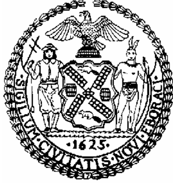


THE CITY OF NEW YORK
INDEPENDENT BUDGET OFFICE
110 WILLIAM STREET, 14TH FLOOR
NEW YORK, NEW YORK 10038
(212) 442-0632 • FAX (212) 442-0350 •EMAIL: ibo@ibo.nyc.ny.us
http://www.ibo.nyc.ny.us

Review of HPD's Article 7A Program

Program Overview
Article 7A of the New York State Real Property Actions and Proceedings law provides for the appointment by Housing Court judges of private administrators to manage residential buildings that have been "effectively abandoned" by their owners, and in which conditions are "dangerous to life, health, or safety" of tenants. Article 7A is designed to address emergency code violations and improve overall living conditions for tenants. Rule-making and program administration are handled by the city through the Department of Housing Preservation and Development (HPD), following customary notification and comment procedures. There are currently 1,794 units in 123 buildings under 7A administration.

IBO spoke with staff at HPD and 7A administrators in preparing the following review of the 7A program, its budget, and policy issues.

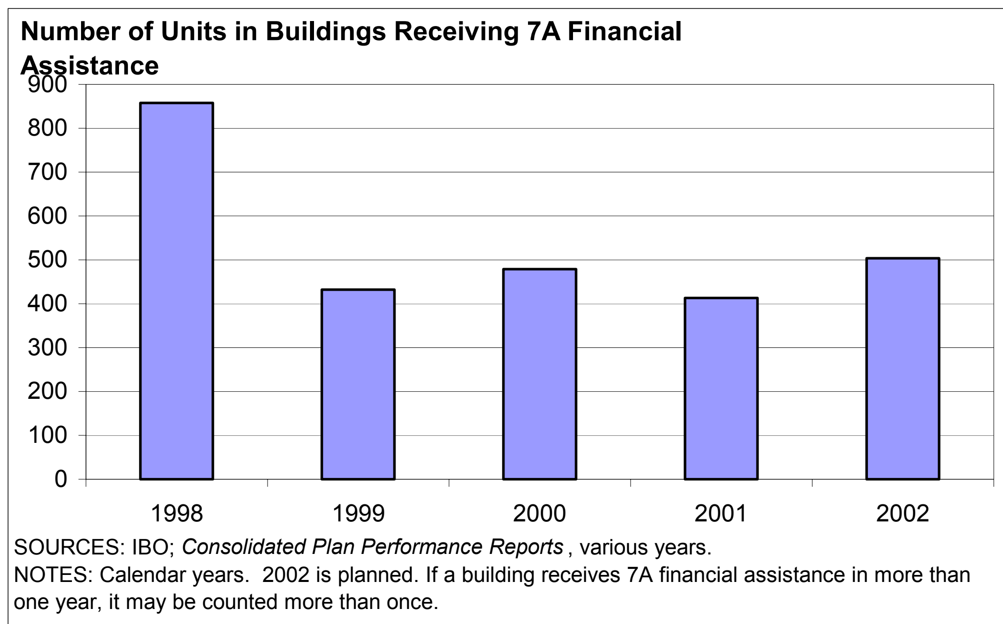
Identifying prospective buildings. A building may enter the program in one of two ways: by tenant petition, or by designation by the Department of Housing Preservation and Development. In either case, one-third of tenants must agree that the private administrator is needed. A Housing Court judge makes the final determination to appoint an administrator.

In practice, about 20 percent of cases are tenant-initiated, and 80 percent begin with HPD—although some HPD cases begin as Housing Court code enforcement cases, in which case the original impetus for city involvement may have come from the tenants. Alternatively, HPD may identify buildings as appropriate for 7A through comprehensive code enforcement cases**,** or through a recommendation from the Department of Public Health and Mental Hygiene. The general HPD "rule of thumb" is that there must be at least two Class C "immediately hazardous" violations per unit for a building to be considered for 7A.

Entering 7A administration. Once HPD or tenants have decided to pursue a 7A action, the case is argued in Housing Court. The Housing Court judge decides whether it is appropriate to appoint an administrator, or whether to enter into a stipulation with the landlord requiring him or her to make necessary repairs. According to HPD, in about 25 percent of cases, the judge allows the landlord to make repairs without appointing an administrator. The better documented the history of poor maintenance, the less likely the judge is to allow the landlord to make the repairs independently. Nonprofit organizations, working with tenant groups, play a key role in establishing this history, and therefore bringing a building into the 7A program. Nonprofit organizations report that they have found that judges often see appointing a 7A administrator as a last resort, preferring to enter into stipulations with landlords.

When a building does enter the 7A program, it remains in private ownership, and the owner has the right to sell the building at any time. If a building is sold, the new owner can petition the Housing Court to remove the administrator, and allow him/her to complete the necessary repairs independently. According to HPD, unless there is an obvious reason to rule against the new building owner, Housing Court judges generally remove the administrators and allow the new landlords to enter into agreements to do repairs on their own.

Funding building repairs. Buildings in the 7A program are of course in serious disrepair, and need both emergency and long-term work. In the past, HPD gave administrators "building stabilization grants" to do emergency repairs, and "financial assistance packages" for longer-term assistance. However, the agency found that administrators had trouble using the building stabilization grant funds, in part because grant funds were inadequate to meet requirements that the administrators pay workers prevailing wages. As a result, HPD has discontinued the use of building stabilization grants, and encourages the administrators to collect rent money for this. The department is also speeding up the processing of financial assistance packages to allow that money to be used for emergency repairs. Some emergency repairs are completed by HPD's Emergency Repair Program.



SOURCES: IBO; *Consolidated Plan Performance Reports* , various years.
NOTES: Calendar years. 2002 is planned. If a building receives 7A financial assistance in more than one year, it may be counted more than once.

According to building administrators to whom we spoke, the elimination of the building stabilization grants may slow down the repair process. The administrator must prioritize repair projects and complete them as sufficient funding from rent rolls becomes available. Many 7A buildings were engaged in rent strikes for relatively long periods before the administrator was appointed, and tenant associations saved the unpaid rents for eventual repairs, which has mitigated the effects of the elimination of the building stabilization grants.

A more serious problem, according to some building administrators, is the fact that many 7A court orders include caps on the value of repairs that administrators can do without prior court approval. These caps generally range from $1,500 to $2,500, which is substantially less than the

cost of the major repairs needed by some 7A buildings. Getting court approval for higher cost work can be a slow process. HPD has told administrators that the agency will work with the Court to get waivers to these spending caps, but to date these waivers have not been granted.

All funding provided under a 7A administrator is considered a loan recoverable from the building owner. A lien is placed against the property for the amount of the debt to ensure its eventual recovery.

Leaving 7A administration. The amount of time buildings spend in the 7A program varies considerably, from just a few months to several years. According to administrators IBO spoke with, buildings generally stay in the 7A program for long periods of time. The impetus to leave 7A administration typically comes from the building owner, but only a Housing Court judge can rule that a building is fit to leave the 7A program. Administrators are removed after "completion of the work prescribed in [the court] judgment" appointing them.

Action by the building owner to regain control is often contested by tenants, with the result that buildings may remain in judicial limbo for long periods of time. One nonprofit administrator who has done extensive work with the program could recall only two instances in which a judge had allowed the landlord to regain control of a building. In one case, the landlord eventually evicted all the original tenants and re-rented the units at higher rates. In the other building, the tenants are once again engaged in a rent strike because building maintenance has declined.

7A administrators. The Housing Court appoints an administrator for a 7A building from a pre-qualified list of either for-profit or not-for-profit housing and building management organizations. Administrators must meet criteria established by HPD, including having been in business for at least three years; manage at least 200 units; and be "almost" free of housing code violations in the units they manage. There are currently 30 pre-qualified 7A administrators, split roughly evenly between nonprofit and for-profit corporations.

Administrators are responsible for managing the building and ensuring that repairs are made. The building owner loses the right to collect rents or otherwise manage the building. Rents paid by tenants in 7A buildings are dedicated to building improvements. Rent levels may be subject to HPD examination; the agency uses state guidelines to set rents in rent-controlled and-rent stabilized apartments.

If an administrator fails to adequately perform his/her job, HPD will return to Housing Court to petition for a change in administrator. An administrator may be identified as inadequate if he/she does not file required financial reports, if tenants report that repairs are not being made, or if he/she does not apply for the loan funds that HPD has estimated are necessary to repair the building. Removal of an administrator is a relatively rare occurrence; HPD estimates that it has to do so no more than once a year.

HPD/administrator relations. HPD 7A staff provides counseling and oversight, making sure that administrators do their jobs correctly. Anecdotally, it appears that the 7A staff may not always provide sufficient support to administrators. For example, IBO spoke to one administrator who

had asked HPD for help in developing a financing package to replace building electrical systems. HPD was not able to provide this assistance.

Administrators told IBO that while their relationships with HPD were generally good, there were ongoing communication problems with the agency. For example, there is frequent turnover among the 7A counselors appointed by HPD to serve as liaisons with administrators. At times, HPD has reportedly changed the reporting requirements without fully explaining the changes to administrators. The communication problems have complicated the administration process, although administrators did not seem to feel that lack of communication presented a major program flaw.

Article 7A Program Budget

HPD funds the 7A program through both the Expense and Capital Budgets. Expense Budget funds are used to pay for 7A program staff, and for financial assistance for smaller buildings. In general, if 7A funds will not be used to pay for the replacement of an entire building system, the expenditure is not considered to be capital-eligible, and must therefore be paid for out of the expense budget. Capital funds are used for financial assistance to larger buildings, and to replace complete building systems.

The Expense Budget is funded from city tax-levy dollars and from federal Community Development Block Grant (CDBG) and Section 8 funds. In fiscal year 2002, roughly 56 percent of the overall 7A expense budget was CDBG funded, 34 percent was tax levy, and 11 percent was Section 8. CDBG funds are used for financial assistance to buildings. The 7A capital budget is entirely city-funded.

Article 7A Spending and Staffing
Dollars in millions

	1999	2000	2001	2002	2003
Expense Budget	$3.8	$4.5	$4.7	$3.4	$2.3
Capital Budget	7.4	3.3	5.5	4.5	4.3
Total	**$11.2**	**$7.7**	**$10.2**	**$7.9**	**$6.6**
Fulltime Program Staff	58	69	52	38	25

SOURCES: IBO; Department of Housing Preservation and Development.
NOTE: 2003 figures are budgeted.

There are six staff units that work on 7A buildings:

- Counseling Unit
- Loan Unit
- Intake Unit
- Program Unit
- Financial Review Unit
- Technical Unit Staff

The Financial Review Unit was recently merged with the Division of Alternative Management Programs, and the Technical Unit was moved to Design, Architecture, Construction, and Engineering within HPD. As a result, the number of fulltime positions attributed directly to the 7A program has fallen. The staff positions still exist, but are technically part of other HPD divisions.

Changes in 7A spending. Spending on the 7A program has fluctuated in recent years, and in general, the size of the program has been declining**.** Some of the decline can be attributed to the transfer of personnel to other parts of HPD. In addition, the elimination of building assistance grants and the use of Emergency Repair Program funds for short-term repair needs has lowered expense budget spending.

More importantly, however, program spending is directly a function of the number of buildings in the program, which in turn depends on the decisions of Housing Court judges, as described above, and the general state of the housing market.

When the real estate market is strong, fewer buildings enter the program because higher and more stable rent rolls may allow landlords to maintain their buildings in at least relatively habitable condition. Landlords are also more likely to contest the appointment of an administrator in a strong real estate market. In addition, more buildings leave the program when the market is strong, because owners of buildings that have been taken under 7A management can find buyers for these properties, and as described above, Housing Court judges are likely to allow new owners to leave the 7A program and complete repairs under an agreement.

Large buildings, which because of their larger rent rolls tend to be more desirable on the private market, are particularly likely to leave the 7A program during strong housing markets. Both the average size of the buildings in the 7A program and the overall number of units in the program dropped during the strong real estate market of the second half of the 1990s.

The Third Party Transfer Program, which began operation in 1999, has also contributed to the decline in the 7A program. Staff of the 7A program may recommend a particular building for the Third Party Transfer program, or a 7A building may be captured in a Third Party Transfer cluster. In either case, the building then leaves the 7A program (or no administrator is appointed in the first place).

Program Issues

Our review reveals several issues with the 7A program as a tool for improving tenant living conditions and addressing owner abandonment.

Budgetary resources. Article 7A is one piece of HPD's overall housing preservation strategy, and the level of resources available for that purpose can affect the number of buildings that end up under 7A administration. HPD's direct spending for the 7A program is principally a function of the number of buildings in the program at any given time. Article 7A Program spending does not, however, reflect the level of resources for other HPD anti-abandonment and preservation programs that could affect the number of buildings that eventually end up in 7A administration. HPD offers building management classes, and code compliance and other low-interest rehabilitation loans, in order to help prevent building deterioration and abandonment. The Division of Code Enforcement, through its inspection program, helps identify buildings that may require a 7A administrator. Finally, the Housing Litigation Division takes the legal steps necessary to get an administrator appointed. All of this must occur before a 7A administrator may be appointed. Thus, the overall level of anti-abandonment and housing preservation

spending plays an important role in determining the number of buildings that may enter into—or avoid—7A administration.

Judicial discretion. The 7A law provides judges with complete discretion to decide between appointing an administrator or entering a judgment directing the building owner to make the repairs. A significant number—25 percent—of 7A cases brought either by tenants or HPD do not result in the appointment of an administrator, because the judge instead allows the building owner to enter into an agreement to complete repairs. Similarly, when a building is sold—even after a 7A administrator is appointed—judges generally give the new owner the opportunity to correct the building violations.

As amended in 1999, the Article 7A law does allow HPD to enter into agreements with new owners of 7A buildings, regardless of whether the Court removes the administrator. Under these agreements, the lien placed on the building will stop accruing interest. In exchange, the new owner agrees to make the necessary repairs to the building. After 15 years of compliance, both the principal and the interest on the debt are forgiven. This provision of the law expires in 2004.

Although there is no empirical evidence one way or another to determine whether 7A administrators or stipulations requiring landlords to do repairs produce better outcomes, administrators IBO spoke with felt that stipulation agreements were not as effective as the appointment of a 7A administrator in producing improvements in building conditions. One possible way to strengthen the effectiveness of stipulations would be to require specified timeframes, including the possibility of penalties for violation of the agreement. Owners could also be required to post a bond, as administrators are currently required to do. Return of the bond could be made contingent on maintaining the building in habitable condition for some number of years.

Lack of clear criteria for ending 7A administration. Buildings can remain in the 7A program for years because tenants oppose returning a building to the owner's control. After buildings have been in 7A for some time, anecdotal reports suggest that they are typically in better shape than they were upon entering the program, which gives landlords an incentive to try to regain control. Tenant associations may prefer to remain under 7A administration, however, fearing that landlords may try to either increase rents to reflect the improved physical condition, or may once again let building conditions deteriorate. Again, guarantees of continued good maintenance, perhaps through a regulatory agreement with HPD, accompanied by penalties for violation, could help assuage tenants' concerns, return the building to private management, and release resources for other purposes.

When 7A fails. Although 7A administration may prove successful in improving building conditions in many cases, in other cases 7A administration may not provide a long-term solution. A building may require new, more responsible ownership. HPD's Third Party Transfer program provides one model for transfer of building ownership. There are significant legal protections for property owners' rights, however, that sharply limit the government's ability to seize property.

The Third Party Transfer program was enacted in 1996 as an alternative to city assumption of direct ownership of "distressed" buildings in tax arrears. HPD reviews buildings identified by the

Department of Finance for inclusion in a tax lien sale, in which liens against buildings in property tax arrears are sold to private parties for collection or eventual foreclosure. “Distressed” buildings—defined as those with an average of five or more hazardous violations per unit, or Emergency Repair Program liens over $1,000—are removed from the tax lien sale and are eventually transferred to new private owners through an *in rem* action. HPD provides funding for building rehabilitation.

There are three conditions a building must meet to enter into Third Party Transfer: it must be “distressed;” it must be in tax arrears; and it must be part of the geographic area identified for a tax lien sale. If a building is not included in a tax lien sale area, or is not in tax arrears, or if there are fewer than five violations per unit, then there is currently no statutory provision for transfer to new ownership. Article 7A administration—which does not provide for city-initiated ownership transfer—is the only alternative.

Property tax arrears or other city liens (such as unpaid water and sewer charges) are a necessary legal condition for an *in rem* action. Without tax arrears, the city would need some other legal basis for seizure. We cannot offer a legal analysis of the city’s power to seize property, and there may or may not be a legal and constitutional basis for a seizure based on failure to maintain a property.

Prepared by Molly Wasow Park