Out of Sight, Out of Control

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This is part of a series of CHPC briefings examining current issues of importance to the NYC housing and community development industries.

Since our publication of *Debt Threat* in August 2009, and our symposium *One Size Fits Some* in 2009, CHPC has raised concerns and offered recommendations to address the problems of multifamily rental housing that has become dangerously over leveraged as well as the desperate need to reframe our regulations to end illegal occupancy and bring new housing choices into the marketplace for households that are sharing accommodations and for single adults.

The complexity of implementing these strategies along with the desperate need to do so can be evidenced by one building's story, 2321 Prospect Avenue, a three family house, in the Belmont neighborhood of the Bronx. On April 23, 2011, three people including a child, died in a fire in this building whose recent history highlights the dangerous impacts of the problems plaguing the rental housing market in recent years.

Various news stories have given us reasons why they died: landlord greed, illegal residential use, lack of access for city departments to inspect, drug dealing, and finally abandonment by the owner. All have played some role but they omit the underlying reasons that placed vulnerable people in unsafe conditions that remained unabated.

A New Owner

This three unit multiple dwelling was doomed to financial failure on the day it was bought on November 16, 2005 for $480,000. This sales price was 75% more than the seller had paid only 18 months earlier. According to the public record, 100% of the purchase price was financed through two mortgage loans: a partial balloon mortgage of $384,000 and a second mortgage of $96,000. There is no evidence that the new owner provided any equity to finance the purchase. In 2007 the first mortgage was purchased by a residential mortgage backed securitized trust.

Encumbered with two mortgages with an estimated payment of approximately $3,000 per month, and estimated operating costs of $1,800 per month, each apartment needed to generate about $1,600 per month just to meet these minimum costs. Obviously this amount does not include profit for the owner or unforeseen costs.*

In less than three years, by August 1, 2008, the owner was already in default of the first mortgage. Foreclosure proceedings were started the following spring in April 2009, by the lender, the CIT Mortgage Loan Trust 2007-1, a residential mortgage backed securitized trust. By October 2010 a judgment of foreclosure and sale was granted to the Trust.

Loose Ends

Though a foreclosure proceeding was started court records do not show any attempt by the Trust to obtain the appointment of a receiver to manage the property during the foreclosure. This left the owner in charge of the property until the completion of the foreclosure. Predictably, the owner, with no financial interest in the property, no longer actively managed the building. Without an active owner and with

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no appointed receiver, the building was effectively abandoned.

Not surprisingly, according to news reports a drug gang took control of the building. It would now be a short bridge to the fire that would claim three lives along with the property.

Debt Threat included a series of recommendations for State, legislation to improve the foreclosure process. Among them were:

- Requiring receivers and property managers to demonstrate competence in overseeing multiple dwellings. New York City's Department of Housing Preservation and Development (HPD) would certify potential receivers and property managers as qualified.
- Requiring bidders on foreclosed multifamily properties to be pre-approved based on their prior records of managing buildings. HPD would pre-qualify bidders.
- Giving HPD the ability to intervene in foreclosure actions when they think the public's life, health or safety is at risk.

There has been some progress on these recommendations. We expect the City Administration to come forward with a proposal for the State Legislature to insure that competent receivers are appointed.

New Law

Beyond our proposals other legislative changes have been made in response to foreclosure concerns from upstate New York, notably Buffalo. In many communities, especially upstate New York, small homes languish in foreclosure proceedings that never finish. The problem arises because lenders find at the end of the foreclosure process that the properties are not worth the cost of putting them up for auction to new potential owners. In December 2009, Governor Paterson signed new amendments to New York State's Real Property Actions and Proceedings Law to modify foreclosure law for homeowners going through foreclosures. Among the new amendments §1307 of the Real Property Actions and Proceedings Law was intended to protect tenants and neighborhoods by making the foreclosing mortgagees responsible for maintenance of such properties when they failed to complete foreclosures. Although a "down State" property, 2321 Prospect Avenue was covered by §1307 and the mortgagee should have assumed responsibility for the property. Clearly they did not.

2321 Prospect Avenue fell through the cracks of our foreclosure system. In the future when foreclosure proceedings are filed in the court but no receiver has been appointed within two months, we think that the Court system should alert the City that there is a property in foreclosure and at high risk. Pursuant to our other recommendations HPD should then have the opportunity to become a party to the foreclosure to insure that the property is properly managed. HPD could ask for the appointment of a receiver if needed.

As 2321 Prospect Avenue shows, buildings in foreclosure are vulnerable because responsibility for the building is in transition. The process must be monitored with the objective of intervening when needed to protect life, health and safety.

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*Costs were determined as follows: The first mortgage of $384,000 is a partially amortizing balloon with a monthly payment of $2,491.60. There is no public record of the terms of the $96,000 second mortgage so we assumed a self amortizing 30 year mortgage at the same interest rate at the first. For operating expenses we assumed a conservative $600 per unit per month; the Rent Guidelines Board in its 2010 Income and Expense Study shows a $704 operating cost per unit per month for Bronx buildings of 11-19 units.

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