

# Louisiana Law Review

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Volume 36 | Number 1

*The Federal Rules of Evidence: Symposium*

Fall 1975

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## Urban Homesteading in the Frontier of the American City

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### Repository Citation

David R. Burch, *Urban Homesteading in the Frontier of the American City*, 36 La. L. Rev. (1975)

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## URBAN HOMESTEADING IN THE FRONTIER OF THE AMERICAN CITY

The word "homestead" usually brings to mind either the exemption given a family to protect its residence from creditors<sup>1</sup> or the exemption of a certain portion of the value of a home from local property taxes.<sup>2</sup> A new type of homesteading, modeled after the federal Homestead Act of 1862,<sup>3</sup> is now encouraging occupancy and development of abandoned housing as a means of renovating inner city areas. The city, for a token fee, transfers to a family of homesteaders an abandoned house acquired through tax delinquency proceedings, lien foreclosure, gift, or otherwise. After a specified number of years, the city grants full ownership if the transferee meets certain conditions, such as continuous occupancy and rehabilitation. This comment will discuss urban homesteading as a remedy for abandonment of urban structures and will examine the legal foundation for such a program in Louisiana.

### *The Abandonment Process*

The abandoned shells of buildings litter the central areas of many American cities because owners often find abandoning their property more economical than paying taxes and keeping it repaired.<sup>4</sup> The complex abandonment process begins with psychological and fiscal abandonment long before owners actually desert their derelict urban property.<sup>5</sup>

Normally, the abandonment of individual properties is a predictable and desirable incident in the housing cycle. A filtering process occurs in which upper income families occupy newly constructed dwellings, leaving vacant their older homes which are claimed by families living in less desirable structures.<sup>6</sup> Vacancies are thus created for families from even

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1. LA. CONST. art. XII, § 9 (provides an exemption of at least \$15,000).

2. LA. CONST. art. VII, § 20(A)(1).

3. Act of May 20, 1862, ch. 75, 12 Stat. 392 (1862), as amended, 43 U.S.C. §§ 161-302 (1970).

4. Sternlieb, *Abandoned Housing: What is to be Done?*, URBAN LAND, Mar. 1972 at 3 [hereinafter cited as Sternlieb].

5. Testimony of Urbanologist Dr. George Sternlieb, *Subcommittee on Housing and Urban Affairs of the Senate Committee on Banking and Currency, 91st Cong., 2d Sess. 1 Housing and Urban Development Legislation of 1970*, 850 (Comm. Print 1970).

6. See F. PENNANCE, HOUSING MARKET ANALYSIS AND POLICY 21 (1969); Sternlieb at 6.

lower socio-economic levels who abandon the most undesirable housing. Under optimum conditions, the abandoned property becomes a prime area for new construction. Recently, however, the swift increase in abandonment and its encroachment into new areas has disrupted the cycle in several cities, and as a result, many structurally sound dwellings are left uninhabited.<sup>7</sup>

### *The Urban Homesteading Program*

Existing programs, either created by municipal ordinance setting up a special urban homesteading board<sup>8</sup> or developed within an existing city housing department,<sup>9</sup> have varying qualifications for homesteading. However, the regulations follow a general pattern and include requirements that the applicant be of a minimum age,<sup>10</sup> be the head of a family,<sup>11</sup> and demonstrate he has financial resources sufficient to pay another to remodel the structure, or that he possesses the necessary building trade skills to do the work himself.<sup>12</sup> The city conveys the property by a conditional fee, subject to the requirement that the homesteader rehabilitate the property,<sup>13</sup> which matures into a fee simple after a specified period of occupancy.<sup>14</sup> Additionally, the city often requires submis-

7. See Edson, *Housing Abandonment—The Problem and a Proposed Solution*, 7 REAL PROP., PROB. & TR. J. 382 (1972). See also G. STERNLIEB AND R. BURCHELL, *RESIDENTIAL ABANDONMENT: THE TENEMENT LANDLORD REVISITED* xii (1973).

8. Philadelphia, Pa., and Wilmington, Del., created a homesteading board by ordinance. PHILADELPHIA, PA., ORDINANCE 543, July 20, 1973 [hereinafter cited as PHILADELPHIA ORDINANCE]; WILMINGTON, DEL., CITY CODE ch. 33A (1973) [hereinafter cited as WILMINGTON ORDINANCE]. Each ordinance creates an urban homesteading board appointed by the mayor. PHILADELPHIA ORDINANCE § 2 (eleven members with two city councilmen, and one from each of the following groups: architects, contractors, members of the building trades council, the clergy, savings and loan association representatives and the general public); WILMINGTON ORDINANCE §§ 7, 8 (three to five members).

9. The Baltimore urban homesteading program developed from an existing rehabilitation loan program rather than being created by a separate ordinance. See Comment, *Homesteading 1974: Reclaiming Abandoned Houses on the Urban Frontier*, 10 COLUM. J.L. & SOC. PROB. 416, 425 (1974) [hereinafter cited as *Homesteading '74*].

10. PHILADELPHIA ORDINANCE § 6(E)(1); WILMINGTON ORDINANCE § 4(1).

11. *Id.*

12. *Id.* at § 6(E)(3); WILMINGTON ORDINANCE at § 4(3).

13. *Id.* at § 6(D); WILMINGTON ORDINANCE at § 4(4)(d).

14. PHILADELPHIA ORDINANCE § 6(E)(5) (five years); WILMINGTON ORDINANCE § 4(4)(d) (three years).

sion to frequent inspections to determine if the homesteader is improving the property in a satisfactory manner.<sup>15</sup>

#### *Acquisition of Homestead Structures*

Tax sales, whereby the city utilizes local procedures and obtains title to property on which taxes have been unpaid for a specified period of time,<sup>16</sup> provide one means of acquiring homesteading properties.<sup>17</sup> However, statutory redemption periods,<sup>18</sup> providing the original owner an opportunity to redeem his title through payment of delinquent taxes, cause delays in transfer of full title to the city. Vandalism and deterioration can increase during the interim vacancy,<sup>19</sup> and unless the redemption periods are drastically shortened, reduce the effectiveness of programs acquiring prospective homestead properties through tax sales.<sup>20</sup>

An alternative to tax foreclosure procedures is a receivership program in which the city assumes operation of neglected rental properties.<sup>21</sup> The receiver performs necessary repairs and the city acquires a foreclosable lien on the property for the costs; in the interim, initial rehabilitation of the building prevents further dilapidation.

To prevent irreversible deterioration of potential homesteading properties, local authorities might acquire title by purchase, eminent domain proceedings, or public nuisance action.<sup>22</sup> Whereas the purchase method encourages exorbitant rises in the asking price of suitable structures,<sup>23</sup> eminent

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15. WILMINGTON ORDINANCE § 4(4)(b). See federal inspection requirements in text at notes 34-38, *infra*.

16. See, e.g., PA. STAT. ANN. tit. 72 § 5860.101 (Supp. 1974); MASS. ANN. LAWS, vol. 2-A, ch. 60 § 37 (1971).

17. *Homesteading '74* at 428.

18. See, e.g., PA. STAT. ANN. tit. 72 § 5860.501 (Supp. 1974) (one year after notice of delinquency before sale, but no redemption after sale); MASS. ANN. LAWS, vol. 2-A, ch. 60 § 65 (1971) (two years).

19. Nachbaur, *Empty Houses: Abandoned Residential Buildings in the Inner City*, 17 HOW. L.J. 1, 11 (1971).

20. The period in Boston was reduced to six months. MASS. ANN. LAWS, vol. 2-A, ch. 60 § 65 (1971) as amended by MASS. LAW 716, § 1 (Aug. 26, 1971).

21. Mann, *Receivership of Problem Buildings in New York City and its Potential for Decent Housing of the Poor*, 9 COLUM. J.L. & SOC. PROB. 309 (1973).

22. See N.Y. CONSOL. LAWS, Bk. 49 1/2 § 1970-74 (McKinney 1973).

23. Sternlieb, *Abandonment and Rehabilitation: What is to be Done?* House Committee on Banking and Currency, Papers Submitted to the Subcommittee on Housing Panels on Housing Production, Housing Demand, and

domain proceedings, which provide for a judicial determination of value, do not. However, some courts have viewed the due process clause of the fourteenth amendment as limiting acquisition by eminent domain to expropriations for a public purpose.<sup>24</sup> Courts have found a valid public purpose in urban renewal so long as the public benefit clearly outweighs any incidental private gain.<sup>25</sup> The problem raised by urban homesteading is whether the public benefit of an improved neighborhood sufficiently outweighs the obvious benefit to the homesteader who receives the property.

No cases weigh the precise considerations involved in a homesteading situation; however, urban renewal cases finding sufficient public purpose even when the property taken was to be developed by and for private interests may provide guidelines.<sup>26</sup> In *Berman v. Parker*,<sup>27</sup> the United States Supreme Court broadly defined "public purpose" to include programs for a better balanced and more attractive community,<sup>28</sup> in effect equating the public purpose requirement with the public welfare requirement of the police power.<sup>29</sup> Using similar reasoning, the Fourth Circuit upheld a Puerto Rican law under which any private property, urban or rural, could be taken for the general economic reconstruction of the island.<sup>30</sup>

Given these broad constitutional boundaries, state courts have usually accepted a legislative determination that urban renewal programs fulfill a public purpose.<sup>31</sup> A requirement that one opposed to the taking of the property prove that the

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*Developing a Suitable Living Environment*, 92d Cong., 1st Sess. 315, 367 (Comm. Print 1971).

24. *E.g.*, *Wright v. Walcott*, 238 Mass. 432, 131 N.E. 291 (1921).

25. *See, e.g.*, *Berman v. Parker*, 348 U.S. 26 (1954).

26. *See, e.g.*, *Berman v. Parker*, 348 U.S. 26 (1954); *Schneider v. District of Columbia*, 117 F. Supp. 705 (D.D.C. 1953); *Housing and Redevelopment Authority v. Greenman*, 255 Minn. 396, 96 N.W.2d 673 (1959).

27. 348 U.S. 26 (1954).

28. The public purpose in *Berman* was defined to include public welfare in its broadest sense of having a beautiful, spacious, and well-balanced community as well as one which is healthy, clean, and carefully patrolled. 348 U.S. at 33.

29. M. DAKIN AND M. KLEIN, *EMINENT DOMAIN IN LOUISIANA* 23 (1970) [hereinafter cited as *DAKIN & KLEIN*].

30. *People of Puerto Rico v. Eastern Sugar Associates*, 156 F.2d 316 (1st Cir. 1946).

31. *E.g.*, *City of New Orleans v. New Orleans Land Co.*, 173 La. 71, 136 So. 91 (1931). *See also* *DAKIN & KLEIN* at 24 for additional examples.

private benefit outweighs the public gain has resulted in few challenges to urban renewal expropriation being successful.<sup>32</sup> Because public purpose is an evolving concept, it seems unlikely that many courts will prohibit the eminent domain method of acquisition. The small expenditure involved in giving away unmarketable property to rehabilitate entire neighborhoods creates numerous benefits ranging from lower crime rates and safer streets to an increase in the overall tax base of the city.

A final method of acquiring property for homesteading is from the federal government. For example, Philadelphia's first homesteading project included fourteen homes which the Department of Housing and Urban Development (HUD) had conveyed to the city under the Local Property Release Option Program.<sup>33</sup> An experimental program authorized by the Housing and Community Development Act of 1974 allows the transfer of property from HUD to any municipal homestead agency.<sup>34</sup> The local programs must meet federal guidelines which include provisions for periodic inspections of homesteading progress and coordinated plans for upgrading community services and facilities.<sup>35</sup>

#### *Transfer of Title to the Homesteader*

Under most homestead programs, the city conveys the property by conditional fee with a power of termination in the event of noncompliance with any condition of the homesteading agreement.<sup>36</sup> Under one proposal the city transfers all homesteading properties to an independent non-profit corporation which leases the houses to the homesteaders for five years at a one dollar yearly rental.<sup>37</sup> Transfer of full ownership occurs upon fulfillment of all the conditions.<sup>38</sup>

#### *Financing*

Availability of money for rehabilitation varies according to the income level of the participants. Even in programs

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32. *In re Bruce Ave.*, 430 Pa. 498, 505, 266 A.2d 96, 99 (1970).

33. HUD CHALLENGE, September 1974, at 15.

34. 42 U.S.C. § 5301 (1974).

35. *Id.*

36. The homesteader in states other than Louisiana receives a fee simple subject to a condition subsequent.

37. *See Homesteading '74* at 443.

38. *See WILMINGTON ORDINANCE* § 6.

which are not primarily aimed at providing housing for low income families many homesteaders will be from such groups, since perhaps only the poor will be willing to return to many of the neighborhoods abandoned.<sup>39</sup> Without financial assistance, these people will be excluded, leaving those sufficiently affluent to find housing in a better environment as the unlikely but only possible participants. Though few banks willingly invest in slum areas where property values deteriorate rapidly,<sup>40</sup> prescreening of lower middle and middle class families with a high likelihood of success in homestead rehabilitation has encouraged some banks to make unsecured loans to homesteaders.<sup>41</sup>

City or state bond issues to finance mortgages and federal loans under the loan program of Section 312 of the National Housing Act<sup>42</sup> provide possible sources of financing.<sup>43</sup> Under Section 312 homeowners receive three percent loans, up to a maximum of \$12,000, for terms of up to twenty years.<sup>44</sup> Homesteaders are eligible for these loans, which may be used to bring the property up to building code standards.<sup>45</sup>

Subsidies or grants in addition to rehabilitation loans may be required. One danger of urban homesteading is that the homesteader may be required to invest capital for the repair of his home in an amount far in excess of its reasonable potential market value. If, after spending \$15,000 for rehabilitation, the homesteader can neither sell nor mortgage the property for more than \$10,000, the city will benefit, but

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39. Sengstock & Sengstock, *Homeownership: A Goal for All Americans*, 46 J. URBAN L. 313 (1969). See McClaughry, *The Troubled Dream: The Life and Times of § 235*, 6 LOY. L. REV. (Chicago) 1, 25-30 (1975).

40. See Phillips and Bryson, *Refinancing: A First Step Toward a Realistic Housing Program for the Poor*, 39 GEO. WASH. L. REV. 835 (1971).

41. The Wall Street Journal, Sept. 23, 1973, at 1, col. 1. See also text at note 106, *infra*; *Homesteading '74* at 444.

42. 42 U.S.C. § 1452(b) (1970).

43. For a discussion of the operation of state housing finance agencies see Committee on Housing and Urban Development, Subcommittee on State and Local Housing Development Legislation and Programs, *Development of State Housing Finance Agencies*, 9 REAL PROP. PROB. & TR. J. 471 (1974). Louisiana has enacted legislation creating a state housing finance agency, but no funding has yet been provided. LA. R.S. 40:581-600 (Supp. 1973).

44. The maximum amount can be increased up to 45 per cent in designated areas of high cost. 42 U.S.C. § 1452(b)(c)(3), (4) (1970); 12 U.S.C. § 1715(k)(h)(2) (1974).

45. 42 U.S.C. § 1452(b) as amended by the Housing and Community Development Act of 1974 § 116(e)(2).

the program will attract few participants.<sup>46</sup> Section 106 of the National Housing Act<sup>47</sup> provides a limited source for such a subsidy; however, the income restrictions contained therein will hinder the use of this program, and a more comprehensive scheme should be considered.<sup>48</sup>

### *Homesteading in Louisiana*

Louisiana cities developing urban homesteading programs face many unique problems. Basic to most programs is a conditional transfer of property allowing enforcement of the obligation to rehabilitate. Although Louisiana does not recognize the common law concept of a conditional fee,<sup>49</sup> a sale subject to a right of redemption affords a similar enforcement device.<sup>50</sup> The Proposed Homesteading Ordinance, City of New Orleans, the first homesteading ordinance to be considered by a local authority in the state, apparently relies on this device.<sup>51</sup>

Under the New Orleans Proposal, the homesteader receives the property for one dollar plus rehabilitation obligations.<sup>52</sup> Treating the transfer as a sale presents difficulty in meeting the requirement of Civil Code article 2464 that the

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46. See statement of Professor William Grigsby quoted in *The Wall Street Journal*, Sept. 23, 1973, at 1, col. 1.

47. 42 U.S.C. § 1466 (1970).

48. 42 U.S.C. § 1466(c) (Supp. 1975) (Up to \$3,500 is provided to homeowners with a family income of under \$3,500 if it can be shown the grant will enable the homeowner to bring his house up to building code standards).

49. 1 A. N. YIANNOPOULOS, PROPERTY §§ 3, 6 in 2 LOUISIANA CIVIL LAW TREATISE 6, 12-13 (1966); *Wemple v. Nabors Oil & Gas Co.*, 154 La. 483, 97 So. 666 (1923) (full ownership and servitude are the only two estates in land recognized by the LA. CIV. CODE).

50. LA. CIV. CODE arts. 2566-88. "The right of redemption is an agreement or paction, by which the vendor reserves to himself the power of taking back the thing sold by returning the price paid for it." LA. CIV. CODE art. 2567.

51. "[F]ailure or refusal of the applicant to fulfill and/or comply with . . . conditions shall give the agency the right to rescind the sale and reacquire the property, all in accordance with applicable Louisiana law." Proposed Homesteading Ordinance, City of New Orleans § 5 [hereinafter cited as *New Orleans Proposal*], a copy of which is on file in the offices of the Louisiana Law Review.

52. Such obligations include meeting building code standards within eighteen months, residence in structure for three years, allowance of periodic inspections, payment of property taxes, and maintenance of flood and fire insurance with extended coverage for vandalism and malicious mischief. *New Orleans Proposal* § 5.

sale price must "not be out of all proportion with the value of the thing." Courts have interpreted article 2464 as requiring that the price be fairly equivalent to the value.<sup>53</sup> When the property is essentially unmarketable, as is the usual case, a transfer for a nominal sum might not be considered out of *all* proportion to the value. However, if the property has some market value, the equivalency requirement will probably not be met, since the obligations assumed by the homesteader cannot be considered as part of the price—the price in a sale must be certain<sup>54</sup> and consist of a sum of money.<sup>55</sup>

A possible solution is to term the transfer an innominate contract, which is subject only to the general principles of the law of obligations.<sup>56</sup> Louisiana courts have upheld as innominate contracts transfers in which a portion of the cause or consideration was services or other advantages to the grantor,<sup>57</sup> thus the obligations assumed by the homesteader should be adequate. If neither the requirements for an innominate contract nor a sale are found, a Louisiana court would probably find a disguised donation.<sup>58</sup>

A final alternative under Louisiana law is to treat the conveyance as an onerous donation.<sup>59</sup> The transfer could be

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53. *Blanchard v. Haber*, 166 La. 1014, 118 So. 117 (1928); *Murray v. Barnhart*, 117 La. 1023, 42 So. 489 (1906); *Northeast La. Detachment of Marine Corps League v. City of Monroe*, 253 So. 2d 107 (La. App. 2d Cir. 1971). Several writers have criticized the doctrine of "serious consideration" because such an interpretation reads the word "all" out of the phrase "out of all proportion." See *Snelling, Cause and Consideration in Louisiana*, 8 TUL. L. REV. 178, 209 (1934). There are four classifications of prices: (1) the insignificant price, out of *all* proportion to the value of the thing; (2) the lesionary price; (3) the just price, equivalent or in reasonable proportion to the value of the thing; and (4) the conventional price, out of reasonable proportion to the value of the thing, greater than the lesionary price, but less than the just price. 8 TUL. L. REV. at 209-11.

54. LA. CIV. CODE art. 2464.

55. LA. CIV. CODE arts. 2439, 2464.

56. LA. CIV. CODE arts. 1777-78. See 1 S. LITVINOFF, OBLIGATIONS § 113 in 6 LOUISIANA CIVIL LAW TREATISE 197-98 (1969). *But see Murray v. Barnhart*, 117 La. 1023, 42 So. 489 (1906).

57. *Kirk v. Kansas City, S. & G. Ry.*, 51 La. Ann. 667, 25 So. 457 (1899); *Thielman v. Gahlman*, 119 La. 350, 44 So. 123 (1907).

58. *E.g.*, *Succession of Daste*, 254 La. 403, 223 So. 2d 848 (1969). "[T]he sale of a plantation for a dollar could not be considered as a fair sale; it would be considered as a donation disguised." LA. CIV. CODE art. 2464.

59. LA. CIV. CODE art. 1527: "The donor may impose on the donee any charges or conditions he pleases, provided they contain nothing contrary to law or good morals." Most cases involve gifts of land for a specified purpose providing that if the donee fails to so use the land, it should revert to the

made on the condition that the homesteader bring the structure up to building code standards within a certain amount of time and live in the house for an even longer period of time.<sup>60</sup> The transferring agency could also impose conditions providing for periodic inspections to determine if the property is being rehabilitated in a satisfactory manner.<sup>61</sup> Failure to fulfill the conditions of the donation would result in revocation under Civil Code article 1559;<sup>62</sup> fulfillment of the conditions and completion of the occupancy period would result in certification by the transferor that the conditions have been met to clear title to the property.<sup>63</sup>

#### *Constitutional Considerations*

If the transfer of the homestead is considered an onerous donation in Louisiana, the transferring municipality must have the capacity to donate property. The Constitution of 1974 contains the following provision:

Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.<sup>64</sup>

The Housing Authority Act<sup>65</sup> authorizing municipalities to invest funds in the bonds of housing authorities was chal-

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donor. *See, e.g.*, *Segura Realty Co. v. Segura Sugar Co.*, 145 La. 510, 82 So. 684 (1919) (donation of land for a sugar refinery); *Lawrence v. Police Jury*, 35 La. Ann. 601 (1883) (donation of land for use for parish purposes only). *See generally* 1 L. OPPENHEIM, SUCCESSIONS AND DONATIONS § 209 in 10 LOUISIANA CIVIL LAW TREATISE 317 (1969).

60. *See, e.g.*, New Orleans Proposal §§ 4(4)(b), (c).

61. *See, e.g.*, WILMINGTON ORDINANCE § 4(4)(b); New Orleans Proposal § 4(d).

62. LA. CIV. CODE art. 1559(3): "Donations inter vivos are liable to be revoked or dissolved on account of the following causes: . . . (3) The nonperformance of the conditions imposed on the donee." A reversionary clause in the act of donation would be unnecessary as all onerous donations contain an implied resolutive condition. *Board of Trustees v. Richardson*, 216 La. 633, 44 So. 2d 321 (1949).

63. *E.g.*, New Orleans Proposal § 6.

64. LA. CONST. art. 7 § 14(A). The prohibition might also apply to a lease or sale which did not have a "serious consideration." *Northeast La. Detachment of Marine Corps League v. City of Monroe*, 253 So. 2d 107 (La. App. 2d Cir. 1971) (decided under the Constitution of 1921). *See* text at notes 52-56, *supra*.

65. LA. R.S. 40:381 (1950).

lenged in *State ex rel. Porterie v. Housing Authority*<sup>66</sup> on the basis of similar language in the Constitution of 1921,<sup>67</sup> the claim being made that such investments would be a prohibited use of public funds to benefit a public corporation. The Louisiana Supreme Court upheld the statute, construing the constitutional provision as requiring only that public expenditures be for a public purpose.<sup>68</sup> Viewing the construction of public housing as a legitimate exercise of the police power, the court found that the public purpose test was met.<sup>69</sup>

Despite practical differences between construction of subsidized public housing and the donation of publicly owned property in a homesteading program, an urban homesteading program should meet the public purpose requirement as interpreted in *Porterie*.<sup>70</sup> In *Porterie*, the court found slums to be breeding places for crime and that removing them would benefit the entire city.<sup>71</sup> Dilapidated and abandoned urban houses today create similar conditions.<sup>72</sup> As in *Porterie*, a court could find a public purpose for the action of a municipality when it is within the general dimensions of the police power—that is, when the action is taken to preserve the health, morals, and safety of the inhabitants.

To exclude onerous donations from the scope of the constitutional prohibition would be an alternative argument. The constitutional language should be construed in light of the codal division of donations into three categories: gratuitous, onerous, and remunerative.<sup>73</sup> Onerous donations are not subject to the rules governing inter vivos donations<sup>74</sup> and

66. 190 La. 710, 182 So. 725 (1938).

67. La. Const. art. 4 § 12 (1921).

68. "It is a public purpose for which the city's funds may be expended and a public use for which private property may be taken in expropriation proceedings." 190 La. at 727, 182 So. at 730.

69. "The framers of the Constitution did not intend to debar municipal corporations from using public funds to protect the health, morals and safety of all their inhabitants. . . ." 190 La. at 734, 182 So. at 732.

70. Perhaps LA. CONST. art. 7 § 14(C) gives additional support for the proposition that the prohibition on donation is inapplicable where there is a sufficient public purpose to justify the governmental action. "For a public purpose, the state and its political subdivisions or political corporations may engage in cooperative endeavors with each other, with the United States or its agencies, or with any public or private association, corporation, or individual." LA. CONST. art. 7 § 14(C).

71. 190 La. at 733, 182 So. at 733.

72. STERNLIEB & BURCHELL at 149, note 7, *supra*.

73. LA. CIV. CODE art. 1523.

74. LA. CIV. CODE art. 1526.

should be treated as onerous transfers.<sup>75</sup> The debates of the Constitutional Convention do not indicate that donations other than gratuitous donations were considered as being prohibited.<sup>76</sup> Urban renewal authorizations enacted under the Constitution of 1921 indicate a similarly liberal interpretation by the legislature of the similar prohibition contained in the Constitution of 1921.<sup>77</sup> The disposition of property sections of many local authorizations provide that in determining fair market value, the local agency will give consideration to the community improvement plan, the conditions and obligations assumed by purchasers, and the objective of the prevention of slums or blighted areas.<sup>78</sup> If the constitutional prohibition were construed to include both onerous and gratuitous donations, allowing such considerations would be unconstitutional, since to the extent the city receives less than the fair market value in money, it has quoted the difference to the purchaser.

#### *Legislative Considerations*

In addition to having the constitutional capacity to donate, a Louisiana city should also have the requisite authority from the legislature. Legislation allowing municipalities to sell property at public or private sale with no highest bid requirement<sup>79</sup> does not definitely indicate a legislative intent to allow donations. However, specific statutory authority may be unnecessary, since the 1974 constitution alters the previous relationship between state and local government by allowing more autonomy to municipalities and limiting legislative interference in local affairs.<sup>80</sup> "Home rule" authority is sufficiently broad to permit any activity not constitutionally

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75. 1 L. OPPENHEIM, SUCCESSIONS AND DONATIONS § 207 in 10 LOUISIANA CIVIL LAW TREATISE 314 (1969). LA. CIV. CODE art. 1524 lends further support to the notion that such transfers are not donations at all: "The onerous donation is not a real donation, if the value of the object does not manifestly exceed that of the charges imposed on the donee." See also Smith, *A Refresher Course in Cause*, 12 LA. L. REV. 2, 16 (1951).

76. State of Louisiana, Constitutional Convention of 1973 Verbatim Transcripts, bk. XXXIII, 102d Day at 67-84, 104-07 (Dec. 17, 1973); Bk. XXXVIII, 117th Day at 102-03 (Jan. 14, 1974).

77. See LA. R.S. 40:381.1 (1950).

78. See, e.g., La. Acts 1968, No. 224 § 9(a) (Baton Rouge City-Parish Community Improvement Act of 1968).

79. LA. R.S. 33:4712 (1950).

80. LA. CONST. art. VI §§ (5), (6). The traditional view was that local governmental agencies were "creatures of the legislature." *Pyle v. City of Shreveport*, 215 La. 257, 40 So. 2d 235 (1949).

or statutorily prohibited, such as donations of property under an urban homesteading program.<sup>81</sup>

If legislative authorization is found to be necessary, urban renewal agencies having the authority to convey property to private individuals on a basis other than highest bid, could engage in an urban homesteading program. These agencies can "mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property"<sup>82</sup> on a basis of reasonable bids and for not less than fair market value, accepting "such proposal as it deems in the public interest . . . ."<sup>83</sup> As discussed above,<sup>84</sup> the fair market value concept is arguably broad enough to encompass an onerous donation of the property.

#### *Acquisition of Homestead Properties*

The Louisiana tax sale<sup>85</sup> will not prove a practicable means for providing potential homestead properties. Louisiana grants tax debtors three years in which to redeem property sold for delinquent taxes.<sup>86</sup> During the redemption the city must keep any property adjudicated to it,<sup>87</sup> thus making its use in a homesteading program impractical. In addition, few buildings are abandoned for tax delinquency due to Louisiana's comparatively low tax rate.<sup>88</sup> The receivership program does not offer a viable alternative. Although New Orleans has a provision for making repairs to buildings that are in violation of the housing code which allows assessment of a special tax on the property to cover expenditures,<sup>89</sup> the city has no authority to assume operation of the building

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81. Kean, *Local Government and Home Rule*, 21 LOY. L. REV. 1, 66 (1975).

82. BATON ROUGE ACT § 6 (e).

83. LA. R.S. 33:4625(1)(2); BATON ROUGE ACT § 9(b).

84. See text at notes 73-78, *supra*.

85. LA. R.S. 47:2178-94 (1950). These provisions are applicable to municipalities for the enforcement of municipal property taxes. LA. R.S. 33:2841 (1950).

86. LA. CONST. art. VII § 25(B).

87. LA. R.S. 47:2189 (1950). In Louisiana, the state and its subdivisions cannot acquire full title by failure of the tax debtor to redeem as he is given a right of redemption so long as the property is in the hands of the state. LA. R.S. 47:2224 (1950). When the property is redeemed from an individual who has bought the property at the tax sale, the tax debtor must pay for the value of the improvements made upon the property. LA. R.S. 47:2222 (1950).

88. PUBLIC AFFAIRS RESEARCH COUNCIL OF LOUISIANA, PAR ANALYSIS: PROPERTY TAX INEQUITIES, No. 176, Oct. 1971, at 4.

89. NEW ORLEANS CITY CODE § 30-12(2)(B).

prior to foreclosure of the tax lien. Purchase by eminent domain, while possible, would require the expenditure of often scarce local funds. Thus abandoned structures available from HUD appear to provide the most immediately available properties in Louisiana.<sup>90</sup>

#### *Financial Assistance to Homesteaders*

State or federal loans and grants are available for financing renovations.<sup>91</sup> Local urban renewal agencies may issue bonds or borrow from private sources to raise funds for low-interest rehabilitation loans to low and moderate income homeowners.<sup>92</sup> Grants may be provided out of general revenue sharing or other funds available to the local agency.<sup>93</sup> Loan eligibility is based upon income,<sup>94</sup> but apparently no income requirement exists for grants.<sup>95</sup> The homesteader could receive a loan for the maximum amount according to his income and then a grant to insure that the value of his rehabilitated house would exceed his outstanding indebtedness. The city would probably need to subordinate its right to rescind to the mortgagee's privilege in order for the homesteader to obtain a loan.<sup>96</sup> The legislative provisions in Louisiana providing for subsidies should insure participation by lower income families willing to live in these areas. Addi-

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90. See text at notes 34-38, *supra*. Local Property Release Option properties apparently will not be available, at least in Baton Rouge, since these properties are still marketable. Letter from Thomas J. Armstrong, Director of New Orleans Area Office, HUD, to W. W. Dumas, Mayor of Baton Rouge, Louisiana (copy on file in the offices of the Louisiana Law Review).

However, under the HUD Office of Policy Development and Research, Preliminary Urban Homesteading Plan (a discussion document) at 2, a one-time appropriation of 5 million dollars should mean that 1000 houses would be available, and these houses, unlike those under the Local Property Release Option Program, need not be unmarketable. Letter from HUD Secretary Carla Hills to W. W. Dumas, Mayor of Baton Rouge, Louisiana (copy on file in the offices of the Louisiana Law Review).

91. See text at notes 42-45, *supra*.

92. LA. R.S. 33:4625, as amended by La. Acts 1974, No. 660 § 1.

93. *Id.* at R(2).

94. *Id.* at R(3) (the annual income restrictions range from \$8,400 for one person to \$13,700 for seven or more persons).

95. *Id.* at R(2).

96. Samuel Jackson, Washington, D.C., attorney and Chairman, National Urban Coalition Task Force on Housing, Urban Growth and Transportation, has noted the need for such subordination. NATIONAL URBAN COALITION, URBAN HOMESTEADING: PROCESS AND POTENTIAL 47 (1974). See also NEW ORLEANS PROPOSAL § 7.

tionally, homestead exemption<sup>97</sup> eliminates the need for financial assistance in the form of property tax relief.<sup>98</sup>

### *The Prospect of Homesteading*

Urban homesteading attempts to combat abandonment of inner city areas, called America's "new frontier,"<sup>99</sup> through homeownership, by encouraging families to resettle in and maintain existing houses. Pride and independence, rather than dependence, are fostered by homeownership. By conserving salvageable structures, homesteading provides an economical alternative to expensive new construction. The success of each program will be determined by whether middle income families are encouraged to remain in and return to these areas. Smaller cities, such as Wilmington, Delaware, where the social problems are less intense and the slum areas not so large as to overwhelm the potential homesteader, offer the low degree of risk-taking necessary to encourage middle income participation. In general, Louisiana cities appear more like Wilmington than like Philadelphia or Boston, thus portending a greater probability of success. New Orleans, though larger than Wilmington, does not suffer from widespread abandonment as do other large older cities,<sup>100</sup> thus the psychological barriers to middle class investment in inner city neighborhoods are not as prevalent.

### *Conclusion*

Homesteading in Louisiana appears best suited as a specialized tool for revitalizing neighborhoods rather than for resettling large abandoned areas. Problems may arise in using the sale subject to redemption to transfer the property;

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97. LA. CONST. art. VII § 20.

98. Most urban homestead programs include a tax abatement provision, usually enacted in conjunction with the homestead program. Boston's program contains built-in tax relief since the homesteader pays no taxes until after he has received full title. See text at notes 37, 38, *supra*.

Philadelphia uses a more common approach by excluding all improvements made during the homesteading period from the tax base. PHILADELPHIA ORDINANCE § 6(J).

99. Coleman, *The New Frontier in our Cities*, FOCUS 4 (Joint Center for Political Studies) (Nov. 1974). See M. STEGMANN, HOUSING INVESTMENT IN THE INNER CITY: THE DYNAMICS OF DECLINE 57 (1972).

100. Linton, Miels & Coston, A Study of the Problems of Abandoned Housing and Recommendations for Action by the Federal Government and Localities (Washington, D.C., 1971 mimeo) 166, 233.

however, an innominate contract in which the obligation to rehabilitate the property is included in the cause or consideration may offer one solution to the objections to a sale. An onerous donation affords another alternative, eliminating the problem of "serious consideration," if the constitutional prohibition against donations is interpreted to apply only to gratuitous donations.

Louisiana's local urban renewal agencies seem uniquely suited for the development and administration of such a program,<sup>101</sup> having the authority to dispose of the property and to provide financial assistance. The agencies should consider providing other forms of assistance, including central purchasing and stockpiling of construction materials to reduce rehabilitation costs, technical assistance in the actual reconstruction, and improved public facilities in the homesteading area, counseling in repair and home management, low-interest and long-term loans, tax abatement, and a guarantee that the city will buy the house if no other buyer can be found.<sup>102</sup> After an experimental project has studied in operational form the practicality of a homesteading program in Louisiana, the legislature could enact comprehensive legislation detailing the requirements for the transfer of title and any additional forms of assistance which may be found necessary. Homesteading is an innovative idea which has sparked enthusiasm<sup>103</sup> in restoring our inner city areas, and hopefully Louisiana cities will experiment with it.

*David R. Burch*

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101. New Orleans proposes to make its urban renewal agency, the Community Improvement Agency, the homesteading authority. NEW ORLEANS PROPOSAL § 1.

102. So far no city has begun with such a comprehensive program, although tax abatement and rehabilitation loans are becoming an increasingly common feature in homesteading programs. Wedemeyer, *Urban Homesteading*, NATION'S CITIES, 20, 21, Jan. 1975.

103. For the first ten houses distributed in Wilmington, there were one hundred applicants from a broad cross-section of society. The Wall Street Journal, Sept. 21, 1973 at 1, col. 1.