

RESURRECTING THE RENT STRIKE LAW

BY GREG BALTZ\*

**Abstract.** In the winter of 1963–1964, the mass uprising of rent striking tenants in New York City provoked the passage of the Rent Strike Law, a private right of action for organized tenants in degrading New York City buildings to remove their landlord from control of the property and appoint a rental receiver in their place. In the ensuing decades, the Rent Strike Law became a critical tool for stabilizing neglected properties and converting them responsibly managed housing. Today, the Rent Strike Law, now commonly referred to as Article 7-A, has fallen into disuse within the context of New York City’s speculative multi-family real estate market. Meanwhile, tenants living in precarious housing elsewhere in New York State lack access to the law. This Article examines the remedial framework available to tenants in New York State—who, excluded from the Rent Strike Law, lack sufficient tools to win repairs and stabilize neglected properties—to illustrate the continued value of this law in New York City and argue for its extension across the State. This Article further demonstrates how the Rent Strike Law was employed historically as a tool to transfer ownership of neglected properties. This Article closes with policy proposals that will enable organized tenants to once again leverage the Rent Strike Law for its historical dual purposes of winning repairs and facilitating the sale of neglected properties to responsible owners or the residents themselves.

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INTRODUCTION

In the winter of 1963–1964, organized tenants in New York City began the United States’ largest rent strike since the Great Depression.<sup>1</sup> Since the end of World War II, mass federal investment in homeownership, suburbanization, and urban renewal with attendant racist policies like redlining and exclusionary zoning contributed to a flight of capital from New York City and the neglect and outright abandonment of multi-family rental properties by their owners.<sup>2</sup> Working-class tenants—Black, Puerto Rican, and white alike—lived in squalid housing conditions in neighborhoods like Harlem, Bedford Stuyvesant, and the Lower East Side.<sup>3</sup> Absentee landlords “milked” still habitable rental properties, collecting rents without reinvesting collected funds into maintenance, capital improvements, or often even tax payments, thus allowing them to become uninhabitable.<sup>4</sup> That winter, conditions reached a

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<sup>1</sup> See ROBERTA GOLD, WHEN TENANTS CLAIMED THE CITY: THE STRUGGLE FOR CITIZENSHIP IN NEW YORK CITY HOUSING 113–45 (2014) (describing the role of the burgeoning Civil Rights Movement and New York City’s long existing tenant Left in the development of the rent strikes); Joel Schwartz, *Tenant Power in the Liberal City, 1943-1971*, in THE TENANT MOVEMENT IN NEW YORK CITY, 1904-1983, at 134, 172-84 (Ronald Lawson & Mark Naison eds., 1986) (situating the rent strikes within the long arc of the tenant movement in New York City); MICHAEL LIPSKY, PROTEST IN CITY POLITICS: RENT STRIKES, HOUSING AND THE POWER OF THE POOR 85-129 (1970) (detailing the impact of the rent strikes on City politics and housing maintenance policies); TAMAR W. CARROLL, MOBILIZING NEW YORK: AIDS, ANTIPOVERTY, AND FEMINIST ACTIVISM 51–60 (2015) (narrating Mobilization for Youth’s (MFY) role in the rent strikes).

<sup>2</sup> See generally SHERYLL CASHIN, WHITE SPACE, BLACK HOOD: OPPORTUNITY HOARDING AND SEGREGATION IN THE AGE OF INEQUALITY (2021); RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017).

<sup>3</sup> See JOSHUA B. FREEMAN, WORKING-CLASS NEW YORK: LIFE AND LABOR SINCE WORLD WAR II, at 23–39 (2000) (detailing mid-century New York City’s demographic makeup).

<sup>4</sup> Duncan Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: ‘Milking’ and Class Violence*, 15 FLA. ST. U. L. REV. 485, 489 (1987) (defining “milking” as “the decision to reduce maintenance below the level necessary to keep a building

breaking point, and between 225 and 500 organized tenant associations collectively withheld their rent.<sup>5</sup> Appearing in court with bags of dead rats, the rent-striking tenants demanded repairs from their landlords as well as greater government assistance in the provision of safe and affordable housing.<sup>6</sup>

Both New York City government<sup>7</sup> and tenants<sup>8</sup> lacked effective legal mechanisms to compel landlords to make repairs. In response to the rent strikes, the New York State Legislature passed Article 7-A of the Real Property Actions and Proceedings Law, colloquially known at the time as the Rent Strike Law.<sup>9</sup> The Rent Strike Law granted organized tenants representing at least one-third of apartments in a building the power to petition a court to appoint an independent receiver known as a 7-A administrator to manage their buildings when the owner had permitted conditions “dangerous to health, life, and safety” to exist for five or more days.<sup>10</sup> The 7-A administrator’s statutory role was to collect rents and dedicate the money towards repairs before all other expenses, including payments to the landlord or debt service to any lenders.<sup>11</sup> The real threat of this re-prioritization of revenue was designed to compel owners or mortgagees to act. At times, this hastened repairs, and when it did not, the appointed 7-A administrator would take charge of repairs rather than the court continuing to threaten penalties only to adjourn court dates without results.

In many ways, the Rent Strike Law was a misnomer; so much so that the attorneys and organizers alike now collectively refer to it as 7-A.<sup>12</sup> A rent strike is the collective refusal of tenants to

in existence as a residential unit. . . . treat[ing] his property as a wasting rather than a renewable asset. . . . [and] adopt[ing] a strategy of renting for what the market will bear as the building deteriorates, fully understanding that within some relatively short period of time he will be out of business.”)

<sup>5</sup> See Tova Indritiz, *The Tenants’ Rights Movement*, 1 N.M. L. REV. 1, 14 n.47 (1971) (assessing the size of the rent strikes).

<sup>6</sup> *Harlem Slum Fighter; Jesse Gray Success After 10 Year A Tailor by Trade Right to Beliefs Back*, N.Y. TIMES, Dec. 31, 1963, at 32 (“[Jesse Gray] asked for a harvest of rats, dead or alive, to dramatize in Civil Court yesterday the misery of slum dwellers . . .”).

<sup>7</sup> During this period, New York City relied on a criminal code enforcement system where landlords were served with criminal summons for violating housing standards. Judges were often reluctant to enforce it. See Judah Gribetz & Frank P. Grad, *Housing Code Enforcement: Sanctions and Remedies*, 66 COLUM. L. REV. 1254, 1275–1281 (1966) (arguing for the replacement of criminal code enforcement with a civil system); see also George J. Castrataro, *Housing Code Enforcement: A Century of Failure in New York City*, 14 N.Y.L.F. 60, 62 (1968) (charting the development of housing codes through New York City’s history until 1968).

<sup>8</sup> In 1963–1964, rent striking tenants’ sole conditions-based defenses to eviction for non-payment of rent were limited to constructive eviction, reduction of rents in rent controlled properties based on conditions, and the Spiegel Law, which would cut off government benefit payments to landlords who did not maintain their properties. See Edward H. Flitton II., *Rent Withholding: Public and Private*, HARV. C.R.-C.L. L. REV. 179, 181–185 (1967).

<sup>9</sup> N.Y. REAL PROP. ACTS. LAW §§ 769–783 (McKinney 2021). Article 7-A was referred to as the Rent Strike Law in periodicals and scholarly articles. See, e.g., *Testing the Rent-Strike Law*, N.Y. TIMES, Aug. 7, 1965, at 20; Note, *Rent Strike Legislation – New York’s Solution to Landlord-Tenant Conflicts*, 40 ST. JOHN’S L. REV. 253, 263 (1966); [hereinafter St. John’s Note].

<sup>10</sup> N.Y. REAL PROP. ACTS. LAW § 770 (McKinney 2021). The first iteration of Article 7-A only permitted attorney barred in New York, certified accountants, or a real estate brokers to be 7-A administrators, and also required tenants to secure a cost estimate from an engineer prior to commencement. 7541-A (1973-1974) (Mar. 22, 1973) (amending the Rent Strike Law giving the City of New York standing to commence cases and removing the professional requirements for 7A Administrators).

<sup>11</sup> *Id.* § 778.

<sup>12</sup> See, e.g., Erica Braudy & Kim Hawkins, *Power and Possibility in the Era of Right to Counsel, Robust Rent Law & COVID-19*, 28 GEO. J. ON POVERTY L. & POLY 117, 149 (2021) (referring to actions brought pursuant to N.Y. REAL PROP. ACTS. LAW § 770 as a “7A proceeding”).

pay rent until their demands are met.<sup>13</sup> The City saw organized tenants withholding their rents as a threat to stability—especially fearing that in New York City’s economic climate, mass withholding of rent would lead to the landlords abandoning properties rather than accepting accountability for repairs.<sup>14</sup> Then, as now, if the tenants paid rent to their landlord, there was no guarantee that the landlord would reinvest the funds into the property. 7-A was designed as an alternative to mass rent withholding, thus pushing the fight from the streets into the courthouse and ensuring rental payments would go to a 7-A administrator to make repairs.<sup>15</sup>

Although 7-A was initially designed to undercut organizing strategies employed during the 1963–1964 rent strikes, tenants and New York City alike transformed 7-A into a tool to win repairs and indirectly transfer ownership of privately-owned multi-family rental housing into forms of social housing starting in the 1970s.<sup>16</sup> By 1975, New York City was in fiscal crisis, and landlords abandoned their buildings and defaulted on their property tax obligations in record numbers.<sup>17</sup> To take over the tax delinquent properties, New York City initiated foreclosure proceedings based on their tax lien on the property known as *in rem* tax foreclosures.<sup>18</sup> By the time foreclosure proceedings began, property owners had little incentive to invest in the property. New York City sought and received authorization

<sup>13</sup> Critical participants in the 1963–1964 rent strikes have labeled them as a failure for not provoking a crisis, making it “the least disruptive in history . . . also the least successful in producing important reforms.” Frances Fox Piven & Richard A. Cloward, *Rent Strike: Disrupting the Slum System*, THE NEW REPUBLIC, Dec. 2, 1967, at 11, 13. (“Crisis thus has a potential political force far greater than the number of citizens, organized or not, who participate in the disruptive action itself. The legalistic tactics of 1963–1964 did not generate a public crisis, but other, more disruptive tactics would.”)

<sup>14</sup> LIPSKY, *supra* note 1, at 90–91 (“Members of the Executive Committee both ‘feared and welcomed’ the rent strikes.”).

<sup>15</sup> Critical participants have argued that court-centered strategies that focus on slumlords rather than on fomenting crisis for government are seriously flawed. See Piven & Cloward, *supra* note 13, at 13 (arguing that “organizers erred fatally by leading tenants to work through the courts rather than disrupt state institutions”); *but see* THOMAS SURGE, SWEET LAND OF LIBERTY: THE FORGOTTEN STRUGGLE FOR CIVIL RIGHTS IN THE NORTH 409–410 (2008) (arguing that the “professionalization of protest” helped the New York rent strike gain a degree of institutional longevity via government and foundation-funded legal services).

<sup>16</sup> Social housing has an expansive definition that can include public housing authorities, privately owned but subsidized housing, non-profit owned rental housing, and shared and limited equity cooperatives among others. Not all such models are conditioned on permanent affordability. For more detail on social housing models see Julie Gilgoff, *Local Responses to Today’s Housing Crisis: Permanently Affordable Housing Models*, 20 CUNY L. REV. 587 (2017); Oksana Mironova & Thomas J. Waters, *Social Housing in the U.S.*, CMTY. SERV. SOC’Y (Feb. 18, 2020), <https://www.cssny.org/news/entry/social-housing-in-the-us> [<https://perma.cc/L322-3ENY>] (“The term social housing is commonly used to describe a range of housing ownership, subsidy, and regulation models in Europe, South America and elsewhere around the globe. These models often go far beyond what’s known as “affordable housing” in the U.S. to promote permanent affordability, democratic resident control, and social equality.”). See also PEOPLE’S ACTION, A NATIONAL HOMES GUARANTEE (2019), <https://homesguarantee.com/wp-content/uploads/Homes-Guarantee--Briefing-Book.pdf> [<https://perma.cc/YY9Y-TWMRJ>].

<sup>17</sup> See generally BENJAMIN HOLTZMAN, THE LONG CRISIS: NEW YORK CITY AND THE PATH TO NEOLIBERALISM (2021) (tracing how New Yorkers developed new solutions to the problems caused by degradation of the lived environment, including housing abandonment); KIM PHILLIPS-FEIN, FEAR CITY: NEW YORK’S FISCAL CRISIS AND THE RISE OF AUSTERITY POLITICS (2018); KIM MOODY, FROM WELFARE STATE TO REAL ESTATE: REGIME CHANGE IN NEW YORK CITY, 1974 TO THE PRESENT (2007).

<sup>18</sup> N.Y.C. ADMIN. CODE § 11-412 (1976); see Andrew Scherer, *Is There Life After Abandonment: The Key Role of New York City’s In Rem Housing in Establishing and Entitlement to Decent, Affordable Housing*, 13 N.Y.U. REV. L. & SOC. CHANGE 953, 955–57 (1984–1985) (recounting changes made in the *in rem* foreclosure law to respond to the abandonment crisis); David Reiss, *Housing Abandonment and New York City’s Response*, 22 N.Y.U. REV. L. & SOC. CHANGE 783, 787 (1997).

to use Article 7-A to stabilize neglected tenant-occupied properties until the foreclosure was complete.<sup>19</sup>

Crucially, the appointment of a 7-A administrator does not shift title from the owner—it was a stabilizing tool used in tandem with other mechanisms to sell the property.<sup>20</sup> At the peak of Article 7-A’s usage, the New York City Department of Housing Preservation & Development was the largest private real estate holder in the United States.<sup>21</sup> It goes unrecognized that government intervention saved much of New York City’s affordable housing stock. Many of these city-owned *in rem* properties developed new management structures<sup>22</sup> and were converted into affordable housing, including tenant-owned limited equity cooperatives and non-for-profit managed affordable housing.<sup>23</sup>

Over the course of the 1980s, instead of converting the majority of these *in rem* properties to

<sup>19</sup> N.Y. REAL PROP. ACTS. LAW § 770 (McKinney 2021) (amending the Rent Strike Law by giving the City of New York standing to commence cases and removing the professional requirements for 7-A administrators). NYC also employed receiverships pursuant to N.Y. MULT. DWELL. LAW § 309 (McKinney 2021). For analysis of this program, see Mark Grossman, *The New York City Housing Receivership and Community Management Programs*, 3 *Fordham Urb. L. J.* 637 (1975). See also Alan S. Oser, *Tenant Management on Rise in Troubled Buildings*, N.Y. TIMES, Feb. 5, 1984, at 7 (quoting Harold Shultz, referring to Article 7-A, “[i]t’s a holding action before city takeover”); Alan S. Oser, *Perspectives: The Article 7A Program, Strengthening the Court’s Appointees*, N.Y. TIMES, June 11, 1989, at 9, 14.

<sup>20</sup> For discussion of constitutional analysis, see James J. Kelly, Jr., *Refreshing the Heart of the City: Vacant Building Receivership as a Tool for Neighborhood Revitalization and Community Empowerment*, 13 *J. AFFORDABLE HOUS. & CMTY. DEV. L.* 210, 220–22 (2004).

<sup>21</sup> The only larger landlord was the New York City Housing Authority (NYCHA). NYU FURMAN CTR. REAL EST. & URB. POL’Y, *HOUSING POLICY IN NEW YORK CITY: A BRIEF HISTORY 2* (2006), [https://furmancenter.org/files/publications/AHistoryofHousingPolicycombined0601\\_000.pdf](https://furmancenter.org/files/publications/AHistoryofHousingPolicycombined0601_000.pdf) [<https://perma.cc/SQH2-ZNFF>].

<sup>22</sup> The City outsourced management of some *in rem* properties through the Division of Alternative Management Program (DAMP), which facilitated Rent Strike Law receivers staying in control of the distressed properties through the 7-A Extension Program, renting properties to tenants to manage through the Tenant Interim Lease (TIL) Program, and granting leases and ultimately selling properties to some private owners through the Private Owners and Management Program (POMP). See Reiss, *supra* note 18, at 793.

<sup>23</sup> Depending on the particular economic context of a given geography, an expanded Article 7-A could be employed as a mechanism to convert privately owned multi-family rental housing. The range of forms of social housing is outside the scope of this Article, but some of the most prominent forms are listed here. Limited equity cooperatives known as Housing Development Finance Corporation (HDFC) Cooperatives are one of the many vehicles for social housing. See Oksana Mironova & Thomas J. Waters, *How Social Is That Housing?*, CMTY SERV. SOC’Y (Feb. 18, 2020), <https://www.csnny.org/news/entry/how-social-is-that-housing> [<https://perma.cc/F9VB-R5MW>] (comparing a number of different social housing models, including the most prominent limited equity co-ops of the time: the Housing Development Finance Corporation Cooperative); see also Julie D. Lawton, *Limited Equity Cooperatives: The Non-Economic Value of Homeownership*, 43 *WASH. U. J.L. & POL’Y* 187, 207 (2013); but see e.g., Caleb Melby, *New York’s Real Estate Tax Breaks Are Now a Rich-Kid Loophole*, BLOOMBERG BUSINESSWEEK (Oct. 8, 2021), <https://www.bloomberg.com/graphics/2021-nyc-taxes-hdfe-coops> [<https://perma.cc/9N3L-JYD7>] (noting that media attention on HDFCs tend to focus on individuals with qualifying incomes making all cash offers on HDFC units with the assistance of family). The Mutual Housing Authority of New York (MHANY) is another vehicle for social housing. See Eric Hirsch & Peter Wood, *Squatting in New York City: Justification and Strategy*, 16 *N.Y.U. REV. L. & SOC. CHANGE* 605, 606, 614–15 (1987–1988) (detailing ACORN’s squatting campaign in East New York *in rem* properties, resulting in the sale of these properties to MHANY). For a review of the development of forms of affordable housing designed to decommodify properties, see Deborah Kenn, *Paradise Unfound: The American Dream of Housing Justice for All*, 5 *B.U. PUB. INT. L.J.* 69, 69 (1995) (“[t]he development of housing as part of a land trust, housing cooperative or housing association is a time-tested concept. The development of housing as part of a *community* land trust, *limited equity* housing cooperative or mutual housing association, however, is a relatively new concept.”).

permanently affordable housing,<sup>24</sup> New York City ultimately turned to a neoliberal strategy:<sup>25</sup> selling the publicly owned properties at steep discounts to investors<sup>26</sup> and offering tax exemptions to developers to build.<sup>27</sup> New York State deregulated New York City's rent control and rent stabilization system.<sup>28</sup> Mayor Ed Koch explicitly prioritized attracting middle class and wealthier households back to New York City.<sup>29</sup> This neoliberal turn contributed to a boom in multi-family property values<sup>30</sup> as well as gentrification and displacement in, among other places, the epicenters of the 1963–1964 rent strikes—Harlem, the Lower East Side, and Bedford-Stuyvesant.<sup>31</sup>

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<sup>24</sup> Scherer, *supra* note 18, at 972–73 (“[i]nstead of the final stage in the demise of low-income housing, in rem housing has the potential to be the foundation for a meaningful commitment on the part of government to guarantee decent, affordable housing to all, regardless of income.”).

<sup>25</sup> See Corinne Blalock, *Neoliberalism and the Crisis of Legal Theory*, 77 L. & CONTEMP. PROBS. 71, 83–84 (2014) (identifying deregulation and privatization as central to neoliberal regimes); David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 L. & CONTEMP. PROBS. 1, 6–8 (2014) (stating that under neoliberal ideology, “strong property rights and private contracting rights are the best means to increase overall welfare”).

<sup>26</sup> A limited number of these units also went to urban homesteaders. See, e.g., Andrea McArdle, *(Re)integrating Community Space: The Legal and Social Meanings of Reclaiming Abandoned Space in New York’s Lower East Side*, 2 SAVANNAH L. REV. 247, 248 (2015) (examining autonomous, self-help efforts including “homesteading” in the Lower East Side in the 1970s); HOLTZMAN, *supra* note 17, at 20 (describing efforts in the South Bronx to reclaim abandoned properties).

<sup>27</sup> Rachel Holliday Smith, *A Tenant’s Guide to 421-a, the City’s Biggest Tax Break for Developers and Landlords*, THE CITY (Feb. 11, 2022, 08:29 AM), <https://www.thecity.nyc/housing/2022/2/10/22925482/a-tenants-guide-to-421-a-the-citys-biggest-tax-break-for-developers-and-landlords> [<https://perma.cc/NS3F-VSXH>].

<sup>28</sup> See Guy McPherson, *It’s the End of the World As We Know It (and I Feel Fine): Rent Regulation in New York City and the Unanswered Questions of Market and Society*, 72 FORDHAM L. REV. 1125, 1131–45 (2004) (charting the history of New York City’s rent regulated system from the 1920s through the early 2000s); Craig Gurian, *Let Them Rent Cake: George Pataki, Market Ideology, and the Attempt to Dismantle Rent Regulation in New York*, 31 FORDHAM URB. L. J. 339 (2004); Justin R. La Mort, *The Theft of Affordable Housing: How Rent-Stabilized Apartments Are Disappearing from Fraudulent Individual Apartment Improvements and What Can Be Done to Save Them*, 40 N.Y.U. REV. L. & SOC. CHANGE 351, 354 (2016).

<sup>29</sup> See JONATHAN SOFFER, ED KOCH AND THE REBUILDING OF NEW YORK CITY 256 (Kenneth T. Jackson et al. eds., 2010).

<sup>30</sup> From 1993 to 2005, New York City saw a dramatic increase in multi-family property sales, as well as rapid price appreciation: 114 percent increase for 20–49 unit buildings and 88 percent increase for properties with 50 or more units. NYU FURMAN CTR. REAL EST. & URB. POL’Y, *NEW YORK CITY’S MULTI-FAMILY RENTAL HOUSING AND THE MARKET DOWNTURN 17* (2010), [https://furmancenter.org/files/sotc/Multifamily\\_Rental\\_Housing\\_2010.pdf](https://furmancenter.org/files/sotc/Multifamily_Rental_Housing_2010.pdf) [<https://perma.cc/JN79-GFSB>].

<sup>31</sup> Scholars debate the causal impact of these increased values as well as demographic change on the movement of lower-income families from these neighborhoods. See NEIL SMITH, *THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY* 70 (1996) (elaborating on rent gap theory, an economic rather than cultural or consumption-based explanation of gentrification); see also John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City’s Affordable Housing Crisis*, 46 FORDHAM URB. L. J. 1081, 1094 (2019) (describing the systemic connection between neoliberalism and gentrification as context for the movement to expand a right to counsel for tenants); DAVID MADDEN & PETER MARCUSE, *IN DEFENSE OF HOUSING* 172–73 (2016) (arguing that the neoliberal transformation of New York City spurred both abandonment and gentrification); Peter Marcuse, *Gentrification, Abandonment and Displacement: Connections, Causes and Policy Responses in New York City*, 28 WASH. U. J. OF URB. & CONTEMP. L. 195, 224 (1985) (illustrating the displacement of low-income people in different parts of New York City, including the Lower East Side); SAMUEL STEIN, *CAPITAL CITY: GENTRIFICATION AND THE REAL ESTATE STATE* 41 (2019); but see Lance Freeman, *Displacement or Succession?: Residential Mobility in Gentrifying Neighborhoods*, URB. AFFAIRS REV., 463 (Mar. 2005) (asserting that demographic change in gentrifying neighborhoods appears to be a consequence of lower rates of intra neighborhood mobility and the relative affluence of in-movers.)

To this day, New York City tenants and organizers continue to advocate for better conditions, at times partnering with attorneys to sue their landlords.<sup>32</sup> However, since 2016, only eighty-nine 7-A cases have been filed in New York City.<sup>33</sup> New York City’s real estate interests have learned how to toe legal lines in a political climate that has fostered a transition from “milking” properties to “pulling equity.” “Pulling equity” is the process by which an investor borrows money to purchase a building based on the expectation of appreciation, maximizes net operating income by cutting maintenance and services, uses this increased net operating income to justify taking out a larger mortgage at the point of refinancing and pockets the difference between the value of the original mortgage and the funds received after refinancing.<sup>34</sup> However, unlike during the *in rem* period, the rising values of the properties do merit infusion of funding to correct dangerous conditions. Once tenants begin a 7-A case, an investor will act in the interest of their tax obligations, rarely risking the appointment of a 7-A administrator or the placement of a tax lien on their property.<sup>35</sup>

Meanwhile, outside of New York City—where tenants also face deteriorating housing conditions and rising prices—the New York State legislature has not granted or limited the scope of this private right of action to seek the appointment of an Article 7-A administrator.<sup>36</sup> The suites of code

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<sup>32</sup> See Robert Wirsing, *‘Notorious’ 1663 Garfield Street Under New Management*, BRONX TIMES (Mar. 7, 2015), <https://www.bxtimes.com/notorious-1663-garfield-street-under-new-management> [https://perma.cc/4VR4-TV5G]; Steven Goodstein, *Number One ‘Slumlord’ of Van Nest Arrested*, BRONX TIMES (Jul. 6, 2016), <https://www.bxtimes.com/number-one-slumlord-of-van-nest-arrested> [https://perma.cc/29GQ-34Z5]; Jarrett Murphy, *Thirteen Month Struggle for Bronx Tenants to Get Their Stoves Back On*, CITY LIMITS (Oct. 22, 2019), <https://citylimits.org/2019/10/22/thirteen-month-struggle-for-bronx-tenants-to-get-their-stoves-back-on> [https://perma.cc/9FG4-PGGH]; Abigail Savitch-Lew, *For Striking NYC Tenants with Notorious Landlords, the Problem Is Not Just COVID-19*, THE APPEAL (May 13, 2020), <https://theappeal.org/new-york-landlords-neglect-rent-strikes-coronavirus> [https://perma.cc/KF3L-JZCF]; Bob Guiliano, *Tenants Take Landlord to Court in Aftermath of Fire*, BRONX TIMES (Dec. 17, 2017), <https://www.bxtimes.com/tenants-take-landlord-to-court-in-aftermath-of-fire> [https://perma.cc/2WTX-YAYA]; Sadeef Ali Kully, *Bushwick Tenants Sue to Force City Takeover of ‘Reprehensible’ Building*, CITY LIMITS (Jul. 12, 2019), <https://citylimits.org/2019/07/12/bushwick-tenants-sue-to-force-city-takeover-of-reprehensible-building> [https://perma.cc/SU29-PCUE]; Sadeef Ali Kully, *Tenants Wanted City to Take Keys to Fire-Scarred Building*, CITY LIMITS (Sep. 25, 2019), <https://citylimits.org/2019/09/25/tenants-ask-city-to-take-over-fire-scarred-building> [https://perma.cc/W88K-NT7R]; Gwynne Hogan, *City Offers Little Help to Rent-Stabilized Tenants Left Homeless by Fire*, DNA INFO (May 9, 2017), <https://www.dnainfo.com/new-york/20170509/bushwick/bushwick-dekalb-avenue-fire-brooklyn-rent-stabilized-tenants> [https://perma.cc/ZQR3-9WS4]; Kelly Mena, *Illegal Repairs Push Tenants Out of Problem-Plagued Bushwick Building*, BROOKLYN DAILY EAGLE (Nov. 12, 2019), <https://brooklyneagle.com/articles/2019/11/12/illegal-repairs-push-tenants-out-of-problem-plagued-bushwick-building> [https://perma.cc/6K5D-DWMN]; Steven Wishnia, *Chinatown Tenants Forced into Shelter Fear Landlord Won’t Let Them Return*, VILLAGE VOICE (Jan. 24, 2018), <https://www.villagevoice.com/2018/01/24/chinatown-tenants-forced-into-shelter-fear-landlord-wont-let-them-return> [https://perma.cc/8JPR-HJZ2].

<sup>33</sup> Housing Data Coalition, Data Set (Feb. 15, 2022) (on file with author).

<sup>34</sup> Limited liability vehicles for investors at this scale incentivize taking on more debt because even if an owner ultimately defaults, they may have still “pulled” substantial equity. See CELESTE HORNBAUGH ET AL., CMTY. SERV. SOC’Y, CORPORATE WINDFALLS OR SOCIAL HOUSING CONVERSIONS? 10 (2020), [https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Foreclosure\\_Report\\_V111.pdf](https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Foreclosure_Report_V111.pdf) [https://perma.cc/H5E9-U6MW].

<sup>35</sup> Even in the case of a problem property with millions in arrears and reoccurring documentation of repairs not being completed, buildings have recently not been subject to Third Party Transfer, part of the current *in rem* tax foreclosure system. See Ese Olumhense, *Landlord of Crumbling Bronx Buildings Owes City \$12.6M*, THE CITY (Feb. 20, 2020), <https://www.thecity.nyc/housing/2020/2/20/21210505/landlord-of-crumbling-bronx-buildings-owes-city-12-6m> [https://perma.cc/Z7ZV-G8BM].

<sup>36</sup> See Paul A. Diller, *The City and the Private Right of Action*, 64 STAN. L. REV. 1109 (2012).

enforcement tools employed by municipalities and the limited private rights of action available to tenants have both proven insufficient. Without access to Article 7-A, tenants in Rochester have had to organize to demand that their City bring a receivership action.<sup>37</sup> In Syracuse, the mayor threatened receivership under a separate nuisance law, but ultimately tenants filed a case for damages, unable to seek appointment of a receiver, while the New York Attorney General began her own investigation.<sup>38</sup> In Buffalo, funding cuts and implementation flaws have undermined a once widely praised court administered receivership program.<sup>39</sup> Many other municipalities and tenants lack a right to seek receivers at all. On Long Island and in Westchester and Rockland Counties, where tenants do have standing to bring Article 7-A actions, not a single case has been filed since at least 2016.<sup>40</sup> Unlike in New York City, municipalities in these counties do not have standing to bring 7-A actions,<sup>41</sup> tenants in these counties lack a right to counsel in housing court, and the legal services that are available must triage and often prioritize eviction defense.

Article 7-A, now as in 1965, is a tool that can ensure that either investors reinvest sufficient profits in their buildings to maintain safe and healthy housing or that a 7-A administrator will invest those funds in their place. Rather than the city government investing a massive amount of time and resources into these properties only to turn them back over to the deed owners once the repairs are complete, amendments to Article 7-A can also ensure these long-neglected properties are sold to responsible housing providers or tenants themselves. This Article examines the remedial framework available to tenants in New York State—who, excluded from the Article 7-A, lack sufficient tools to win repairs—to illustrate the value of this tool in New York and across the United States.<sup>42</sup>

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<sup>37</sup> See Adria R. Walker, *'Housing is a human right!' Roc City-Wide Tenant Union, supporters, rally for local reforms*, DEMOCRAT & CHRON. (Sept. 1, 2021), <https://www.democratandchronicle.com/story/news/2021/09/01/rochester-tenant-union-rally-new-york- eviction-moratorium-expires-local-bill-14/5664202001> [<https://perma.cc/CN6M-WZD7>].

<sup>38</sup> See discussion *infra* Section III.C.

<sup>39</sup> See Talia Rodriguez, *Receivership & Code Enforcement: May Courts Affect Social Change?*, 50 (2012) (M.A. thesis, Empire State College, State University of New York) (proquest). Buffalo's Receivership Program has recently been reoriented towards historic preservation. See, e.g., Kaley Lynch, *Allentown home is first sale through Buffalo's Preservation Receivership Program*, NEWS 4 BUFFALO (Oct. 18, 2021), <https://www.wivb.com/news/top-stories/allentown-home-is-first-sale-through-buffalos-preservation-receivership-program> [<https://perma.cc/A7RA-X4FD>].

<sup>40</sup> Housing Data Coalition, Data Set (Feb. 15, 2022) (on file with author).

<sup>41</sup> See also N.Y. REAL PROP. ACTS. LAW § 770 (McKinney 2021) (“[o]ne-third or more of the tenants occupying a dwelling located in the city of New York or the commissioner of the department of the city of New York charged with enforcement of the housing maintenance code of such city, or in the counties of Nassau, Suffolk, Rockland and Westchester . . .”); *but see* Long v. Kissling Real Est., 80 Misc. 2d 817, 819 (Co. Ct. 1975) (“[w]ithin the counties of Suffolk, Nassau, Westchester, and Rockland, only tenants have standing to bring a special proceeding under Article 7-A.”).

<sup>42</sup> At least ten states have rental receivership laws. See, e.g., CAL. HEALTH & SAFETY CODE § 17980.7 (West 2019) (including tenant or tenant association or organization); CONN. GEN. STAT. § 47a-14a (2020) (including a majority of tenants); DEL. CODE ANN. tit. 25, § 5901 (2022) (including tenant or groups of tenants); MD. CODE ANN., COM. LAW §§ 24-201-24-801 (West 2019) (including tenants); MASS. GEN. LAWS ch. 111, § 1271 (2020); MINN. STAT. § 504B.385 (2021) (including tenants or housing related neighborhood organization); N.J. STAT. ANN. § 2A:42-114 (West 2014) (including tenants, organizations representing tenants); OHIO REV. CODE ANN. § 3767.41 (West 2018) (including tenants); 68 PA. STATE AND CONS. STAT. ANN. § 1101 *et seq.* (West 2009); WIS. STAT. § 254.595 (2022) (including tenants, a class of tenants, or any other person or class of person “whose health, safety or property interests are or would be adversely affected” by building conditions). For an accounting of state receivership statutes, see ALAN MALLACH, BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS 49–59 (2006).



Drawing on the bureaucratic history of Article 7-A, this Article highlights correctable flaws in its implementation, and fills a gap in the understanding of what remedies can serve which tenants. Recent scholarship on receiverships tends to focus on vacant and abandoned properties, especially in post-industrial cities.<sup>43</sup> Meanwhile, legal scholarship addressing tenant remedies for repairs focuses on the state's code enforcement authority,<sup>44</sup> tenants' claims based on the warranty of habitability,<sup>45</sup> the gap of remedies available in informal housing,<sup>46</sup> or the needs of tenants in New York City rather than the State as a whole.<sup>47</sup> This Article argues for the merits of a tenant private right of action for the appointment of a 7-A administrator to occupied housing for all of New York State. Until now, scholarship examining Article 7-A was either written prior to the *in rem* period<sup>48</sup> or focused on the experiences of community lawyers representing organized tenants in New York City in the present day.<sup>49</sup> This Article situates Article 7-A in its remedial and historical context as both a tool to win repairs and to transition properties into various models of affordable housing.

This Article proceeds as follows: Part I introduces Article 7-A and explains its unique capacity both to secure repairs and neglected properties, comparing it with the other remedies available to tenants elsewhere in New York State. Part II highlights flaws in the present Article 7-A regime. The Article concludes in Part III by offering policymakers a set of proposals that will resurrect Article 7-A's

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<sup>43</sup> See, e.g., Melanie B. Lacey, *A National Perspective on Vacant Property Receivership*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 133, 134 (2016); Matthew J. Samsa, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 CLEV. ST. L. REV. 189, 193 (2008); Kelly, Jr., *supra* note 20; James J. Kelly, Jr., *Controlling, Acquiring, and Disposing of Vacant Properties*, in VACANT AND PROBLEM PROPERTIES: A GUIDE TO LEGAL STRATEGIES AND REMEDIES 199 (Alan Mallach, Jessica A. Bacher & Meg Byerly Williams eds., 2019); MALLACH, *supra* note 42, at 49–65 (discussing the current status of receivership in various states and how receivership could be used); David Listokin et al., *Housing Receivership: Self-Help Neighborhood Revitalization*, 27 WASH. U. J. URB. & CONTEMP. L. 71 (1984).

<sup>44</sup> See Kathryn A. Sabbeth, *(Under)enforcement of Poor Tenants' Rights*, 27 GEO. J. ON POVERTY L. & POL'Y 97, 100 (2019) (detailing the gap between housing code standards and their enforcement and describing proposals for filling that gap).

<sup>45</sup> *Id.* at 112–16 (detailing tenant claims related to condition, including breach of warranty of habitability); see also Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145, 149 (2020) (providing empirical analysis of gap between tenants' right to assert breach of warranty of habitability defenses in eviction proceedings and outcomes for both rental abatements and actual repairs).

<sup>46</sup> See, e.g., Mekonnen Firew Ayano, *Tenants Without Rights: Situating the Experiences of New Immigrants in the U.S. Low-Income Housing Market*, 28 GEO. J. ON POVERTY L. & POL'Y 159, 191 (2021) (highlighting the precarity of new immigrants living in informal housing situations and advocating that courts enforce tenants' interests regardless of their official status).

<sup>47</sup> See Braudy & Hawkins, *supra* note 12, at 146–149 (canvassing laws available to tenant attorneys and urging New York lawmakers to take action to protect tenants in light of the COVID-19 pandemic).

<sup>48</sup> See, e.g., St. John's Note, *supra* note 9, at 263; Note: *Tenant Rent Strikes*, 3 COLUM. J.L. & SOC. PROBS. 1 (1967) (describing recently passed Rent Strike Law); Donald J. Stang, *Tenant-Initiated Repairs: New York's Article 7-A*, 2 HARV. C.R.-C.L. L. REV. 201, 201 (1967) (focusing on early procedural technical barriers to implementing Article 7-A); Edward H. Flitton II, *Rent Withholding: Public and Private*, HARV. C.R.-C.L. L. REV. 179, 188–94 (1967) (situating Article 7-A among other rent withholding rights available at the time); Note: *Article 7-A Revisited: New York City's Statutory Rent Strike Law*, 8 COLUM. J.L. & SOC. PROBS. 523, 547–50 (1972) (highlight necessary reforms to effectuate the intent of Article 7-A in the early 1970s).

<sup>49</sup> See John Whitlow, *Community Law Clinics in the Neoliberal City: Assessing CUNY's Tenant Law and Organizing Project*, 20 CUNY L. REV. 351, 380–84 (2017) (contextualizing CUNY School of Law Tenant Law & Organizing Project's use of Article 7-A); Stephanie Rudolph, *Lessons from College Avenue*, 22 GEO. J. ON POVERTY L. & POL'Y 417, 420–27 (2015) (discussing a 7-A proceeding brought at a Bronx building organized by CASA); Shekar Krishnan, *Advocacy for Tenant and Community Empowerment: Reflections on My First Year in Practice*, 14 CUNY L. REV. 215, 235 (2010) (elaborating on Brooklyn Corporation A's use of Article 7-A).

capacity to secure repairs and facilitate the transition of neglected properties into safe and habitable housing.

## I. REMEDIES AND REPAIRS

Tenants across New York State live and have lived in the precarious conditions of aging and neglected rental apartments, but have been denied access to legal tools like Article 7-A.<sup>50</sup> This section reviews the housing codes that exist statewide, the rights of action available and unavailable to tenants to seek repairs, and the limited receivership programs that exist or that advocates have attempted to create outside of New York City. The system of civil penalties and injunctive relief used by municipalities lack the weight necessary to secure repairs at the worst properties. Similarly, the patchwork of receivership statutes lacks the speed, institutional support, and health and safety orientation of the 7-A program. Without effective receivership tools, efforts to involve municipal code enforcement can be as likely to result in condemnation as repair. Article 7-A fills a necessary gap in statewide municipality and tenant-initiated claims, targeting the properties where owners have effectively walked away from their obligations but buildings are not so degraded that an investment in their repair would be futile.

### *A. Article 7-A, the Rent Strike Law*

Article 7-A has a unique capacity both to secure repairs and neglected properties and, in some cases, facilitate the sale of that property to responsible owners, including to the building's residents. The law had five distinct characteristics that allow it to play this role. First, both the discursive power of the relief afforded in a 7-A proceeding and the one-third of tenants' participation requirement facilitate collective action.<sup>51</sup> Second, its broad causes of action for conditions and courses of conduct dangerous to life, health or safety allow tenants to proceed independently, asserting claims without relying on a municipality to first inspect a property or otherwise certify it.<sup>52</sup> Third, Article 7-A was meant to have an expedited procedure to reflect the gravity of concerns raised by tenants.<sup>53</sup> Fourth, the relief, removal of a landlord in favor of a 7-A administrator, is distinguishable from instances where other types of receivers are appointed because this administrator must focus on safety over any lienors receiving a return. Fifth, a 7-A administrator is not automatically discharged when a property is sold—the court technically cannot relieve an administrator until all the repairs are complete. This characteristic of the law gives tenants and the municipality tremendous leverage in determining whether new or

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<sup>50</sup> See N.Y. REAL PROP. ACTS. LAW § 770(1) (McKinney 2021) (“One-third or more of the tenants occupying a dwelling located in the city of New York or the commissioner of the department of the city of New York charged with enforcement of the housing maintenance code of such city, or in the counties of Nassau, Suffolk, Rockland and Westchester. . .”).

<sup>51</sup> See N.Y. REAL PROP. ACTS. LAW § 770 (McKinney 2021).

<sup>52</sup> See *id.* § 770(1); cf. N.Y. MULT. DWELL. LAW § 309(e) (McKinney 2021) (allowing tenants to seek an order for repair only after the city has certified a nuisance).

<sup>53</sup> See N.Y. REAL PROP. ACTS. LAW §§ 770, 774 (“Where triable issues of fact are raised, they shall be tried by the court without a jury at the time when issue is joined. However, the court, in its discretion, may grant an adjournment of such trial at request of either party, if it determines that an adjournment is necessary to enable either of the parties to procure the necessary witnesses, or upon consent of all the parties who appear. Such adjournment shall not be for more than five days except by consent of all the parties who appear.”).

prospective purchasers will easily gain possession of a property. The combined impact of these five components create a powerful tool to compel repairs, grant tenants leverage at the bargaining table both before and after the appointment of a 7-A administrator, and set the stage for sale of the building to an entity invested in the development and maintenance of affordable housing.

Article 7-A's relief using the appointment of a 7-A administrator as well as the numerosity requirement for tenants facilitates collective action. Article 7-A's remedy, removing a landlord from control of a building they mismanage, has the power to excite and motivate tenants otherwise disheartened by the delays and limits of other relief available to them or those relied on by the state.<sup>54</sup> Raising signs stating "Evict Our Slumlord," tenants in Rochester, New York have demanded that the city seek the appointment of a receiver to their building.<sup>55</sup> Through a tenant-initiated suit, Article 7-A effectively allows tenants to do just that. For any tenant who has attempted to win repairs through lawsuits or rent withholding and has been met with delays, shoddy repairs and the threat of eviction for unpaid rent, a rental receivership provides an opportunity to turn the tables on their landlord.

Article 7-A provides tenants with leverage unrivaled by other available legal claims because it is a realistic possibility that an owner could lose control of their property and their ability to meet their debt obligations.<sup>56</sup> While organizing need not be oriented towards the courts and judicial remedies do not necessarily offer the greatest potential for systemic changes, the power of this law is certainly beyond discursive. The causes of action possible through Article 7-A allow tenants to "organize on the scaffolding of litigation," relying on the threat of court relief to bargain settlements with terms outside of anything the court has the authority to grant.<sup>57</sup>

Article 7-A's requirement that one-third of tenants in a building participate in an action facilitates collective action.<sup>58</sup> The given reason for the one-third requirement was to ensure nuisance actions were not brought by individual tenants, but had the effect of requiring neighbors to speak with one another and at times work with community organizers to maintain solidarity across the life of a case. Although the power and utility of law itself as well as the appropriate role of lawyers to foment social change has long been debated,<sup>59</sup> there is no question that Article 7-A creates a structure around which tenants can organize.<sup>60</sup>

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<sup>54</sup> See discussion *infra* Sections II.A, II.B.

<sup>55</sup> See Walker, *supra* note 38.

<sup>56</sup> See discussion *infra* Section III.A.

<sup>57</sup> Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J. L. & SOC. CHANGE 25, 52–58 (2011) (discussing the potential for group litigation as an organizing tool as well as the risks of such strategies undermining organizing goals).

<sup>58</sup> N.Y. REAL PROP. ACTS. LAW § 770(2) (McKinney 2021).

<sup>59</sup> See, e.g., Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (1988) (exploring an example in which a lawyer and an organizer departed from traditional notions of their roles to effectively collaborate with community members challenging structures of domination); GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE*, 11–82 (1992) (arguing that failures of public interest lawyers are attributable to deeply ingrained views on the practice of law and that progressive lawyering demands a rethinking of the way the practice of law intertwines with the needs of the community); Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 481–82 (2001) (describing various types of community lawyering and the need to disaggregate them to study organizing strategies); E. Tammy Kim, *Lawyers As Resource Allies in Workers' Struggles for Social Change*, 13 N.Y. CITY L. REV. 213 (2009); Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 CLINICAL L. REV. 109, 118 (2009); Scott L. Cummings, *Movement Lawyering*, 27 IND. J. GLOBAL LEGAL STUD. 87, 88 (2020).

<sup>60</sup> Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*,

The one-third requirement also poses a threat: it incentivizes landlords to retaliate against individual tenants and cause them to abandon the case. If less than one-third of tenants ultimately participate, the Article 7-A case cannot proceed. The silver lining of this downside is that planning and launching an Article 7-A case requires relationship building and encourages inoculation, in which tenants have to realistically consider the retaliation tactics a landlord will employ and address that proactively. Thus, Article 7-A's one-third requirement poses a risk but also presents an opportunity for organized, proactive tenant participation.

Article 7-A is impactful because it empowers tenants to raise claims for conditions and harassment. Article 7-A's cause of action is broad and does not require that a third-party such as city government verify the condition or conduct.<sup>61</sup> Conditions that permit a 7-A administrator's appointment include where "there exist[s] . . . a lack of heat or of running water or of light or of electricity or of adequate sewage disposal facilities, or another condition dangerous to life, health or safety, which has existed for five days, or an infestation by rodents, or any combinations of such conditions."<sup>62</sup> The statute permits tenants to independently assert the existence of a condition rather than waiting for the arrival of an inspector.

Article 7-A's additional relief for harassment became particularly salient during New York City's real estate boom when suing "predatory equity landlords"—investors who purchased rent stabilized buildings and "unlocked" profits by rapidly deregulating units and raising rents through legal and illegal means.<sup>63</sup> Specifically, Article 7-A states that a "course of conduct by the owner or his agents of harassment, illegal eviction, continued deprivation of services or other acts dangerous to life, health or safety" is grounds for appointment of a 7-A administrator.<sup>64</sup> Tenants may independently testify to this course of conduct that potentially includes a broad range of acts.<sup>65</sup> The cause of action for appointment of an administrator is broadly worded to encompass any condition or course of conduct dangerous to life, health or safety.

On paper, Article 7-A also guarantees an expedited procedure. Given that tenants allege

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130 YALE L.J. 546, 580–86 (2021) (arguing that organizational structures and the capacity for collective action is shaped by legal structures).

<sup>61</sup> The one exception involves certification by the NYC Department of Housing Preservation and Development for the failure of an owner to make repairs and pay fines when placed in the Alternative Enforcement Program. N.Y. REAL PROP. ACTS. LAW § 770 (McKinney 2021) (as amended in 2013 to extend the cause of action to include "the issuance of an order to the owner of such dwelling by the commissioner of such department of the city of New York pursuant to the alternative enforcement program under section 27-2153 of the administrative code of the city of New York, provided that such dwelling has not been discharged from the program pursuant to such section and there has not been a determination that the owner has substantially complied with such order.").

<sup>62</sup> N.Y. REAL PROP. ACTS. LAW § 770(1) (McKinney 2021).

<sup>63</sup> STABILIZING NYC & COM. DEV. P. AT THE URB. JUS. CTR, THE PREDATORY EQUITY STORY: TENANT PERSPECTIVES ON SPECULATIVE LANDLORDS, DISPLACEMENT, AND FIGHTING FOR JUSTICE at 2 (2017) [https://takerootjustice.org/wp-content/uploads/2019/06/CDP.WEB\\_doc\\_Report\\_SNYCPredatoryEquity\\_20171214\\_0.pdf](https://takerootjustice.org/wp-content/uploads/2019/06/CDP.WEB_doc_Report_SNYCPredatoryEquity_20171214_0.pdf) [<https://perma.cc/2J9T-RH27>]. See also BARIKA WILLIAMS, PREDATORY EQUITY: EVOLUTION OF A CRISIS 10 (Nov. 2009), <https://anhd.org/report/predatory-equity-evolution-crisis> [<https://perma.cc/VP84-ZB28>] (describing predatory equity as a model that sought Wall Street-level returns by displacing rent stabilized tenants legally entitled to renewal leases through lawful and unlawful means).

<sup>64</sup> N.Y. REAL PROP. ACTS. LAW §§ 770(2), 772(1), 778 (McKinney 2021).

<sup>65</sup> Cf. N.Y.C. ADMIN. CODE § 27-2004(a)(48) (2021) (defining harassment, including delineating a list of acts and omissions constituting harassment).

conditions or a course of conduct “dangerous to life, health and safety,” both the statutory language of Article 7-A and its designation as a special proceeding were intended to ensure the case proceeded swiftly. With limited exceptions, leave of court is required for any discovery or disclosures.<sup>66</sup> Trial must commence at the time the defendants file responses to the pleadings, although the court is entitled to exercise its discretion to grant an adjournment of no more than five days at the request of one party, and to grant one for longer upon consent of both parties.<sup>67</sup> Anticipating a swift proceeding, in the event the tenants have met their burden, the owner, mortgagee, lienor of record, or any other person with an interest in the property may move the court to forestall the appointment of the 7-A administrator and instead, upon demonstrating the ability to pursue the work and posting security, earn another opportunity to make additional repairs for sixty days or additional time with good cause shown.<sup>68</sup> Assuming neither the owner nor mortgagee steps in to make the repairs or fails to do so, the court will appoint the 7-A administrator so long as the property is not in so poor a conditions that the appointment would be futile.<sup>69</sup>

Article 7-A prioritizes health and safety over investors’ returns. A 7-A administrator’s duty to prioritize addressing dangerous conditions and other repairs over payments to the owner or any lienholders means both they can dedicate funds to repairs and, indirectly, accelerate the sale of the property. In the case of the appointment of an Article 7-A administrator, the owner of the property is barred from collecting any further rents, including rents from tenants who did not participate in the 7-A action.<sup>70</sup> The 7-A administrator may borrow funds from the housing agency to dedicate to repairs or capital improvements, and the value of those may be recorded as a primary lien that takes precedence over a mortgage or other lien.<sup>71</sup> In some instances, the administrator will complete all of the repairs and, after paying off any liens to the city, the owner may be restored to control.<sup>72</sup> However, where the repairs are not completed or the lien not paid off, the appointment of the administrator may provoke a sale before the repairs are complete.

The appointment of a 7-A administrator can thus, in addition to securing repairs, accelerate a foreclosure. The 7-A administrator is not obliged to make any payments towards the debt service of a

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<sup>66</sup> N.Y. C.P.L.R. § 408 (McKinney 2021).

<sup>67</sup> N.Y. REAL PROP. ACTS. LAW § 774 (McKinney 2021).

<sup>68</sup> *Id.* § 777(a). This sixty-day restriction was added in 2020 legislation as a result of the death of Jashawn Parker in 2002, who was killed in an electrical fire at Dekalb Ave., Bronx, NY where a judge delayed installation of a 7-A administrator after the owner posted a bond. See Jordan Moss, *Years of Warnings, Then a Boy’s Death*, CITY LIMITS (Mar. 13, 2012), <https://citylimits.org/2012/03/13/years-of-warnings-then-a-boys-death> [https://perma.cc/VAK6-DAPS].

<sup>69</sup> See *McGovern v. 310 Riverside Corp.*, 49 A.D. 2d 949, 374 N.Y.S.2d 137 (1975) (“ . . . the condition of the building was dangerous to *life, health and safety* of the tenant as to render the building uninhabitable and that the appointment of an administrator in the proceeding would be a futile gesture, because such administrator would not be able to raise sufficient income to properly repair and maintain the premises.”) (emphasis added). *But see* Dep’t of Hous. Pres. & Dev. of City of N.Y. v. St. Thomas Equities Corp., 494 N.Y.S.2d 787, 791–792 (App. Term 1985) (distinguishing from *McGovern v. 310 Riverside Corp.* to appoint a 7-A administrator where the owner of a building near Prospect Park and the Brooklyn Museum, “in the process of gentrification,” “maliciously and vindictively withheld essential services, including heat and hot water from the residents of 115 Eastern Parkway for the entire 1982–1983 heating season to date, in a calculated and still continuing effort to force the residents from their homes.”).

<sup>70</sup> See N.Y. REAL PROP. ACTS. LAW § 778 (McKinney 2021) (stating that “[a]ny administrator is authorized and empowered in accordance with the discretion of the court . . . to demand, collect, and receive the rents from the tenants.”).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* § 778(11).

mortgage or other outstanding liens on the property. Meanwhile, the owner retains both title to the property as well as its obligation for any debts incurred, whether to lenders or the government. If the owner defaults, either the lending institution or the government may sell the building through foreclosure to recoup the debt.<sup>73</sup> As in the *in rem* period, this presents an opportunity for the tenants themselves or other parties dedicated to long-term affordability to purchase the property.

Finally, Article 7-A forbids the removal of a 7-A administrator until the health and safety of the property are secured. Both the duties of a 7-A administrator and the timing of their discharge from a property are fundamentally different from those of statutorily recognized receivers in, for example, a foreclosure. Even when a new party purchases the building, tenants in a building with a 7-A administrator have tremendous leverage because the sale of the property does not relieve the administrator of their duties.<sup>74</sup> A new purchaser could close on the property and not be permitted to displace the administrator and act as a manager, including collecting rents.

The disparate treatment of 7-A administrators and receivers is indicative of the role the former play. When courts have weighed the competing interests of appointing a 7-A administrator or a receiver at foreclosure, they have found that a Article 7-A receiver “stands in a completely different position,” as their duty is to “duty to carry out the public policy of the State of New York, that is, to collect and use the rents of the realty ‘for the purpose of remedying conditions dangerous to life, health or safety.’”<sup>75</sup> The purpose of a receiver appointed at foreclosure<sup>76</sup> is to “maintain the property during the course of litigation so that the court, sitting as a court of equity, may dispose of the property and its profits in accordance with law” and whose function it is to “deal with and protect the private interests of the parties.”<sup>77</sup> A 7-A administrator’s first duty is to tenant health and safety. That also means the 7-A administrator will not be discharged automatically at sale, which is crucial because purchase by a new party does not guarantee new investment in the property. The distinction between 7-A administrators and receivers is thus significant.

In order for either the original owner or purchaser to win the discharge of the administrator, they must make a *prima facie* showing that the reason for the administrator’s appointment no longer exists.<sup>78</sup> The new owner would need to establish that they have the resources and experience to manage

<sup>73</sup> N.Y.C. ADMIN. CODE §§ 11-401–11-428 (2021).

<sup>74</sup> See *Pack v. Loremary Realty Corp.*, 65 Misc.2d 801, 804, 318 N.Y.S.2d 860 (Cty. Ct. 1971) (“[R]elief afforded under an Article 7–A proceeding is a grave remedy and not to be lightly imposed. . . .once decreed . . . the will of the legislature to effect judicial policing of such depressed premises is not to be readily thwarted . . .”).

<sup>75</sup> *Brynnell Management Corp. v. Mill River Realty Inc.*, 112 Misc. 2d 838, 840, 447 N.Y.S.2d 595, 596-597 (Sup. Ct. 1981) (holding that, based on this disparity, “[a]s between the two officers, that is, the receiver and administrator, the receiver must yield to the administrator.”). See also *Genneth v. First Div. Ave. Realty Corp.*, 387 88 Misc. 2d 586, 58788 (1976) (holding that equity requires that a 7-A administrator “remedying conditions dangerous to health, life, and safety” should be continued to manage and operate the premises after a subsequent appointment of a receiver pursuant to CPLR § 6401 and RPAPL § 1325); *Gomez v. S. Williamsburg Better Hous. Corp.*, 129 Misc. 2d 542, 545–46 (Civ. Ct. 1985) (holding that the fact that the receiver in foreclosure had already been appointed did not preclude appointment of 7-A administrator to correct housing code violations and eliminate bad conditions in building).

<sup>76</sup> N.Y. REAL PROP. ACTS. LAW § 1325 (McKinney 2021).

<sup>77</sup> *Brynnell Mgmt. Corp.*, 447 N.Y.S.2d at 596.

<sup>78</sup> See, e.g., *Swallow v. Schnipper*, N.Y.L.J., 14 (App.Term, 2nd and 11th Jud. Dists. Sept. 12, 1984) (finding that “[t]o discharge the Administrator, there should be at least a *prima facie* showing that the reasons for the appointment no longer exists.”); *940 St. Nicholas Ave. Tenants Ass’n v. Dixon*, N.Y.L.J., 13 (App.Term, 1st Dep’t May 20, 1985) (stating that “more than good intentions must be shown before an administrator [sic] is relieved”); *Toribio v. Whiz Realty Corp.*, 131 Misc. 2d 227,

the property and a plan to address any outstanding conditions.<sup>79</sup> Courts may consider the purchaser's track record at other properties when deciding whether to relieve the 7-A administrator.<sup>80</sup> In theory, this could ward off prospective buyers who intend to purchase the property as a speculative asset. Alternatively, the tenants and the Department of Housing Preservation and Development may consent to the removal of the administrator. Since the threshold for removal is so high, once the 7-A administrator has been appointed, tenants and the City have substantial leverage to either challenge the discharge or negotiate terms with the new purchaser. Once a 7-A administrator is appointed, tenants have far more control over the fate of their housing.

### *B. Municipalities' Enforcement Tools Are Ineffective or Lead to Perverse Results*

Article 7-A would fill the crucial gap between New York State's patchwork of legal tools currently used to address declining conditions in rental housing. The first two tools, code enforcement and nuisance abatement, are primarily designed to incentivize owners to make repairs by fining them for more than the cost of the work if necessary work is not completed. On the other end of the spectrum are tools targeting properties that have been rendered uninhabitable. For those cases, the municipal authorities have the power to issue vacate orders for tenants and even condemn the properties, acquiring them through eminent domain. Receivership, addressed separately, is meant to address the properties that fall in between these two scenarios, where the nudges of civil penalties associated with code enforcement or nuisance abatement fail, but the property is occupied and not so degraded that an investment would not make them habitable once again.<sup>81</sup> Unfortunately, at every step, New York State's housing maintenance system is flawed, with the patchwork of receiver statutes failing to bridge the gap between one-off repairs and total condemnation. A municipal and tenant right of action under Article 7-A is well suited to bridge that gap.

Code enforcement is ill equipped to address emergency conditions. New York City's primary codes establishing standards for housing are the Multiple Dwelling Law<sup>82</sup> and the New York City Housing Maintenance Code, the latter adopted in the wake of the 1963–1964 rent strikes.<sup>83</sup> Whereas

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228, 499 N.Y.S.2d 582 (N.Y. Civ. Ct. 1986) (finding that when owner, who purchased building after administrator's appointment, made conclusory promises to effect repairs, such representations were insufficient to support the administrator's discharge).

<sup>79</sup> *Swallow v. Schnipper*, N.Y.L.J., 14; 940 St. Nicholas Ave. Tenants Ass'n v. Dixon, N.Y.L.J., 13.

<sup>80</sup> *See, e.g., In re Morataya*, 37 N.Y.S.3d 375, 384 (N.Y. Civ. Ct. 2016) (“where violations are placed against one (1) property the court may deny the substitution of a 7A administrator of a different property, where both properties are owned by the same individual(s). The reason being is that it would not be in the best interest of the building or the public to replace a 7A administrator with an owner that is managing another property in a standard which is contrary to the public health and safety, as this may be an indication of the manner in which the property owner will manage other property that he or she is responsible to maintain.”).

<sup>81</sup> *See* discussion *infra* Section III.C.

<sup>82</sup> N.Y. MULT. DWELL. LAW § 1 (McKinney 2021). The Multiple Dwelling Law applies to cities with a population above 325,000 (i.e. New York City) or as well as any city, town, or village that has adopted it. *Id.* § 3(4). The City of Buffalo has also opted into the Multiple Dwelling Law. *See* Daniel R. Shortt, *No Dwelling Left Behind: Expanding New York's Uniform Housing Statutes to Single and Two-Family Dwellings*, 31 PACE L. REV. 721 (2011).

<sup>83</sup> N.Y.C. ADMIN. CODE § 27-2001 (2021). The same rating system created in 1967 continues to be used today, with conditions rated as Class C for immediately hazardous, Class B for hazardous, and Class A. *Id.* § 27-2115; *see also* George J. Castrataro, *Housing Code Enforcement: A Century of Failure in New York City*, 14 N.Y.L.F. 60, 62 (1968) (charting the development from the 1901 Tenement House Law to the enactment of the Multiple Dwelling Law in 1929, and then the Housing Maintenance

Article 7-A is designed to allow tenants or municipalities to swiftly respond to a crisis, code enforcement systems are slower, bureaucratic processes that often offer unsatisfying results.

Housing codes have largely developed independently in New York City (as opposed to the rest of New York State). In New York State's bifurcated code system, the Multiple Residence Law applies to cities with a population of fewer than 325,000, all towns and villages<sup>84</sup> and all multi-family rental properties in New York State counties, cities, towns, and villages outside of New York City. Multi-family rental properties in New York State counties, cities, towns, and villages outside of New York City are subject to the Uniform Fire Prevention and Building Code (UFPBC) and the Property Maintenance Code therein.<sup>85</sup> The UFPBC creates a floor for all municipalities, which still may exercise their home rule authority to build on, but never abrogate, sections of the code.<sup>86</sup> Some municipalities rely exclusively on the Property Maintenance Code, whereas others develop extensive standards of their own.<sup>87</sup>

Code enforcement generally includes the right of inspectors to enter a premises, proactively inspect conditions or respond to complaints, provide notice to an owner of a condition that violates one of the housing codes, and either civilly<sup>88</sup> or criminally<sup>89</sup> penalize the owner if they fail to make the repair within a designated period of time.<sup>90</sup> Unlike, for example, a traffic ticket where it is anticipated that the recipient will pay the penalty unless they mount a defense, municipal law departments generally need to affirmatively pursue penalties in court because savvy landlords do not pay unless or until the city commences a case.<sup>91</sup>

Because of this dynamic, tenant advocates argue that municipalities should actually collect fines, as this would incentivize owners to preemptively make repairs.<sup>92</sup> Instead, municipalities often

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Code in 1967).

<sup>84</sup> N.Y. MULT. RESID. LAW § 3 (McKinney 2021). For more discussion of the Multiple Dwelling Law and Multiple Residence Law, see Daniel R. Shortt, *No Dwelling Left Behind: Expanding New York's Uniform Housing Statutes to Single and Two-Family Dwellings*, 31 PACE L. REV. 721 (2011) (discussing details of the Multiple Dwelling Law and Multiple Residence Law).

<sup>85</sup> N.Y. EXEC. LAW § 377 (McKinney 2021) (authorizing the formulation of the Uniform Fire Prevention and Building Code); N.Y. COMP. CODES R. & REGS. tit. 19, §§ 1219, 1226 (2020).

<sup>86</sup> N.Y. COMP. CODES R. & REGS. tit. 19, §§ 1203 *et seq.* (2015) (outlining minimum standards for administration and enforcement of the UFPBC); *id.* § 1226 (codifying the Section of Property Maintenance Code dealing with preemption).

<sup>87</sup> Town of Ithaca, N.Y., GEN. LEG. ch. 205 (2011); Village of Sea Cliff, N.Y., GEN. LEG. §§ 48-4-48-11 (2019).

<sup>88</sup> N.Y.C. ADMIN. CODE §§ 27-2115, 27-2116, 27-2117 (2021).

<sup>89</sup> *Id.* §§ 27-2118, 27-2119 (2021).

<sup>90</sup> N.Y. EXEC. LAW § 381 (McKinney 2021) (authorizing formulation of regulations for inspections by secretary of state); See, e.g., Julissa Reynoso, *Putting Out Fires Before They Start: Community Organizing and Collaborative Governance in the Bronx*, U.S.A., 24 L. & INEQ. 213, 249-51 (2006) (describing New York City's Dept. of Housing Preservation & Development's code enforcement system); see generally *Administration and Enforcement of the Uniform Fire Prevention and Building Code and the State Energy Conservation Construction Code*, N.Y. DEP'T OF STATE (2020), <https://dos.ny.gov/system/files/documents/2021/11/administration-of-uniform-code.pdf>.

<sup>91</sup> See CITY OF ROCHESTER, N.Y., CODE §§ 10-9, 10-12 (2018); City of Poughkeepsie, N.Y., Code of Ordinances § 12-23 (1996).

<sup>92</sup> Alternative proposals have included sending landlords to a board that is distinct from housing court where they must pay fines before a violation is cleared, licensing landlords and requiring them to rectify issues in distressed buildings before getting a permit, or creating a *qui tam* action for tenants to pursue these penalties on behalf of the state. See J. Moss, D. Rosenblum and M. Perlman, *Time to License Landlords?*, CITYLIMITS (Mar. 13, 2012), <https://citylimits.org/2012/03/13/time-to-license-landlords> [<https://perma.cc/2JWU-UEWX>]; Alex Ellefson, *Landlord Bounty Hunters: Qui Tam as an Effective Tool for Housing Code Enforcement*,



waive or settle penalties for pennies on the dollar based on the premise they would prefer the funds went to repairs.<sup>93</sup> Should a municipality actually levy these fines, failure to pay the penalties can result in the municipality placing a priority lien on the property—meaning the municipality’s right to collect on the proceeds of a sale or foreclose on a debt supersedes the right of even the lending institution that provided the primary mortgage on the property.<sup>94</sup> However, there is a core distinction between municipalities having these rights and exercising them.

As both an alternative and intermediary step to Article 7-A actions, New York City developed a targeted code enforcement system known as the Alternative Enforcement Program (AEP).<sup>95</sup> A close look at the buildings in this program evidences New York City government’s extreme reluctance to rely on Article 7-A. Through AEP, the Department of Housing Preservation and Development (DHPD) selects 200 properties each year. DHPD gives the owners four months’ notice to correct violations before enforcing through orders to correct, building-wide inspections, and penalties.<sup>96</sup> The program is designed to give landlords a last chance before getting hammered with penalties and before a 7-A administrator is potentially appointed.<sup>97</sup> However, a review of the properties in the AEP program shows that, from year to year, DHPD opts to keep these properties in the same program without moving for the appointment of a 7-A administrator.<sup>98</sup> In these instances, the City opts to not fill an existing gap.

Separately, municipal governments are authorized to enter properties and make repairs themselves where there is an emergency condition or an owner fails to comply, and can place a priority lien for the cost of the labor and materials.<sup>99</sup> This work tends to prioritize heating systems and other services immediately threatening tenants. While this is a necessary tool to respond to emergencies, targeted abatement and repair is no substitute for consistent management and regular maintenance.

The tools left to municipalities may cause them to unnecessarily vacate or condemn tenants’ homes. Absent an effective tool like Article 7-A, municipal agencies facing a distressed property are often forced to choose between levying penalties that will not effectuate repairs, making the repairs themselves, or ordering a property vacated and potentially condemned. New York State’s enforcement agencies have the authority to issue vacate orders on individual units or entire properties when an event like a fire has rendered them unsafe or a property has decayed or destabilized to a point where it presents a danger.<sup>100</sup> Similarly, when it is found that there are occupants living in properties not legally intended

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29 J.L. & POL’Y 460 (2021).

<sup>93</sup> See Grace Ashford, *Leaks, Mold and Rats: Why New York City Goes Easy on Its Worst Landlords*, N.Y. TIMES (Dec. 26, 2018), <https://www.nytimes.com/2018/12/26/nyregion/nyc-housing-violations-landlords-tenants.html> [<https://perma.cc/6LQV-3UAS>].

<sup>94</sup> See, e.g., N.Y. MULT. DWELL. LAW § 309(5) (McKinney 2021).

<sup>95</sup> N.Y.C., ADMIN. CODE § 27-2153 (2022).

<sup>96</sup> N.Y.C. DEPT OF HOUS. PRESERVATION & DEV., THE ALTERNATIVE ENFORCEMENT PROGRAM: ROUNDS 1-6, 2007-2014 at 2 (2014), <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/AEP-year7-report.pdf> [<https://perma.cc/N8RN-RS3Q>].

<sup>97</sup> In 2013, DHPD advocated to expand the grounds for the appointment of 7-A administrators to the issuance of an order to correct under AEP after this four month period had passed. See 2013 N.Y. Sess. Laws, ch. 455, §§ 2–4 (McKinney 2013); Bill Jacket, A.B. 7834, ch. 455 (N.Y. 2013).

<sup>98</sup> Housing Data Coalition, Data Set (Feb. 15, 2022) (on file with author).

<sup>99</sup> See N.Y.C. ADMIN. CODE §§ 27-2125, 27-2128 (2016); CITY OF MOUNT VERNON, N.Y., CODE § 149-47 (1981); SYRACUSE, N.Y., CODE § 27-117 (1993); WHITE PLAINS, N.Y., CODE ch. 9 pt. 1(j)–(aa) (2018).

<sup>100</sup> See, e.g., N.Y.C. ADMIN. CODE § 27-2139 (2017).

for habitation, like basement or attic apartments where the occupants would lack a safe exit during a fire, or if a unit is overoccupied based on statutory guidelines, these agencies may place orders requiring residents to vacate.<sup>101</sup> In the former situation, the owner may then be ordered to make repairs and the tenants may or may not have a right to return once the work is complete.<sup>102</sup> In the latter scenario, owners rarely have an obligation to renovate or construct a space where a tenant lived in order for them to return.

Condemnation requires use of a municipality's eminent domain power, providing the owners with compensation for "blighted" properties.<sup>103</sup> The proliferation of unoccupied, abandoned properties—colloquially referred to as "Zombie Homes"—have spurred much recent legislation dealing with property neglect.<sup>104</sup> There is no question that in certain circumstances, a property is too far gone and the cost of repairing it would exceed its value. In those cases, even a 7-A administrator will not be appointed.<sup>105</sup> However, there are a number of instances where New York municipalities have vacated or condemned tenant-occupied rental properties where a 7-A administrator may have been able to resuscitate the property.<sup>106</sup> The power to condemn can create perverse incentives, where an owner who knows their property may be condemned fails to make repairs in anticipation of receiving compensation.<sup>107</sup> It may also create perverse incentives for municipalities and elected officials looking to exclude already marginalized tenants living in precarious housing from their communities. Some scholars have highlighted that condemnation procedures can be used in discriminatory fashion, targeting marginalized groups such as immigrants.<sup>108</sup>

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<sup>101</sup> See, e.g., N.Y.C. ADMIN. CODE § 27-2142 (2017).

<sup>102</sup> See, e.g., N.Y.C. ADMIN. CODE § 27-2142(b) (2017) ("The department may require as a condition for revocation of a vacate order, that the owner make reasonable effort to notify any tenants who may have vacated the dwelling pursuant to such order that said tenant has a right to re-occupy the dwelling.").

<sup>103</sup> See generally, N.Y. EM. DOM. PROC. LAW § 101 (McKinney 2021) (providing the exclusive procedure for the use of eminent domain in New York State).

<sup>104</sup> See 2016 N.Y. Sess. Laws, ch. 73, p. Q (2016) (McKinney); see also 2019 N.Y. Sess. Laws, ch. 682 (McKinney).

<sup>105</sup> See *McGovern v. 310 Riverside*, 49 A.D.2d 949, 374 N.Y.S.2d 137 (App. Div. 1975).

<sup>106</sup> See Paul Nelson, *Schenectady plans to take owner of condemned downtown building to court*, TIMES UNION (Dec. 9, 2019), <https://www.timesunion.com/news/article/City-plans-to-take-owner-of-condemned-downtown-14893825.php> [<https://perma.cc/L5C3-GGR3>] (reporting that the Wedgway Building in Schenectady was condemned after safety violations, yet an unknown number of residents still live there); Alex Gault & Alec Johnson, *Dozens Displaced after Watertown apartment complex condemned*, NNY360 (Aug. 9, 2021), [https://www.nny360.com/news/jeffersoncounty/dozens-displaced-after-watertown-apartment-complex-condemned/article\\_414a23af-dfaa-5fcd-9d35-530c4730bec2.html](https://www.nny360.com/news/jeffersoncounty/dozens-displaced-after-watertown-apartment-complex-condemned/article_414a23af-dfaa-5fcd-9d35-530c4730bec2.html) [<https://perma.cc/PA88-E5K5>] (reporting that the City of Watertown, NY condemned the apartment building at 661 Factory Street, immediately displacing residents of the building's 25 units); Pete DeMola, *Tenants Remain at Schenectady building condemned for safety violations*, TIMES UNION (June 8, 2021) <https://www.timesunion.com/news/article/Tenants-remain-at-Schenectady-building-condemned-16232830.php> [<https://perma.cc/8FMK-NXDN>] (commenting that while Crescent Park Apartments in Schenectady were condemned for safety issues, the city is toothless when it comes to both code enforcement and keeping tenants out of unsafe structures); Lana Bellamy, *For renters in Newburgh, the living isn't easy*, TIMES HERALD-RECORD (Dec. 29, 2018 5:36 PM), <https://www.recordonline.com/story/news/2018/12/29/for-renters-in-newburgh-living/6362603007> [<https://perma.cc/9ZH9-AQBN>] (reporting on the consequences of a condemned Newburgh apartment, rendering a family temporarily homeless until they found Section 8 housing).

<sup>107</sup> See generally Steven J. Eagle, *Does Blight Really Justify Condemnation?*, 39 URB. LAW. 833 (2007) (investigating alternatives to condemnation to avoid constitutionality concerns).

<sup>108</sup> See generally Firewe Ayano, *supra* note 46 (discussing the absence of legal remedies for African immigrants in particular

*C. Tenants' Available Rights of Action Do Not Address Emergencies*

As with access to Article 7-A, tenants in New York City and those who live elsewhere in New York State do not enjoy the same rights. Broadly speaking, tenants across New York State have access to three core remedies when seeking repairs: the right to seek injunctive relief,<sup>109</sup> the right to seek monetary damages based on a breach of the warranty of habitability,<sup>110</sup> and a corollary to that right—the right to withhold rent both individually<sup>111</sup> and collectively<sup>112</sup> as part of a rent strike.<sup>113</sup> However, sometimes even in New York City those rights can be hard to effectuate, and in the rest of New York State there are real procedural and statutory hurdles to their implementation. Each of these remedies has the potential to compel an owner to make repairs provided that they have both the willingness and the capital. However, as with the state's code enforcement options, Article 7-A fills a necessary gap where the threat of contempt by court or denial of rental revenue is insufficient to compel an owner to make repairs at the pace required, but moving or allowing a property to degrade to the point where it is unlivable is an unacceptable option. Tenants' right to seek the appointment of a 7-A administrator is a one of a suite of options that must be made available to them.

The courts' restrained use of contempt power limits the efficacy of injunctive relief during emergencies. Perhaps the most straightforward remedy tenants have is the right to go to a court and seek an order from a judge that a landlord make specified repairs. If the landlord fails to make the repairs, they could face the contempt powers of court. Unfortunately, the contempt power is seldom employed and only with much delay.<sup>114</sup> In all of New York State, the New York City Housing Court

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living in precarious housing such as basements not designated as dwellings); Stefan H. Krieger, *A Clash of Cultures: Immigration and Housing Code Enforcement on Long Island*, 36 HOFSTRA L. REV. 1227 (2008) (discussing fair housing discrimination litigation on behalf of Latinx tenants against the Village of Farmingville); see also *Rivera v. Inc. Village of Farmingdale*, 784 F.Supp. 2d 133, 137–38, 142–45 (E.D.N.Y. 2011) (alleging Fair Housing Act discrimination claims against the Village of Farmingdale).

<sup>109</sup> See, e.g., N.Y.C. ADMIN. CODE §§ 27-2120—27-2121 (2022).

<sup>110</sup> N.Y. REAL PROP. ACTS. LAW § 235-B (McKinney 2021).

<sup>111</sup> *Id.*; see also N.Y. MULT. DWELL. LAW § 302-a (McKinney 2021) (designating “rent impairing violations” for which tenants may escrow rent in lieu of payment when existed for six or more months); N.Y. MULT. DWELL. LAW § 305-a (McKinney 2021) (providing for abatement of rents where “rent impairing violations” exist).

<sup>112</sup> See, e.g., N.Y. CIV. CT. ACT § 110(b) (2021) (“On the application of . . . any party, or on its own motion, the housing part of the civil court shall, unless good cause is shown to the contrary, consolidate all actions and proceedings pending in such part as to any building.”).

<sup>113</sup> There are a variety of remedies available to a subset of tenants that I do not discuss in detail. These include administrative rent reduction complaints filed by tenants living in rent regulated housing (RSL); the right to request that a government agency discontinue rental assistance payments when an apartment is in poor condition (Spiegel law); and the “constructive eviction law,” whereby 755 stated that in a summary proceeding to evict a tenant brought by a building owner, the court might grant a stay of the proceeding where the tenant proved that there existed a condition at the property that, “in the opinion of the court,” “constructively evict[s] the tenant from a portion of the premises occupied by him, or is, or is likely to become, dangerous to life, health, or safety.” N.Y. REAL PROP. LAW § 755 (McKinney 2021); see also *Landlord/Tenant Answer In Person Fact Sheet: #11: Spiegel Law*, N.Y. CIV. CT. RES. CTR. (Dec. 2009), <https://nycourts.gov/courts/nyc/housing/pdfs/spiegellaw.pdf> [<https://perma.cc/4KYH-JDKU>].

<sup>114</sup> See generally Armen H. Merjian, *Righting the Scales of Justice: The Critical Need for Contempt Proceedings Against Lawless Landlords*, 52 COL. HUM. RIGHTS L. REV. 592 (2021) (demonstrating the need for contempt proceedings to secure repairs on a timeline and punish offending landlords with penalties for tenants).

is the only venue that traditionally hears housing cases where tenants statutorily have standing<sup>115</sup> to bring lawsuits ordering a landlord to make repairs.<sup>116</sup> Outside of New York City, courts hearing housing-related claims have generally only recognized tenants' right to raise a claim for injunctive relief as a counterclaim in an eviction proceeding; meaning tenants need to withhold rent and risk eviction in order to win a judicial order for repairs.<sup>117</sup> Even in New York City, scholars and practitioners have their critiques. Criticisms have been made of judges granting interminable adjournments and then failing to hold landlords in contempt even after defying a court's order to make repairs.<sup>118</sup> Under such circumstances, the threat of contempt is often far off and unlikely to compel an unwilling landlord to urgency in the case of a crisis.<sup>119</sup>

Meanwhile, the breach of the implied warranty of habitability has limited efficacy in compelling repairs. Tenants' right to sue their landlord for rent abatements<sup>120</sup> when living in poor conditions suffers from the same limitations as the strategies employed in the rent strikes of 1963–1964: when a building's owner is unable to afford repairs or the value of the property or the rent rolls do not merit the investment, withholding rent will not change their calculus. Even if it did, the most accessible courts to tenants, the Housing Courts in New York City, Buffalo, and Rochester as well as the City and District Courts outside those cities, do not have jurisdiction over affirmative warranty of habitability cases.<sup>121</sup> Instead, tenants must go to non-specialized courts like small claims court where

<sup>115</sup> N.Y.C. ADMIN. CODE § 27-2115(h)(1) (2021).

<sup>116</sup> In 2022, the legislature also passed the Tenant Dignity and Safe Housing Act, which would have allowed tenants across New York State to bring summary, affirmative suits for rent abatements related to conditions as well as injunctive relief for repairs in all the courts outside of Long Island that hear eviction cases. S.B. S04594-B, A0354, 2021-2022 Leg. Reg. Sess. (N.Y. 2022). Under threat of pocket veto by Governor Kathy Hochul, tenants' ability to seek abatements will be stripped from the law, as will jurisdiction to hear the suits in New York City. S.B. S1332, A0983, 2023-2024 Leg. Reg. Sess. (N.Y. 2023).

<sup>117</sup> See *Tardibone v. Hopkins*, 17 Misc. 3d 888, 842 N.Y.S.2d 864 (City Ct. 2007) (ordering a landlord to repair the rented property after the landlord sought to evict a tenant for withholding rent); *Vernon Randolph, L.L.C. v. Aharca*, 42 Misc. 3d 1216(A), 984 N.Y.S.2d 635 (City Ct. 2014) (determining that the tenant's "blanket assertions of bias [were] insufficient to warrant injunctive relief."). However, the Rochester City Court has recognized tenants' rights to bring affirmative repairs litigation based on an argument advanced by the tenant's counsel that the 2005 amendments to the jurisdictional provisions Uniform City Court Act and Uniform District Court Acts were intended to allow such affirmative relief. New York Bill Jacket, 2005 A.B. 7293, ch. 337. Order, *Barger v. Viator*, unpublished order [CV-009397-19/RO] (N.Y. City Ct. Roch. Jan. 17, 2020); Jeremy Moule, *A Landlord's Victim Fights Back and Blazes a Trail for Tenants*, ROCHESTER CITY NEWS (Jan. 22, 2020), [https://www.rochester-city-newspaper.com/rochester/a-landlords-victim-fights-back-and-blazes-a-trail-for-tenants/Content?oid=11316882\\_\[https://perma.cc/RN9G-LN98\]](https://www.rochester-city-newspaper.com/rochester/a-landlords-victim-fights-back-and-blazes-a-trail-for-tenants/Content?oid=11316882_[https://perma.cc/RN9G-LN98]); Jeremy Moule, *Rochester tenant's battle with landlord, rodents persists*, ROCHESTER CITY NEWS (Feb. 19, 2020), <https://www.rochester-city-newspaper.com/rochester/rochester-tenants-battle-with-landlord-rodents-persists/Content?oid=11435778> [https://perma.cc/WEA7-CAKP]; Jeremy Moule, *Rochester renters' rights pioneer dies; her case lives on in limbo*, ROCHESTER CITY NEWS (May 5, 2020), <https://www.rochester-city-newspaper.com/rochester/rochester-renters-rights-pioneer-dies-her-case-lives-on-in-limbo/Content?oid=11752593> [https://perma.cc/U8CW-WJWZ].

<sup>118</sup> See, e.g., Merjian *supra* note 114.

<sup>119</sup> *Id.* at 596.

<sup>120</sup> The right to rent abatement, known as the breach of warranty of habitability, first recognized in *Amanuensis Ltd. v. Brown*, 65 Misc.2d 15, 318 N.Y.S.2d 11 (N.Y. Civ. Ct. 1971) was reduced to statute in 1975. N.Y. REAL PROP. LAW § 235-b (McKinney 2021). See generally David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 394 (2011); Paula A. Franzese et al., *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS L. REV. 1 (2016).

<sup>121</sup> The Tenant Dignity and Safe Housing Act, which would have permitted tenants to affirmatively seek rent

there are few, if any, housing-focused resources and limited *pro se* assistance.<sup>122</sup> Even if tenants can affirmatively raise habitability claims, their damages are calculated by the difference in the fair market value of the property (based on the lease) and the value of the property in its current condition,<sup>123</sup> effectively capping the value of tenant claims.<sup>124</sup> Even if the threat of winning affirmative money damages would induce an owner to make repairs, tenants find it difficult to access courts that can hear claims. Meanwhile, City and District Courts statewide already have jurisdiction to hear Article 7-A claims.<sup>125</sup>

Likewise, rent withholding is not effective when the need is immediate. Article 7-A was expressly designed to aid tenants in circumstances where rent withholding did not induce owners to make repairs. Tenants in New York State have historically withheld rent as leverage in negotiations with landlords over a number of issues, including conditions.<sup>126</sup> Warranty of habitability claims are now the cornerstone of a tenant rent strike.<sup>127</sup> Tenants who withhold rent are not required to escrow<sup>128</sup> and may

abate damages based on the breach of the implied warranty of habitability everywhere in New York State but Long Island will be gutted. *See* S.B. S04594–A, A00354A, 2021–2022 Leg., Reg. Sess. § 1 (N.Y. 2021) (enacting the “tenant dignity and safe housing act”); *see also* S.B. S1332, A0983, 2023–2024 Leg., Reg. Sess. (N.Y. 2023) (stripping New York City courts of jurisdiction to hear Tenant Dignity and Safe Housing Act claims and removing the provision authorizing courts to grant tenants rent abatements until repairs are completed). This jurisdictional distinction makes little sense in light of that fact that the New York City Housing Court has jurisdiction to hear affirmative claims for damages when a landlord is in contempt of court for diminished habitability, *see* Merjian, *supra* note 118, at 640, as well as tenants’ harassment claims based on conditions using the same calculation for damages as the breach of warranty of habitability, but not claims for the breach of warranty of habitability itself. *T & G Realty Co. v. Hawthorn*, 116 N.Y.S.3d 872, 2019 WL 3070982 at \*6 (N.Y. Civ. Ct. 2019) (remarking that when calculating compensatory damages for harassment, those damages have been held to be “akin to a rent abatement”); *see, e.g.,* *Leung v. Zi Chang Realty Corp.*, (HP 449/2019) (N.Y. Civ. Ct. 2020), *aff’d*, 74 Misc.3d 126(A) (N.Y. App. Term 2022) (awarding \$140,810.46 in compensatory damages for harassment as relates to conditions, including deprivation of services like heat and hot water).

<sup>122</sup> *See, e.g.,* N.Y. CITY CIV. CT. ACT § 1801 (McKinney 2021) (“... any cause of action for money only not in excess of ten thousand dollars . . .”); N.Y. UNIFORM CITY CT. ACT § 1801 (McKinney 2021) (“... any cause of action for money only not in excess of five thousand dollars . . .”); N.Y. UNIFORM DIST. CT. ACT § 1801 (McKinney 2021) (“... any cause of action for money only not in excess of five thousand dollars . . .”).

<sup>123</sup> *Park W. Mgmt. Corp. v. Mitchell*, 391 N.E.2d 1288, 1295 (N.Y. 1979).

<sup>124</sup> *See* Sabbeth, *supra* note 44, at 123 (arguing that “prevailing methods for calculating damages incorporate biases of class, race, and gender, and they underestimate the value of poor tenants’ cases”).

<sup>125</sup> In an odd quirk, courts across the state where neither tenants nor municipalities have standing to bring Article 7-A claims have jurisdiction, presumably because the jurisdictional statute borrowed language directly from the New York City Civil Court Act.

<sup>126</sup> *See generally* CHARLES W. MCCURDY, *THE ANTI-RENT ERA IN NEW YORK LAW AND POLITICS: 1839–1865* (2006); ROBERTA GOLD, *supra* note 1; Schwartz, *supra* note 1; Dias, *supra* note 41.

<sup>127</sup> *See* Myron Moskovitz, *The Implied Warranty of Habitability: A New Doctrine Raising New Issues*, 62 CAL. L. REV. 1444, 1504 (1974) (“[t]he growth of tenant unions in the past has been hampered largely by the illegality of the key tenant organizing tactic: the rent strike. When tenants withheld rent, they were evicted, and the organizing effort failed. The implied warranty, however, in effect legalizes the rent strike against slum landlords.”).

<sup>128</sup> *Cf.* N.Y. MULT. DWELL. LAW § 302-a (McKinney 2021) (stating that, if there is a rent impairing violation of which the owner has been on notice for at least six months, “no rent shall be recovered by any owner . . .”); N.Y. MULT. RESID. LAW § 305-a (McKinney 2021) (stating that, if there is a rent impairing violation of which the owner has been on notice for at least six months, “no rent shall be recovered by any owner . . .”); N.Y. REAL PROP. ACTS. LAW § 755 (McKinney 2021) (stating that, under § 755, “tenant or respondent shall not be entitled to the stay unless he shall deposit with the clerk of the court the rent then due . . .”).

prove damages at trial. Court rules allow tenants to consolidate their cases and pay over any money not collected after trial.<sup>129</sup>

However, the current defense and counterclaim based on rent withholding derives from the same right to affirmatively seek damages based on the breach of the warranty of habitability.<sup>130</sup> When tenants are sued for eviction and past-due rent, the tenant may counterclaim for breach of warranty of habitability and ask the court to make a determination after trial as to the amount of a rent abatement to which the tenant is entitled. In any court that can hear eviction proceedings, tenants may raise these defenses and counterclaims, yet these courts do not have jurisdiction over affirmative claims.<sup>131</sup>

Practically, this means that if a tenant in New York State wants repairs, the fastest way to get in front of a judge is often to withhold rent and wait to be sued for eviction. This unnecessarily puts tenants at risk of losing their homes, requires tenants to miss work or other obligations, and could eventually result in a chronic rent delinquency eviction case if they must employ this strategy over and over. The outcomes for individual tenants in solitary fights against their landlord demonstrate the limitations of solitary counterclaims in Housing Court. Recent empirical study of the Bronx Housing Court found that rent abatements were only awarded in 1.75% of nonpayment of rent eviction cases and, where a tenant had to return to court after initially signing an agreement whereby the owner committed to make repairs, those same repairs were included in a subsequent agreement 80% of the time.<sup>132</sup> While rent withholding may create substantial leverage for organized tenants seeking to bargain with their landlord, there is a limit to the efficacy of this tactic where a landlord is effectively “milking” a property and has no intention of reinvesting funds.

Where an owner is unwilling or unable to make repairs, tenant remedies for injunctive relief, breach of warranty of habitability, or even rent strikes may not achieve the intended result. Prior to the creation of Article 7-A, tenants’ options under such circumstances were to stay, make repairs themselves, or eventually leave or be removed. Article 7-A exists specifically to bridge the gap between these tenant remedies.

#### *D. New York State’s Receivership Laws Do Not Fill the Enforcement Gap*

In theory, the gap in enforcement between code enforcement, nuisance programs, and vacatur and condemnation could be filled by a patchwork of existing receivership programs in some municipalities. In the limited municipalities that have used their own home rule authority to pass receivership laws, no tenant has explicit standing to seek such an appointment. Where there is neither clear state nor municipal authority to seek the appointment of a receiver, some law departments and courts have interpreted their power broadly to fill this gap in code enforcement. However, there is a dearth of case law upholding this right, meaning it is highly dependent on the politics and interpretation of the corporation counsel or judge overseeing the case.<sup>133</sup> None of those programs other than Article

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<sup>129</sup> See, e.g., CITY CIV. CT. ACT § 110(b) (McKinney 2021) (“[o]n the application of . . . any party, or on its own motion, the housing part of the civil court shall, unless good cause is shown to the contrary, consolidate all actions and proceedings pending in such part as to any building.”).

<sup>130</sup> N.Y. REAL PROP. ACTS. LAW § 235-b (McKinney 2021).

<sup>131</sup> See, e.g., CITY CIV. CT. ACT § 110 (McKinney 2021); N.Y. UNIFORM CITY CT. ACT § 203 (McKinney 2021); N.Y. UNIFORM DIST. CT. ACT § 203 (McKinney 2021).

<sup>132</sup> Summers, *supra* note 45, at 204 (assessing Bronx Housing Court filings for abatements and repairs completed).

<sup>133</sup> It is difficult to account for all of the municipalities that have considered and chosen not to pursue receiverships

7-A permit tenants to initiate actions to appoint any type of receiver on their own. Likewise, none have a clearly defined receivership program that specifies that a receiver will not be discharged until all repairs are complete. Effective implementation of a rental receiver program across New York State requires passage of a clear statute laying out the basis for appointment of a 7-A administrator by municipalities or tenants.

There is no applicable statewide statute that allows tenants and municipalities to seek the appointment of a receiver to address conditions dangerous to life, health, and safety. However, municipalities do exercise home rule authority to pass their own receivership legislation.<sup>134</sup> Various local receivership ordinances have been passed to deal with conditions in Syracuse<sup>135</sup> and the Village of Islip, and to deal with criminal nuisances in Buffalo,<sup>136</sup> Albany,<sup>137</sup> Kingston,<sup>138</sup> the Town and Yonkers.<sup>139</sup> None have authorized tenants to seek the appointment of a receiver independently.<sup>140</sup>

Recent incidents in Syracuse display the limits of such an approach from tenants' perspectives. The mayor of Syracuse, as recently as March 2021, threatened to seek appointment of a receiver at the Skyline Apartments, a 365-unit building with a documented history of both code violations and criminal arrests.<sup>141</sup> Ultimately, the Syracuse Chief of Police sought and secured a nuisance abatement order for the property, but the City of Syracuse did not pursue the receivership.<sup>142</sup> As of January 22, 2022, that nuisance order was still in place and inspectors were sent to the property to spot-check it found violations.<sup>143</sup> The New York Attorney General ultimately commenced a repairs-related case at the

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based on these theories.

<sup>134</sup> N. Y. CONST. art. IX, § 2(b)(2).

<sup>135</sup> SYRACUSE, N.Y., CODE ch. 27, art. VIII § 27-121 (2019).

<sup>136</sup> BUFFALO, N.Y., CODE ch. 294, art. I § 294-4 (1990).

<sup>137</sup> ALBANY, N.Y., CODE ch. 255, art. VIII § 255-50 (1983).

<sup>138</sup> KINGSTON, N.Y., CODE ch. 199, art. IV § 199-19 (2008).

<sup>139</sup> YONKERS, N.Y., CODE ch. 75, art. VI § 75-29 (2010).

<sup>140</sup> New York City and Buffalo's largely unused receivership statute permits tenants to seek the appointment of a receiver only after the city certifies the existence of a nuisance. N.Y. MULT. DWELL. LAW § 309(5) (McKinney 2021); BUFFALO, N.Y., CODE ch. 294, art. II § 294-14 (1990).

<sup>141</sup> *Mayor Walsh Announces Next Wave of Skyline Enforcement*, OUR CITY (Mar. 23, 2021), <https://ourcity.syr.gov.net/2021/03/mayor-walsh-announces-next-wave-of-skyline-enforcement> [<https://perma.cc/SNB8-8R8Z>] (“[i]f Green National fails to act in a swift, comprehensive manner the company will face additional fines; the withholding of publicly-funded rent payments; and the appointment of a receiver to manage the property.”).

<sup>142</sup> *See* 753 James Street, Nuisance Abatement Order (City of Syracuse June 3, 2021), <https://ourcity.syr.gov.net/wp-content/uploads/2021/06/2021-06-03-NUISANCE-ABATEMENT-ORDER-Skyline-Apartments-753-James-Street.pdf> [<https://perma.cc/D3M4-Q25D>]; *Mayor Walsh Announces Increased Safety and Security Requirements at Skyline Apartments*, OUR CITY (June 3, 2021), <https://ourcity.syr.gov.net/2021/06/mayor-walsh-announces-increased-safety-and-security-requirements-at-skyline-apartments> [<https://perma.cc/U5HD-HPGN>] (“[u]ltimately, it is up to Green Skyline to live up to the duties of a responsible property owner.”).

<sup>143</sup> *City of Syracuse Monitoring and Enforcement Actions at Skyline Apartments*, OUR CITY (Jan. 24, 2022), <https://ourcity.syr.gov.net/2022/01/city-of-syracuse-monitoring-and-enforcement-actions-at-skyline-apartments> [<https://perma.cc/ZD2P-PDE8>] (“[u]nder the coordination of the HOME Unit (High Occupancy Monitoring and Enforcement), multiple City of Syracuse Departments work together to hold Green Skyline accountable to the requirements of the Nuisance Abatement order issued in June 2021 . . .”). Separately, the City of Syracuse ultimately commenced 15 additional cases against various properties owned by the same landlords, seeking injunctions for repairs and civil penalties. *See, e.g.*, *City of Syracuse v. Green Skyline Apts*, No. 007129/2021 (N.Y. Sup. Ct. 2021 filed Aug. 10, 2021); *see also* Alaina Losito, *Home And Held*

property, but as of this writing has not sought the appointment of a receiver.<sup>144</sup> Meanwhile, counsel for various tenants living at the Skyline Apartments have filed a suit in Onondaga Supreme Court seeking money damages for breach of warranty of habitability as well as breach of the covenant of quiet enjoyment. Tenants can neither pursue a receivership nor even injunctive relief because these remedies are not statutorily available to them.<sup>145</sup> With access to Article 7-A, these tenants would have had legal authority to seek removal of control from their landlord where the City of Syracuse chose not to do so.

Elsewhere, most prominently in Buffalo and Rochester, courts have favorably interpreted jurisdictional statutes to grant broad authority to appoint receivers. However, other courts whose jurisdictional statutes either match the exact language relied on in Buffalo or are in fact the same statute have not followed suit, demonstrating why a clear statutory right to seek the appointment of a 7-A administrator is preferable. In Buffalo, the presiding judge in the Housing Court has relied on broad, equitable powers to “recommend or employ any remedy, program, procedure or sanction authorized by law for the enforcement of housing standards, if it believes they will be more effective to accomplish compliance or to protect and promote the public interest. . . .”<sup>146</sup> The City of Rochester has sought the appointment of multiple receivers, relying on the jurisdictional statute for the City Court.<sup>147</sup>

The statutory language relied on by both the Buffalo Housing Court<sup>148</sup> and the City of Rochester<sup>149</sup> is the same in every City and District Court in New York State, but there is no evidence of other municipalities pursuing receiverships based on similar interpretations.<sup>150</sup> Neither law departments nor tenants are entitled to a clear, statutory right they can rely on in circumstances that present a danger to their lives, health, and safety.

Where a municipality does seek to appoint a receiver, through whichever mechanism, the success of the action is often contingent on the tenants buying into the process, paying rent to the administrator, and participating in the control of their homes. When tenants play no role in the

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*Hostage: Green National's Legion of Lawsuits Spur on Little Progress*, NCC NEWS (May 2022), <https://nccnews.newhouse.syr.edu/home-and-held-hostage-green-nationals-legion-of-lawsuits-spur-on-little-progress> [<https://perma.cc/YUB8-Y5R9>].

<sup>144</sup> The People of the State of New York, by Letitia James, Attorney General of the State of New York v. Greenland Property Services, LLC et al, No.8669/2022 (N.Y. Sup. Ct. 2022 filed Oct. 25, 2022).

<sup>145</sup> Carter v. Green Skyline Apartments, No. 005036/2021 (N.Y. Sup. Ct. 2021).

<sup>146</sup> City of Buffalo v. Nat'l Fuel Corp., 766 N.Y.S.2d 828, 862 (N.Y. Civ. Ct. 2003) (quoting 1978 N.Y. LAWS 917, 918–19). The Buffalo Housing Court Act also grants jurisdiction over “proceedings for the appointment of a receiver of rents, issues, and profits of buildings in order to remove or remedy a nuisance or to make repairs required to be made under such housing codes.” 1978 N.Y. LAWS 917, 918; *see generally* Anthony P. Lo. Russo, *The Buffalo Housing Court: A Special Court for Special Needs*, 17 URB. L. ANN. 199 (1979) (explaining various avenues of relief available in housing court).

<sup>147</sup> The City of Rochester’s arguments rely on an interpretation of Uniform City Court Act § 203 and CPLR § 5106. *See, e.g.*, City of Rochester v. Thurston Road Realty, LLC (Verified Petition), CV-004893-18/RO (Rochester City Ct. filed May 18, 2018).

<sup>148</sup> City of Buffalo, 766 N.Y.S.2d at 862 (quoting 1978 N.Y. LAWS 917, 918-19).

<sup>149</sup> N.Y. UNIFORM CITY CT. ACT § 203 (McKinney 2021).

<sup>150</sup> Decisions related to landlord-tenant law often are not published, let alone appealed, making it difficult to track down supporting case law from the civil courts that hear repairs-related cases. It can be difficult to find case law evidencing attempts to pursue these arguments elsewhere. Sabbath, *supra* note 44, at 135–36 (“[b]ecause poor people are particularly likely to experience substandard housing and particularly unlikely to hire counsel, the problems of substandard housing receive little legal analysis. Private lawyers . . . do not appeal to higher courts and therefore miss out on opportunities to strengthen existing doctrine and create precedent.”).



appointment of a receiver or even a 7-A administrator, it can place them at odds with the landlord they had wanted removed, the municipality, and the receiver or administrator. In addition to granting tenants a private right of action, Article 7-A explicitly grants them the authority to join a pending case brought by New York City, which helps the government and tenants in developing a fruitful relationship.<sup>151</sup>

## II. FAILURES OF THE RENT STRIKE LAW

The expansion of the right of action to seek the appointment of an Article 7-A administrator to all tenants and municipalities would fill a crucial gap in the remedies available to tenants and municipalities. It may also facilitate the sale of these neglected properties to responsible owners, including the tenants themselves, who have a vested interest in maintaining the property. The sixty-year period of Article 7-A's use have laid bare its greatest flaws. Without addressing these concerns in New York City and statewide, a statewide expansion of Article 7-A will not live up to its promise.<sup>152</sup>

### *A. Repeat Offenders Have Learned to Play the System*

Presently, a condition dangerous to health, life, and safety can exist in a property and, if the issue is fixed before the close of trial, tenants will not win the appointment of a 7-A administrator.<sup>153</sup> In New York City's climate of abandonment in the 1960s and 1970s, it made sense to use the threat of receivership to incentivize landlords and mortgagees where possible to make repairs rather than converting one more property from private ownership to 7-A administration and possibly to an *in rem* foreclosure holding. However, in a high value market where investors compete for properties based on their speculative value, maximizing net operating income by keeping maintenance costs at a bare minimum until faced with an enforcement action is a common strategy to maximize profits. Landlords will frequently wait until they are sued, whether for injunctive relief, damages, or even appointment of a 7-A administrator, and then make repairs. From a certain standpoint, repairs are the goal; however, once a landlord knows they can repeatedly get away with the same conduct, the threat of the appointment of a 7-A administrator is no longer effective as a deterrent. Unfortunately, in such a context, we have seen both the failings of traditional tenant rights of action and municipal code enforcement mechanisms to effectively deter a business model of deferred maintenance even when it results in tenants repeatedly facing conditions dangerous to their health, life, and safety.<sup>154</sup>

For a statute written to provide organized tenants relief when they face conditions or actions dangerous to their health, life and safety, Article 7-A has become mired in procedural hurdles. Article 7-A is clear that trial must commence within five days of the defendants responding to a pleading serve

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<sup>151</sup> N.Y. REAL PROP. ACTS. LAW § 770 (McKinney 2021).

<sup>152</sup> Article 7-A would need to be updated for one and two-family housing stock. Currently, tenants may only bring 7-A actions in buildings where three or more families live or in garden-type apartments that may be single-family, so long as at least three units are connected in a row. *Id.* § 782 (McKinney 2021).

<sup>153</sup> *Id.* § 775(a) (McKinney 2021); *id.* § 776(a) (McKinney 2021).

<sup>154</sup> See Carl Campanile & Alex Taylor, *De Blasio puts city's "worst landlord" on notice over rat infestation*, N.Y. POST (Feb. 16, 2017, 11:41 AM), <https://nypost.com/2017/02/16/de-blasio-puts-citys-worst-landlord-on-notice-over-rat-infestation/> [https://perma.cc/89FV-LDC9] (documenting the continued violations made by Ved Parkash, a Bronx landlord, who never faced 7-A action).

on them except by consent of the parties.<sup>155</sup> It is the oft-repeated experience of both City officials and tenant lawyers that a 7-A case can drag on for months or even years.<sup>156</sup> These delays not only require tenants to continue to live in conditions meant to be resolved on an expedited basis, but they create temporal space for landlords to retaliate by filing eviction proceedings and otherwise attempting to dissuade tenants from participating.<sup>157</sup>

In New York City, part of this problem is administrative. New York City's Housing Court faces tremendous administrative burdens in scheduling Article 7-A cases.<sup>158</sup> Courtrooms in the Housing Court are designated as either Resolution Parts, which handle newly filed eviction cases and motion practice; Trial Parts, which is only for eviction trials; or as HP Parts,<sup>159</sup> which hear all newly filed code enforcement cases from tenants or the city, conference motions on pending cases, and conduct trials for HP repair actions, HP harassment cases, and Article 7-A proceedings.<sup>160</sup> Even a well-intentioned judge presiding over a 7-A trial is forced to fit trials in between hundreds of other cases, which can lead the presiding judge to effectively twist tenants' arms to schedule a case further out or, failing that, to conduct trial across multiple adjournments where tenants are granted only a fraction of the court's time to testify.<sup>161</sup> Delay becomes the most effective tool in the landlord's attorney's arsenal.<sup>162</sup> Even after trial is complete, judges facing the enormous administrative pressures of the HP Part have at times delayed months in rendering a decision.<sup>163</sup>

Even after tenants win a 7-A case at trial, a 7-A administrator is not automatically appointed. Up until November 2020, either the owner or mortgagee could invoke Section 777 to request an opportunity of undefined length to post a bond and make repairs before an administrator is appointed.<sup>164</sup> If Article 7-A were implemented as originally intended, with a summary trial beginning within five days, this mechanism might make sense. However, if an owner enjoys a full six to nine month trial period to make repairs and then makes a renewed motion for another opportunity, the court is facilitating delay. In 2002, eight year old Jashawn Parker was killed by an electrical fire at 3569

<sup>155</sup> N.Y. REAL PROP. ACTS. LAW § 774 (McKinney 2021).

<sup>156</sup> Jill Jonnes, *Courts are Naming Administrators Now to Better Buildings*, N.Y. TIMES, June 21, 1981, at R10 (“[b]ut even more important is that there has to be some one tenant willing to spend a tremendous amount of time during the day going to court, where everything is always being postponed. It helps if someone is self-employed or retired.”).

<sup>157</sup> See, e.g., Rudolph, *supra* note 49, at 420, 425.

<sup>158</sup> *Id.* at 420 (discussing administrative hurdles that occurred in a 7-A proceeding brought at a Bronx building organized by CASA).

<sup>159</sup> A tenant can bring a case against a property owner in Housing Court for injunctive relief to make repairs and provide essential services, like heat and hot water. This case is called an “HP action.” N.Y.C. DEP’T OF HOUS. PRESERVATION & DEV. *Tenant’s Rights: Housing Court* (last visited Dec. 8, 2022) <https://www1.nyc.gov/site/hpd/services-and-information/housing-court.page#:~:text=A%20tenant%20can%20bring%20a,of%20harassment%20in%20Housing%20Court> [<https://perma.cc/XG6R-Q5CZ>].

<sup>160</sup> See, e.g., Krishnan, *supra* note 49, at 225–26. A tenant or group of tenants may bring a case called an HP action. (“Housing Part Action”) seeking an order to correct code violations and provide essential services, like heat and hot water. N.Y.C. ADMIN. CODE § 27-2115(h) (2022).

<sup>161</sup> See *Id.* at 226-228.

<sup>162</sup> See, e.g., Whitlow, *Community Law Clinics in the Neoliberal City*, *supra* note 49, at 381–82; Rudolph, *supra* note 49, at 422; Krishnan, *supra* note 49, at 228.

<sup>163</sup> See Krishnan, *supra* note 49, at 225–26.

<sup>164</sup> See N.Y. REAL PROP. ACTS. LAW § 777 (McKinney 2021).

DeKalb Avenue in the Bronx during one of these court-granted delays.<sup>165</sup> In November 2020, the New York State legislature passed a law capping this additional time at 60 days or an additional extension for good cause.<sup>166</sup> While this amendment is an improvement over the frustratingly open-ended nature of Section 777, it does not address the fundamental problem. Even capped at 60 days (or additional time with good cause shown), this last and final opportunity to make the repairs would only make sense in the context of a truly summary proceeding. In practice, this section incentivizes owners to delay repairs and mortgages throughout the length of a many-month trial. Without Section 777, it is possible that there would be fewer 7-A administrator appointments because the real threat of their appointment would encourage landlords and mortgagees to make haste on the landlord and mortgagee's parts.

### *B. The 7-A Appointment Process is Inaccessible Without Counsel*

Despite having the right to pursue Article 7-A actions in Nassau, Suffolk, Westchester, and Rockland counties, tenants have not commenced a single case since 2016.<sup>167</sup> *Pro se* tenants likely lack the knowledge that this remedy is available, which signals a core part of the problem. Outside of New York City, tenant-side attorneys do not enjoy substantial municipal or statewide financial support to pursue litigation crucial for maintaining tenants' homes. There is no effective right to counsel in housing court, whether for eviction proceedings or affirmative litigation for repairs, harassment, or discrimination. Article 7-A proceedings are particularly difficult for tenants to maintain *pro se* because as an action implicating property rights, every single person and entity with a property interest must be properly served with notice.<sup>168</sup> This often requires a title search as well as payment for service of process on corporations and potentially out-of-state defendants. Although Article 7-A is designed in many ways to empower tenants, these service requirements make it difficult to proceed without counsel.

### *C. 7-A Administrators Lack Sufficient Oversight and Financial Support*

Creating a right of action for tenants that allows them to seek the appointment of a 7-A administrator will be ineffective without support for municipalities and tenant groups to screen and train a pool of administrators. In New York City, the criteria for Article 7-A administrators has shifted over years. In the 1970s and 1980s, where the greatest numbers of administrators were being appointed, tenants could be appointed to manage their own buildings. Now, with the number of appointments significantly lower, there is a smaller class of non-profit and private management companies who may be appointed, and they are selected by the Department of Housing Preservation and Development.<sup>169</sup>

Similarly, 7-A administrators have access to limited municipal financing to make repairs once they take over the property.<sup>170</sup> The initial intention of Article 7-A was to facilitate repairs by having

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<sup>165</sup> See Jordan Moss, *Years of Warnings, Then a Boy's Death*, CITY LIMITS (Mar. 13, 2012), <https://citylimits.org/2012/03/13/years-of-warnings-then-a-boys-death> [<https://perma.cc/2NK2-5JUC>].

<sup>166</sup> See S03320, 2019–2020 Leg., Reg. Sess. (N.Y. 2020); A02625, 2019–2020 Leg., Reg. Sess. (N.Y. 2020).

<sup>167</sup> Housing Data Coalition, Data Set (Feb. 15, 2022) (on file with author). See also Long v. Kissling Real Est., 364 N.Y.S.2d 134, 135–36 (Co. Ct. 1975).

<sup>168</sup> N.Y. REAL PROP. ACTS. LAW §§ 769–83 (McKinney 2021). See also Himmel v. Chase Manhattan Bank, 262 N.Y.S.2d 515 (N.Y. Civ. Ct. 1965) (holding Article 7-A is constitutional).

<sup>169</sup> List of Article 7-A administrators (June 2021) (on file with author)

<sup>170</sup> In a 1982 letter from Mayor Ed Koch to the State Legislature, Mayor Koch supported similar legislation for New

tenants pay rent to a receiver charged with making repairs instead of withholding rent where a building owner was otherwise not incentivized to make repairs.<sup>171</sup> However, soon thereafter, New York City government recognized that a 7-A administrator starting with one-month of rental payments at a time could not quickly address capital needs like repairs to a boiler or elevators.<sup>172</sup> At times, the City will have to use its abatement powers to address conditions like boiler repair that are life threatening, for which the 7-A administrator lacks capital.<sup>173</sup> Presently there is a 7-A Finance Fund available for capital repairs. However, it remains the case that after a 7-A administrator is appointed, it can take months—and intense advocacy from tenants—to get funds released for structural repairs for which DHPD is already on notice of at the time of appointment. Delays in financing contribute to a breakdown in the relationship between the tenants and receiver.<sup>174</sup>

#### *D. Tenants Lack Control Over Selling Buildings*

Tenants living in properties where 7-A administrators have been appointed do not exercise direct control over sale of the property. 7-A administrators themselves also have no authority to initiate a sale. Instead, tenants are reliant on the government to initiate tax foreclosures, particularly during New York City's *in rem* period, or, as is more common now, on either the owner to sell the property unsupervised by the court that appointed the 7-A administrator or a lienor to initiate a mortgage foreclosure in a different venue. In the latter scenario, tenants' most direct influence over whether or not a sale occurs is their decision to seek the appointment of a 7-A administrator, setting up the chain of events that leads to default.

Under some circumstances, a building in the 7-A program might never be sold. If the 7-A administrator completes all the repairs and the owner pays off the liens, the court will restore the owner to control. This can be immensely unsatisfying for the administrator and tenants alike, who exhausted significant time and resources in removing the owner to begin with, without any guarantee the owner will become responsible once in charge again. After the owner regains control, there are no legal guarantees or probationary periods to ensure the owner does not permit the property to degrade again unless the administrator's removal is the subject of a settlement agreement including such terms.

There is also a risk that the property stays in limbo. Despite the fact that 7-A administrators are intended to be temporary, if the 7-A administrator cannot complete the repairs or the owner cannot pay the liens and demonstrate future capacity to make repairs, but no outside entity initiates a sale, the administrator could remain in place in perpetuity. The tenants, the 7-A administrator, and the appointing court do not exercise any discretion in these circumstances to commence a process to sell

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York City. "All too frequently, an administrator will be appointed with an insufficient rent roll to allow for the immediate repairs that are needed. This is particularly important where a major system such as heating or electrical is in poor condition or where vacant apartment [sic] must be repaired before they can be rented. This bill would allow HPD to advance money to administrators to make systems or other repairs designed to stabilize the condition of the building." Letter from Ed Koch, Mayor of New York City, to the New York State Legislature (Jul. 8, 1982) (on file with author and available at NYU School of Law microfiche collection).

<sup>171</sup> See Flitton, *supra*, note 8 at 192–193.

<sup>172</sup> See Note: *Tenant Rent Strikes*, *supra* note 48, at 13.

<sup>173</sup> See Note: *Article 7-A Revisited*, *supra* note 48, at 525.

<sup>174</sup> Oser, *Tenant Management on Rise in Troubled Buildings*, *supra* note 19 ("[the tenants] carry on the same war with the receiver that they carried on with the landlord").

or clear title.

Alternatively, an owner defaulting on their debt obligations may sell the property outright or face a mortgage foreclosure. Without access to the rent roll, the owner may default on their mortgage loan and feel compelled to sell at a now below-market price. When sales do occur, they are most often made directly by the owner to a third-party purchaser or are result of the owner defaulting on their mortgage payments. If the owner initiates a sale, they have no obligation to inform the court. If the owner defaults on a loan, their lender may initiate a foreclosure, which does require judicial oversight in New York State. Alternatively, the owner can sell the building's note to an actor who intends to leverage it for purchase of the property without going through the expense and scrutiny of a judicial foreclosure. In the latter case, the sale can occur without the tenants, 7-A administrator, or an appointing court ever receiving notice.

New York State has three methods to initiate sale on its own which are more likely to facilitate social acquisition of properties where 7-A administrators have been appointed in softer markets: eminent domain,<sup>175</sup> *in rem* tax foreclosures,<sup>176</sup> and abandonment proceedings.<sup>177</sup> Eminent domain, requires payment of compensation to the original owner and goes largely unused.<sup>178</sup> The second option is foreclosing on or selling the tax liens on properties where tax liens are priority liens, meaning their payment takes precedence over paying back lenders with mortgages on the property. A sale is easier to initiate in softer markets, where the owner of a neglected property is more likely to fall into tax arrears and be subject to an *in rem* foreclosure, as was the case with NYC in the 1970s<sup>179</sup> and still the case in many upstate jurisdictions. In a higher value market, a speculator owner is less likely to fall into tax arrears because their revenue is based on the appreciation of the asset and refinancing,<sup>180</sup> while lower income, long term holders of property may find their unpaid tax debts result in lien sale or tax foreclosure.<sup>181</sup> Even where owners have failed to meet their tax obligations, government may be

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<sup>175</sup> See generally N.Y. EM. DOM. PROC. LAW §§ 101–709 (McKinney 2021) (providing the exclusive procedure for the use of eminent domain in New York State).

<sup>176</sup> See, e.g., N.Y.C. ADMIN. CODE § 11-412 (2022). This article refers to *in rem* tax foreclosures generally, but there are different methods of municipalities collecting on the tax debts of owners of real property. In New York City, these programs are Third Party Transfer and the tax lien sale, both of which have been the subject of controversy. See generally Christopher J. Allred, *Breaking the Cycle of Abandonment: Using a Tax Enforcement Tool to Return Distressed Properties to Sound Private Ownership*, PIONEER INST. (2000), [https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/bgc\\_winner.pdf](https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/bgc_winner.pdf) [<https://perma.cc/H6V4-4YBV>] (charting the history of New York City's use of in rem foreclosure and the transition to the Third Party Transfer Program and Tax Lien Sale).

<sup>177</sup> See generally N.Y. REAL PROP. ACTS. LAW §§ 1971–74 (McKinney 2021).

<sup>178</sup> See generally David T. Kraut, *Hanging Out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings from Urban Areas*, 74 N.Y.U. L. REV. 1139 (1999) (arguing for cities' right to seize vacant properties and discounting the cost to bring the property in compliance with code from the just compensation for property owners).

<sup>179</sup> See Scherer, *supra* note 18, at 956; see also Reiss, *supra* note 18, at 789.

<sup>180</sup> See Jordan Moss, *Program to Take Buildings from Bad Landlords Fades*, CITYLIMITS (Dec. 4, 2013), <https://citylimits.org/2013/12/04/program-to-take-buildings-from-bad-landlords-fades> [<https://perma.cc/D36X-3UDG>] (“The whole world changed with cheap bank and mortgage company financing,” says John Reilly, executive director of Fordham Bedford Housing Corporation (FBHC), a well-known northwest Bronx nonprofit. “They can get a mortgage worth more than the building’s real business value and do enough work to keep the city off their backs. They are not making much off running the buildings; they make it off the re-financing and sales.”).

<sup>181</sup> See generally *Dorce v. City of New York*, 2 F.4th 82 (2d Cir. 2021) (ongoing class action brought by Brooklyn-based homeowners of color alleging New York City illegally seized their homes using the Third Party Transfer, *in rem* foreclosure

reluctant to use its authority to foreclose.<sup>182</sup>

Government also has the authority to vest itself with title where a property is deemed abandoned. This statute includes specific provisions related to Article 7-A, stating that if a 7-A administrator has been appointed for at least six months, no mortgagee or lienor has commenced foreclosure proceedings, and no motion to discharge the 7-A administrator has been granted by the appointing court, the property may be deemed abandoned and the municipality may commence a proceeding to vest itself with title.<sup>183</sup> Long underutilized outside of New York City, municipalities have begun to employ abandonment proceedings to vest title of abandoned properties.<sup>184</sup> As with *in rem* foreclosures, abandonment proceedings can be commenced solely at the discretion of the government.

#### *E. Tenants Lack a Say in Who Purchases Their Home*

Even if a sale was initiated, tenants do not exercise direct influence over who will purchase the property. There are no legal restrictions on the sale of a property in the 7-A program, so anyone buying a property sight unseen—ranging from highly responsible landlords to out-of-state investors—may purchase a building. This is a problem because a property owner’s sole incentive is to maximize the sale price of a building, and the entity most likely to have a winning offer will have calculated their offer by minimizing maintenance costs, maximizing rental income, and in some instances, displacing long term tenants. Whereas in the 1970s and 1980s these properties formed the bedrock of New York City’s affordable housing by creating opportunities for tenants to lease with community development corporations, mutual housing authorities, or become shareholders in limited equity cooperatives, the tenants’ fight today often ends with a new, private landlord providing marginally better services.

Rather than being able to deter an owner who may not act responsibly, tenants and municipalities are left to challenge the new owner’s attempts to seek the discharge of the 7-A administrator. However, tenants do exercise indirect influence over a potential purchaser. Since a 7-A administrator is not discharged at the point of sale and a new owner needs to demonstrate a repair and maintenance plan, tenant opposition may dissuade some purchasers. But that assumes tenants know the sale is happening.

Further, once a sale occurs there can be tremendous pressure on the City to discharge the 7-A administrator in favor of any private owner. This has been the City’s policy since the Koch administration, in order to divest itself of government-owned properties and see 7-A as temporary. In New York City, the Department of Housing Preservation and Development also may put its thumb on the scale for a particular purchaser through its discretionary authority to waive municipal liens. The Department is empowered to waive liens in exchange for a thirty-five year affordability commitment,

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proceeding); *see also* DEP’T OF HOUS. PRES. & DEV., THIRD PARTY TRANSFER WORKING GROUP FINAL REPORT 7–12 (Nov. 8, 2021), <https://www1.nyc.gov/assets/hpd/downloads/pdfs/services/tpt-working-group-final-report.pdf> [<https://perma.cc/CE49-FC3Q>] (outlining the finding of a working group initiated by the New York City Council in response to Third Party Transfer controversy).

<sup>182</sup> Olumhense, *supra* note 35 (reporting that tenant advocates urged New York City to foreclose on outstanding tax debt using Third Party Transfer at troubled Bronx property).

<sup>183</sup> *See generally* N.Y. REAL PROP. ACTS. LAW §§ 1971–74 (McKinney 2021).

<sup>184</sup> *See, e.g.*, Dennis Phillips, *City Announces Vacant Housing Strategy*, THE POST-JOURNAL (May 26, 2021) (announcing that the City of Jamestown will be using Article 19-A to take title of vacant “zombie homes.”).

where waiver can make the difference between the bids of two different owners.<sup>185</sup>

### III. REFORMS TO MAXIMIZE STATEWIDE IMPACT

#### *A. Extend the Right to Bring a 7-A Proceeding Statewide*

Article 7-A will fill a crucial gap across New York State for tenants living in precarious situations where traditional code enforcement remedies and limited tenant rights of action are unavailing. The patchwork of receivership ordinances and judicially created rights to seek appointment of receivers leave out a number of tenants who face conditions dangerous to health, life, and safety that go unresolved. Absent 7-A programs that stabilize occupied housing, municipalities instead pursue vacate orders or condemnation. Tenants without the finances or capacity to vacate are left little option but to continue living in conditions that could negatively impact their health or to leave their homes, sometimes moving into a shelter. Living with a condition dangerous to life, health, and safety threatens tenants living in Buffalo, Rochester, Poughkeepsie, Ithaca, or Albany as much as if those tenants live in New York City. Tenants statewide should be afforded the same opportunity to not just secure their homes, but ensure that once they have successfully won the appointment of a 7-A administrator, any future purchaser of their homes will maintain business practices that ensure sufficient funds are dedicated to the property's maintenance. Likewise, tenants statewide should have access to Article 7-A to seek the appointment of a 7-A administrator for neglected properties.<sup>186</sup>

#### *B. Expand Appointment Grounds to Include a “Business Practice of Neglect”*

Unlike New Jersey, New York State lacks a mechanism to bring buildings into receivership when the owner has repeatedly demonstrated an unwillingness to maintain their properties until presented with the threat of the appointment of a receiver.<sup>187</sup> The constitutional authority for receiver appointments does not require that the law be tailored this narrowly. Since 1982, tenants have had the right to seek the appointment of a 7-A administrator in circumstances where “course of conduct by the owner or the owner’s agents of harassment, illegal eviction, continued deprivation of services or other acts dangerous to life, health or safety. . . .”<sup>188</sup>

In order to thwart landlords who engage in a business practice of neglect, consistently deferring maintenance until enforcement actions are brought, New York State can broaden the current legal standard. As of 2004, New Jersey has implemented a similar amendment in their Multifamily Housing Preservation and Receivership Act, which lays out numerical thresholds evincing a “clear and convincing pattern of recurrent code violations.”<sup>189</sup> In New Jersey, a clear and convincing patterns my

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<sup>185</sup> N.Y. REAL PROP. ACTS. LAW § 778(10) (McKinney 2021).

<sup>186</sup> In order to effectuate Article 7-A statewide, the scope of properties where an administrator might be sought must be expanded. Presently 7-A proceedings are limited to “dwellings” defined as “occupied as the residence or home of three or more families living independently of each other. *See* N.Y. MULT. RESID. LAW § 4 (McKinney 2021).

<sup>187</sup> *Cf.* N.J. STAT. ANN. § 2A:42-123 (West 2013).

<sup>188</sup> N.Y. REAL PROP. ACTS. LAW § 770 (McKinney 2021).

<sup>189</sup> N.J. STAT. ANN. § 2A:42-117 (West 2021) (“[a] building shall be eligible for receivership if it meets one of the following criteria: . . . b. The building is the site of a clear and convincing pattern of recurrent code violations, which may be shown by proofs that the building has been cited for such violations at least four separate times within the 12 months preceding

be shown by “proofs that the building has been cited for such violations at least four separate times within the 12 months preceding the date of the filing of the complaint with the court, or six separate times in the two years prior to the date of the filing of the complaint with the court.”<sup>190</sup> Likewise, New York’s State statute should be amended to include a course of conduct comprising acts or omissions by the owner, person acting on the owner’s behalf, mortgagee, and/or lienor of record, which results in a clear and convincing pattern of conditions dangerous to health, life, or safety as grounds for the appointment of a 7-A administrator. Such a course of conduct would include explicit numerical thresholds both for the number of violations placed as well as the period during which they remained uncorrected. An owner who delays in making these repairs may be the subject of a 7-A proceeding even after they have corrected the conditions should their conduct demonstrate a pattern that they are likely to allow the property to degrade again.

#### *C. Fund Right to Counsel Statewide for Repairs as Well as Eviction Defense*

The condition of rental housing subject to Article 7-A proceedings, namely conditions dangerous to life, health and safety, is as likely to cause the displacement of tenants as an eviction for non-payment of rent or a breach of lease. As the State considers the expansion of a right to counsel in housing proceedings for income qualifying tenants, it is crucial that funding be allocated for low-income tenants facing constructive eviction due to these conditions in addition to strict eviction defense. The flexibility to bring both affirmative cases and defensive cases is crucial where an owner’s failure to correct a condition may result in a tenant losing their home.<sup>191</sup> The success of these actions is likewise contingent on the effectiveness of tenants self-organizing or organizing with the assistance of community organizers whose professional skillset is as specialized as that of lawyers. Funding should also extend to cover the work of organizers supporting and empowering tenants as they bring 7-A actions.<sup>192</sup>

#### *D. Remove Barriers to Speedy Appointment*

For a cause of action intended to address conditions dangerous to life, health, and safety that explicitly requires trial to commence within five days, Article 7-A proceedings have been mired in delays that have literally cost tenants’ lives. Civil trial calendar delay has been a problem for civil proceedings in general,<sup>193</sup> and in particular for courts designated to handle landlord-tenant cases since before the Article 7-A became law.<sup>194</sup> The creation of the Housing Part within the New York City Housing Court

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the date of the filing of the complaint with the court, or six separate times in the two years prior to the date of the filing of the complaint with the court and the owner has failed to take action as set forth in section 9 of P.L.2003, c. 295 (C.2A:42-122).”)

<sup>190</sup> Id.

<sup>191</sup> Sabbeth, *supra* note 44, at 112–13.

<sup>192</sup> See Andrias & Sachs, *supra* note 60, at 599 (describing funding as a prerequisite for much organizing activity).

<sup>193</sup> Charles S. Desmond, *Current Problems of State Court Administration*, 65 COLUM. L. REV. 561, 562 (1965).

<sup>194</sup> See Leonard N. Cohen, *The New York City Housing Court—An Evaluation*, 17 URB. L. ANN. 27, 42 (1979) (finding that the housing court, designed to focus on housing standards, had shifted to prioritizing evictions); see also Paula Galowitz, *The Housing Court’s Role in Maintaining Affordable Housing*, in HOUSING AND COMMUNITY DEVELOPMENT IN NEW YORK CITY: FACING THE FUTURE 177, 178 (Michael H. Schill ed., 1999) (describing how the New York City Housing Court was created in 1972 with a mission to retard the deterioration and abandonment of buildings and encourage investment).



and the 2005 conferral of equity powers to City Courts and District Courts across New York State were intended, in part, to streamline proceedings focused on repairs and abandonment, but that has not happened.

In order for the Office of Court Administration to meet the explicit statutory obligation delineated in Article 7-A,<sup>195</sup> the courts need to have trial parts available to tenant litigants and to permit these cases to supersede pending eviction trials.<sup>196</sup>

Given the chronic delays in civil proceedings, such a reform may not fundamentally shorten the length of an Article 7-A trial. Section 777, which allows owners or mortgagees sixty additional days or longer to conduct repairs provided that they post security and a plan demonstrating they could competently handle the work, is a vestige of a statutory purpose that was never realized—one where tenants could actually begin and complete an Article 7-A trial on an expedited basis.<sup>197</sup> Even though mortgagees are necessary parties, Section 777 incentivizes them to remain aloof from the outset when they instead could be advancing funds during trial, not after. The elimination of Section 777 will still give owners and mortgagees the opportunity to make repairs to avoid the appointment of a 7-A administrator, while also incentivizing both owners and mortgagees to take the appointment of a 7-A administrator seriously from the start of the case.

#### *E. Screen, Train, and Fund 7-A Administrators*

Article 7-A proceedings are only as effective as the appointed administrators and the financing available to address capital needs outside the available rent roll. Especially as the 7-A program is built out in jurisdictions without active receivership programs, municipalities and tenant organizations will need to develop screening criteria for who can become a 7-A administrator. This criteria should keep an eye towards individuals and groups capable of shepherding a property from neglect to stability and transfer of ownership to an entity whose purchase price and budget reflects the maintenance costs necessary to maintain a property. In some instances, it will make sense to create training programs for tenants themselves to become managers of their own homes.<sup>198</sup>

Effective 7-A administrators require access to a readily available pool of money they can borrow from the municipality and that will become a priority lien against the property. New York State should create a revolving fund, accessible to receivers, that loans rather than grants money for capital improvements.<sup>199</sup> Absent a rotating fund, funds from paid off liens are likely to be paid into an unrestricted general fund, the most coveted money in municipal governance. New York City currently

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<sup>195</sup> N.Y. REAL PROP. ACTS. LAW § 774 (McKinney 2021).

<sup>196</sup> A similar recommendation was recently made by the Housing Court Committee of the New York City Bar Association for trials in HP Proceedings where tenants or the city seek injunctive relief, penalties, and findings of harassment. N.Y.C. BAR ASS'N HOUS. CT. COMM., RECOMMENDATION TO IMPROVE THE HOUSING COURT'S ENFORCEMENT OF HOUSING MAINTENANCE AND STANDARDS 2 (Dec. 2021), <https://s3.amazonaws.com/documents.nycbar.org/files/2020954-HousingCourtHPPartPolicyRecommendations.pdf> [<https://perma.cc/QM23-F3M4>]. Out of concern for DHPD resources, tenants represented by counsel should be permitted to waive DHPD's presence at Article 7-A trials.

<sup>197</sup> *See* S03320, 2019–2020 Leg., Reg. Sess. (N.Y. 2020); A02625, 2019–2020 Leg., Reg. Sess. (N.Y. 2020).

<sup>198</sup> Reiss, *supra* note 18, at 793.

<sup>199</sup> P'SHIP FOR THE PUB. GOOD, BUFFALO TENANTS RIGHTS, [https://ppgbuffalo.org/files/documents/housing\\_neighborhoods/general/housingneighborhoods-\\_buffalo\\_tenant\\_bill\\_of\\_rights.pdf](https://ppgbuffalo.org/files/documents/housing_neighborhoods/general/housingneighborhoods-_buffalo_tenant_bill_of_rights.pdf) [<https://perma.cc/H9Q4-FCXA>] (last visited Feb. 16, 2022).

has designated 7-A financing, but liens and penalties on those properties do not go directly back into the fund. 7-A financing could also be funded consistently through the New York State budget. A similar fund for receivers has already been created in New Jersey, theoretically setting up New Jersey receiver to succeed.<sup>200</sup> This presents an opportunity to seed a revolving fund for an effective program moving forward.

#### *F. Grant Tenants and 7-A Administrators the Power to Initiate Sale*

Presently, the sale of buildings in the 7-A program occurs without any judicial involvement. After overseeing a case where a court determined an owner was not sufficiently responsible or capable of managing a rental property, it stands to reason that the same court should exercise oversight over a sale of the property in addition to structuring terms for the discharge of a 7-A administrator.

After an owner has proven unsuccessful at discharging the 7-A administrator, the municipality should be required to move forward with abandonment proceedings. Once a property is certified as abandoned, the judge who administered the Article 7-A proceeding should have authority to structure the terms of a sale. Constitutional principles require the property be sold at fair market value, but not necessarily to the highest bidder.<sup>201</sup> The court could play a role in assessing the quality and past experience of potential purchasers, much as it does when assessing whether a purchaser is sufficiently capitalized and dedicated to discharge a 7-A administrator.<sup>202</sup>

If DHPD and tenants ultimately consent to the discharge in favor of a new owner in exchange for a settlement, that settlement can include terms such as the correction of specific outstanding repairs, the new owner putting up a bond with the court in case of default, and that the court will maintain ongoing supervisory jurisdiction over the property. This same standard should be imposed when an owner wins discharge of the 7-A administrator, making them subject to the ongoing supervision of the court for a probationary period.<sup>203</sup>

#### *G. Create a First Right of Refusal for Tenants and Community Stakeholders*

If they so desire, tenants of the property in question should have the first opportunity to put forward a bid on the property. Passage of the Tenant Opportunity to Purchase Act (TOPA) would provide tenants the opportunity to own or remain renters.<sup>204</sup> TOPA, as it exists in Washington, D.C. and as written in a pending bill in New York State, gives tenants a right of first offer, requiring the owner to make an offer to tenants before listing it.<sup>205</sup> A tenant first right of refusal could provide tenants

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<sup>200</sup> See N.J. STAT. ANN. § 2A:42-141 (West 2014).

<sup>201</sup> MALLACH, *supra* note 42, at 63.

<sup>202</sup> Such a standard has been judicially created, but is not uniformly applied and does not have precedential value. *See, e.g., In re Morataya*, 37 N.Y.S.3d 375, 382 (N.Y. Civ. Ct. 2016).

<sup>203</sup> See CAL. CIV. PROC. CODE § 564 (West 2019).

<sup>204</sup> See S3157, 2021–2022 Leg., Reg. Sess. (N.Y. 2022). For more details on New York’s Tenant Opportunity to Purchase Act, see Meixell, *supra* note 54, at 294 (contextualizing Senator Myrie’s TOPA bill within recent New York State legislative changes).

<sup>205</sup> See S3157, 2021–2022 Leg., Reg. Sess. (N.Y. 2022); *Tenant Opportunity to Purchase Act*, D.C. DEP’T OF HOUS. AND CMTY. DEV., <https://dhcd.dc.gov/service/tenant-opportunity-purchase-assistance> (last visited Feb. 16, 2022); *see generally Community Opportunity to Purchase Act (COPA)*, CITY AND CNTY. OF S.F., <https://sfmohcd.org/community-opportunity-purchase->

with the opportunity to convert their homes into limited equity cooperatives, mutual housing authorities, or to invite a reputable preservation purchaser to manage the property.<sup>206</sup>

#### IV. CONCLUSION

The passage of the Rent Strike Law represented a seismic expansion in tenants' rights in the wake of the 1963–1964 rent strikes. It then became a crucial tool for stabilizing neglected properties during New York City's abandonment period, as New York City government actively took possession of property and turned it over to tenants to manage their own, permanently affordable homes. Statewide expansion and the amendment of Article 7-A would restore its two dual purposes of winning repairs and facilitating the sale neglected properties to responsible, independent owners—including the possibility that be the residents themselves.

In the wake of the COVID-19 pandemic, New York State's working class tenants face housing instability whether they live in Brooklyn, the Bronx, Buffalo, Rochester, or Poughkeepsie. Tenants outside of New York City were excluded from use of the Rent Strike Law because of an absence of political power, not because their homes were proportionately more habitable. The legal remedies available to municipal governments and tenants are unfit to address emergency circumstances and the few receivership status designed to address those needs are largely unavailing. In the absence of access to Article 7-A, tenants outside of New York City are too often forced to choose between living in squalid conditions and homelessness.

When tenants are forced to organize and seek the appointment of a 7-A administrator because of a property owner's neglect, that owner's right to continue operating that property should be forfeited. In softer markets, *in rem* foreclosure may still work as it previously did in New York City. But in higher value markets, tenants need a mechanism to pass title of programs in Article 7-A. Such a forced sale, in tandem with a tenant opportunity to purchase, would lay the groundwork for the transfer of ownership to entities prioritizing the future maintenance of the property. Resurrected, the Rent Strike Law would serve a renewed purpose for New York's statewide tenant movement.

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act-copa [<https://perma.cc/ZX5Y-HHF9>] (last visited Feb. 16, 2022); MONTGOMERY COUNTY, MD., CODE § 53A-4 (2022) (granting tenant organizations the right of first refusals). Private rights of first refusal have been critically examined. *See, e.g.*, Bernard Daskal, *Right of First Refusal and the Package Deal*, 22 FORDHAM URB. L.J. 461 (1995) (examining situations where sellers combine in one sale properties subject to a right of first refusal along with unencumbered properties); Meixell, *supra* note 54, at 307 (documenting the challenges that arise when private parties assign rights of first refusal to third-party actors); Julie Gilgoff, *Giving Tenants the First Opportunity to Purchase their Homes*, SHELTERFORCE (July 24, 2020), <https://shelterforce.org/2020/07/24/giving-tenants-the-first-opportunity-to-purchase-their-homes> [<https://perma.cc/5AQ5-SCLL>]; David W. Tisel, *The Campaign for the Tenant Right to Purchase in Greater Boston*, (May 22, 2018) (M.C.P. thesis, Massachusetts Institute of Technology) (on file with MIT), <https://dspace.mit.edu/handle/1721.1/118073?show=full> [<https://perma.cc/JZ2M-FLHJ>]; Meixell, *supra* note 54, at 294.

<sup>206</sup> *See* Gilgoff, *supra* note 16, at 614 (describing strategies to ensure tax delinquent properties become affordable housing).