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## Recent Reforms in Cuban Housing Policy

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John Grein  
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Trip Paper

## RECENT REFORMS IN CUBAN HOUSING POLICY

### INTRODUCTION

Wandering through the streets of Old Havana one immediately notices the varied state of Cuba's housing stock. Elegantly restored buildings showcase their preserved classical touches next to crumbling ruins of the same vintage. Walking along the Malecón, one observes newly-constructed and brightly-colored apartment buildings proudly facing the Atlantic while the adjacent mottled relics look like they might be blown away with the next storm.

Though over 85% of Cubans own their homes,<sup>1</sup> Cuba has long struggled with issues of insufficient housing supply both in terms of the shortage of available units and the lack of resources to maintain and improve the existing stock. While recent trends of falling birthrates and emigration to other places have reduced the need for housing, the Cuban government estimates that it needs an additional 500,000 housing units (though some private demographers place the estimate at closer to one million).<sup>2</sup> As a result many Cubans live in multi-generational homes, sharing a small space with parents, spouses, in-laws, children, and perhaps even

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<sup>1</sup> See Victor Normand, [The Real Estate Market in Cuba](http://blog.acton-realestate.com/the-real-estate-market-in-cuba/), July 16, 2014 available at <http://blog.acton-realestate.com/the-real-estate-market-in-cuba/>. (Note, though various sources cite Cuba as having a 85% or so homeownership rate it appears that this statistic who reside in housing owned by someone in their family. As later sections will illustrate many Cubans share their homes with other family members, but do not appear to possess title to the property.)

<sup>2</sup> See Sergio Díaz-Briquets, [The Enduring Cuban Housing Crisis: The Impact of Hurricanes](#), Cuba in Transition, 429 ASCE 439 (2009); Carmelo Mesa-Lago, [Can Cuba's Economic Reforms Succeed](http://www.americasquarterly.org/content/can-cubas-economic-reforms-succeed), Americas Quarterly, available at <http://www.americasquarterly.org/content/can-cubas-economic-reforms-succeed>.

grandparents or extended family.<sup>3</sup> Anecdotes from a recent immersion program demonstrate this reality. One young Cuban, a gay blogger, lamented that while his family had accepted his sexual orientation, sharing an apartment with his extended family made it impossible for him to share private moments with his partner. An older woman, who shared her home with both in-laws and young children, noted the friction that can arise from indefinite cohabitation with extended family. Aside from overcrowding and diminished privacy, many Cubans live in dilapidated structures suffering from decades of inadequate maintenance and on the verge of collapse.<sup>4</sup>

To remedy these issues, on November 2, 2011, Raúl Castro's government issued Decree 288. Decree 288 opened up the private real estate market in Cuba for the first time since the Revolution in 1959. Prior to this law, Cubans could not legally sell their homes on an open real estate market, though narrow means existed so that one could transfer a home to other family members or exchange the home with another.<sup>5</sup> This paper analyzes home ownership in Cuba primarily through the lens of Decree 288. I will start by briefly describing the history of homeownership in Cuba, with a focus on the changes effectuated during the Cuban Revolution. The following sections will discuss the specific changes the law permits

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<sup>3</sup> See Damien Cave, Cubans Set for Big Change: Right to Buy Homes, New York Times, August 2, 2011 available online at [http://www.nytimes.com/2011/08/03/world/americas/03cuba.html?\\_r=0](http://www.nytimes.com/2011/08/03/world/americas/03cuba.html?_r=0).

<sup>4</sup> See Díaz-Briquets, The Enduring Cuban Housing Crisis: The Impact of Hurricanes, at 429–30.

<sup>5</sup> See Saumil Jariwala, Undergraduate Thesis, Cuban Housing Privatization: A Comparative Perspective on the Future of Housing in Havana, Cuba at 49–50, available online at <http://repository.upenn.edu/cgi/viewcontent.cgi?article=1214&context=curej>.

and the extent to which the law has alleviated Cuba's problems with insufficient housing stock. The paper concludes with additional recommendations the Cuban government might consider to alleviate housing shortfalls, with a particular focus on a revived rental market and a voucher system.

## I. HISTORY OF POST-REVOLUTION CUBAN HOUSING LAW

Housing policy and homeownership have long been subject to the control of the Cuban government. Prior to the Revolution, many Cubans did not own their home, perhaps a symptom of the wealth inequality that fanned the flames of revolution.<sup>6</sup> After assuming power in 1959, Fidel Castro immediately passed sweeping land use and housing reforms which help account for Cuba's high level of homeownership today.<sup>7</sup> These changes, known as the Urban Reform Law included: abolishing the right to openly transfer homeownership, slashing rental rates, abolishing landlord-tenant relationships and instilling the government as the landlord, cancelling mortgages, and setting up systems that would allow tenants to become the owners of their homes.<sup>8</sup> To help transition renters' tenancy from renting to ownership, the government would collect reduced rents from tenants for a finite period of time (between ten and twenty years) before transferring title to the

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<sup>6</sup> See Victor Normand, The Real Estate Market in Cuba, July 16, 2014 available at <http://blog.acton-realestate.com/the-real-estate-market-in-cuba/>.

<sup>7</sup> See Jariwal, Cuban Housing Privatization: A Comparative Perspective on the Future of Housing in Havana, Cuba at 49–51. See also Philip Peters, Cuba's New Real Estate Market, 1 Latin American Initiative February 2014 1–2, available online at <http://www.brookings.edu/~media/research/files/reports/2014/02/21-cuba-real-estate/phil-peters-cubas-new-real-estate-market.pdf>.

<sup>8</sup> See Peters, Cuba's New Real Estate Market at 1–2.

tenants (now owners). As a result, the Revolution greatly increased homeownership as former renters were afforded an easy way to become homeowners.

The Urban Reform Law demonstrates the Castro's regime's historic views on housing policy. In place of a market-based system, the new system conceptualized home ownership as an important government service.<sup>9</sup> The rhetoric of the open market was replaced with new ideas of using housing to promote equity and equality. The regime tried to create a mentality where people used their homes for living, not as a vehicle to accumulate wealth or rent to others. Other laws from this period protected renters from being evicted from their homes and made it impossible for private individuals to speculate on land.<sup>10</sup> The end result was a new understanding of the way private citizens could use their homes. One commentator summarizes the government's historic philosophy towards housing as homes are meant for "living in" not "living off of".<sup>11</sup>

Though the reforms vastly increased the amount of homeownership on the island, the government's notion of homeownership only conferred a narrow bundle of rights onto homeowners. First, the home was meant primarily for residency and shelter. Using the home as a way to generate income was prohibited.<sup>12</sup> Owners could not rent out their homes to others. Homes could not be sold on the open market, as the real estate market was abolished. Thus, if the value of one's home appreciated one could not sell the home to the highest bidder, purchase a lower-

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<sup>9</sup> See Jariwala, Cuban Housing Privatization at 49–51.

<sup>10</sup> See *id.*

<sup>11</sup> See Normand, The Real Estate Market in Cuba.

<sup>12</sup> See Peters, Cuba's New Real Estate Market at 2.

valued home and pocket the extra wealth. Related, owners could not purchase homes or tracts of land for speculation.<sup>13</sup>

Second, the Revolution outlawed the use of mortgages as a financial product.<sup>14</sup> As a result a home owner could not take out the American equivalent of a home equity loan to fund an expansion or new project. Aside from impacting homeowners, the lack of mortgages also constrains potential first-time homebuyers as well. In other countries, potential homebuyers can seek a mortgage from a bank to purchase a home. In such instances the bank will use the home itself as collateral in the event of default. However, in Cuba, the lack of a mortgage market means that first-time homebuyers (often younger people) must purchase their home upfront with cash.<sup>15</sup> Abolishing the residential mortgage market seems tied to the idea that banks foreclosing on homeowners in default was contrary to the state policy of promoting homeownership, though it also denies homeowners the ability to use their homes as a vehicle for investment.

The abolition of mortgages has had negative consequences for the residential housing market. Currently, the law only allows for mortgages for capital-intensive purchases such as ships and aircrafts.<sup>16</sup> Recent decrees hint at broadening mortgage options for foreign commercial investors, but such reforms do not seem to benefit Cubans interested in borrowing money for the purchase of a new home.

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<sup>13</sup> See Jariwala, Cuban Housing Privatization at 49–51

<sup>14</sup> See Fox Rothschild LLP, The Impact of the Cuban Foreign Investment Act of 2014 on Foreign Real Estate Investments, December 2014, available online at <http://www.foxrothschild.com/newspubs/newspubsArticle.aspx?id=19327353738>.

<sup>15</sup> See Normand, The Real Estate Market in Cuba.

<sup>16</sup> See Fox, The Impact of the Cuban Foreign Investment Act of 2014.

Indeed, one individual I encountered, a bank manager, shared that Cuban banks never give out loans in excess of \$40 or so dollars, a far cry short of the thousands of dollars needed to purchase a modest unit. Given the discrepancy between the average Cuban's salary and housing costs (the average Cuban earns a monthly salary of \$20 while the humblest of apartments sells for thousands of dollars), many emerging adults lack the funds needed to finance a home purchase and instead must continue to live with their parents (and sometimes grandparents, spouses, and children).<sup>17</sup>

Due to the absence of a mortgage market, Cubans have two options when purchasing a home. One option is for cash-strapped Cubans to sell their current home and use the proceeds and perhaps modest savings to acquire a new home.<sup>18</sup> This creates inefficiencies when a potential seller cannot find an interested buyer, a common scenario given the lack of funds many potential buyers experience. The second option is to rely on support from family living abroad. In either case, the absence of mortgages and the illegality of most forms of real estate transfer have stymied the housing market.

## II. DECREE 288 AND OTHER REFORMS TO ALLEVIATE THE HOUSING CRISIS

Recognizing these issues, on November 2, 2011, Raúl Castro passed Decree 288. Decree 288 changed many of the laws governing Cuba's homeownership

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<sup>17</sup> See id; Mesa-Lago, Can Cuba's Economic Reforms Succeed.

<sup>18</sup> See Hiland Doolittle, Untangling Cuba's Real Estate Market available at <http://www.travelguidecuba.com/cuba-real-estate/%EF%BB%BFuntangling-cubas-real-estate-market.html>.

system with the hopes that a more robust private market would alleviate constraints on housing stock and deteriorating infrastructure.<sup>19</sup>

The Decree's first change was allowing a private market for housing. Under the previous laws homeowners could transfer ownership of their homes to other family members or devise an in-kind exchange where one family basically swapped homes with another family. However, such transfers required explicit government approval. The government also valued the homes to ensure that similar properties were exchanged. Legally, it was forbidden to sell one's home on the open market and to extract a profit from the sale. However, in the past buyers and sellers would often engage in side transactions to offset questionable government valuation or to compensate the party giving up the more valuable unit. Under the new market, owners can value the homes and themselves and find a private buyer from the home without government restrictions. Additionally, owners can sell their home for some form of profit, as many owners choose to sell larger homes so as to downsize into smaller ones, thus allowing the seller to use the difference in prices for other forms of consumption or investment.

Decree 288 also reduces the government's role in the transfer of housing.<sup>20</sup> Under the old regime, government approval was required before a transaction could take place. The new regime does not require government approval, though the buyer and seller must appear before a notario (a government official—not the Cuban equivalent of a notary public) to register the transaction and title to the

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<sup>19</sup> See Peters, Cuba's New Real Estate Market at 4.

<sup>20</sup> See *id.*

property on the municipality's property registry. Whereas the old regime required government approval, the new regime just requires that the property be properly registered so as to record new ownership of the property.

The Decree also shifts default property rights between individuals and the government.<sup>21</sup> Under the old regime, people who left the island were deemed to have forfeited ownership of their property and the state would reclaim the property. Transfers made to a relative were not honored by the government and routinely nullified. Under the new law, emigrants have the option of transferring ownership or selling their homes before leaving the island. They may sell the home on a market or leave it to a family member. When individuals leave without making a transfer, the title to the property passes to the next-highest claimant to the property, be it a spouse or a child or sibling. Thus, the law encourages more private ownership of homes even when people leave the island.

Finally, post-Decree court decisions have attempted to create more stability in the housing market.<sup>22</sup> During the decades between the passing of the Urban Reform Laws and the ratification of the Decree, many Cubans acquired homes under questionable circumstances. As a result, many Cubans possess homes with unclear title. In a seminal case, the Cuban Supreme Court interpreted Decree 288 to allow people who acquired homes in earlier times to establish clear title to their homes.

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<sup>21</sup> See *id.* at 4–5.

<sup>22</sup> See *id.* at 20–21

The case involved Bertha Lina Bouly Wilson, a Cuban woman from the outer provinces. In 1998, Wilson spent \$5,000 to purchase an apartment from Ricardo Barrueta. However, because at the time they could not openly buy and sell the property, Wilson and Barrueta engaged in a transaction structure that was apparently common at the time. Wilson and Barrueta agreed to marry with the intent of quickly divorcing that way Barrueta could use the divorce settlement as a means to legally transfer the apartment to Wilson.<sup>23</sup> However, the divorce did not commence as expected and instead Barrueta tried to have Wilson removed from the property. She unsuccessfully sued to regain ownership of the home for which she had already paid.

Wilson argued that the new law should be held to apply retroactively so as to restore her ownership of the home. Specifically, she noted that though the transaction conducted in 1998 was illegal, the private sale of an apartment would be legal after the passing of the Decree. Though a lower court was not persuaded to act, Cuba's highest court agreed and decided that the Decree retroactively applied to illegal private transactions that took place before 2011, so long as the acts would now comply with the current law. Wilson was ordered to finalize the transaction by appearing before a notario to register the change in the property's title. Though Cuba's civil law relies on codes and not binding case law precedent, the high court circulated a memo to all the lower courts advising the lower courts to follow the analysis set forth in Wilson's case. Thus, anyone who illegally bought or sold

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<sup>23</sup> It bears noting that based on personal communications with a Cuban professor of family law, uncontested divorces are easily and quickly available in Cuba.

property on the private market can appear before a notario to legally finalize the transaction. In cases of disagreement between the buyer and seller, the parties can present evidence before a municipal court to resolve the issue. If the buyer successfully demonstrates that a transaction took place, the court will allow the notario to transfer clear title to the buyer. This case is important because it will allow the many Cubans who unlawfully acquired their homes to find a way to get clear title so as to avail themselves of the new housing market as homes with unclear title cannot be sold.<sup>24</sup>

Though the new Decree permits more freedoms than before, it is still limited in several key ways. First, Cubans are still only permitted to own a maximum of two homes.<sup>25</sup> One home is allowed as a primary residence and those who can afford it may purchase up to one vacation home. Buyers must state under oath that they own no other main residence when purchasing a home. To the extent that some Cubans possess the capital to purchase and refurbish multiple homes to create income-generating rental properties, this law hinders the creation of new viable housing stock.<sup>26</sup> Second, the Decree does not lift the current prohibition on home mortgages, leaving many Cubans without a source of finance to avail themselves of the new market opportunities. This impediment to funding will likely need to be resolved before Cuba is able to fund the construction of hundreds of thousands of new housing units.

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<sup>24</sup> See Peters, Cuba's New Real Estate Market at 6.

<sup>25</sup> See *id.* at 4.

<sup>26</sup> Though this may seem far-fetched, I met a young woman working in the lucrative tourism industry who hopes to save enough to put such a plan in place (assuming that the law relaxes).

### III. OTHER POLICIES TO INCREASE HOUSING STOCK

Aside from opening up the real estate markets, since 2011 the government has experimented with other programs to create additional housing stock and to preserve deteriorating stock.

First, the Cuban government has expressed an interest in relying on construction cooperative groups to increase and improve the housing stock.<sup>27</sup> In a 2013 article published in *Granma*, the state's official newspaper, the government indicated the creation of over 100 new cooperative groups, some of them focused exclusively on construction. The cooperatives would be hybrid private and government entities that would receive preferential treatment from the state over purely private firms due to the formers' socialist values. Some commentators have expressed skepticism that cooperatives will be more effective than previous government forays into construction, noting that similar agricultural cooperatives have consistently led to underproduction.<sup>28</sup> Furthermore, despite the announcement in the newspaper in 2013, there does not seem to be any publically available documentation of the effectiveness or preliminary progress of such construction coops. However, the announcement is still relatively recent and perhaps this will be a promising resource in the future. During the immersion trip to Cuba, it did seem like there was a lot of construction taking place, though such construction seemed focused on the restoration of grand public buildings such as the

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<sup>27</sup> See Clay Boggs, Cuba's New Cooperatives, Washington Office of Latin America, July 1, 2013, available online at [http://www.wola.org/commentary/cuba\\_s\\_new\\_cooperatives](http://www.wola.org/commentary/cuba_s_new_cooperatives).

<sup>28</sup> See id.

capitol building and National Opera House as opposed to rebuilding dilapidated residential buildings. There did not appear to be significant levels of residential construction.

Commentators have also observed the increase of Cubans undertaking do-it-yourself (“DIY”) projects to renovate and improve their homes.<sup>29</sup> While there are no reports on the frequency of DIY improvements or the added value of such improvements, at least one report suggests that it is an increasingly common phenomenon, particularly in Havana.<sup>30</sup> Though it is hard to know how much impact such DIY projects will have, this anecdote does suggest the importance the private sector will have in remedying Cuba’s housing problems. To support DIY projects, the government has opened 43 building supply centers in Havana and over 1,100 of such centers across the country.<sup>31</sup> Private citizens can come to the supply centers and purchase cheap building materials to use in their own construction projects. To facilitate DIY projects, the government reduced prices of building materials after issuing the Decree 288. Again, it remains too early to see if such programs will be effective. Several online bloggers have reported that the 2011 sales of such DIY fell far below government expectations.<sup>32</sup> The bloggers attributed the lackluster sales to high prices as well as low-quality merchandise and unreliable

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<sup>29</sup> See Peters, Cuba’s New Real Estate Market at 13–14.

<sup>30</sup> See *id.*

<sup>31</sup> See *id.*

<sup>32</sup> See The Cuban Triangle, The Do It Yourself Push, March 7, 2012 available at <http://cubantriangle.blogspot.com/2012/03/do-it-yourself-push.html>; Patricia Caceres, Analizan Deficiencias en Ventas de Materiales de la Construccion, Juventud Rebelde, February 28, 2012 available at <http://www.juventudrebelde.cu/cuba/2012-02-28/analizan-deficiencias-en-ventas-de-materiales-de-la-construccion/>.

supply chains. While the government has reduced prices, it is unclear if private citizens can continually access the materials needed to make home repairs, or if supplies quickly run out as they do in other government-run stores, thus hampering construction.

Private homeowners with low incomes are also eligible to apply for grants to fund home construction and renovation.<sup>33</sup> The grants are funded from the proceeds of the state-run construction supply centers. The grants can be for as much as \$3,800 in United States dollars. However, only 30% of the grants can be applied to labor costs, thus providing an incentive for homeowners to undertake most of the rehabilitation labor themselves.<sup>34</sup> Based on the most recently available information, 33,431 households have availed themselves of the grants, though again there is not much information available on their effectiveness.

The Cuban government has also permitted families to take out small loans for home construction and renovation costs.<sup>35</sup> The extent of such loans or the security for the loans is unclear, as people cannot pledge their homes as a security for a loan as it is contrary to the government's housing policy.

While the effectiveness of these policies is still unclear, it becomes evident that the Cuban government is turning more and more to private actors to help resolve the state's housing problem. Though the constructive cooperative programs and support for DIY projects certainly benefit from state support and funding, it

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<sup>33</sup> See Peters, Cuba's New Real Estate Market at 15.

<sup>34</sup> See *id.*

<sup>35</sup> See *id.*

seems like the government is trying to involve more private citizens (and their localized labor) in the process. However, despite these intriguing efforts, problems remain.

#### IV. POST-DECREE PROBLEMS WITH HOUSING STOCK

Despite the recent reforms the twin problems of housing shortages and substandard housing endure.

The major problem under the old housing regime was the shortage of housing units. Some commentators observe that Cuba's 11.2 million people live in 3.9 million housing units.<sup>36</sup> The Cuban government claims a shortfall of 500,000 units while outside scholars estimate the shortfall to be over one million units. As a result, Cuba would need to add around 60,000-70,000 units to the housing stock each year to make up for the deficit.<sup>37</sup> Reports suggest that the Cuban government builds closer to 16,000 units each year with another 10,000 or being built by private citizens.<sup>38</sup> While these additional units certainly help, one must also consider that continual deterioration of poorly-maintained buildings as well as natural disasters simultaneously deplete the housing stock. In 2012, Hurricane Sandy, in fairness an unusually powerful storm, removed over 22,000 units from Cuba's housing stock.<sup>39</sup> The shortage of housing is a primary reason why many units are inhabited by multiple generations of families. The New York Times describes the shortage as creating apartments of "Alice in Wonderland proportions" noting that two bedroom

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<sup>36</sup> See id at 13.

<sup>37</sup> See id.

<sup>38</sup> See Peters, Cuba's New Real Estate Market at 13.

<sup>39</sup> See id.

apartments are magically converted into four bedroom apartments and adult stepsons sharing a bedroom split in half with a plywood mezzanine loft.<sup>40</sup>

Aside from shortages of housing stock, there exist many safety issues with the extant housing stock. Some scholars cite to evidence that as much as 60% of the housing units in Havana are “poorly maintained” with “many described as in poor or deplorable conditions.”<sup>41</sup> One only needs to stroll along the Malecón, Havana’s Atlantic seawall to see people living in crumbling edifices, exposed wires, and partially collapsed or missing roofs. Journalists have reported instances of children on the Havana waterfront peeking out of buildings missing huge chunks of their façade.<sup>42</sup>

Full-on collapses of buildings are not uncommon.<sup>43</sup> Last year in Havana the seventh floor of an apartment building collapsed in the middle of the night. Over one hundred families were left homeless after the building collapsed and had to be housed elsewhere.<sup>44</sup> Displaced tenants went to live with other family members or to crowded government shelters while others camped on the street or in a nearby garage. Some estimate that around 28,000 or so people in Havana live in a building that will likely collapse<sup>45</sup> and that “every three days, there are two partial or total

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<sup>40</sup> See Damien Cave, Cubans Set for Big Change: Right to Buy Homes, New York Times, August 2, 2011 available online at <http://www.nytimes.com/2011/08/03/world/americas/03cuba.html? r=0>.

<sup>41</sup> See Díaz-Briquets, The Enduring Cuban Housing Crisis: The Impact of Hurricanes at 429–30.

<sup>42</sup> See Cave, Cubans Set for Big Change: Right to Buy Homes.

<sup>43</sup> See Andrea Rodriguez, Cuba’s Housing Crisis Worsens, The Associated Press, April 21, 2014, available online at [http://www.huffingtonpost.com/2014/04/21/cuba-housing-crisis\\_n\\_5185411.html](http://www.huffingtonpost.com/2014/04/21/cuba-housing-crisis_n_5185411.html).

<sup>44</sup> See id.

<sup>45</sup> See Díaz-Briquets, The Enduring Cuban Housing Crisis: The Impact of Hurricanes at 434.

building collapses in Central Havana alone.”<sup>46</sup> While some of these reports predate the Decree, the recent collapses have sometime after the passing of the Decree. In either case, these pieces of evidence all demonstrate the severity of issues associated with Cuba’s housing stock.<sup>47</sup>

Deficiencies in housing stock will only worsen as time progresses. While many of the buildings from pre-1959 are already in disrepair, units that were built in the 1950’s, 60’s, and 70’s are beginning to show the strains that come from decades of insufficient maintenance. As more time passes, these aging units will deteriorate without some form of intervention.<sup>48</sup>

#### V. RETURN TO RENTING AND OTHER ADDITIONAL MEASURES

Cuba currently suffers from an undersupplied and deteriorating housing stock. Though Decree 288 will likely nudge the country in the right direction there are likely some additional measures that might help the country.

One such solution might be to re-create a culture of renting on the island. Admittedly, one of the first goals of the Revolution was to eliminate people using their residential properties as sources of income.<sup>49</sup> However, this cultural norm

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<sup>46</sup> Id at 435.

<sup>47</sup> One of the reasons why Havana is especially prone to collapsing buildings deals with the historic construction in the city. Between 1915 and 1920 Cuba experienced a major boom as its sugar was desperately needed during World War I. As a result Havana flourished and many new buildings were constructed. At the time many new buildings used a new type of construction sand. The sand proved quite durable so long as the buildings had adequately sealed roofs. However, as resources dwindled after the Revolution and maintenance was put off, formerly watertight roofs began leaking, weakening the construction sand and threatening the building’s integrity. Apparently, this design flaw is why so many buildings in Havana collapse from the upper floors first. See Díaz-Briquets, The Enduring Cuban Housing Crisis: The Impact of Hurricanes at 434.

<sup>48</sup> See id at 434–35.

<sup>49</sup> See Part I.

might have already started to weaken in light of the government's encouragement of private individuals to convert portions of their homes into paladars<sup>50</sup> or other small businesses.<sup>51</sup> Indeed, if one could turn an extra room into a dining room to generate income; why not also convert the room for the benefit of a lodger? The former feeds tourists but the latter houses fellow countrymen.

Though Cuba has a shortage of housing units, anecdotes suggest that some Cubans live in excessively large units. Creating a rental market might put some of these oversized units to use and help alleviate the housing problem. Consider the story of Annerys Velasco. Ms. Velasco lives in a 3,000 square foot, seven-bedroom home with several other family members.<sup>52</sup> The small family does not appear to need all the extra space and the cost and energy of maintaining the expansive structure is beyond her means. Ms. Velasco and her siblings wish to sell the building (asking price \$160,000) and each relocate to a smaller unit. However, recall that there are really only two ways that local Cubans can accumulate enough cash to purchase a new home. One option is to sell the home that one currently owns and use the proceeds to purchase a new home. However, based on the anecdotes that appear in the press it seems that this pool of potential buyers is limited to older individuals (who already own homes) and who are more likely to want to downgrade to smaller a home and pocket the extra cash instead of

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<sup>50</sup> A paladar is a small, privately-run restaurant that usually operates out of the owner's home.

<sup>51</sup> See Michael Allen and Kejal Vyas, Real-Estate Revolution Hits Cuba, Wall Street Journal, April 3, 2015 available online at <http://www.wsj.com/articles/real-estate-revolution-hits-cuba-1428055201> (discussing how one woman will use her newfound wealth to open a small shop); Antonio R. Zamora, The Impact of Cuba's New Real Estate Laws on the Island and the Diaspora, Cuba in Transition, 208 ASCE 2012, 209 (discussing the use of housing to open paladars).

<sup>52</sup> See Allen, Real-Estate Revolution Hits Cuba.

upgrading to a massive unit.<sup>53</sup> It seems unlikely that a cash-flush person looking to downgrade would want to buy a seven-bedroom fixer-upper, especially since there is no market to rent out the extra space. In the alternative, Ms. Velasco might try to find a buyer who has access to hard currency or funding from family abroad, but again, one questions the market for what sounds like a white elephant property.

However, imagine if the renting of private units was more customary.<sup>54</sup> Ms. Velasco has a lot of extra space that she could convert into income-generating rental property. While Ms. Velasco herself might not want to don the mantle of a landlord, the ability to convert a portion of the property into rental property would presumably increase the property's value, making it much easier for Ms. Velasco to find a buyer and an alternate housing arrangement. A landlord could avail herself of the subsidized construction materials and use them to gradually improve upon the space or take out a small construction loan to make similar improvements. Furthermore, even if the space was not flawlessly maintained (Ms. Velasco points out the broken floor tiles and chipped paint on her property),<sup>55</sup> some individuals might prefer renting a sub-standard personal room as opposed to sharing a space of the same size and quality with a large group of family members. To the extent that there are mismatches between the size of units owned and the families who reside in those units, a more developed rental market might lead to a more efficient

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<sup>53</sup> See *id.*

<sup>54</sup> Though it has received less commentary, it does seem like the Cuban government is open to the idea of a rental market. See Peters, Cuba's New Real Estate Market at 3 (recounting quotes from the government on how it wishes to create laws for a flexible "exchange, purchase, sale, and rental of housing").

<sup>55</sup> See *id.*

allocation of housing resources as families who own extra space can instead rent the property instead of letting the space go underutilized.

There are several problems that might accompany a more robust rental regime in Cuba. First, though the government has hinted that it is not opposed to renting, it might be difficult to change cultural norms around renting. Banning rental housing and transferring home ownership from landlords to tenants was one of the very first acts undertaken during the Revolution.<sup>56</sup> Even though renting endured for several years after the Revolution, the government received those rents and the rates had been slashed from pre-Revolutionary levels. Reestablishing a culture of renting might appear to contrarian to the Revolution's ideals to be deemed permissible. Furthermore, establishing rents might undercut the philosophy of using homes for "living in" not "living off of".<sup>57</sup> However, as previously mentioned, the Cuban government is encouraging people to undertake small entrepreneurial steps. Some people have started operating paladars from within their homes. Others have taken the surplus from downsizing their original homes and used the extra money to invest in small shops. This suggests that at the ground level, people have already started to use their homes for more than just residential purposes. In fairness, renting out portions of one's home to others is more nakedly profiting off the homeownership than running a paladar from one's home; however, in either case the home has transitioned to an income-generating asset.

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<sup>56</sup> See Part I.

<sup>57</sup> See Normand, The Real Estate Market in Cuba.

A second issue with renting is that Cuba does not permit the eviction of an individual from his or her home.<sup>58</sup> Prior to the Urban Land Reform legislation landlords were forbidden from evicting tenants who had not paid their rent. Banks could not seize homes with unpaid mortgage payments. Basically owners of property had no recourse against tenants or home purchasers who were behind on their payments. Ultimately, after the Urban Land Reform legislation was passed, title to the property was transferred to the tenants. The lack of eviction rights likely poses a serious problem to any developing rental market. Potential landlords would lack incentives to develop rental properties out of a fear that a tenant would stop paying rent. In such an event the landlord would have no recourse against the squatting tenant, thus negating the benefits of renting the property. For the rental market to develop, landlords would likely need some tools to protect their assets.

On the other side of the coin, the undeveloped rental law means that tenants have no rights against their landlords in the event that the landlord fails to maintain the unit. Doctrines such as constructive eviction and the implied warranty of habitability protect American tenants from proverbial slum lords.<sup>59</sup> However, given the fifty-year absence of a robust rental market in Cuba it is likely that analogous doctrines never had a chance to develop. Related, given reports of frequent building collapses in Havana, it does not appear like the Cuban government steps in to condemn dangerous or structurally compromised buildings. Collectively, this might suggest that the main Cuban housing policy at the moment

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<sup>58</sup> See Part I.

<sup>59</sup> See Dukeminier et al, Property, 505, 515 (Wolters Kluwer 8<sup>th</sup> ed 2014).

is to keep as many viable units in the extant housing stock even if some units are substandard. As a result, Cubans might focus less on setting minimum quality standards for rental stock and focus more on creating new units for people to inhabit. Creating minimum standards for tenants might be less of a concern at this point in time.

One way to sidestep the political and legal concerns of expanding a rental market might be to involve the government in the process through a type of voucher system. In the United States voucher programs generally allow a person who qualifies (someone with income that is a fraction of the area's median income) to receive a coupon that will allow them to pay the difference between a percentage of their family's income and the fair market rent of the building.<sup>60</sup> Thus, the voucher provides the family with the resources to bridge the gap between what the family could realistically afford to pay in rent and the market rents in the neighborhood. One strength of a voucher program is that it is cheaper for the government to subsidize one's rent than to construct and administer new housing stock.<sup>61</sup> To the extent that some units are underutilized, vouchers might be a cheaper way to alleviate the housing problem than only constructing new units. Since the Cuban government conceptualizes the provision of housing as a basic government service, the government might consider subsidizing or paying for the costs of rental housing. For example, a young couple who wishes to move out of their parents' home but who lack the funds to purchase a home might instead apply for a government voucher.

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<sup>60</sup> Alexander F. Schwartz, Housing Policy in the United States, 227–28 (Routledge 2015).

<sup>61</sup> See *id.*

The funds from the voucher could be used to seek rental housing on the market, thus alleviating some crowding issues and putting some under-utilized housing stock back into use.

With regard to politics, the use of a voucher system need not conflict with current revolutionary ideals. The Cuban government views the provision of housing as basic government service. By providing people with vouchers the government provides residential shelter, if not some of the other property rights that traditionally accompany ownership. Additionally, the Cuban government outlawed rental properties to create more equality in the country. Perhaps there are lingering concerns that the creation of a class of landlords will recreate more economic stratification than the government views as desirable. However, the use of a state-sponsored voucher system affords the state a lot of power in the rental market. As discussed in previous sections, the average Cuban does not have much disposable income. A government-provided subsidy in the form of a voucher will likely shape the contours of what landlords could charge in rent (assuming that the government does not just impose clear caps on rental fees). Thus, the government might be able to engage in some form of price setting that creates enough of a monetary incentive for Cubans to become landlords, but not so much of an incentive that it creates undesirable class outcomes.

Depending on its structure, a voucher system might also offset the needs for landlord eviction rights and tenant rights to ensure that the rental stock is properly maintained. A system where the government remits rental payment directly to the

landlord reduces the need for a landlord's eviction rights. Presumably landlords evict tenants for failing to pay rent (though one can imagine other violations that cause landlords to evict). However, if landlords are directly paid by the government it would be impossible for tenants to default on rent. Problems of poor compatibility between a landlord and a tenant might remain, but direct payments to landlords mitigates against the biggest risk of renting property in Cuba, the risk of a non-paying squatter. A system of direct payment to the landlord might also give the government more rights to inspect the rental property to ensure that it complies with some basic safety standards. Indeed, voucher programs in the United States often require that landlords comply with government inspection and basic safety standards.

A robust rental market accompanied by a voucher system will likely not solve all of Cuba's housing woes. Vouchers by themselves do not explicitly create new housing units, though it might make it easier for Cubans with extra space in their homes to become landlords, thus making better use of the existing housing stock. Furthermore, if a viable rental system exists it might incentivize families to stay and improve larger homes with viable rental rooms as opposed to downsizing. This might make use of the Cuban government's push to have homeowners improve their homes themselves while also finding a way to add more units into the housing stock.

## CONCLUSION

In recent years the Cuban government has started making efforts to update its economic model. One series of reforms has been to open up the real estate market to stimulate the construction of new housing and the renovation of deteriorating stock. The passing of Decree 288 in November 2011 and other related reforms will hopefully address these issues. However, additional reforms will likely be needed. One area ripe for reform is the need to create some form of a residential mortgage market so that a broader swath of Cubans can finance their homes. Absent such a sweeping change, improving the robustness of the rental market might help Cubans take advantage of underutilized residential space in an attempt to add more units to the housing supply. However, as the rental market grows Cuban law would need to evolve to protect both landlords and tenants. Ultimately, such policies might help create enough housing stock to support the laudable goals of increased privacy and individual autonomy while also creating means for families to develop entrepreneurial skills and to acquire wealth through their homes.