

Preliminary Draft - LANDLORD-TENANT LAW REFORM

I

Archaic landlord-tenant law and practices, once appropriate to an agricultural society, must be reformed and modernized to meet the need of industrialized urban America.

Ancient legal doctrine, construing a lease as a conveyance of an interest in land rather than an agreement, leads to the holding that the obligation of the tenant to pay rent is independent of the duty of the landlord to repair and maintain the premises. The sole remedies thus available to the tenant to secure his rights are limited to his vacating the premises and then claiming termination of the lease or himself repairing the premises, financing the cost and thereafter claiming a set-off against future rents.

Such limitations, while onerous to all tenants, are intolerable in their application to poor people. Their choice of accommodations within their means is minimal; they can neither finance repairs nor, often, even gain access to the parts of the premises requiring repair. While states and local governments, in proper concern for the lives, health and safety of all citizens, prescribe minimum standards for housing accommodations, out-dated legal practices thwart the poor in direct assertion of their rights.

II

Reformation of landlord-tenant law is a state and local government responsibility burdened with consequence to the National welfare.

While appropriate solutions may vary between jurisdictions, certain broad principles must apply throughout:

- A. State and local enforcement of building, health and safety codes must be streamlined and improved. Administrative flexibility and fact finding must be fostered and the power of local courts strengthened. The obligation of code compliance must be a prior charge on the property itself and all rights therein, rather than merely a personal obligation of the owner.
- B. Compliance with law must be a basic part of every agreement and every right. Obligations of landlord and tenant alike, as provided in building, health and safety codes, must be construed as creating independent rights enforceable by direct legal action. Determination of such issues in the courtroom must be facilitated.
- C. Public funds must not reward illegal conduct. Appropriate rent withholding procedures must be developed for the welfare tenant. Appropriate actions must be taken in all public acquisitions to the end that prices paid disregard values achieved from income

derived in property operation contrary to minimum building, health and safety codes.

* * * * *

While these responsibilities are local, the Federal Government can and has assisted:

1. The establishment of neighborhood legal centers in slums by the Director of the Office of Economic Opportunity, who are making a major effort to help tenants secure their rights to safe and sanitary housing.
2. The convening of a Conference by the Attorney General to develop new procedures to insure that the rights of tenants are fully and effectively enforced.
3. The appointment of a Commission to make a comprehensive review of codes, zoning, taxation and development standards.

III

Programs and activities of the Federal Government, while indirect in that enforcement of fire prevention, housing, building, health and sanitation law is a responsibility of local government, can be of decisive importance:

- A. 1. Section 101(a) of Public Law 171 qualifies Federal assistance upon the appropriate local public bodies undertaking "positive programs" and "a workable program" for community improvement through the

"adoption, modernization, administration and enforcement of housing, zoning, building and other local laws, codes and regulations relating to land use and adequate standards of health, sanitation and safety for buildings, including the use and occupancy of dwellings."

Administrative regulations heretofore issued by the Secretary of Housing and Urban Development should be further clarified to direct specific enumeration and attention to the application and enforcement of local codes and ordinances related to life, health and safety throughout the locality and to demonstrate increased effort and progress in such enforcement. Such enforcement of minimum codes shall be required as protection of lives and health of occupants, irrespective of whether a basically sound and stable area is thereby created.

2. The Secretary of Housing and Urban Development can further implement the purposes of the legislation through the development of national uniform statistical reporting, whereby yardsticks of comparable municipal performance may be established.



3. The Secretary of Housing and Urban Development can tighten existing regulations to the end that mortgage insurance available through the Federal Housing Administration for property acquisition, rehabilitation and improvement must be conditioned upon code compliance. At the same time, mortgage insurance and grants under Section 312 can be promoted and expedited. Special personnel can be designated in each insuring office of the Federal Housing Administration with the specific assignment of coordinating the insuring activities of that agency with city building departments and community organizations to the end that provision of proper financing for complete rehabilitation to meet code standards be greatly expedited.

B. The Secretary of Health, Education and Welfare can, by administrative regulation, require that each local authority participating in administration and disbursement of relief funds establish, in collaboration with appropriate local authorities, systems of housing inspection and certification to the end that appropriate withholding of rents, where justified, be undertaken.

C. All Departments of Government concerned with property acquisition, wherever Federal investment is involved, can require that the acquiring public authority demonstrate and certify that no part of the award granted or payment made represents values achieved by operation contrary to local codes of building, health and safety.

D. All Departments of Government dealing with the audit and verification of real estate and mortgage loan assets can require certification that as to the property concerned no complaints are presently pending by any local authority charging violation of local minimum codes of building, health and safety.

IV

At this time property owners in deteriorated or declining city areas assume that the municipality either cannot or will not enforce its building, housing, health and sanitation laws -- an assumption based on experience and occasionally supported by Federal statement:

"Characteristic of a typical slum area is the overcrowding of housing units well beyond the levels permitted by local codes. Any effort to enforce the occupancy standards of the code would have as its immediate consequence a massive displacement of the families occupying the overcrowded units. This might be acceptable if it were coupled with a concurrent program to make available to such families decent housing at prices they can afford. Unfortunately, the latter tends to be far slower and more costly than the carrying out of code enforcement. In many cases local courts have recognized this consequence and, as a matter of public policy, have refused to permit enforcement action.

"By its very nature, a program of code enforcement requires property owners to make substantial investments in repairs and improvements in order to avoid prosecution. Unless that investment is coupled to an increase in rental returns or property values, the owner is likely never to be able to recover the cost. But since we are still dealing with a seriously blighted area, neither the increase in rentals or property values is likely to occur. The present tenants usually cannot afford higher rentals, particularly if occupancy is reduced and there are fewer wage earners to pay the rent. Tenants with higher incomes usually cannot be persuaded to move into a still blighted area. The value of the property in a private sale cannot be expected to increase unless the rentals increase nor would the repairs or improvements add significantly to the property value in the event of a future public condemnation.

"It has been argued that rigid code enforcement in deteriorated areas will so depress property values that new purchasers will be able to afford to make the necessary repairs without increasing rents. In fact, this does not happen on any broad scale. While our understanding of the factors which motivate owners of slum property is very limited, a recent study does cast some light on this. The large 'sophisticated' owners of slum property usually have so little of their own money invested that any feasible reduction in cost of purchasing could not equal the cost of needed repairs. On the other hand, the small 'unsophisticated' investor is usually incapable of taking advantage of any such economic effects.

"In sum, it is our belief that concentrated code enforcement by itself in badly blighted areas would result in more turmoil than improvement of housing conditions. But to say that this one approach will not work is not a satisfactory answer to a very real and pressing problem. Although we have not yet arrived at anything we regard as an adequate solution, it would be extremely valuable to present some of the problems and possible approaches in order to get broader consideration." (Staff Report, Housing and Urban Development, forwarded by the Secretary to Senator John Sparkman, Chairman, Subcommittee on Housing, Senate Committee on Banking and Currency, 7/26/66)

The assumption becomes a self-fulfilling prophecy:

- A. Property owners reduce expenditures for property maintenance and repair wherever possible.
- B. Tenant and community morale collapse.
- C. Constructive community leadership is denied credibility.

If it be assumed that power of state and local government to regulate housing condition in order to preserve life, health and safety is a prior charge on all interests in property, then the equation as to the feasibility of property repair to minimum standard is simply whether the gross rent roll will cover current operating expense, current taxes, and principal and interest payments to cover the cost of repair. Antecedent mortgage commitments, as well as the equity investment, are irrelevant to the issue. Were mortgagees and property owners, contrary to existing assumptions, convinced of this contingency, their conduct concerning property repair and maintenance would be altered significantly. In these circumstances, it would not be necessary that public action be asserted against each property in a given neighborhood in order to reverse the prior assumptions.

A formidable case exists, therefore, for selection of a few neighborhoods in which, after complete inventory of structure condition, ownership, mortgage debt, and prior history of code enforcement, an experimental program be undertaken by the appropriate local public authority, working in collaboration with the local community, in which a number of the possible Federal sanctions here enumerated were employed. The effort is attractive in:

1. Presenting a new attack upon the syndrome of community decline and collapse.
2. Offering promise of reduced public expenditures by imposing costs upon non-conforming properties.
3. Generating increased voluntary compliance with minimum codes and standards.