an interest of record in the property, a nonprofit organization that is duly organized and that has as one of its goals the improvement of housing conditions for low- to moderate-income persons in the municipality where the property in question is located, or any other qualified property manager who certifies that any rehabilitation of the property in question will not result in the long-term displacement of low- and moderate-income persons.

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—If the court determines that the building has been abandoned by the owner and has either unsafe or dangerous conditions on it, or otherwise in violation of codes, it shall issue an injunction requiring the owner to correct the conditions. If the court finds that in addition to being abandoned by its owner and unsafe or in violation of codes, the building also constitutes a public nuisance and that the property owner has had reasonable opportunity to begin to correct the conditions, and has failed or refused to do so the court must: serve notice of its determination on all interested parties with an order to show cause why a receiver should not be appointed, and conduct a hearing at which any interested party in the order of its priority of interest in title shall be offered the opportunity to abate and correct. If the court determines at anytime after this hearing that any party who is undertaking to abate and correct cannot or will not proceed, or has not proceeded with due diligence, the court may appoint a receiver.

Notification Requirements—Person or organization initiating the proceeding must apply for an injunction requiring the owner of the property to correct or abate. A summons for the injunction which indicates the time and date of the hearing is served on the owner. The hearing will be scheduled at least 20 days after service. Service must be completed by personal service, residence service, or service by certified mail pursuant to rules of civil procedure. If service cannot be made by these methods then notice shall be served by posting it in a conspicuous place on the building and by publication in a newspaper of general circulation.

If at the hearing for an injunction or a subsequent hearing the court finds that, in addition to having been abandoned by its owner and possessing either unsafe or dangerous conditions or code violations, the building constitutes a public nuisance and that the owner has failed to refused to abate or correct after reasonable time has passed, the court will serve notice of this determination with an order to show cause why a receiver should not be appointed on all interested parties in the same manner as described above. After notice of its determination is served the court shall hold another hearing at which all interested parties are afforded the opportunity, in order of their priority interest in the title to undertake the responsibility for correcting the conditions.

Receivership Duties/Powers—Prior to appointment any receiver must provide the court with a viable financial and construction plan for the rehabilitation of the building. The court must then review the plan submitted and determine: the estimated cost of labor, materials, and other development costs required to abate the public nuisance; the estimated income and expense of the property after furnishing of the materials and the completion of the repairs and improvements, the need for conditions and availability of any financing that is necessary for the performance of the work and the furnishing of materials; if the repairs and of the building are not found feasible, the cost of demolition of the building, or the portions of the building that constitute the public nuisance.

“Before proceeding with his or her duties, any receiver appointed by the court shall post a bond in an amount designated by the court, but not exceeding the value of the building involved at the time of the appointment of the receiver as determined by the judge. The court may empower the receiver to do any or all of the following:

(1) Take possession and control of the property, operate and manage the property, establish and collect rents and income, lease and rent the property, and evict tenants;

(2) Pay all expenses of operating and conserving the property, including, but not limited to, the cost of electricity, gas, water, sewerage, heating fuel, repairs and supplies, custodian services, taxes and assessments, and insurance premiums, and hire and pay reasonable compensation to a managing agent;

(3) Pay pre-receivership mortgages or installments of them and other liens;

(4) Perform or enter into contracts for the performance of all work and the furnishing of materials necessary to abate, and obtain financing for the abatement of, the public nuisance;

(5) Pursuant to court order, remove and dispose of any personal property abandoned, stored, or otherwise located on the property that creates a dangerous or unsafe condition or that constitutes a violation of housing regulations or ordinances;

(6) Obtain mortgage insurance for the receiver's mortgage from any agency of the federal government or private mortgage insurance company;

(7) Enter into any agreement and do those things necessary to maintain and preserve the property and comply with all housing and building regulations and ordinances;

(8) Give the custody of the property and the opportunity to abate the nuisance and operate the property to the owner, or any mortgagee or any lienholder of record;

(9) Issue notes and secure them by a mortgage bearing interest upon terms and conditions as the court may approve. When sold or transferred by the receiver in return for valuable consideration in money, material, labor, or services, the notes or certificates shall be freely transferable. If within sixty (60) days of the issuance of a secured note, the mortgage is filed for record in the office of the municipal recorder of the municipality in which the property is located, it shall be a first lien upon the property and shall be superior to any claims of the receiver and to all prior or subsequent liens and encumbrances except taxes and assessments. Priority among the receiver's mortgages shall be determined by the order in which they are recorded.”

Financing of Receivership—Rents, liens.

Receivership Compensation—“Receiver … is entitled to receive fees and commissions….”

Receivership Discharge—"When the pubic nuisance has been abated… [and] all costs, expenses, and approved fees of the receivership have been paid;… [and] [e]ither all receiver's notes and mortgages issued pursuant to this section have been paid, or all the holder's of the notes and mortgages request that the receiver be discharged…"

Change since 1985—Provision was not law in 1985.

JURISDICTION—TEXAS

Statute Citations—Texas Local Government Codes § 214.003

Trigger—Applicable Circumstances—a "residential" or "historic" property that is "not in substantial compliance with municipal ordinances regarding : (1) fire protection; (2) structural integrity; (3) zoning; or (4) disposal of refuse."

Trigger—Who Initiates Proceeding—"A home-rule municipality."

Receivership Agent—"… a nonprofit organization with a demonstrated record of rehabilitating residential properties…."

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—"If the court finds that … the structures on the property are in violation of the standards set forth in … an ordinance described [and] … notice of violation was given to the record owner of the property; and… a public hearing … has been conducted. The court may appoint as a receiver for historic property a nonprofit organization or an individual with a demonstrated record of rehabilitating historical buildings if the court finds that: ... the structures on the property are in violation of the standard…; the structure has been reviewed by the municipal historic preservation board and the structure meets the criteria…; notice of the violation was given to the record owner of the property; and … a public hearing … has been conducted."

"If the record owner does not appear at the hearing required by … the hearing shall be conducted as if the owner had personally appeared….In the action, the record owners and any lienholders of record of the property shall be served with personal notice of the proceedings or, if not available after due diligence, may be served by publication. Actual service or service by publication on the record owners or lienholders constitutes notice to all unrecorded owners or lienholders…. The court may issue, on a showing of imminent risk of injury to any person occupying the property or a person in the community, any mandatory or prohibitory temporary restraining orders and temporary injunctions necessary to protect the public health and safety."

Notification Requirements—Not specified.

Receivership Duties/Powers—"A receiver appointed by the court may … take control of the property; …collect rents due on the property…make or have made any repairs necessary to bring the property into compliance with: … minimum standards in local ordinances; or guidelines for rehabilitating historic properties established by the Secretary of the Interior under 16 U.S.C.A. Section 470 et seq. or the municipal historic preservation board, if the property is considered historic property under [Texas law]:.… make payments necessary for the maintenance or restoration of utilities to the properties; purchase materials necessary to accomplish repairs; renew existing rental contracts and leases; enter into new rental contracts and leases; affirm, renew, or enter into a new contract providing for insurance coverage on the property; and exercise all other authority that an owner of the property would have except for the authority to sell the property."

Financing of Receivership—Rents, possibly liens.

Receivership Compensation—Not specified.

Receivership Discharge—A receiver is discharged upon "the completion of the restoration to the property of the minimum code standards of the municipality or guidelines for rehabilitating historic property. A receiver may also "petition the court to terminate the receivership and order the sale of the property."

Change since 1985—Provision was not law in 1985.

JURISDICTION—WISCONSIN

Statute Citations—Wisconsin Statutes § 254.595

Trigger—Applicable Circumstances—Property violating municipal building codes that concern health or safety or orders or regulation of the local board of health.

Trigger—Who Initiates Proceeding—City, village, or town where property is located. Tenant or class of tenants of the property. Or any other person or class of persons whose health, safety or property interests are or would be adversely affected by the building in violation.

Receivership Agent—Disinterested person.

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—If the initiating party is a governing body, the governing body may commence an action to have the property declared a public nuisance or health hazard. If the initiating party is not a governing body, they must file a petition with the clerk of governing body where the property resides. If the governing body refuses or fails to commence an action, within 20 days after the filing of the petition the party may commence the action directly after the filing of security for court costs.

Once action is commenced, the owner and any interested parties are accorded service of process as afforded by law. If the court finds that a violation exists it shall adjudge the property a nuisance or human health hazard and the entry of judgment shall be a lien on the property.

After the entry of judgment the property owner or any interested party of record shall have 60 days to eliminate the violation. If after 60 days there is no satisfactory evidence that the violation has been eliminated, then the court shall appoint a disinterested person to act as receiver.

Notification Requirements—Not specified beyond "service of process… as provided by law."

Receivership Duties/Powers—Receiver may need to furnish a bond, at the discretion of the court. Once appointed the receiver shall collect rents and profits accruing from property, pay all costs of management, including all general and special real estate taxes or assessments and interest payments on first mortgages on the property, and make any repairs necessary to meet the standards required by the building code or order or regulation of the local board of health. The receiver may, with the approval of the circuit court, borrow money to make such repairs.

At the request of and with the approval of the owner, the receiver may also sell the property at a price at least equal to the appraisal value plus any costs incurred by any repairs resulting from the violation that initiated the receivership for which the owner is liable. The receiver shall apply proceeds of sale to all debts in the order set by law with any remainder, with the approval of the court, to the selling owner.

Financing of Receivership—The receiver shall have a lien, for the expenses necessarily incurred to abate the nuisance or in the execution of the order, upon the premises.

Receivership Compensation—Receiver shall receive compensation as determined by the court.

Receivership Discharge—Court may discharge receiver whenever it deems it appropriate.

Change since 1985—Provision was not law in 1985.

JURISDICTION—WISCONSIN

Statute Citations—Wisconsin Statutes §823.23

Trigger—Applicable Circumstances—Nuisance or property violating municipal building codes that concern health or safety or orders or regulation of the local board of health.

Trigger—Who Initiates Proceeding—First-class or second-class city.

Receivership Agent—Housing authority, redevelopment company, redevelopment corporation or authority, or community development authority. Or a nonprofit corporation, the purpose of which is to improve the housing conditions within the city where the property is located. If court is unable to appoint any of above it may appoint anyone it deems competent.

Type of Proceeding—Judicial proceeding.

Receivership Appointment Process—A city may not apply for the appointment of a receiver under this subsection if an interested party has commenced and is prosecuting in a timely fashion an action or other judicial or administrative proceeding to foreclose a security interest on the residential property, or to obtain specific performance of, or forfeit, the purchaser's interest in a land contract.

If a residential property is alleged to be a nuisance, the city in which the property is located may apply to the circuit court for the appointment of a receiver to abate the nuisance. Notice must be served on all parties.

If, following the application for appointment of a receiver, one or more of the interested parties elects to abate the nuisance, the party or parties shall be required to post security in such an amount and character as the court considers appropriate to ensure timely performance of all work necessary to abate the nuisance, as well as satisfy such other conditions as the court considers appropriate for timely completion of the abatement.

In the event that all interested parties elect not to act, or do not act to timely perform work undertaken, the court shall make a determination as to whether the residential property is a nuisance. The court shall determine the extent of the abatement necessary and the scope of work necessary to eliminate the conditions and shall appoint a receiver to complete the abatement.

Notification Requirements—At least 60 days before filing an application for the appointment of a receiver city shall give written notice by 1st class mail to all owners, owners agents, and interested parties at their last-known address of the intent to file the application, and by publication. The notice shall include all of the following information: the address and other information that identifies the residential property; the conditions of the residential property that constitute a nuisance and that resulted in the decision to apply for a receiver; the name, address, and telephone number of the person or department where additional information can be obtained concerning the nuisance and the action necessary to abate the nuisance; that the appointment of a receiver may be requested unless action is taken to abate the nuisance within 60 days after receipt of the notice.

If the notice is recorded with the register of deeds in the county in which the residential property is located, the notice is considered to have been served, as of the date the notice is recorded, on any person claiming an interest in the residential property as a result of a conveyance from the owner of record unless the conveyance was recorded before the recording of the notice.

Notice of the application for the appointment of a receiver under this section shall be served on all owners, owners agents, and interested parties. At the time that the application is filed with the court, the applicant shall file a lis pendens.

Receivership Duties/Powers—Receiver must furnish a bond. Receiver shall have the authority to do all of the following unless specifically limited by the court:

1. Take possession and control of the residential property including the right to enter into and terminate tenancies, manage and maintain the property, and charge and collect rents derived from the residential property, applying the sum of those rents to the costs incurred due to the abatement and receivership.

2. Negotiate contracts and pay all expenses associated with operation and conservation of the residential property including all utility, fuel, custodial, repair, or insurance expenses.

3. Pay all accrued property taxes, penalties, assessments, and other charges imposed on the residential property by a unit of government including any charges accruing during the pendency of the receivership.

4. Dispose of any or all abandoned personal property found at the residential property.

5. Enter into contracts and pay for the performance of any work necessary to complete the abatement.

6. In addition, the receiver may, under such terms and conditions as a court shall allow, enter into financing agreements with public or private lenders and encumber the property so as to have moneys available to abate the nuisance. The receiver may give a holder of a purchase money security interest who received notice the first opportunity to lend the money under this paragraph.

Financing of Receivership—Rents and property income, plus liens, subject to court approval. All moneys the receiver expends and all of the costs and obligations that he or she incurs in performing the abatement, including the receiver's administrative fee, shall be reviewed by the court for reasonableness and necessity. To the extent that the court finds the moneys, costs, or obligations to be reasonable and necessary, it shall issue an order reciting this fact as well as the amount found to be reasonable and necessary.

If all of the costs and obligations that the court found to be reasonable and necessary have not been paid, the court shall issue a judgment for the unpaid amount and file that judgment with the office of the clerk of court within 60 days after the receiver files a statement of those unpaid costs and obligations with the court, and that judgment shall constitute a lien on the residential property from the date of the filing of the judgment.

Receivership Compensation—A receiver may charge an administration fee at an hourly rate approved by the court or at a rate of 20 percent of the total cost of the abatement, whichever the court considers more appropriate.

Receivership Discharge—"The court shall terminate the receivership if the residential property owner or owner's agent or an interested party or the receiver show the court all of the following:

1. That the abatement has been completed.

2. That the costs and obligations incurred due to the abatement, including the receiver's administrative fee, have been paid by an owner, owner's agent, or interested party or that a lien has been filed.

3. That the owner, owner's agent, or interested party will manage the residential property in conformance with applicable housing codes."

Alternately, "the court shall terminate the receivership if the receiver shows the court one of the following:

1. That the abatement is not feasible.

2. That the improvements on the property have been demolished by the 1st or 2nd class city."

Change since 1985—Provision was not law in 1985.

5

Rehab Barriers and Best Practice Solutions Case Study: Seattle, Washington

INTRODUCTION AND SUMMARY

There is a relatively strong market for rehab and adaptive reuse in Seattle. This case study overviews some of the challenges to renovation in this city and focuses on strategies applied to overcome the hurdles. The case study does not focus on any one group, neighborhood, or building. Rather, we spoke to a variety of experts on housing rehab in Seattle and considered numerous affordable housing rehab projects in that city. What follows is a summary of the barriers and solutions to affordable-housing rehab in Seattle circa 2000. These findings are presented following the conceptual framework of considering affordable housing rehab, first from its economic perspective and then according to the implementation stages of development, construction, and occupancy.

ECONOMIC CONSTRAINT BARRIERS AND BEST PRACTICE SOLUTIONS TO AFFORDABLE-HOUSING REHAB

Although Seattle is home to many well-educated and well-paid residents, there are exceptions. Numerous households can afford only modest amounts for shelter, and housing rehab serving these households must tap a variety of subsidies. The latter include: Low Income Housing Tax Credits (LIHTC); Affordable Housing Program (AHP) monies from the Federal Home Loan Bank; Local Initiatives Support Corporation (LISC) investment; assistance from the Washington State Housing Trust Fund, the city of Seattle, and the U.S. Department of Housing and Urban Development (HUD) (e.g., HUD Neighborhood Development Demonstration Project, Section 8, McKinney and Section 241 (f) programs); Community Reinvestment Act (CRA)–inspired low-cost loans, and other lenders; "creative financing" (e.g., sale of development rights); and foundation support (e.g., from the Merrill and Skinner Foundations).

The subsidies are often combined. It is very common to combine the HTC with the LIHTC to create a powerful subsidy for low-income historic rehab. Seattle's Plymouth Housing Group (PHG) acquired the Pacific Hotel located in the downtown area. Built in 1916, this property traditionally had provided transient housing; it had closed by the 1980s. PHG, a homeless-advocacy group, acquired the abandoned hotel and rehabilitated it to provide 112 units. All of the units served low-income residents; there were 75 single-room-occupancy (SRO) units in one wing and 37 studio and one-bedroom apartments in another (Sullivan 1998).

The Pacific Hotel's total project cost was $8,534,694 ($2,113,092 acquisition and $6,421,602 rehab), or about $76,000 per unit. PHG's clientele could not afford the rents to amortize a $76,000 unit, but rents were brought down to an affordable level through multiple sources. The $8,534,694 project expense was met through $3,656,085 in equity—raised from combining the LIHTC and HTC (see Exhibit 5.1 for details)—and $4,878,609 in debt financing. The debt's cost was reduced from subsidies received from the FHLB, the Washington State Housing Trust Fund, and the City of Seattle. The project's operating costs were further subsidized from HUD's McKinney SRO MOD REHAB program (Sullivan 1998).

EXHIBIT 5.1

Example of Combining the HTC and the LIHTC in the Rehab of the Pacific Hotel, Seattle, Washington

TAX CREDIT ANALYSIS:	
Historic Rehab Tax Credit (HTC)	***Project***
Total development costs	$8,534,694
Total qualifying expenditures	$5,925,041
Rehab tax credit %	x20%
Total rehab tax credit	$1,185,008
Equity yield for rehab credit	$0.80 per $1.00
Equity raised from rehab credit	$948,006
Low-Income Housing Tax Credit Analysis (LIHTC)	
Total development costs (should be the same as above)	$8,534,694
Total qualifying expenditures	$6,234,742
Less rehab tax credit	[$1,185,008]
Eligible basis	$5,049,734
Low-income proportion[a]	130%
Qualifying basis	$6,564,654
Annual credit %	9%
Annual credit amount	$590,819
Total low-income housing tax credit	$5,908,190
Equity yield for low-income credit[b]	45.84 cents per $1.00
Total equity raised from low-income credit	$2,708,079
Total Combined Equity:	$3,656,085

Notes:

[a] Project consists of 100% low-income units and is located in a "qualified census tract." Therefore, a 30% boost/increase in credit amount is allowed.

[b] Yield low due to the following: (a) at that time the LIHTC was not yet a permanent program, resulting in few investors/little competition; and (b) 100% of HTC and LIHTC equity was invested up front, at the start of construction.

Source: Sullivan 1998, 5.

Another example is the rehab of the Morrison Hotel in downtown Seattle to 190 studio apartments that will be offered to low-income residents. This $20.9 million project taps $11.3 million in Low Income Housing Tax Credits, $2.0 million in Seattle funds, and $20 million from the State of Washington, and the remainder of the other sources listed in Exhibit 5.2.

EXHIBIT 5.2

Example of Using a Variety of Sources to Finance the Rehab of the Morrison Hotel, Seattle, Washington

Source	*Amount*	*Terms*
Tax credit proceeds	$ 11,266	Equity
State of Washington	2,000,000	Deferred Loan
King County	720,000	Deferred Loan
CDBG Community Facilities	500,000	Deferred Loan
DESC Capital campaign	2,000,000	Equity
FHLB AHP	750,000	Grant
Developer Fee Loan	590,000	Deferred loan
City Levy Funds	3,037,000	Residual receipts loan
Total Project Cost	20,963	NA

Notes:
DESC = Downtown Emergency Service Center
NA= Not applicable
Source: Seattle Office of Housing 2002

Yet another example is the renovation of the Lincoln Court apartment building by the Capital Hill Housing Improvement Program (CHHIP), a nonprofit organization. Built in 1907, Lincoln Court , a 29- unit apartment building, contained numerous attractive features, such as historic leaded windows and a tiled front entrance. CHHIP's rehab plans include repairs to the plaster, appliances and other items, and plumbing, fire alarm and sprinkler upgrades. The project's $3.7 million cost is to be funded from the sources indicated in Exhibit 5.3. Interestingly, while Lincoln Court is eligible for listing in the National Register of Historic places, CHHIP elected not to seek historic rehab tax credits.

EXHIBIT 5.3

Example of Using a Variety of Sources to Finance the Rehab of Lincoln Court, Seattle Washington

Source	*Amount*	*Terms*
Tax-exempt bond loan from bank	$ 1,134,207	6.25%, 1.5% fee, 360 months
State Housing Trust Fund	1,140,839	No payment, deferred Loan
CHHIP equity	10,000	NA
City Required funds	1,400,512	NA
Total Project Cost	$ 3,685.558	NA

Note: Not applicable.
Source: Seattle Office of Housing 2002

To facilitate applying for multiple subsidies, the state of Washington, Kings County, and the City of Seattle use a common application. This cuts down on the paperwork and effort in securing support for affordable housing.

Another economic incentive is property tax reduction for housing rehab. If property rehab in Seattle serves low-income families, then the project qualifies for a special property tax exemption that can "reduce the property tax bill to zero" (Weinstock 2003). Projects using the state housing trust fund or the Seattle housing tax levy subsidies (which serve low-income families), benefit from this property tax exemption (LaTuchie 2003.) Even when a housing project does not serve low-income families, there is a property tax break. Under this program, the housing rehab investment (as well as new construction in a multifamily project) is exempt from property taxes for ten years. Land, existing improvements, and nonresidential improvements are not exempt.

Special property tax incentives are available for the rehab of historic properties. A special valuation tax incentive for historic properties, passed in 1985, allows the subtraction from property taxes, of renovation costs to a historic landmark—if the renovations have been approved by the local historic review board (McKnight 2002).

Another subsidy source is the transfer of development rights (TDR). The city of Seattle permits certain developers, including those providing affordable housing or renovating historic properties, to sell their unused development rights. For instance, a low-rise, single-room occupancy (SRO) hotel in downtown Seattle may be located in a high-rise zoning district. If the SRO is retained as a low-rise, and is renovated for affordable housing, then the developer can sell the unused development rights (the difference in square footage between a low-rise and a high-rise), to those seeking to increase their density. To facilitate such transfer, the city has set up a TDR bank.

While layering tax credit grants, property tax abatement, TDR transfer, and other aids is the practical way to deliver affordable rehab in today's subsidy climate, there is a price to pay for such grantmanship. There is a learning curve for each program, and staff time and other expenses are involved in the application process. Each funder has its own requirements, ranging from the type and wording of real estate closing documents to the priorities and nature of the rehab (Williams 1999). When the Seattle Housing Levy is used, the building's systems have to be rehabilitated to a 20-year life, whereas state/federal funders have other requirements or are silent on the matter (Williams 1999). Ancillary programmatic requirements can be expensive in their own right. One Seattle nonprofit tries to avoid using CDBG funds for rehab because such funding requires Davis-Bacon construction wages and adhering to federal relocation mandates (Weinstock 1999).[1]

Relatedly, there is an interplay of the benefit of a subsidy against the need to abide by the subsidy's regulatory mandate. The HTC is illustrative. As was evident with the Pacific Hotel

[1] CHHIP is sympathetic to relocation needs and adheres to city of Seattle relocation requirements. The latter are viewed by CHHIP as being less onerous to a nonprofit than the federal requirements. The federal mandate, codified in lengthy, formal regulations, is seen by CHHIP as more appropriate for massive federal intervention (e.g., dam or highway construction) than for the small-scale rehabilitation work effected by nonprofits.

case, the HTC is a deep subsidy, crucial for making rehab affordable. Yet when the HTC is used, the rehab must abide by historic preservation standards; sometimes this conflicts with the goal of providing affordable housing.

Difficulty in securing support for affordable-housing rehab is an even more fundamental hurdle than the programmatic demands of the subsidies. Housing subsidies are in short supply. Given the modest sums available, housing subsidies are very competitive—and the competition does not always favor rehab. The LIHTC is illustrative. In Washington, as in other states, far more projects apply for LIHTCs than credits are available statewide. Consequently, there is a "beauty contest" competition for the tax credits. The LIHTC "beauty contest" in Washington incorporates the following scoring system:

1.	Lowest-income tenants	—	50 points
2.	Extend (Low-Income) use period	—	44 points
3.	Serves greatest housing needs	—	15 points
4.	Project location	—	10 points
5.	Family housing	—	10 points
6.	Elderly housing	—	10 points
7.	Housing for the disabled	—	10 points
8.	Preservation of existing affordable housing	—	10 points
9.	Transitional housing	—	10 points
10.	Maximum efficient use of credit	—	10 points
11.	Rehab projects	—	10 points
12.	Small-scale project size	—	10 points
13.	Low developer's fees	—	10 points
14.	Rural housing service projects	—	5 points
15.	Participation of nonprofit organizations	—	5 points
16.	Historic property	—	5 points
17.	Targeted areas	—	5 points
18.	Leveraging of public resources	—	5 points
19.	Local support	—	5 points
20.	Readiness to proceed	—	5 points

Some of the above criteria "favor" rehab projects, either directly or indirectly. These include criterion 8 (preservation of existing affordable housing), 11 (rehab projects), 12 (small-scale project size), and 16 (historic properties). However, other criteria may have the opposite effect, such as awarding points for rural projects, for ready-to-proceed projects (because of their complexity, rehab projects may be less ready-to-proceed than their new counterparts), and for applications with low developer fees (because of their complexity and risk, developers of rehab projects may demand a premium rather than a lower fee). On balance however, most of the housing experts interviewed in the course of this case study felt that the Washington LIHTC "beauty contest" tended to support rehab applications. As observed by the Low-Income Housing Institute (LIHI), "rehab projects in Washington tend to score high in the LIHTC beauty contest and state tax officials have been flexible, such as raising the maximum per housing unit cap on historic preservation projects" (Lee 2003).

Inevitably, however, there are always challenges in securing "traditional" subsidies for affordable housing rehab. Therefore, Seattle nonprofits, such as the Capital Hill Housing Improvement Program (CHHIP, have tapped a variety of creative financing mechanisms, including the following:

Bargain Sales: Sellers of real estate can make a partial donation of equity to a nonprofit buyer such as CHHIP, with the seller then claiming a charitable contribution to reduce tax liabilities. CHHIP has negotiated nearly $1 million in such donation transactions.

Tax-exempt financing: Due to its unique status as a nonprofit development authority, CHHIP can offer tax-free interest to its lenders, thus securing below-market interest rates for loans to CHHIP.

Partnerships: CHHIP has entered into productive relationships with private parties to achieve production and reduce rents. The nature of these partnerships varies from project to project. Examples including leasing relationships, tax-advantaged investments, and "linkages" with commercial developers desiring site bonuses available from promoting low-income housing.

EXHIBIT 5.4

Predevelopment Financing Available From Impact Capital (Local Initiatives Support Corporation)

Loan Project	***Eligible Uses***	***Loan Size***	***Terms and Conditions***	***Other Requirements***
Phase I Pre-Development Loans	Costs associated with preparing site-specific applications to public and private funders, such as site control costs, engineering and environmental studies, soils testing, design work, legal fees.	Up to $75,000 (avg = $40,000)	• 0 % interest; • 3% loan fee; • Average loan length of 18 months; • Non-recourse to borrower; • May be converted to a grant if project does not go forward.	Eligible projects include emergency housing; transitional housing; rental, cooperative, or homeownership housing; mixed-use projects; or other real estate-based development projects which demonstrate benefit to low-income neighborhoods or households.
Phase II Pre-Development Loans	Site control extension payments, property holding costs, A&E to be permit-ready, consulting, legal, application and financing fees including interest reserve, permit fees. Including eligible costs for LIHTC carryover requirement. Site prep and some staff costs eligible on a case-by-case basis.	Up to $150,000 (avg = $75,000)	• 6.0% interest; • Up to 12 mo (renewable); • Interest only until construction closing; • 1% fee at closing; • Secured by subordinated lien on property and/or lien on other unencumbered assets; • Recourse to borrower.	Loan approval subject to evidence that at least one significant source of permanent project funding is committed.
Subdebt Acquisition Bridge Loans	Acquisition of residential, commercial, or mixed use properties that will serve low- and moderate-income populations, including: • Expiring-use HUD Section 8, USDA-RD, and LIHTC properties; • Raw land;	$250,000 - $1.5 million	• 6.0% interest; • up to 3 years (avg 24 mo.); • Interest only until construction closing; • 1% fee at closing; • Secured by property and other unencumbered assets as required;	Underwritten on the experience, track record, and capacity of nonprofit borrower and the competitiveness of project to secure development subsidy. Development concept and plan required including early due-diligence on market and

Loan Project	***Eligible Uses***	***Loan Size***	***Terms and Conditions***	***Other Requirements***
Subdebt Acquisition Bridge Loans (continued)	• Unoccupied, spec property already under construction Intended to fill the gap between primary lender loan amount (i.e. 60-70% LTV) and purchase price.		subordinate to first Deed of Trust; • Recourse to borrower.	development and operating costs. Loan approval, closing, and disbursement to take 120 days or less.
Line of Credit Revolving Credit	• Predevelopment • Construction • Working Capital • Acquisition	$100,000 – $3 Million	• 6.0% interest; • 3-Year Term; • 1% fee at closing; • Usually secured by property lines of credit, may be partially unsecured Recourse to borrower.	Lines of Credit and Revolving Credits are suited for established organizations with a track record and a pipeline of projects.
Construction Co-Lending	• Construction	$100,000 – $1 Million	• 6.3% Interest; • Average Term 6-12 months; • 1% fee at closing; • Secured by subordinate lien; • Recourse to borrower.	Bank or other lender willing to provide 1^{st} Lien position loan and willing to manage construction loan and disbursements.
Guarantees	• Acquisition • Construction	$100,000 – $1 Million	• 1% Annual Fee • 1- to 5-Year Term • Recourse to borrower	Bank or other lender willing to provide loan with a shared dollar for dollar risk up to the amount of guarantee.
Commercial TI Loan	TI build-out for commercial properties or commercial portions of mixed-use buildings. Assumes build-out from "vanilla box", including painting, carpeting, partitions, standard lighting fixtures. Does not include fixtures or utility build-out for medical offices or restaurants.	Up to $250,000 (avg = $100,000)	• 6.0% interest; • 15-year amortization; • Term tied to average initial lease length; • 1% fee at closing; • Secured by property (subordinated lien) and assignment of commercial rents.	Pre-approval available to expedite deals but will be subject to lease terms and strength of commercial tenants.

Source: Impact Capital 2003

DEVELOPMENT-PHASE BARRIERS AND BEST PRACTICE SOLUTIONS TO AFFORDABLE-HOUSING REHAB

Obtaining Properties

The “hot” market in Seattle has effectively driven up housing prices. It is often necessary to pay cash at closing, and property owners want to close quickly. Attempts to assemble properties also have driven up prices.

In response to this challenge, numerous approaches are being used in Seattle to acquire properties for affordable housing rehab. One strategy is the secure bridge loans for property acquisition. This provides “up front” capital to permit timely property acquisition—especially important in Seattle’s “hot market.” To illustrate, the Seattle Office of Housing provides bridge loans for property acquisition. Loan terms are 100 percent loan-to-value (LTV), 3-year term, 3 percent interest-rate only, and loan repayment can be deferred. Seattle nonprofits also draw upon bridge loan resources from Impact Capital. Impact Capital supports the efforts of organizations creating affordable housing in the northwestern United States. Its programs are provided in conjunction with the Local Initiatives Support Corporation (LISC). As detailed in Exhibit 5.4, Impact Control provides an array of attractive financing for property acquisition and other redevelopment expenses. Notes CHHIP’s executive director, “with a bridge loan from the city or Impact Capital, we can act more quickly, like any other purchaser” (Weinstock 2003).

While funding sources for property acquisition and similar predevelopment purpose are limited, these type of bridge loans are very useful since up-front expenses are naturally problematic for many groups doing rehab. At the same time there are issues with early acquisition. Notes CHHIP’s executive director, “…buying with a bridge loan may not work. The rehab may not work out and then you are stuck as the owner, having to make repairs, raising rents and confronting the possibility of a property’s value going down” (Weinstock 2003).

Cooperative strategies have also been used in Seattle in order to acquire properties for rehab. In one instance, two nonprofits swapped properties they respectively owned since the properties they each acquired through the swap better met their organizations’ needs, in terms of organizational mission and geographic area of operation (LaTuchie 2003). In yet another case, a nonprofit wanted to acquire a larger building than its budget allowed. The nonprofit then joined forces with the Seattle Public Library and a social service organization to buy the building. The structure was rehabilitated, and one portion was used as a library; yet another portion was utilized for a community center; and the remainder was rehabilitated for affordable housing. There have also been instances of the city and school district making available surplus school buildings and other publicly owned properties to nonprofits for adaptive reuse to housing.

There are proposed strategies in Seattle for facilitating property acquisition. One proposal would mandate that an owner of an occupied property contemplating selling a multifamily building would have to give a right of first refusal for purchase to: (1) tenants; or, (2) a tenant-approved association such as a nonprofit. Notes CHHIP, however, “The right of first refusal is not worth very much because where is the capital to have that right realized?” (Weinstock 2003).

Another proposal would have the Seattle Housing Authority apply its eminent domain power to facilitate acquisition of properties suitable for rehab by nonprofit groups. Currently, the Authority has eminent domain power only for its own projects, and the above-described proposal would expand the application of the Authority's condemnation power.

Estimating Costs

Groups doing rehab in Seattle speak of the task of estimating costs as being "part of the job" (Barrientos 1999), and for the most part they are reasonably accurate. Yet they recognize the challenges of estimating rehab expenses, especially when compared with "more straightforward new construction" (Murphy 1999). "Substantial" rehab was deemed easier to estimate accurately than a more moderate renovation because in the latter there were more judgment calls concerning items that could be retained as is, those that need to be repaired, and finally, systems that must be replaced. With substantial rehab, almost everything is replaced; thus, estimating that type of job is more akin to new construction.

The following suggestions were made to improve cost estimating for rehab. "For larger and more complex rehab jobs, an experienced cost estimator should be retained. Such an individual was described as the "eyes and ears to the reality of construction" (LaTuchie 2003). Smaller rehab jobs can be estimated by using such guides as the *Robert Means* catalogue with area adjustments (Murphy 2003). Cost-estimating software was viewed as a useful tool for producing estimates and for organizing construction activities by category (e.g., organizing the construction expenses into Construction Systems Institute classification groups) on any given job. At the same time, the experts we spoke to in Seattle cautioned against "giving a bogus legitimacy to the software-produced cost estimates" (Murphy 2003). Other recommendations for improving cost estimation included:

1. Working closely with potential contractors and subcontractors who typically have a very good sense of what the rehab of a given building of a particular type in a given neighborhood should cost; and

2. Having the city of Seattle identify and publicize the actual rehab costs of different classes of properties in various Seattle neighborhoods—information that could be developed from the many rehab projects funded with city and state funds.

Obtaining Insurance

This was not an area of major concern. Hazard and other coverage on the properties being rehabilitated was readily obtainable at what has been deemed a reasonable cost, though CHHIP mentioned that the carriers were always changing (e.g., a company would extend coverage and would then elect to "get out of the business") and that rates were rising, so one had to shop to secure the best quotes (Weinstock 1999). LIHI advised up-front investment in alarms and sprinklers as a way to reduce long-term insurance costs. Surety coverage for contractors doing rehab was available at reasonable cost for experienced companies. Those with less of a track record had more difficulty in securing such bonding.

Obtaining Financing

Years ago, some Seattle lenders were uncomfortable to finance rehab jobs; currently, such loans are routinely extended. Because of the uncertainties and challenges of rehab, however, lenders demand a "tighter" pro forma (Barrientos 1999). These include a higher project contingency factor with rehab; a contingency of 8 percent to 10 percent is demanded by lenders on renovation jobs, a factor 2 percent to 3 percent higher than with new construction (Barrientos 1999). Lenders expect "soft" costs to be about 5 percent more on rehab work relative to new construction. Lenders also demand greater development-construction expertise on a rehab job team relative to their expectation for a new construction project because the former has more uncertainties. Yet sometimes lenders will cut the rehab job some slack with respect to the acceptable project financial pro forma. Because of its more distinct amenities and hence unique market attraction, a rehabilitated residential property in Seattle can expect to have 1 percent to 3 percent lower vacancy rate than its new-construction counterpart (Barrientos 1999).

Land Use

Parking requirements have been a detriment to doing rehab in Seattle; space is at a premium and adding parking in existing structures is difficult. Another barrier is the mandate that all construction must include 20 percent open space. Retrofitting an existing structure with 20 percent open space is a challenge. Yet some of these restrictions are being addressed, and we shall focus on the subject of off-street parking.

The employment and population boom in Seattle has exacerbated an already difficult parking situation. There are simply not enough on-street spaces for Seattle's residents and workers. Consequently, the city requires that on-street parking spaces be provided in housing projects. That requirement applies to all housing projects—both new construction and rehab—yet the parking mandate is typically easier to satisfy when building anew than when trying to retrofit spaces. It is obviously difficult to provide parking where it did not exist before, and that is the situation describing many affordable housing rehabs (e.g., an SRO converted to affordable housing).

The parking challenge has been reduced through various actions:

1. The on-site parking requirement has been reduced from 1.5 to 1.3 parking spaces per housing unit.
2. Certain types of rehab projects may be exempted from the parking requirement. These include affordable housing developments located in Seattle's downtown (the "core") and historic preservation projects located anywhere in Seattle.
3. More generally, Seattle has instituted context-sensitive design with respect to its parking (and other land-use) requirements. The on-site parking to be provided may vary by:
    a. the parking already available in the neighborhood (e.g., on the streets and in parking garages of existing, mixed-use buildings); and
    b. a neighborhood's access to mass transit and the residents served in a housing project. Projects serving low- and moderate-income families, the disabled, and the homeless can provide less on-site parking (Lee 2003; Murphy 2003).

A recently adopted city "sustainability" policy, which includes such environmentally innovative policies as reducing auto-dependence, may further act to moderate on-site parking requirements. For instance, in *Seagreen: Greening Seattle's Affordable Housing,* the city of Seattle Office of Housing (2003) discussed ways of reducing auto-dependence and the on-site parking that would encourage auto use. Among the strategies included (Seattle Office of Parking 2003, 3a):

1. Supplement auto parking with cycle parking;
2. Survey the tenant's actual parking needs and parking capacity of the area;
3. Consider sharing parking with other buildings in the area;
4. Consider an on-site car-sharing program to reduce per unit parking needs (Flex-car).

CONSTRUCTION PHASE BARRIERS AND BEST PRACTICE SOLUTIONS TO AFFORDABLE-HOUSING REHAB

Building Code

Background to the Seattle Building Code

Seattle's Building Code (SBC) incorporates certain flexibilities pertaining to renovation. Particular flexibility is encouraged in the instance of historic properties.

> **Section 3403.8: Historic Buildings and Structures.** The building official may modify the specific requirements of this building code as it applies to buildings and structures designated as landmarks of historical or cultural importance and require in lieu thereof alternate requirements which, in the opinion of the building official, will result in a reasonable degree of safety to the public and the occupants of those buildings.
>
> A historic building or structure is one which has been designated for preservation by the city council or state of Washington, has been listed, or has been determined eligible to be listed, in the National Register of Historic Places, has been officially nominated for such status or is a structure contributing to the character of a landmark or special review district.

Historic preservationists report that building officials do in fact modify the nominal requirements of the building code to further the rehab of landmark buildings (Gordon 1999). Thus, the spirit of Section 3403.8 is, in fact, being upheld.

Section 3403.8 of the SBC applies only in the instance of landmarks. The general rule—that is, the mandate for all buildings—is that if a property is rehabilitated in Seattle, it has to be brought up to a new-building standard only if "substantial alteration" has been made. Section 3403.11 of the SBC defines five "triggers" of "substantial alteration":

1. Extensive structural repair;

2. Remodeling or additions which substantially extend the useful physical and/or economic life of the building or significant portion of the building, such as remodeling a complete floor other than typical remodeling;

3. A change of a significant portion of a building to an occupancy that is more hazardous than the existing occupancy, based on the combined life and fire risk as determined by the building official. A change of tenant does not necessarily constitute a change of occupancy;

4. Reoccupancy of a building that has been substantially vacant for more than 12 months (with some exceptions);

5. A significant increase in the occupant load of an unreinforced masonry building.

Of the five definitions of “substantial alterations,” the second (“extending the useful physical and/or economic life of a building”) is the most frequently used, and code officials acknowledge it as one of the most difficult triggers to determine (Seattle Department of Construction and Land Use 1996). For example, routine maintenance of a building, by itself, will not trigger a “substantial alternation.” Routine maintenance typically includes items such as painting, reroofing, or replacement of plumbing fixtures. When routine maintenance has been delayed to the point where the building has suffered significant deterioration and requires expensive restoration, however, it may be considered substantial. Routine maintenance combined with some improvement work may also be considered substantial.

Since “extending the useful physical and/or economic life of a building” is a gray area, the SBC notes three criteria that guide this second trigger of substantial alteration. The three criteria include the following (Seattle Department of Construction and Land Use 1996):

1. *Cost of project.* For the typical project, if the cost is high relative to the value of the building, it will be considered substantial. For example, if a project consists of new carpet, paint, upgrade of light fixtures, new toilets and sinks, a new roof, and patching of plaster, and the cost is more than half the value of the building, it would probably be considered a substantial alteration. Even though most of these items alone would be considered maintenance, the total amount of work would be great enough to justify a conclusion that the project is a substantial alteration. The 50 percent figure used here is not intended to be a fixed percentage, but only an example.

2. *Existing conditions.* A careful review of existing conditions is important in determining whether a given proposal will trigger substantial alteration requirements. A relatively new building may undergo a face-lift, with expensive new finish work and some minor alterations and yet not trigger special requirements, while a very old and poorly maintained building that undergoes similar improvements may be viewed as a substantial alteration.

3. *Size of project relative to building size and extent of use.* Alteration projects vary considerably from total building renovation to renovation of a portion of a floor; building use varies from fully occupied to completely vacant. It is the particular combination of these two items that becomes important in evaluating whether a project is substantial. For example, many older downtown buildings have very limited, if any, use of their upper floors. Renovation of the tenant spaces on the lower floors of such a building, even though of moderate size and scope relative to building size, may trigger the substantial alteration requirements.

If there is a substantial alteration, however triggered, then the SBC requires that the new building undergoing rehab conform to critical new-building standards. These include conformance to the requirements of Section 403 (high-rise buildings, when applicable), Section 713.10 (smoke dampers), 713.11 (fire dampers), 801 through 805, 808 (interior finishes), 904 (fire-extinguishing systems), Chapter 3 (fire alarm requirements), and Section 3403.11.3 (evaluation and mitigation of seismic deficiencies) (Seattle Department of Construction and Land Use 1996).

Evaluation of the Impact of the Seattle Housing Code on Rehab

Unlike other jurisdictions where the building code is governed by an archaic "25–50 percent rule"[60] and code administration is often "by the book," the situation is much more positive in Seattle. "Modifications" to requirements are expressly permitted in the case of historic properties. More generally, the SBC's "substantial alteration" rule, provided for in Section 3403.11, has many reasonable features, such as requiring more stringent standards in the cases of rehab increasing the hazard level (trigger 2) or occupant load (trigger 5) of a property.

Helping matters is the philosophy behind the SBC's administration.[61] That philosophy historically has been supportive of rehab, especially in affordable-housing situations. A city administration, which is particularly pro-housing, has encouraged municipal officials to flexibly administer the SBC (Hooper 1999).

Yet even flexible administration ultimately is guided by the regulations and there are elements of the SBC that can frustrate rehab. Seattle is not governed by a strict "25–50 percent rule," but that long-criticized standard does have an impact. The second definition of "substantial alteration" (extending the useful physical and/or economic life of a building) is the most common trigger, and that trigger, in turn, is most often influenced by the "cost of project" criteria. Groups knowledgeable about rehab in Seattle describe the following negotiations (Murphy 1999; Thomas 1999). Developers and architects will argue that their proposed rehab is actually "deferred maintenance," and as such should not trigger the "substantial alteration" requirements.

[60] A provision that links code requirements to the extent to which rehab adds to the property's value. For instance, if the rehab exceeds one half of the property's pre-renovated value, then the entire existing building, and not just the renovation, would have to meet the standards for new construction. See Chapter 3 for details.

[61] The generally rehabilitation-supportive situation in Seattle with respect to the building code was contrasted to a more challenging environment in the suburbs and rural areas outside the city. Building officials in these outer locations were described as typically having less expertise than their Seattle counterparts and being less willing to negotiate. Compounding the problem were instances where a single person was both the fire and building official, thus controlling all critical regulatory matters. When that individual was not flexible, the building code could be a major hurdle to affordable-housing rehabilitation (Murphy 1999).

Building code officials, however, will often be guided by the hard costs of the rehab job and will scale up their requirements accordingly. As a rough rule, if the rehab expenses amount to less than one-third of the property's assessed improvement value—that is, the assessed value of the structure but not including the land—then the rehab will, in fact, be considered "deferred maintenance." If expenses exceed two-thirds of the assessed improvement value, then the job is counted as a substantial alteration. Rehab jobs costing between roughly one-third and two-thirds of the assessed improvement value are a gray area, and depending on other factors (e.g., existing conditions and/or size of the project relative to building size and extent of use), will be treated as either deferred maintenance or a substantial alteration.

Ironically, funders of rehab subsidies often "push" a job into the substantial alteration category. Knowing how the rehab cost can influence its building code treatment, sponsors of affordable-housing renovation may decide to improve less or to stagger the work over time in order to prevent the substantial alteration trigger. Funders, however, often have a different perspective. For instance, when Housing Levy funds are tapped for rehab, program administrators often encourage "doing the job right" by effecting a substantial rehab in "one fell swoop," as described by one nonprofit developer (Weinstock 1999). Yet doing rehab in such a fashion means it will be considered a substantial alteration, and thus will have to meet stringent code requirements.

It is often difficult and expensive to retrofit the substantial alteration requirements, which can involve such work (unless a variance is granted) as modifying a stairway's riser, altering the door swing, enclosing stairways, installing sprinklering, and in other ways meeting new-building fire safety standards (Murphy 1999).

To improve the building code situation, the Seattle Department of Construction and Land Use has issued a number of Client Assistance Memos "clarifying such matters as what is "routine maintenance" as opposed to a "substantial alteration." This memo aims to "demystify" the situations when a substantial alteration is triggered (Murphy 2003) so that architects, developers, and others can better plan for the improvements which have to be made.

Rehab professionals in Seattle also recommended that the development team meet early on with code officials to discuss the work to be done and the applicable code requirements (Murphy 2003; Tomkins 2003). For instance, the architect of the rehab of the Frye Hotel, a LIHI project producing affordable housing, met with Seattle's Building Department when this project commenced (Tompkin 2003). Originally, the city envisioned a rehab of the property, but this would have added to project expenses, in part because of the SBC's "substantial alteration" trigger. After carefully analyzing the building, the architect argued that selective rehab could be done, whereby certain building systems would be salvaged (e.g., Frye's heating system), while others would be replaced. The city ultimately agreed with the architect's proposal and the selective rehab strategy saved dollars, in part by avoiding the wholesale upgrading that would have been mandated by a "substantial alteration" trigger.

Our contacts in Seattle recommended further actions to address building code issues. One approach was to limit liability on the part of code officials granting variances to the nominal code requirements (Chaney 2003). Such an action would hopefully make code officials less "risk averse" so that they would grant appropriate variations and would be flexible when the activation called for it. Another suggestion was to codify the practical wisdom of more senior code officials before they retired in the form of "memos to the file" and the like (Murphy 2003). This would retain the institutional wisdom of these officials before they left government service.

Historic Regulations

In Pioneer Square, Pike Place Market, the International District, and many other Seattle neighborhoods, historic preservation is an important theme for housing rehab. To that end, Seattle offers a number of incentives to owners of landmark properties. These include the following, some of which have been mentioned earlier (City of Seattle 1997):

- *Zoning code relief.* For a designated landmark, Seattle may authorize a use not otherwise permitted in a certain zone. This provision provides flexibility of use to encourage the preservation and use of historic buildings.

- *Building code relief.* The SBC allows modifications to specific requirements of the building code for landmark buildings.

- *Special tax valuation for historic properties*. Special property tax breaks are accorded to landmarks undergoing rehab.

Seattle further offers special incentives for downtown landmarks. These include the following (City of Seattle 1997):

- *Transfer of development rights.* To encourage the preservation of landmarks, the property owner is able to sell unused development rights to other developers. The value of these development rights is negotiated between the owners of the sending and receiving lots.

- *Downtown residential zone.* Seattle landmarks in a downtown residential zone are exempted from any restriction on commercial density as long as the building is restored and committed for long-term preservation.

- *Demolition disincentive*. Development on a site that results in the destruction of a designated Seattle landmark is not allowed to acquire additional development rights through a floor area bonus.

Local preservation controls and incentives in Seattle, by almost all accounts, are an important support to housing rehab in that city (Barrientos 1999; Williams 1999). Yet there are costs associated with that regulation. One developer recounted the following example (Nodland 1999). He proposed the rehab of a residential property in a landmark historic district.[62] The work fell under the oversight of a neighborhood historic preservation board. As the board met only every two weeks and reviewed many applications, its review of the project in question took a long time, almost a year. There were often legitimate reasons for this delay, but the local Seattle

[62]The city of Seattle contains about 200 individual landmarks and about 800 to 1,000 properties in seven historic districts.

historical oversight, however well intentioned and important to encourage rehab in the city, does exact a regulatory cost.

The same is true with respect to the historic rehab tax credit (HTC). The 1986 Tax Reform Act (TRA) allows a 10 percent investment tax credit (ITC) for income-producing nonresidential properties. TRA provides for a 20 percent HTC. To qualify for the 20 percent HTC, the rehabilitated property has to be a "certified historic structure" (i.e., a building individually listed on the National Register or located in, and contributing to, the historic significance of a registered historic district);[63] the rehab must be "substantial" (i.e., more than $5,000 or the adjusted basis of the renovated property, whichever is greater); and finally, the rehab has to be certified.

The HTC is an important incentive to affordable-housing rehab in Seattle, especially since it can be combined with the LIHTC. This was previously illustrated in the Pacific Hotel example, which showed how the HTC could be applied in a way that met the goals of providing affordable housing while abiding by the Secretary of the Interior's Standards for Rehabilitation as well as the local building code and other requirements. The Pacific Hotel traditionally had been used for transient housing, so its rehab for SRO and other compact (e.g., studio and one-bedroom) apartments was very compatible. This compatibility allowed the Pacific Hotel rehab to "successfully use the historic floor plan with only minimal changes" (Sullivan 1998, 3). This theme of synthesis was carried forth in the project, satisfying historic, affordable housing, and building regulatory mandates as described in a 1998 study by the National Park Service (NPS).

> Several code issues with a potential to impact the historic appearance of the structure also required creative solutions. Providing disabled accessibility to the building was a major challenge. Due to the sloping streets, all of the existing entries were located several steps up from the sidewalk. The only feasible option was to create a new, level entry at a point where the sidewalk most closely aligned with the floor. To accomplish this, a large window opening was carefully modified to become a doorway by cutting away the sill. Two apartments were then minimally reconfigured and a ramp (leading to an elevator) was inserted between them. As a result, eight units and all common areas were made fully accessible. Another code issue was caused by the balconets (i.e., pseudo-balconies) which blocked emergency egress from 36 bedroom windows. The balconets are integral to the historic integrity of the building's façade. The solution in this case was to cut the guardrail from the frame and remount it as a hinged "gate" with a latch reachable from inside the unit.
>
> Although constructed with a concrete frame, the building's geographic location in an earthquake zone also mandated significant seismic improvements. The inside of all exterior walls received a gridwork of two-by-four framing to which the existing clay tile infill was anchored using heavy-gauge copper wire. Structural shear walls were installed at selected interior locations and roof parapets braced. All exterior walls were covered on the inside with 3 ½" insulation added to the wall cavities created by the two-by-four framing. This approach allowed the original single-glazed windows to be retained while improving overall energy performance.

---

[63]A registered historic district includes both those districts listed on the National Register, and any state or local historic districts in which the district and enabling statute are certified by the Secretary of the Interior.

> The east apartment wing contained two ornate exit stairs, one of which was extremely steep and non–code–complying. After considerable study it was determined that the ground-floor portion of the stair met code requirements and could be retained while the steep portion (second through fourth floors) required replacement with a modern, code-complying stair. Prior to any action being undertaken, the architects consulted with the National Park Service for guidance. The action was approved by NPS, out of consideration for safety issues and the fact that a similarly detailed stair remained in the building and was representative. (Sullivan 1998, 3–4)

Sometimes there are greater tensions in trying to harmonize the Secretary of the Interior Standards and other mandates; these tensions are often most acute where the interiors of the properties are being renovated. In the case of the Pacific Hotel, the functional compatibility of the historical and current use of the property allowed for rehab that essentially left intact the significant interior features of this building. But that is not always the case.

Take, for example, another SRO (not identified by name or address but referred to here as "other SRO"). The original interior of the other SRO had narrow hallways, reflecting the historical, modest housing amenity of the property. The original apartments were also "bare bones," essentially single rooms off a corridor. To modernize the other SRO and to produce the kind of unsubsidized units that are sought after in today's marketplace, a developer proposed altering its interior. The units would be enlarged and new corridors would be built. The exterior features of the property would be left intact, however.

The developer of the other SRO sought an HTC, claiming that the proposal satisfied the spirit of the Secretary of the Interior Standards. The NPS rejected that argument. The developer then proposed leaving the interior of the first floor as is, thus preserving its historic character. The interiors of the upper floors, however, would be remodeled as earlier described. The exteriors of all floors would be left intact. This second proposal was considered by the NPS and discussions took place between the developer and the NPS during the next few months. Ultimately, the developer opted to cease negotiating over the historical appropriateness of the different rehab approaches. He dropped the HTC application, made the interior changes he wanted, and kept the exterior largely as it had been.

To reduce historic preservation–affordable housing tensions, the following actions were recommended.

1. The rehab team should meet early on with the SHPO and the National Park Service (NPS) to informally discuss the renovations that are contemplated. This meeting should take place as early as possible, and surely before submission of part 2 of the HTC paperwork. (Tompkin 2003).
2. State or regional NPS oversight on the HTC is preferable to decisions made in Washington, D.C., because the state and regional officials are more attuned to area conditions (Tompkin 2003).
3. The NPS and SHPO should publish HTC case studies (Chaney 2003). The case studies should be "in-depth resources for interpretation of standards with an honest discussion of 'gray areas', such as windows" (Chaney 2003).

4. The NPS should issue "interpretations" of HTC standards, for public consumption, much like the Internal Revenue Service issues private letter rulings (Chaney 2003). An example might be "that if 50 percent of the original windows have been replaced and if all the sash connections are deteriorated, then windows can be replaced rather than repaired" (Chaney 2003). Currently, the regulatory framework is more ambiguous (e.g. it is preferable to repair rather than to replace historic windows) and the proposed NPS "interpretations" would clarify matters.
5. "Cross-fertilization" of experts should be encouraged, such as the Vermont Housing and Conservation Board hiring preservationists with affordable housing experience. The NPS can act similarly.

Interdepartmental Coordination

Mentioned frequently in a number of previous sections was the importance of the parties involved in rehab and its regulation—the developer, architect, building code official, SHPO, and NPS—to meet early on and to consider the proposed renovation. This theme underlies an "Interdepartmental Coordination" initiative by the City of Seattle to foster a more integrated regulation of construction, including rehab. This effort brings together such agencies as the Seattle Office of Housing, the Seattle Department of Construction and Land Use, Seattle Department of Transportation, and the Seattle utility, street and fire service departments. Through enhanced coordination, the initiative hopes to improve the intake process (e.g., what forms and drawings are required to review construction applications), to facilitate the scoping of issues (not necessarily approval, but identifying areas of concern), and to minimize areas of bureaucratic conflict, or other problems (e.g., a city street is torn up after new underground utility cables are installed (LaTuchie 2003, Murphy 2003, Weinstock 2003).

Access Requirements

The state of Washington access code combines the most stringent requirements of the Fair Housing Act (FHA) and Americans with Disabilities Act (ADA). The state access requirement recognizes that it is often challenging to retrofit accessibility and therefore allows various flexibilities, including the following:

1. *Substantial rehab hardship*. The full access requirements have to be satisfied only in the case of substantial rehab, defined as rehab exceeding 60 percent of the property's appraised value (not the lower assessed value, which is the measure used in the "substantial alteration" test). In other words, if rehab amounts to less than 60 percent of the property's appraised value, the rehab project would be exempt from full-access requirements because they would constitute a "substantial hardship."

2. *Path of travel*. The path of travel has to be made accessible only if the cost of doing that does not exceed 20 percent of the cost of construction expended over 36 months.

3. *Historic properties*. Flexibility in meeting access requirements is encouraged in the case of historic properties.

These provisions allow flexibility in satisfying access requirements while effecting rehab in Seattle. Yet the city's topography (e.g., sloped streets), historical pattern of development (full lot coverage), and other characteristics, as well as the inherent difficulty of retrofitting access, make it challenging to meet the access mandate. Satisfying the mandate requires creative responses. In the Pacific Hotel, as noted, a new level entry was provided and a window opening was modified to create a doorway (Sullivan 1998, 3–4). In the rehab of the Blive building, there was no way to provide a ramp because the lot was 100 percent covered. The solution was an accessible unit in the basement, which did have wheelchair access. Thus, the accessibility mandate is being satisfied in myriad ways, but it is more difficult to do so when doing rehab as opposed to new construction.

Seismic Regulations

Retrofitting seismic protections is another challenge. Seattle is in a high seismic risk area; accordingly, the city has stringent seismic standards. That can be expensive. The Frye Hotel rehab cost LIHI $6 million for construction; about $2 million of that total was spent for seismic protection.

One Seattle architect advised trying to negotiate in the "gray areas" of seismic-related activities (Murphy 2003). For instance, instead of bracing the entire building undergoing rehab and tying all the floors, an alternative is to focus on addressing the areas of most immediate concern. This might consist of phasing the seismic bracing over time, tying and bracing of some of the floors (as opposed to all), and repairing/replacing hazardous items in a seismic event—loose parapets, cracked terra cotta, and masonry in poor condition.

Davis-Bacon

Three recommendations to reduce Davis-Bacon costs included:

1. Raise the CDBG threshold for triggering the Davis-Bacon prevailing wage (federally funded multiunit projects of eight or more housing units) to the HOME program threshold (12 or more units). Alternatively, do rehab jobs in stages, or sequentially, so that the trigger, at whatever threshold, is not reached (e.g., do HOME projects in 10 unit increments).
2. Reduce the administrative cost of Davis-Bacon. Instead of requiring reams of paperwork, allow self-certification that prevailing wages have been paid. The State of Washington has a prevailing wage requirement, yet allows self-certification. The latter was viewed as less costly than the federal Davis-Bacon reporting requirements (Weinstock 2003).
3. On mixed-use residential and commercial projects that are governed by Davis-Bacon, it is important to ensure that the commercial prevailing wages (which are generally higher than for the residential sector) are applied only to the commercial portion of the development and not extended to the residential work force.

Relocation Requirements

If a rehab impacts tenants, then there are governmentally mandated relocation requirements. On federally aided projects, such as those funded by CDBG or HOME, requirements are prescribed by the Uniform Relocation Agreement (URA). The State of Washington and the City of Seattle have relocation requirements of their own for housing projects they subsidize.

The URA requirements are more restrictive than those of the state or city. For instance, the URA requires extensive permanent relocation payments if a tenant must leave the housing unit for at least 72 hours, or if there are contractors in the unit for a similar period. The threshold is higher in the city and state relocation provisions, and these are deemed more reasonable (Weinstock 2003).

Other Actions/Recommendations

Entities involved with rehab, ranging from property owners to city officials, may be unfamiliar with this process. A rehab educational pamphlet may help. This resource would describe the various stages of rehab and would contain a checklist of the items and tasks that need to be done at the different stages (e.g., do a soils and hazardous materials test at an early stage). The pamphlet would emphasize the importance of early on consultation of the development team with city officials and the need to do certain tests (e.g., shear test) before certain tasks (e.g., detailed drawings).

We have thus far considered many individual best practices that were effected or proposed in Seattle to further affordable housing rehab. We conclude the Seattle discussion by showing how many of these practices were brought together to adaptively reuse the Eastern Hotel, a historic structure located in the city's International district, into affordable housing.

IMPLEMENTING THE BEST PRACTICES:
A CASE STUDY OF THE REHABILITATION OF THE EASTERN HOTEL

Background

Seattle has a rich Asian-American heritage. The first Asian immigrants, mostly single men, arrived from China in the late nineteenth century. The population fluctuated from a few hundred to a few thousand due to labor demands and the Chinese Exclusion Act of 1882. What is referred to as "Old Chinatown" was an area on the waterfront that was destroyed in the Great Fire of 1889. During a massive city re-grading project in the early 1900's, Chinatown was reborn. The area, once under water and filled in during the city project, is now the "Chinatown/International Special Review District." This unique neighborhood was settled and built by Chinese, Japanese, Filipinos, African-Americans, Vietnamese, Koreans and Laotians. They came to the area seeking jobs in lumber mills, railroads, canneries and factories. As a result, boarding houses, hotels, general stores and restaurants emerged to support the growing predominately Asian neighborhood.

By the first decade of the twentieth century, Chinatown also was home to a growing Japanese population. Nihonmachi, or Japantown, was a bustling neighborhood. Unlike the Chinese, Japanese were permitted to bring their wives and family to the United States. According to the 1910 U.S. census, Japanese were the largest ethic minority in the area. During World War II, however, Japanese-Americans were sent to Internment Camps, and their presence in Seattle was all but lost during the War. African-Americans enriched the neighborhood with a thriving jazz scene in the second quarter of the twentieth century. In the years following the Vietnam War, immigration patterns fluctuated again, and the neighborhood saw an increase in immigrants from Southeast Asia. Today Filipinos make up the largest ethnic minority in the neighborhood. However, Asian groups dominate the commercial enterprises and are the most visible ethnic group. The area remains one of Seattle's few ethnic neighborhoods. The 2000 census analysis conducted by the City of Seattle for the Chinatown-International district reports that fully 60 percent of the residents are foreign born, and about half of that number are not U.S. citizens. This is in sharp contrast to the neighboring "Downtown Urban Center," where 80 percent of residents are native, or Seattle City, where 83 percent of the population is native born, and of those born outside the United States, only 9 percent are not citizens.

In 1973, the City of Seattle established the International Special Review District to "promote, preserve and perpetuate the cultural, economic, historical and otherwise beneficial qualities of the neighborhood, particularly the features derived from its Asian heritage" (Seattle Municipal Code 23.66.302).

The National Park Service followed by creating the Seattle Chinatown National Register Historic District within the boundaries of the International Special Review District in 1986. These designations protect the district from insensitive changes (city municipal code) and make contributing historic structures eligible for federal historic rehabilitation tax credits.

To sustain the growing population, entrepreneurs built hotels to house the influx of immigrants, such as the Bush and Rex Hotels. The Eastern Hotel was built by David Dow, a well-known contractor and Seattle citizen, between 1909 and 1911. The Wa Chong Company was the first company to manage the Eastern Hotel. The company was founded by Chin Chun Hock, considered to be first Chinese immigrant to settle in the Seattle area. Hock's company ran a retail and import business, and operated as a labor contractor. The Eastern was possibly built to house the Wa Chong Company and its workers.

Originally, the Eastern Hotel had 92 single-occupancy apartments on the upper floors and ground-floor retail space. It was one of the earliest examples of a multistory apartment hotel with ground-floor retail space, of the many built in the neighborhood. The Hotel operated under different names, the O.K. Hotel in 1913, the Kanagawa Hotel from 1913 to 1918, and the Freedom Hotel from 1919 to 1944. The Hotel was also the home of the Maynard Theater, one of Seattle's first movie theaters. The Chinn Family acquired the hotel in 1947 and owned the building until 1996.

In 1996, the Chinn family sold the Eastern Hotel to the Interim Community Development Association (ICDA.) Since 1969, ICDA has been working to revitalize the Chinatown/International Special Review District neighborhood without gentrification and displacement.

ICDA's objectives are:

- Community development planning and advocacy in the areas of growth management, low-income housing, land use, social services, and minority and community issues.

- Housing development assistance to public, nonprofit and private owners and developers for housing projects addressing community needs, particularly in the development of low-income housing.
- Community economic development efforts for low-income and minority individuals and businesses.
- Promoting affordable housing policies and programs with local and state officials.
- Establishing and providing support to social services programs and agencies and organizations providing needed services to the community.
- Land-use analysis and monitoring of projects and plans that will impact the International District.
- Management of the Danny Woo International District Community Garden for low-income elderly residents, and management of the community parking lot.
- ICDA's approach to community development is to work with the entire community to encourage community-based revitalization by those who have a commitment to the District.

ICDA has rehabilitated numerous buildings in the neighborhood for the benefit of the community. The Eastern Hotel is one of the many successful projects undertaken by the organization. The renovation began in 1996 and was complete two years later in 1998; it now provides 47 low-income housing units and ground-floor retail and exhibit space.

Rehab Process/Description

The Interim Community Development Association has significant experience in acquiring buildings for rehab within the International Special Review District, and in particular in rehab for affordable housing. The Eastern Hotel rehab project involved several stages: acquisition, redevelopment, finance, construction and occupancy. Based on past experience, ICDA completed a preliminary feasibility analysis to assess the project's viability.

The Eastern Hotel was owned by a local family with whom ICDA had worked on the renovation of an adjacent building for low-income housing. That project, the Rex Hotel, was also a major renovation of a partially vacant building of the same period as the Eastern Hotel. At the request of the owner of the Eastern, the first phase of the project involved an ICDA assessment of the building condition, and an analysis of the situation with current residential and commercial tenants. ICDA worked with Kovalenko Hale Architects to do an initial evaluation of the rehab needs and the redevelopment options. After analyzing various design options, and identifying preliminary construction cost estimates, ICDA prepared preliminary development budgets and operating pro formas, and analyzed possible financing scenarios.

As ICDA prepared the preliminary feasibility analysis, it discussed ownership options with the current owner of the property. The owners were willing to allow ICDA to do the residential portions of the building, but they wished to retain the street level retail/commercial portions of the property in order to generate future income for the family interests. Various options were analyzed with the owner. Since the Low Income Housing Tax Credit (LIHTC) and Historic Rehabilitation Tax Credit (HTC) were a required part of the financial structure, it was necessary to explore ownership options that would allow the establishment of a limited partnership and the transfer of ownership from the current owners. Because the family was not interested in operating the housing, ICDA negotiated an acquisition of the entire property at a below-market cost. In return, ICDA agreed to renovate the building, including both the residential and the retail/commercial spaces, providing commercial shell improvements for future tenant improvements. The developer then granted a 50-year master lease of the commercial spaces back to the seller, at a nominal cost, with an option for the seller to acquire the commercial space at the end of the lease period. This accomplished ICDA's interest in securing the property for residential redevelopment, and allowed the sellers to maintain operation of the retail/commercial spaces at street level.

The next phase was to work on the design of the redevelopment. ICDA and Kovalenko Hale, the architecture firm of record, worked through the final design plans and cost estimates to ensure financial feasibility. The Eastern Hotel is an individually designated City of Seattle Landmark (Ordinance 107750, 1978), and is a contributing resource to the Seattle Chinatown National Register Historic District and to the International Special Review District (ISRD). The National Register designation makes the building eligible for the 20 percent federal historic preservation income tax credits. The local designations bring special recognition of the importance of the area and its ethnic heritage. Because of the importance of the area, in 1973 the city established a local board to assure that the "beneficial qualities of the area" are preserved. In order to receive the income tax credits necessary to make the project work financially, the owners needed to meet the Secretary of the Interior's "Standards for Rehabilitation." As the design progressed, ICDA worked closely with the International Special Review District Board (ISRDB) for approvals related to use and historic preservation issues. The architect also developed the plans to conform to the Secretary of the Interior's "Standards for Rehabilitation," and regularly consulted with the City and State Historic Preservation Officers to ensure the rehabilitation plans would be likely to be approved by the NPS.

As an individually designated City Landmark, the work had to be reviewed by the Landmarks Preservation Board (LPB.) The project was reviewed first by the ISRDB and then went to the LPB. In addition, the project had to be reviewed by land-use planners from the Department of Design, Construction and Land Use (DCLU) to coordinate procedure. The project was subject to State Environmental Policy Act review because of the change of use—92 SRO units to 47 apartments—with the Department of Neighborhoods serving as lead agency. A Determination of Non-Significance (DNS) was issued for the project, meaning that the proposed change of use did not have any effect or adverse effect on the various components under review. Neither of the review boards could take action and issue a Certificate of Approval until the DNS was issued. Once the DNS was issued, both boards issued separate Certificates of Approval for Change of Use and for Preliminary Design (for the exterior facades). Subsequently, the Boards issued final design approval.

Throughout the project a number of presentations were made to the ISRDB as the design progressed. The Board was very supportive of the efforts to renovate a vacant building for the community, and to do so in a historically sensitive manner. Neither Bob Hale, the project architect, nor ICDA could think of a single problematic issue during the review process.

The State Historic Preservation Officer (SHPO) was consulted in the design of the project and reviewed the proposed renovation plans. The SHPO was very helpful in providing feedback on architectural plans and giving guidance on the federal preservation guidelines. When there were existing conditions that warranted special consideration, explored below, the architect worked with the SHPO to identify acceptable treatments. As approval of the federal Historic Rehabilitation Tax Credit is not granted until the completion of the renovation, it was critical to ICDA to have the input from the SHPO to know that upon completion, the project would be approved. ICDA found the SHPO insight to be key in helping with the renovation plans and to assuring adherence to the Secretary of the Interior's "Standards."

A few of the elements, in which the "Standards" were flexibly applied, ensured the success of the rehab of the Eastern Hotel. Historic windows are a character-defining feature in any historic building. Much care must be taken when addressing rehab of windows because of their prominence and because changes can have a significant effect on the appearance of the building. In the case of the Eastern Hotel, the hotel had retained its historic one-over-one wood windows throughout the exterior of the building. The wood windows on the street-facing exterior of the building were restored. However, it was determined that the windows that faced the interior light wells were not as significant because they were not visible, and that cost savings could be achieved by replacing them with vinyl windows in a one-over-one configuration. The apartments open onto the light wells in secondary spaces.

Rooftop additions can significantly alter the appearance of a historic building to the detriment of the original. In this case, however, the architects were able to design a penthouse addition that was set back from the parapet, not visible from the street. The addition gave the developer more square footage and desirable upper-floor units.

Historically, retail space, and especially storefronts, change with the fashion of the times, and while it is important to retain the major divisions and the character of a storefront, several approaches can be used successfully. The ground floor of the hotel was originally divided into a round-arched hotel entrance and three storefronts. Using historic photos and on-site investigation, the developer appreciated the historic configuration of the transom and echoed it in the new design while using new materials. At the street level, the appearance of the doorway and the configuration of the three storefronts were reintroduced. However, the doorway and the "storefront" adjacent to it now function as the entrance to the apartment lobby. The remaining two storefronts will function as retail space. The new appearance is both very attractive and functional.

A concurrent phase of the project was securing the financing necessary to move forward with the project. Predevelopment financing was secured by the local LISC office, allowing ICDA to do initial due-diligence reviews, architectural studies, and negotiate the acquisition of the property. ICDA then prepared loan applications to the City of Seattle and the State Housing Trust Fund to provide below-market financing. The developer also applied for an allocation of Low Income Housing Tax Credits from the Washington State Housing Finance Commission. ICDA secured all of these financing sources. They also secured a grant from the Federal Home Loan Bank's Affordable Housing Program. Once they had secured the tax credit allocation, ICDA solicited equity investment proposals for the LIHTC, as well as the HTC. ICDA was able to select an equity investor, The National Equity Fund, who provided equity for both tax credits. The total project cost was just over $6 million. The project received roughly $3 million through the Low Income Housing Tax Credit and the Historic Rehabilitation Tax Credit.

Another financial incentive that made this rehabilitation a success was the Washington State Special Tax Valuation for Historic Properties. "Special valuation" revises the assessed value of a historic property, subtracting, for up to 10 years, those rehab costs that are approved by the local review board. The Eastern Hotel rehab project benefited from a decade-long span of reduced property taxes.

The next phase involved the actual construction. It was critical to ICDA to select a general contractor who had successful experience with historic preservation renovation, and had done this type of project. After soliciting proposals from a short list of qualified general contractors, they were able to negotiate a contract with a local, community-based, minority general contractor who put together a very well-qualified team. This contractor had done numerous projects in the community previously, including the building next door. As this was a very visible project to the community, and the building was one of the more exceptionally striking buildings, the contractor made special efforts to help make the project come in on schedule and within budget, and paid particular attention to getting details done the best way possible. The building was acquired in November 1996 and completed in the fall of 1998.

The final phase of the project was occupancy and the ongoing operations of the property for low-income housing. The building remains fully occupied with very little turnover. The building houses many minority, non-English speaking tenants, including a large number of Chinese and Ethiopian tenants. All the tenants are low-income and are subject to the eligibility requirements of the federal low-income housing tax credit program, as well as other requirements of the City of Seattle and the State of Washington, which have regulatory agreements on the property which ICDA must conform to. The property will continue to provide affordable housing to low-income residents for 50 years. In sum, many best practices involving financing, development and construction contributed to the successful adaptive reuse of the Eastern Hotel into affordable housing.

REFERENCES

Angelos, Constantine. 1992. $20 Million for Affordable Housing. *Seattle Times*, September 25.

Barrientos, Maria. 1999. Interview at Real Estate Development Services, by David Listokin and Barbara Listokin. Seattle, WA, July.

Beaumont, Constance. 1996. *Smart States, Better Communities*. Washington, D.C.: National Trust for Historic Preservation.

Capitol Hill Housing Improvement Program (CHHIP). 1999. *Capitol Hill Housing Improvement Program: History and Accomplishments.* Seattle: CHHIP.

Chaney, John. 2003. Interview with the executive director of Historic Seattle, by David Listokin. Seattle, WA, May 5.

City of Seattle. 1988. Seattle Municipal Code. International Special Review District Guidelines.

———. 1997. *Historic Preservation in Seattle: A Guide to Incentives and Procedures*.

———. 1998. *Monitoring Our Progress*. Seattle: City of Seattle Strategic Planning Office.

———. 1999. *Toward a Sustainable Seattle*. Seattle: City of Seattle Strategic Planning Office.

———. 2001. Strategic Planning Office. Decennial Population, City of Seattle, 1900-2000.

———. 2002. Property Tax Exemption for Multifamily Housing. Online at http://www.cityofseattle.net/housing/propertytaxexemption.htm (accessed November 6, 2003).

———. 2003. *History of the International District*. Seattle: Department of Neighborhoods. Office of Historic Preservation. International Special Review District. Online at http://www.cityofseattle.net/neighborhoods/preservation/id_history.htm

———. 2003. *Incentives for Historic Properties in Seattle*. Seattle: Department of Neighborhoods. Office of Historic Preservation. Online at http://www.cityofseattle.net/neighborhoods/preservation/incentives_state.htm

———. 2003. *Seagreen: Greening Seattle's Affordable Housing*. February. Seattle: Office of Housing.

Enlow, Claire. 1999. Providing Housing, Preserving History. *Daily Journal of Commerce*, July 21.

Flickinger, Matthew. 1999. Interview with Low-Income Housing Institute staff person, by David Listokin and Barbara Listokin. Seattle, WA, July.

Gordon, Karen. 1999. Interview with principal at Department of Neighborhoods, by David Listokin and Barbara Listokin. Seattle, WA, July.

Hale, Bob. 2003. Principal/Project Manager, Kovalenko Hale Architects. Interview by Sydney A. Becker. November.

Heritage Preservation Services, Services Branch. 1998. *Case Studies in Affordable Housing through Historic Preservation.* Washington, D.C.: U.S. Department of the Interior, National Park Service.

Hooper, Rick. 1999. Interview with principal at City of Seattle, Office of Housing, by David Listokin and Barbara Listokin. Seattle, WA, July.

Impact Capital. 2003. Lending. Online at http://www.impactcapital.org/lending/pipdl.htm (accessed November 6, 2003).

InterIm Community Development Association. 2003. *Affordable Housing Projects.* www.interimicda.org/ahp.shtml

Katahira, Ken. 2003. Development Director, InterIm Community Development Association. Interview by Sydney A. Becker. December.

LaTuchie, Joanne. 2003. Interview with city of Seattle staff person, by David Listokin. Seattle, WA, May 2.

Lee, Sharon H. 1999a. Interview with the executive director of the Low-Income Housing Institute, by David Listokin. Seattle, WA, May 5.

Lee, Sharon H. 1999b. Interview with the executive director of the Low-Income Housing Institute, by David Listokin and Barbara Listokin. Seattle, WA, July.

Mathison, Steven. 2003. Tax Act Coordinator. Office of Archeology and Historic Preservation. State Historic Preservation Office. Interview by Sydney A. Becker. November.

McKnight, Reuben. 2002. What's In It For Me? Financial Incentives for Historic Preservation. *Preservation Seattle*, August 1.

Mizuki, Andy. 2003. Carlos Bulosan Memorial Exhibit. *A Brief History of the Eastern Hotel.* www.bulosan.org/html/eastern_hotel.html

Murphy, Ronald F. 1998. Pioneer Square's Second Renaissance. *Daily Journal of Commerce*, September 17.

———. 1999. Interview at Stickney Murphy Romine, by David Listokin and Barbara Listokin. Seattle, WA, July.

———. 2003. Interview at Stickney Murphy Romaine, by David Listokin. Seattle, WA, May 5.

New Jersey Office of State Planning. 1996. *Statewide Planning for Development and Redevelopment in the United States*. Trenton: New Jersey Office of State Planning.

Nodland, Scott. 1999. Interview with principal at Kauri Investment Ltd., by David Listokin and Barbara Listokin. Seattle, WA, July.

Seattle Chinatown-International District Business Improvement Area. 2003. *Then and Now.* www.internationaldistrict.org/history.asp.

Seattle Department of Construction and Land Use. 1996. *Seattle Building Code Requirements for Existing Buildings That Undergo Substantial Alterations.*

Sullivan, Aleca. 1998. *Affordable Housing through Historic Preservation—Pacific Hotel, Seattle, Washington.* Washington, D.C.: National Park Service.

Thomas, Val. 1999. Interview with principal at Val Thomas, Inc., by David Listokin and Barbara Listokin. Seattle, WA, July.

Tompkin, Les. 2003. Interview with architect, by David Listokin. Seattle, WA, May 2.

Weinstock, Chuck. 1999. Interview with the executive director of the Capitol Hill Housing Improvement Program, by David Listokin. May 5.

Weinstock, Chuck. 2003. Interview with the executive director of the Capitol Hill Housing Improvement Program, by David Listokin and Barbara Listokin. July.

Williams, Pat. 1999. Interview with Seattle housing consultant, by David Listokin and Barbara Listokin. Seattle, WA, July.

Wing Luke Asian Museum. 2003. Seattle's Chinatown-International District. www.wingluke.org/international_district.html

Woo, Eugenia. May 2001. Seattle Neighborhood News. *Historic Eastern Hotel Sees Better Days Once Again.*

Woo, Eugenia. 2003. Coordinator, International Special Review District. City of Seattle, Department of Neighborhoods, Office of Historic Preservation. Interview by Sydney A. Becker. November.

6

Affordable Housing and Federal Historic Preservation Tax Incentives: Examples of the Compatibility of Affordable Housing Rehabilitation and Preservation

BACKGROUND AND SUMMARY

As described in Chapter 2, the federal historic preservation tax incentives program, introduced in 1976, has been central to the revitalization of thousands of historic properties. When combined with low-income housing credits or other financial incentives, the 20 percent historic rehabilitation tax credit provides a unique opportunity for building owners and developers to benefit from the renovation of historic properties that are placed into service as affordable housing for low- to moderate-income residents. Over the last decade, the National Park Service has certified numerous affordable housing historic rehabilitations as meeting the Secretary of the Interior's Standards for Rehabilitation, thus making them eligible for the 20 percent tax credit. Statistics from throughout the history of the program support the fact that historic preservation and the Secretary's Standards may be compatible with the objectives of affordable housing.

The following brief case descriptions represent a broad cross-section of recent housing projects that have been successfully completed utilizing the 20 percent historic rehabilitation tax credit—from a historic residential building to a former textile mill, from exclusive residential use to mixed-use, mixed-income, and assisted-living properties.

DEVELOPMENT PHASE BEST PRACTICE SOLUTIONS TO AFFORDABLE HOUSING REHAB

Best Practice Application of Historic Rehab Tax Credit

Katherine Court Apartments, Macon, Georgia (see Figures 6.1–6.4)

As one of the earliest large apartment complexes in Macon, Georgia, the Katherine Court Apartments presented a new option to the city's residents at the time of its construction. Built in 1914 on the site of an earlier house that had burned, the U-shaped Renaissance Revival apartment building features an entrance courtyard. Located in the Macon Historic District, which includes commercial, residential, and institutional structures in a variety of architectural styles, the building's striking buff brick details on its red brick mass, along with the clay tile roof, evoke a strong sense of the building's Renaissance Revival architecture. Even in this architecturally diverse historic district, the Katherine Court Apartments' styling is distinctive.

Vacant prior to the $1.6 million rehab, the building had suffered a moderate amount of deterioration. Decorative tile floors at the entrances were repaired and retained, as were the wood floors throughout the corridors and apartment units. Water damage to plaster ceilings and walls required substantial repair and some replacement with drywall. Although the apartments had retained the majority of woodwork and details, many fireplace mantels required replacement. New heating, ventilation, and air-conditioning systems were installed with minimum interference with the building's historic features. Full retention of the building's historic floor plans, which provide for studio, one-, two- and three-bedroom units, limited intervention with the building's historic interior features. The historic interior stairs and doors, as well as exterior balconies, were retained; and the building code required no modifications because a sprinkler system was installed in the corridors and units.

Utilizing historic photographs, the owners and architects reconstructed the towers at the front of the building, which had been lost due to extensive deterioration. Although the restoration of these prominent features was not a requirement of the tax credit program, their reconstruction recaptures the historic appearance of the building and elevates the quality of the completed project. Portions of the original towers had been stored on-site and were reused in the restoration of those features.

In 1914, the apartments were described as "magnificent," "modern in every respect," and "as fine and up-to-date as any in the country." With the completion of this rehab project, these words continue to ring true. The Macon Heritage Foundation has featured the Katherine Court Apartments in its fund-raising efforts, and the rehab project is a 2004 award recipient from the Georgia Trust for Historic Preservation. The project resulted in the rehab of 28 existing apartment units into stylish, newly revitalized residences, and has contributed to an overall increase in Macon's available housing.

Whitman Mills (Mill Building No. 1), New Bedford, Massachusetts (see Figures 6.5–6.8)

Constructed in phases between 1896 and 1923, the Whitman Mills is comprised of two main mill buildings and numerous other industrial support buildings. Listed individually in the National Register of Historic Places, the mill complex is significant not only for its industrial interpretation of Romanesque Revival architecture but also for its role in the development of the local textile industry. Originally a whaling port, New Bedford emerged as a major industrial city during the late nineteenth century due to the increasingly industrialized textile industry, which was led by businessmen such as William Whitman. Designed by internationally known Providence, Rhode Island, architect Charles R. Makepeace with later additions by the New Bedford architectural firm of Leary and Walker, the mill complex essentially forms a U-shaped plan that opens onto the street. The rehab included approximately one-half of Mill Building Number 1, the oldest portion of the mill; other parties own the remaining portions of the mill complex.

Now known as Whaler's Cove, the rehabilitated two-story mill building provides 120 units of assisted living in a mixed-income setting, with 80 percent of the units reserved as affordable housing. The unique setting for an assisted-living facility includes dining facilities, a library, a chapel, salon and barber shop, exercise facilities, and a large "country" kitchen reserved for resident use.

Partially occupied by businesses prior to the rehab, much of the mill's interior had been subdivided and many of the windows had been either modified or hidden from exterior view through the application of various coverings. Although many of these coverings concealed extant historic window units, their deteriorated condition allowed for replacement to match the configurations and profiles of the historic windows. The new interior plan arrangement allows all of the residential units to take advantage of the abundant natural light provided by the enormous windows. Locating units at the exterior walls allowed support spaces, such as offices, mechanical equipment rooms, laundry rooms, meeting areas, and the library and mailroom, to be centrally located at the core of the building. Due to the size of the building, two small openings were permitted in the floorplate in this central area in order to allow natural light from the clerestory windows to filter to the community seating areas.

All of the studio, one- and two-bedroom apartments retain the historic character of an industrial building while also providing the comforts and amenities of modern apartment units. The large mill windows, exposed tongue-and-groove ceilings, and exposed posts and beams clearly reveal the historic character of the space, while new finishes are seen within the kitchens and bathrooms and at the new partition walls. Exposed brick at the exterior walls completes the appearance of a historic mill building. The required fire separation between floors was achieved through the use of concrete overlays at the floors, which was an appropriate solution given the deteriorated and altered condition of the existing flooring.

A recipient of the Massachusetts Historical Commission's Preservation Award, this $22 million rehab provides a modern assisted-living facility in an unexpected setting and has improved the quality of options available to the area's residents.

Chambers Building, Kansas City, Missouri (see Figures 6.9–6.12)

Now largely surrounded by modern construction, the 12-story Chambers Building has achieved prominence as a significant local landmark located at a major city intersection. Individually listed on the National Register of Historic Places owing to its architectural significance, the building was constructed in two separate building campaigns. The lower five stories were designed by the Kansas City architectural firm of Smith, Rea and Lovitt and constructed in 1915; Charles Smith of that firm designed the remaining seven stories in 1923. The structural steel and concrete building and additions are bottom-faced with terra cotta tiles and brick, thus appearing to be a single architectural composition. Designed in the largely nondescript commercial architectural style of its period, the building nonetheless features touches of Gothic Revival ornamentation to punctuate its twelfth story.

The $7.2 million rehabilitation of the Chambers Building, now known as Chambers Lofts, also includes more than 4,000 square feet of leasable commercial space. The first-floor tenant spaces were reused as commercial spaces, while the second floor features offices and resident amenities such as an exercise room with ADA-accessible restrooms. The third through twelfth floors were redesigned as apartment units and provide 50 one- and two-bedroom units of affordable housing. The building was continuously used as offices throughout its history and received numerous interior modifications as the result of multiple tenancies prior to the rehabilitation. However, with the exception of storefront modifications, the exterior remained virtually unchanged.

The building's terra cotta façade and ornamentation required repointing and cleaning in accordance with the Secretary's Standards. The storefronts, extensively modified during earlier renovations, received new designs compatible with the historic building after it was determined that no historic materials remained beneath the later coverings. Although the majority of the building's historic wood and Chicago-style steel windows remained, replacement of the windows was allowed because of their extensively deteriorated condition. The new units replicate the historic units in appearance but provide for improved thermal performance.

Earlier non-historic interior renovations included the installation of dropped acoustical tile ceilings and the construction of office partitions. Limited historic material remained, but included window trim, a simple Craftsman-detailed steel stair, and plaster detailing at the elevator lobbies. The lack of historic interior finishes and original open floor plan allowed for a complete redesign of the interior spaces. Exposed mechanical systems eliminated the need to reduce ceiling heights in the apartment units and are in keeping with the building's utilitarian interior character.

Mandated code requirements required fire rating of the elevator shaft and existing historic steel exit stair, as well as the new steel exit stair, all of which were located adjacent to window openings at the rear and side of the building. This code requirement was met by allowing the infill of the adjacent window units with recessed brick panels.

Originally constructed in response to an anticipated need for additional office space, the new Chambers Lofts respond to an increasing need for affordable housing in Kansas City and are part of a surge in residential development in the city's downtown.

Bostwick Building, Tacoma, Washington (see Figures 6.13–6.16)

The Bostwick Building, located in Tacoma, Washington, was constructed in 1889. The four-story Italianate building was designed by architect Oliver P. Dennis for Dr. Henry Clay Bostwick, who is regarded as the city's first practicing physician. Known then as the Hotel Bostwick, the building featured a ground-floor bank from the time of its construction until a major 1924 remodel. Prominently situated near a five-way downtown intersection in the Old City Hall Historic District, the distinctive "flatiron" building has long been regarded as a prominent Tacoma landmark. The area, which flourished as the town became the headquarters and terminus for the Northern Pacific transcontinental railroad, is now home to a vibrant theater district.

Prior to the $1.27 million rehabilitation, the Bostwick Building was largely vacant, although the first-floor retail spaces were occupied. Historically, the upper floors had been utilized for single-room-occupancy (SRO) use. The building's original 23 hotel rooms were converted to 20 studio and one-bedroom apartment units while retaining the majority of the original apartment units' woodwork and configurations. Major work items included the repair of the building's historic windows to an operable condition, life-safety upgrades including a sprinkler system, and the construction of a new exit stair. The original wood Eastlake interior stair was retained, but modified to the mandated handrail height through the installation of a glass panel of the proper height adjacent to the historic balustrade and a new handrail at the wall.

The historic storefronts, which were modified during a 1924 remodel, were intact and repaired as part of this rehab project. Other street-level repairs included the rehabilitation of the decorative metal canopy at the building's main entrance and the repair of a prominent street clock attached to the canopy. The building's first floor continues to feature retail spaces, including a coffee shop and pet store.

Due to the building's construction type and local regulations, no seismic upgrades were required, and thus, the drastic modifications typically required for such upgrades were avoided. This not only limited the rehab costs but also prevented losses to the building's remaining historic interior features.

A previous owner had removed much of the building's historic woodwork, including door casings, baseboards and wainscoting. Fortunately, the woodwork was stored on-site and was reinstalled during the rehab. The transoms atop each room's entrance had been removed during an earlier rehabilitation in order to achieve the required fire separation. That configuration was continued throughout this rehab, although the transom frames were reinstalled with a drywall panel in place of glass in order to maintain the appearance of the historic corridors. Historic wood flooring was repaired and refinished, and remained exposed within the apartment units. The final result was 20 handsome, affordable apartment units—a much-needed commodity in the Tacoma housing market.

Called a "linchpin" in Tacoma's downtown revitalization, the rehab project was the recipient of the Washington State Historic Preservation Officer's Award for Outstanding Achievement in Historic Rehabilitation, as well as Tacoma's Historic Preservation Commission's award for Excellence in Historic Preservation.