

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

The continuing population explosion threatens to overwhelm the national inventory of housing. Housing codes, urban renewal programs, and public housing projects have not yet sufficed to put every American family in a home that meets minimal standards. Instead, despite our efforts, we seem in some respects to be falling farther behind in attaining the goal of adequate housing for everyone.

Moreover, housing problems have taken on added dimensions. Adequate housing now signifies much more than a well-built structure. It includes accessibility of schools, parks, playgrounds, highways, public transportation, and shopping facilities. Since the desirability of a site for housing purposes will depend to a significant degree upon the availability of public improvements and facilities, governmental decisions as to their location will materially influence the choices of site made by developers of housing. Similarly, governmental action in the form of zoning ordinances, subdivision controls, and building and housing codes will have great impact on decisions which private entrepreneurs make with respect to housing.<sup>1</sup>

In some quarters the complaint is voiced that government officials have made excessive use of the broad authority vested in them and that, by imposing unnecessary controls on residential development, they have added to the expense of, and have thereby deterred, construction or rehabilitation of housing. According to this view, the untrammled operation of the laws of supply and demand would often have resulted in more, and even better, housing than was feasible in light of the strict governmental restrictions. And certainly in the face of a vast need for new housing, city planners are sometimes open to the charge that the requirements they have promulgated involve "gold-plating"—demanding that any housing be constructed or rebuilt in such a way that it will meet adequately the needs of all foreseeable future generations, thereby adding costs and delays that may prevent the fulfillment of present housing needs.

Frequently it is asserted that government's sin has been inertia, rather than hyperactivity and excessive use of authority. For example, the criticism is stated that municipal authorities have tolerated or condoned slums by reason of failures to enforce housing codes which preclude the occupancy of seriously substandard buildings. Sometimes the issue is complicated by the likelihood that unbending

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<sup>1</sup> Over the years the courts have been willing to broaden the spectrum of factors which government officials may weigh in the planning and control of land use. Even aesthetics may now be considered in this regard—an evolution which contains an element of irony since, in today's society, a consensus of views as to aesthetic values is especially difficult, if not impossible, to achieve.

enforcement of the codes may remove dwellings from the housing market and thereby exacerbate existing housing shortages.

There have been attacks on the process by which such difficult issues are decided. Some groups maintain that they are underrepresented on the local commissions or groups which make the decisions. And the suggestion has been made that local and state governmental processes should be somewhat restructured to assure greater citizen involvement in the decision-making which affects housing. It is argued that, even if such involvement does not lead to wiser decisions, it may give rise to more acceptable ones.

In some respects the mortgage lender is the most important decision-maker in the process of adding to the national housing inventory. In practice, availability of a "permanent" mortgage loan is usually a requisite for constructing a project; indeed, a developer will frequently defer his architect's preparation of detailed working drawings until, on the basis of preliminary plans and specifications, he has received a satisfactory loan commitment.

The mortgage lender is himself profoundly influenced by governmental action, especially action at the national level which affects interest rates or tends to direct personal savings to one type of financial institution instead of another—for example, to commercial banks instead of building and loan associations. However, the lender has a considerable sphere of autonomy, as most builders are well aware. Unfortunately, many mortgage lenders have occasionally imposed severe limitations upon their own autonomy and have contented themselves with applying rules of thumb and rigid formulae, with almost no consideration of design criteria. Obviously good design should have in the long run a positive effect on value; but many lenders have given only lip service to design.

The mortgage lender, the government official, the developer, and others involved in the effort to supply the existing vast housing demands will be materially aided by advances in technology. For instance, systems analysis utilizing computer techniques can be applied to identify the types of housing that are, and will be, needed, and to compare the costs of the alternatives available for meeting those needs; it can assist the architect in achieving improved design at reduced cost; it can help reveal the added expense of construction that results from obsolete municipal land-use controls; and it can predict the effects on housing construction of new fiscal and monetary policies.

The available technological advances include more extensive use of prefabrication—a construction technique which is carried to its logical conclusion by the mobile home.<sup>2</sup> Progress in "legal technology" also affords help in the solution of housing

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<sup>2</sup> Unfortunately, the introduction of new technology for construction of housing must often take place over considerable opposition. For example, carpenters have resisted from time to time the installation of pre-hung doors; and the substitution of performance criteria in many building codes may be opposed by suppliers of materials which have an entrenched position under the wording of the existing codes.

problems. The development of residential condominiums provides a good example in this respect. Also, skilled lawyers have played a role in meeting housing needs by encouraging and supervising the organization of nonprofit sponsors to participate in certain federal housing loan programs and by familiarizing their builder clients with tax advantages available through accelerated depreciation, capital gains, land leases for the construction of multifamily housing projects, and so on.

Certainly there exists a need for every new tool that can be forged for use in attaining the national goal of adequate housing for all citizens. And the events of recent summers suggest that the time left for us to meet housing demands within our traditional social framework may be extremely short. Yet it is inconceivable that a society which can mobilize its resources on short notice to fight wars abroad or to place a man on the moon cannot solve its housing problems. Perhaps part of the difficulty stems from the failure in many quarters to appreciate the urgency of the situation, the absence of a general outcry from the populace demanding effective action, and the lack of more forceful exhortations by influential leaders of government, business, or labor. It is unknown how much substandard housing our society can tolerate before irreversible deterioration in the quality of national life sets in. We may be perilously close to that point now; unless heroic measures are taken soon, we shall surely reach it in the near future.

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