

**TESTIMONY OF HOUSING PRESERVATION AND DEVELOPMENT BEFORE
THE NEW YORK CITY COUNCIL'S HOUSING AND BUILDINGS
COMMITTEE – TUESDAY, APRIL 21ST, 2009 – 1PM**

GOOD AFTERNOON, CHAIRMAN DILAN AND MEMBERS OF THE HOUSING AND BUILDINGS COMMITTEE. MY NAME IS JOSEPH ROSENBERG AND I AM THE DEPUTY COMMISSIONER OF INTERGOVERNMENTAL AFFAIRS AT THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT (“HPD”). SITTING NEXT TO ME IS BARBARA FLYNN, CHIEF OF STAFF OF THE INTERGOVERNMENTAL AFFAIRS DIVISION. WE ARE PLEASED TO BE HERE TODAY TO DISCUSS THE THREE FORECLOSURE NOTIFICATION BILLS ON THE AGENDA.

AS YOU ALL KNOW, HPD TOGETHER WITH THE COUNCIL IS AT THE FOREFRONT OF THE ISSUE THAT THESE THREE BILLS, INTRO 889, 956 AND 959 ARE TRYING TO ADDRESS – LIMITING THE IMPACT OF MORTGAGE FORECLOSURES. BEFORE DISCUSSING THE BILLS I WOULD LIKE TO TALK ABOUT THE CURRENT STATE OF THE MORTGAGE FORECLOSURE PROBLEM IN NEW YORK CITY AND PROGRAMMATIC INITIATIVES CREATED TO MITIGATE THE IMPACT ON FAMILIES AND NEIGHBORHOODS.

THE MORTGAGE FORECLOSURE PROBLEM HAS GROWN SUBSTANTIALLY IN NEW YORK CITY OVER PAST FEW YEARS. THERE WERE 1,065 FORECLOSURE AUCTIONS CITYWIDE IN THE FIRST QUARTER OF 2009. THIS

REMAINS AT ABOUT THE SAME LEVEL AS FOR THE SAME PERIOD IN 2008 BUT IS ABOUT 35% HIGHER THAN IN 2006 AND 2007. ALTHOUGH THESE FIGURES INDICATE A GROWING PROBLEM IN NEW YORK CITY, THE SCALE OF THE PROBLEM IN OUR CITY PALES IN COMPARISON TO OTHER CITIES, LARGE AND SMALL, AROUND THE NATION.

NEVERTHELESS, FORECLOSURES HAVE A REAL IMPACT ON HOMEOWNERS AND RENTERS BY DISPLACING FAMILIES FROM THEIR HOMES, WHILE NEIGHBORHOODS CAN FACE DETERIORATION AND DESTABILIZATION DUE TO VACANT PROPERTIES AND DECLINING HOME VALUES. FORECLOSURES REMAIN A PRIORITY ISSUE FOR HPD AND THE ADMINISTRATION AND THE SOLUTIONS TO THIS PROBLEM, ALTHOUGH STILL BEING DEVELOPED, REQUIRE COOPERATION BETWEEN ALL LEVELS OF GOVERNMENT, THE BANKING INDUSTRY AND OUR NONPROFIT PARTNERS.

TO MITIGATE THE IMPACT OF FORECLOSURES, HPD HAS DEVELOPED TWO PROGRAMMATIC APPROACHES TO ADDRESS THE DUAL EFFECTS OF THE FORECLOSURE PROBLEM. THE FIRST AIMS AT KEEPING FAMILIES IN THEIR HOMES. THE SECOND ADDRESSES STABILIZING NEIGHBORHOODS.

FORECLOSURE PREVENTION COUNSELING IS THE MAIN TOOL IN KEEPING FAMILIES IN THEIR HOMES. TOGETHER, THE ADMINISTRATION AND THE

COUNCIL CREATED THE CENTER FOR NEW YORK CITY NEIGHBORHOODS ("CNYCN"). CNYCN IS A NOT FOR PROFIT ENTITY THAT IS FUNDED WITH HPD AND CITY COUNCIL MONIES AND PRIVATE PHILANTHROPY. THE CORE OF CNYCN PROGRAMS IS SUPPORT FOR NONPROFIT SERVICE PROVIDERS OFFERING FREE EDUCATION, HOUSING COUNSELING AND LEGAL SERVICES TO ANYONE AT RISK OF LOSING THEIR HOME TO FORECLOSURE. CNYCN PROVIDES FUNDING AND TECHNICAL ASSISTANCE TO COMMUNITY GROUPS WHO PROVIDE DIRECT SERVICES TO INDIVIDUAL HOMEOWNERS. IN FEBRUARY 2009, CNYCN STARTED A CALL CENTER THAT SERVES AS THE PRIMARY POINT OF CONTACT FOR ALL HOMEOWNERS IN DISTRESS IN NYC. CALLERS MAY REACH CNYCN BY CALLING 311. SINCE THE OPENING OF THE CALL CENTER IN FEBRUARY, OVER 1000 NEW YORKERS IN NEED HAVE CALLED 311 AND BEEN REFERRED TO THE CNYCN CALL CENTER.

ANOTHER IMPORTANT ASPECT OF CNYCN'S WORK IS ENCOURAGING HOMEOWNER AND LENDER PARTICIPATION IN NEW FEDERAL PROGRAMS. SINCE THE ANNOUNCEMENT OF PRESIDENT OBAMA'S MAKING HOME AFFORDABLE (MHA) PROGRAMS IN THE BEGINNING OF MARCH, CNYCN HAS PROVIDED ITS NETWORK PARTNERS WITH EXTENSIVE TRAINING REGARDING THE DETAILS OF THE LOAN MODIFICATION AND REFINANCING PROGRAMS AND THEIR POSSIBLE IMPLEMENTATION BY

LENDERS AND SERVICERS. IT IS ESTIMATED THAT UP TO 500,000 NEW YORKERS MAY BE ELIGIBLE FOR THE LOAN MODIFICATION PLAN ALONE.

ADDITIONALLY, CNYCN WORKS WITH ADVOCATES TO IMPROVE ACCESS TO THE JUDICIAL SYSTEM FOR HOMEOWNERS, AND A KEY ASPECT WILL BE THE IMPLEMENTATION OF NEW STATE LAWS REQUIRING SETTLEMENT CONFERENCES PRIOR TO FORECLOSURE JUDGMENTS. CNYCN WILL ALSO COORDINATE PRO BONO LEGAL WORK BY DEVELOPING A FORECLOSURE PREVENTION "PRACTICE AREA" ON PROBONO.NET WHICH WILL SERVE AS A RESOURCE LIBRARY, AND WILL PROVIDE OTHER MUCH NEEDED SUPPORT TO PRO BONO AND LEGAL SERVICES ATTORNEYS WORKING TO IMPROVE THE SETTLEMENT CONFERENCES.

OVERALL, CNYCN IS ABLE TO GATHER BEST PRACTICES, COORDINATE ACCESS TO COUNSELING, AND ENSURE THAT TRAINING AND TECHNICAL ASSISTANCE GET INTO THE HANDS OF THOSE WHO NEED THEM AS FAST AS POSSIBLE.

WE ARE ACUTELY AWARE OF THE IMPORTANCE OF THIS INITIATIVE TO COMMUNITIES THREATENED BY FORECLOSURE AND ARE COMMITTED TO OBTAINING ADDITIONAL FUNDS TO THE CENTER IN 2010. WE ARE CONFIDENT THAT SUCH FUNDING WILL BE IDENTIFIED AND EARMARKED QUITE SOON.

NOW, I WILL SHIFT FOCUS TO OUR LATEST INITIATIVES IN STABILIZING NEIGHBORHOODS. WE ARE UTILIZING FEDERAL NEIGHBORHOOD STABILIZATION PROGRAM (NSP) FUNDING IN THE REAL ESTATE OWNED (REO) PROGRAM TO STABILIZE HOME PRICES AND PREVENT BLIGHT AND NEIGHBORHOOD DECLINE IN AREAS OF GREATEST RISK OF FORECLOSURE. THE REO PROGRAM WILL BE EXECUTED BY RESTORED HOMES HOUSING DEVELOPMENT CORPORATION. THIS PROGRAM WILL REVITALIZE NEIGHBORHOODS BY BRINGING VACANT HOMES BACK IN USE AND TO CREATE AFFORDABLE HOMEOWNERSHIP OPPORTUNITIES FOR LOW AND MODERATE INCOME FAMILIES IN NEW YORK CITY. USING EXISTING HUD HOUSING INITIATIVES AS A MODEL, RESTORED HOMES WILL ACQUIRE, REHABILITATE AND SELL 1-4 FAMILY PROPERTIES AT AFFORDABLE PRICES TO RESIDENTS MEETING SPECIFIC INCOME REQUIREMENTS. IN THIS PROGRAM WE WILL BE WORKING WITH NOT FOR PROFIT COMMUNITY GROUPS TO DEVELOP ABOUT 100 HOMES IN NEIGHBORHOODS WITH THE HIGHEST RATES OF FORECLOSURE IN NEW YORK CITY.

AS HPD CONTINUES TO ANALYZE MORTGAGE FORECLOSURE DATA AND TRENDS, WE ARE DEVELOPING OTHER PROGRAMMATIC SOLUTIONS TO THE CURRENT CRISIS AND WELCOME THE COUNCIL'S PROACTIVE APPROACH TO THE ISSUE AND ANY OPPORTUNITIES FOR WORKING

TOGETHER. OVER THE NEXT WEEKS AND MONTHS, HPD INTENDS TO DEVELOP A COMPREHENSIVE NEIGHBORHOODS STABILIZATION STRATEGY AS PART OF A COMPETITIVE BID FOR A PORTION OF THE \$2 BILLION IN HUD NEIGHBORHOOD STABILIZATION PROGRAM FUNDS IN THE AMERICAN REINVESTMENT AND RECOVERY ACT OF 2009 TO SUPPLEMENT THE WORK THAT WE DO AS AN AGENCY TO SUPPORT KEEPING FAMILIES IN THEIR HOMES AND STABILIZING NEIGHBORHOODS. WE ARE WORKING WITH DHS AND CNYCN TO EXPLORE WAYS TO PROVIDE HOUSING COUNSELING AND LEGAL SERVICES TO RENTERS AFFECTED BY THE FORECLOSURE CRISIS.

WE SHARE THE COUNCIL'S CONCERN REGARDING THE IMPORTANCE OF THESE ISSUES AND THEY ARE AT THE FOREFRONT OF OUR NEW PROGRAMMING PLANS.

I WOULD NOW LIKE TO DISCUSS THE THREE BILLS THAT ARE ON TODAY'S AGENDA, INTRO 889, 956 AND 959.

INTRO 889 WOULD REQUIRE ANY MORTGAGEE, EXCEPT A GOVERNMENTAL ENTITY, THAT HAS COMMENCED A FORECLOSURE ACTION REGARDING PROPERTY LOCATED IN NEW YORK CITY, TO REGISTER WITH HPD WITHIN 10 DAYS OF FILING THE FORECLOSURE ACTION. THE REGISTRATION WOULD INCLUDE SUCH INFORMATION AS

THE NAME OF THE ENTITY BRINGING THE ACTION, THE ENTITY AGAINST WHOM THE ACTION WAS BROUGHT, THE RELEVANT BLOCK AND LOT NUMBER AND THE COURT AND THE DATE WHERE SUCH ACTION WAS COMMENCED.

THE AGENCY MUST ALSO MAINTAIN AN UPDATED WEBSITE OF THE INFORMATION AND THE MORTGAGEE MUST NOTIFY HPD WITHIN 10 DAYS OF CERTAIN CHANGES IN STATUS OF THE ACTION, INCLUDING THE FORECLOSURE ACTION BEING DISCONTINUED, SO THE INFORMATION CAN BE UPDATED ON THE WEBSITE. A FAILURE TO REGISTER WITH HPD WOULD RESULT IN A CIVIL PENALTY FROM HOUSING COURT OF \$1,000 PER DAY FOR EACH DAY THAT THE ACTION WAS NOT REGISTERED WITH HPD. I WOULD LIKE TO NOTE THAT THERE IS NO CORRESPONDING PENALTY FOR FAILURE OF A MORTGAGEE TO NOTIFY HPD OF ANY CHANGES IN THE STATUS OF A CASE.

THE ENTITY BRINGING THE FORECLOSURE ACTION WOULD BE RESPONSIBLE FOR ANY PENALTY AGAINST THE PROPERTY FOR VIOLATIONS OF ANY LAWS AND REGULATIONS. THIS APPEARS TO BE AN ATTEMPT TO ENSURE THAT THE PROPERTY IS MAINTAINED AND THAT THE MORTGAGEE IS RESPONSIBLE FOR CORRECTING VIOLATIONS OF THE HOUSING MAINTENANCE CODE. ALTHOUGH WELL INTENTIONED, THIS SPECIFIC PROVISION CREATES A TROUBLING REQUIREMENT SINCE A

MORTGAGEE MAY NOT HAVE A LEGAL RIGHT TO ENTER THE BUILDING, LET ALONE REPAIR ANY HOUSING MAINTENANCE CONDITIONS. NEVERTHELESS, IT IS IMPORTANT THAT PROPERTIES BE ADEQUATELY MAINTAINED IN ORDER TO STEM DETERIORATION, NOT ONLY OF THE BUILDING ITSELF, BUT ALSO OF THE SURROUNDING NEIGHBORHOOD. WE THEREFORE LOOK FORWARD TO WORKING WITH THE COUNCIL ON LEGISLATIVE LANGUAGE THAT WILL ENSURE THAT THE PROPERTIES WILL NOT BE ALLOWED TO LANGUISH AND DETERIORATE.

THE OTHER TWO BILLS, INTRO 956 AND 959 ARE DIRECTED AT THE ENTITY BRINGING THE FORECLOSURE ACTION AND REQUIRE IT TO NOTIFY ALL TENANTS OF THE PROPERTY BEING FORECLOSED WITHIN TEN DAYS OF FILING THE ACTION. HPD WOULD BE REQUIRED TO WRITE RULES AS TO WHAT INFORMATION SHOULD BE INCLUDED IN THE NOTICE TO TENANTS, WHERE IN THE BUILDING A COPY OF THE NOTICE SHOULD BE POSTED, WHICH TENANT RIGHTS RELATING TO MORTGAGE FORECLOSURE SHOULD BE INCLUDED IN THE NOTICE AND WHICH GOVERNMENTAL AGENCY SHOULD BE LISTED ON THE NOTICE SO THAT TENANTS MAY CALL TO ASK QUESTIONS.

WHILE HPD SUPPORTS THE CONCEPT OF NOTIFICATION WE MUST ALSO TAKE INTO ACCOUNT TODAY'S ECONOMIC CLIMATE AND BE REALISTIC ABOUT WHAT WE CAN ACCOMPLISH. WE ALL UNDERSTAND THE ANXIETY

TENANTS HAVE ABOUT BEING EVICTED IN FORECLOSURE ACTIONS. HOWEVER BOTH INTRO 956 AND 959 COULD HAVE THE UNDESIRE EFFECT OF ALARMING TENANTS ABOUT ACTIONS THAT END UP BEING RESOLVED SHORT OF FORECLOSURE. IT MAY ALSO ACTUALLY UNINTENTIONALLY SPEED THE EVICTION OF TENANTS BY MAKING IT LESS BURDENSOME FOR LANDLORDS TO NAME AND SERVE THE TENANTS IN THE INITIAL ACTION. WE THEREFORE LOOK FORWARD TO EXPLORING LANGUAGE WITH THE COUNCIL THAT WOULD ASSIST TENANTS WITHOUT EXPOSING THEM TO THESE RISKS.

LASTLY, THE BILL'S REQUIREMENTS PUT HPD IN THE POSITION OF PROVIDING LEGAL ADVICE TO PRIVATE CITIZENS, WHICH WE DO NOT FEEL IS AN APPROPRIATE ROLE FOR A GOVERNMENT AGENCY.

WHILE IT IS IMPORTANT THAT TENANTS BE AWARE OF THEIR RIGHTS AND PENDING ACTIONS, AND MANY OF THE PROGRAMMATIC INITIATIVES I PREVIOUSLY DESCRIBED WORK TOWARDS THIS PURPOSE, THESE BILLS DO NOT LAY OUT A CLEAR PROCESS FOR EITHER HPD OR THE MORTGAGEE AND MOST IMPORTANTLY, IN THEIR EXISTING FORM, MIGHT NOT TRULY BENEFIT THE TENANTS IN PROPERTIES FACING FORECLOSURE.

THE FORECLOSURE CRISIS IS A CHALLENGE FOR ALL OF US. IT REQUIRES AN APPROACH THAT CAN ONLY BE SUCCESSFUL WITH THE COOPERATION

AND PARTICIPATION OF GOVERNMENT AND OUR PARTNERS IN THE PRIVATE AND NOT FOR PROFIT SECTORS. ACCORDINGLY, WE WOULD LIKE TO CONTINUE TO WORK WITH THE COUNCIL ON PROGRAMMATIC AND LEGISLATIVE IDEAS THAT CAN PROVIDE SOME SOLUTIONS TO THE CHALLENGES THAT FACE ALL OF US.

THANK YOU.

FOR THE RECORD

LEGAL SERVICES NYC
Legal Support Unit
350 Broadway, 6th Floor
New York, NY 10013
(646) 442-3596

THE LEGAL AID SOCIETY
Civil Law Reform Unit
199 Water Street, 3rd Floor
New York, NY 10038
(212) 577-3300

TESTIMONY OF LEGAL SERVICES NYC AND THE LEGAL AID SOCIETY FOR HEARING OF THE CITY COUNCIL HOUSING AND BUILDINGS COMMITTEE

APRIL 21, 2009

The Legal Aid Society and Legal Services NYC welcome the opportunity to present testimony to the New York City Council Housing and Buildings Committee. We commend the City Council for its recognition of the serious problems faced by tenants needing serious repairs during the foreclosure process.

Legal Services NYC

Legal Services NYC's mission is to provide expert legal assistance that improves the lives and communities of low income New Yorkers. Through 18 community-based offices and numerous outreach sites located in each of the city's five boroughs, our priority service areas have included housing, government benefits and family law; in recent years Legal Services NYC has vastly expanded services in areas of need critical to our client base, including unemployment, language access, disability, education, immigration, bankruptcy, consumer and foreclosure prevention. A hallmark of Legal Services NYC is its ability to create innovative projects and community based initiatives that provide essential services for clients, critical

resources for lawyers, advocates and lawmakers throughout New York City and State, and that serve as models for legal services programs across the country. For the past decade Legal Services NYC has been a national leader in the fight to preserve the homes of families that are threatened with foreclosure as a result of predatory lending. Our housing attorneys have represented hundreds of tenant households that are threatened with eviction as a result of those foreclosures.

The Legal Aid Society

The mission of the Society's Civil Practice is to improve the lives of low income New Yorkers by helping vulnerable families and individuals to obtain and maintain the basic necessities of life — housing, health care, food and subsistence income or self-sufficiency. The Society's legal assistance focuses on enhancing individual, family and community stability by resolving legal problems in the areas of immigration, domestic violence and family law, employment, housing and public benefits, foreclosure prevention, elder law, tax, community economic development, health law and consumer law. Through a network of ten neighborhood and courthouse-based offices in all five boroughs and 23 city-wide and special projects, the Civil Practice provides free direct legal assistance in thousands of matters annually. In addition to individual representation, the Society engages in law reform litigation, advocacy and neighborhood initiatives, and provides extensive back-up support and technical assistance for community organizations; it also operates an extensive *pro bono* program through which over 1,000 volunteers provide legal assistance to low income New Yorkers annually. The Legal Aid Society has provided foreclosure related litigation services to hundreds of homeowners and tenants alike for many years, and began the first foreclosure legal services pilot screening project, serving both homeowners and tenants, in 2008 in response to the home financial crisis.

Testimony of Legal Services NYC and The Legal Aid Society

We applaud the City Council for recognizing an important problem facing an increasing number of New York City tenants who are suddenly faced with an imminent move and lack of services when their landlord is in foreclosure. Although much attention is justifiably focused on the growing problem of homeowners facing foreclosure, less attention has been paid to the serious issues faced by tenants whose buildings are often left to deteriorate during the period leading up to completion of the foreclosure action. Landlords who cannot afford to pay their mortgages are also unlikely to spend money to fix leaky roofs, remediate lead paint, or even continue to provide heat and hot water. Although tenants can still sue their landlords for repairs in Housing Part (HP) proceedings in Housing Court, many landlords in foreclosure simply won't show up; a default judgment does little to get repairs completed. As a result, tenants who live in buildings that are in foreclosure often suffer from terrible conditions month after month during the course of the action.

Foreclosing mortgagees have the power to pay for essential services and make other repairs, but most are not willing to put money into the building, even though they can theoretically recoup those costs through the foreclosure action, because they will then become liable for repairs and other management-related duties. Although tenants can sue a mortgagee "in possession" for repairs by commencing an HP proceeding in Housing Court, most lenders will not "take possession" by asking for rent or investing money in repairs. Receivers, appointed by the Supreme Court to collect rents and maintain conditions in larger buildings (six units or more) during foreclosure, are not usually appointed to care for the small buildings that are now the subject of the vast majority of foreclosure actions.

Tenants can get help with some emergencies, such as cascading water leaks and empty

boilers, from the Emergency Repair Program of the City's Department of Housing Preservation and Development (HPD). However, they must "wait in line" with other tenants for these limited services, especially in smaller buildings. For conditions considered less dangerous but which nevertheless seriously threaten the habitability of their apartments, such as broken windows, leaky ceilings, mold or rat infestation, tenants may have no recourse.

Int. No. 889, before the Council today, displays a recognition that mortgagees should take responsibility for the serious repair needs of tenants when the landlord is not willing to do so. The bill would require mortgagees to register with HPD and to abide by city laws. These are steps that will help tenants in getting mortgagees to make repairs, by identifying the entity responsible for the property and by holding it legally accountable. This measure, in turn, may also encourage mortgagees to hold their borrowers accountable for repairs during the course of the loan and even after default.

We also applaud the Council for recognizing that the State should pass legislation making mortgagees that prevail in foreclosure actions liable for repairs. Proposed Resolution No. 1725-A recognizes that the needs of tenants for maintenance of their homes following foreclosures is a statewide problem requiring a statewide solution.

Finally, we agree with the Council that tenants often do not get adequate notice of foreclosure proceedings and lack information about their rights and the timeline in which they have to move, a timeline which we think should be lengthened depending on the circumstances of the tenant and lender. We believe this hearing represents a major step in the right direction toward due process for renters in this financial crisis.

We again thank the City Council for addressing these issues affecting New York City tenants.

Respectfully submitted.

Raun J. Rasmussen
David Robinson, Esq.
Legal Services NYC
The Legal Support Unit
350 Broadway, 6th Floor
New York, NY 10013
(646) 442-3600

Adriene L. Holder, Esq.
April A. Newbauer, Esq.
The Legal Aid Society
Civil Practice
199 Water Street, 3rd Floor
New York, NY 10038
(212) 577-3300

TENANTS: INNOCENT VICTIMS OF THE NATION'S FORECLOSURE CRISIS

Vicki Been & Allegra Glashausser***

INTRODUCTION.....	2
I. RENTERS IMPACTED BY FORECLOSURE: THE EXTENT OF THE PROBLEM.....	4
II. TENANTS' RIGHTS.....	7
<i>A. Tenants' Rights in Foreclosure: An Overview</i>	8
1. Priority.....	10
2. Joinder.....	12
3. Notice.....	15
<i>B. Tenants' Rights: States with Stronger Protections</i>	16
III. MITIGATING FORECLOSURE'S IMPACT ON TENANTS: ANALYSIS OF LOCAL PROPOSALS.....	19
<i>A. Proposals to Increase the Protections Available to Tenants Whose Landlords are Foreclosed</i>	19
<i>B. Why Do Purchasers Evict Tenants?</i>	24
CONCLUSION.....	27

* Vicki L. Been, Elihu Root Professor of Law and Professor of Public Policy and Director, Furman Center for Real Estate and Urban Policy at New York University School of Law. J.D. New York University School of Law, 1983.

** Allegra Glashausser, Research Associate, Furman Center for Real Estate and Urban Policy at New York University School of Law. J.D. New York University School of Law, 2008.

INTRODUCTION

Renters are innocent victims of the foreclosure crisis, losing their homes through no fault of their own when their landlord goes into foreclosure. Until lately, the national discussion on the foreclosure crisis largely focused on owner-occupied homes, but recent analysis reveals that the crisis is significantly impacting renters across the country.¹ New York University's Furman Center for Real Estate and Urban Policy found that in New York City, well over half of all foreclosure filings in 2007 were on two to four family or multi-family buildings, and a growing body of data and anecdotal evidence indicates that the problem is not isolated to New York City; heart wrenching stories of renters losing their homes have appeared in newspapers nationwide.²

¹ David Handelman, *Low-Income Renters Feel Foreclosure Burn*, MEDILL REP. WASH., July 3, 2008 (explaining how experts think the plight of the foreclosure crisis on renters has been underreported); Cody Calamaio, *Foreclosure Crisis Hurting Renters, Too*, TUCSON CITIZEN, July 2, 2008 (according to the local Community Development and Neighborhood Conservation Department, rental foreclosures are a "big problem" that is only recently receiving attention); Danilo Pelletiere & Keith Wardrip, *Renters and the Housing Credit Crisis*, 17 POVERTY & RACE 4, 1 (July/Aug. 2008) ("As the implosion of credit and housing markets progressed, gaining national attention, the impact on renters and rental housing went largely unrecognized by policymakers and the media."). Even in the recently passed Emergency Economic Stabilization Act (EESA), renters affected by foreclosure received only passing notice. The subsection entitled "Tenant Protections" provides only that any loan modifications that affect rental properties should not affect existing subsidies and protections, and that those modifications "take into account the need for operating funds to maintain decent and safe conditions at the property." 12 U.S.C. § 5220(b)(3)(B) (2008) (emphasis added). However, recent news indicates that the plight of renters is finally moving into the national spotlight. In December 2008, Fannie Mae announced that it would sign new leases with renters living in foreclosed properties owned by the company. News Release, Fannie Mae, Statement by Brian Faith, Managing Director Communications on National Tenant Policy (Dec. 15, 2008), available at <http://www.fanniemae.com/newsreleases/2008/4556.jhtml?p=Media&s=News+Release>. See also Charles Duhigg, *Fannie Mae Lets Renters Stay Despite Foreclosures*, N.Y. Times, Dec. 14, 2008, at B1 (describing the plan as the "first nationwide effort to provide widespread relief to renters").

² Press Release, Furman Center for Real Estate and Urban Policy, New Analysis of NYC Foreclosure Data Reveals 15,000 Renter Households Living in Buildings that Entered Foreclosure in 2007 (Apr. 14, 2008) [hereinafter Furman]. More recent data, from the first half of 2008, reveals that the percentage of foreclosure filings on 2-4 and multi-family buildings has remained constant. The phrase "multi-family buildings" refers to buildings with five or more units. See, e.g., *Legislative and Regulatory Options for Minimizing and Mitigating Mortgage Foreclosures: Hearing Before the H. Comm. on Financial Services*, 110th Cong. 35 (2007) (testimony statement of Judith Liben, Housing

These renters often are completely unaware that their landlords are in default until utilities are shut off or an eviction notice appears on their door. Frequently, they lose not just their homes, but also their security deposits.³ Finding a new rental on short notice is often difficult, especially for low-income tenants who face increasing competition for fewer affordable apartments on the market.⁴ In the majority of states, purchasers at foreclosure sales are entirely within their rights to evict all existing tenants, but even when renters have the right to stay in their homes after foreclosure—when the tenant holds a Section 8 voucher, for example—they are frequently intimidated or improperly lured out of their homes with offers of “cash for keys.”⁵ In addition,

Attorney, Massachusetts Law Reform Institute) [hereinafter *Hearing*]; Jondi Gumz, *Renters Caught in Foreclosure Mess*, SANTA CRUZ SENTINEL, Sept. 9, 2008; Dina ElBoghday, *Foreclosure Crisis Catching Renters Off Guard*, WASH. POST, Aug. 8, 2008, at A01 (including a story of one renter who was forced out of two different homes because of foreclosure).

³ See, e.g., Jeff Knebel, *Foreclosure Crisis is Affecting Renters, Too*, MOUNT SHASTA AREA NEWSPAPERS (Cal.), Sept. 3, 2008 (reporting on newlywed renters returning from their honeymoon only to find an eviction notice); Brett Wilkison, *Renters Rocked by Foreclosure Evictions*, VISALIA TIMES-DELTA (Cal.), Aug. 29, 2008 (telling of the “cruel surprise” facing renters, the “unseen victims” of the foreclosure crisis); Jeff Pope, *Impending Foreclosures Leave Renters in Limbo*, LAS VEGAS SUN, Aug. 28, 2008 (reporting on renters who were “stunned when a ‘for sale’ sign appeared one day in the front yard of the house they were renting” and left wondering if an eviction notice would end up on their door); Wendell Hutson, *Apartment Renters Caught in Foreclosure Net*, CHI. DEFENDER, Aug. 13, 2008 (“She knew something was wrong when, in January, her rent payment was returned by the post office.”); Keith Benman, *Renters Swept Up in Foreclosure Storm*, THE TIMES (Ind.), July 13, 2008. For articles about utility shut-offs, see April Dembosky, *Foreclosures Mean Crises for H.I.V. Positive Renters*, N.Y. TIMES, Aug. 26, 2008, at B6 (reporting on a landlord shutting off utility service while the tenant was still in possession of the property and before foreclosure proceedings were complete); James Temple, *Foreclosure’s Hidden Victims*, S.F. CHRON., Aug. 15, 2008, at A1 (“Renters are being told to leave, are living in the dark or are receiving little response to their complaints as their homes fall into disrepair.”).

⁴ The foreclosure crisis generally has made finding rental properties more difficult, because of an increased number of former homeowners searching for rentals after foreclosure. See, e.g., Nick Rahaim, *Foreclosure Crisis Forces Rental Crisis*, CALIFORNIAN.COM, Sept. 13, 2008; Christiana Schmitz, *Rental Runaround: Renters Evicted Because of Foreclosure Have Trouble Finding New Housing*, CHI. REP., July 1, 2008 (explaining how evicted renters, especially if they are poor, are having difficulty finding new housing); Pelletiere & Wardrip, *supra* note 1, at 6 (“It seems likely that in all but the slackest rental markets, increased demand will be met with declining supply in the short run.”).

⁵ See, e.g., Mike Dello Stritto, *‘Cash for Keys’ Becoming More Common*, CBS13 (Cal.), Feb. 11, 2008, <http://cbs13.com/local/cash.for.keys.2.651785.html> (last visited Nov. 10, 2008); Benman, *supra* note 3; Andres Araiza, *Renters Facing Eviction*, ABC30 (Cal.), Aug. 25, 2008, <http://abclocal.go.com/kfsn/story?section=news/local&id=6350628> (highlighting a story in which a renter

rental fraud has developed where landlords who know foreclosure is imminent, or non-owners posing as landlords, collect renters' money, then disappear.⁶ The actual owners can then evict the fraud victims.

A handful of states already protect tenants from foreclosure-related evictions by requiring a "just cause" for eviction, such as non-payment of rent. Around the country, local governments are debating stronger tenant protection laws to deal with the growing rental foreclosure crisis.⁷ These proposals include increased notice requirements, financial aid for moving expenses, and prohibitions against utility shut-offs.⁸

This article aims to help inform the debate over these proposals. The first section reveals the scope of the crisis by describing what the available data tells us about the impact of foreclosures on renters and rental housing. The second section presents an overview of the rights tenants have when their landlord is foreclosed. It uses New York as an example, but highlights laws in other states that offer stronger tenant protection. The third section analyzes the debates taking place in state and local governments across the country, and reaches beyond the plight of the individual tenants to discuss the impact landlord foreclosure may have on the availability and quality of rental housing.

I. RENTERS IMPACTED BY FORECLOSURE: THE EXTENT OF THE PROBLEM

The displacement of renters due to foreclosure is not limited to a few heartrending tales scattered around the country. On the contrary, data demonstrates that the problem is widespread. In New York City, NYU's Furman Center for Real Estate and Urban Policy found that nearly 60% of the 15,000 notices of foreclosure

was offered \$1,400 to vacate in two weeks or go through "the regular eviction process"; Debt Advocacy Center, Cash For Keys, <http://www.foreclosurefish.com/cashforkeys.htm> (last visited Oct. 27, 2008) (providing a basic definition of "cash for keys").

⁶ For more information see *infra* Part I.

⁷ See, e.g., H.R. 4735, 110th Cong. § 2 (2007); California Political Desk, *Assembly Approves Torrico's Protections for Renters in Foreclosed Properties*, CAL. CHRON., May 30, 2008; Adrian Sainz, *Renters in Foreclosed Homes Get Help*, ASSOCIATED PRESS, Oct. 17, 2008.

⁸ See, e.g., Sainz, *supra* note 7 (discussing proposed legislation in various states); *Evicting Tenants When Landlords Foreclose!*, <http://orangecountyrealestatevoice.com/?s=evicting+tenants> (Aug. 20, 2008, 12:24 EST) (discussing the problem of utility shut offs).

filed in 2007 were on two to four family or multi-family buildings.⁹ Using a conservative estimate (assuming that an owner lives in one of the units in all two to four family buildings), the Center estimated that 15,000 renter households, or about 38,000 New Yorkers, were impacted by foreclosure.¹⁰

Studies across the nation are uncovering similar trends. The Joint Center for Housing Studies of Harvard University found that in 2007, 20% of all foreclosure filings across the country were in non-owner occupied properties.¹¹ The National Low Income Housing Coalition estimates that one third of all properties facing foreclosure across New England are in multi-unit buildings, and 45% of homes at the end of the foreclosure process in four New England states are rentals.¹² In Chicago, the Woodstock Institute found that 35% of foreclosure filings were on two to six unit buildings, and other researchers are finding similar results in counties in Michigan, Minnesota, and North Carolina.¹³

⁹ Furman, *supra* note 2.

¹⁰ *Id.* Brooklyn accounted for the largest share of these foreclosures, with 7,200 renter households entering foreclosure (or 56% of all Brooklyn foreclosure filings). *Id.* However, the impact was seen across all five boroughs. Queens and the Bronx had 3,723 renter households (or 37%), and 2,483 rental households (or 59%) entering foreclosure respectively, while Staten Island had 488 rental households (or 27%) entering foreclosure. *Id.* Although Manhattan had a lower number of total properties entering foreclosure, a staggering 83% of all those properties that did enter foreclosure were rental properties. Manhattan had 1,333 total households facing foreclosure, of which 1,111 were renter households. *Id.*

¹¹ JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., AMERICA'S RENTAL HOUSING: THE KEY TO A BALANCED NATIONAL POLICY 14 (2008).

¹² KEITH E. WARDRIP & DANILO PELLETIERE, NAT'L LOW INCOME HOUS. COAL., PROPERTIES, UNITS, AND TENURE IN THE FORECLOSURE CRISIS: AN INITIAL ANALYSIS OF PROPERTIES AT THE END OF THE FORECLOSURE PROCESS IN NEW ENGLAND 4, 5 (2008) (analyzing the foreclosure records of Connecticut, Massachusetts, New Hampshire, and Rhode Island); Danilo Pelletiere, Research Dir. & Keith Wardrip, Research Analyst, Nat'l Low Income Hous. Coal., Out of Reach 2008: Rental Housing and the Current Crisis (July 24, 2008) [hereinafter NLIHC].

¹³ GEOFF SMITH, WOODSTOCK INST., FORECLOSURE CRISIS IMPACTS CHICAGO'S RENTAL HOUSING MARKET 2 (2008) (noting that in 2007, 35% of 13,872 foreclosure filings in Chicago were on 2-6 unit buildings). *See, e.g.*, CHRISTOPHER L. FOOTE ET AL., FED. RESERVE BANK OF BOSTON, SUBPRIME FACTS: WHAT (WE THINK) WE KNOW ABOUT THE SUBPRIME CRISIS AND WHAT WE DON'T 5 (2008) (finding that in Massachusetts, multi-family dwellings account for only 10% of residential property but almost 30% of foreclosures); John Fraser, 2008 Foreclosures by Property Type for Lowell and Lawrence, MERRIMACK VALLEY HOUS. REP. (UMASS Lowell/Middlesex North Registry of Deeds), July 2008, at 2 (finding that for two Massachusetts counties, multi-family properties make up a disproportionate number of foreclosures); NLIHC, *supra* note 12 ("25% of foreclosure filings in Kalamazoo, MI, were renter occupied", 60% of filings affected renters in Minneapolis, and 29% affected renters in Mecklenburg

The scale of the foreclosure crisis is likely even greater for renters than these numbers indicate because of the emergence of new types of rental fraud.¹⁴ One type of fraud involves owners in default on their mortgage payments who know that their properties will soon enter foreclosure. The owners lease the properties out to unsuspecting renters, collect security deposits and rent, and disappear when the foreclosure process formally begins.¹⁵ Another fraud scheme involves individuals posing as landlords, and renting properties (often left vacant due to foreclosure) that they do not own.¹⁶ In this scam, the purported landlord collects security deposits and the first month's rent from tenants, even though the purported landlords have no legal possession of the property.¹⁷ When the real owner of the property (the mortgage holder or person who purchased the property at the foreclosure auction or from the bank's inventory) discovers the fraud, the tenants are evicted.¹⁸

Tenants in rental housing that is foreclosed upon face the costs and disruption of having to find a new apartment and move, often with little notice, and are unlikely to be able to recover their security deposits. Even tenants who are legally protected from foreclosure-related eviction are at risk of losing their homes.

County, N.C.). This data is supported by reports of an increased need for the services of community housing organizations. NLIHC, *supra* note 12 (listing different community housing organizations that have an increased volume of clients requesting foreclosure-related eviction help).

¹⁴ *E.g.*, *How to Protect Yourself from Rental Fraud*, N.Y. DAILY NEWS, Aug. 27, 2008 (explaining that rental fraud "is intimately related to the ongoing mortgage meltdown," and although statistics are not yet available, the "sheer volume of the anecdotes is alarming").

¹⁵ *See, e.g.*, Kelly Bennett, *Renters Caught When Banks Foreclose on Landlords*, VOICE OF SAN DIEGO, Aug. 5, 2008, available at <http://www.voiceofsandiego.org/articles/2008/08/05/news/02renter080508.txt> (describing a situation where a renter was the victim when the landlord purchased a home with stolen identity); Hillary Copsey & Nadia Vanderhoof, *Foreclosures Have Mortgage Fraud on the Rise in St. Lucie*, VERO BEACH PRESS J., Apr. 27, 2008, at A1 (reporting on a victim of renter fraud, and quoting local officials on a recent spike in rental fraud cases).

¹⁶ John Benedict, *Foreclosure Scams—Renters Beware*, E REALESTATEEXEC, Apr. 2008, http://erealestateexec.com/legal_notes/foreclosure_scams.php.

¹⁷ *See, e.g.*, REAL ESTATE FRAUD UNIT, L.A. COUNTY SHERIFF'S DEP'T, VICTIM'S GUIDE TO REAL ESTATE FRAUD [hereinafter VICTIM'S GUIDE]; Brent Whiting, *Fraud Aimed at Renters, Police Warn*, ARIZ. REPUBLIC (Phoenix), Aug. 7, 2008, Valley & State, at 1; Press Release, S.C. Dep't of Consumer Affairs, Residential Rental Scam: Combining Fraud with Risk of Identity Theft (Aug. 6, 2008) (issuing a warning following reports of rental fraud in neighboring states).

¹⁸ *See* VICTIM'S GUIDE, *supra* note 17 ("When the fraud is discovered the tenant is evicted, losing his security and rental deposits."); Benedict, *supra* note 16.

Many tenants are unaware of their rights, so incentives such as “cash for keys” are attractive. “Cash for keys” is industry parlance for the practice some lenders who have acquired the property through foreclosure (or people who have purchased the property at a foreclosure auction or at another point in the foreclosure process) have of offering tenants money to vacate the home and drop any claims to possession.¹⁹ Generally, the new owner tells the tenant that if the tenant does not take advantage of the offer quickly (often within a week), they will still be evicted, but without any compensation.²⁰ New owners have significant success in removing even tenants protected by federal or state laws.²¹

II. TENANTS' RIGHTS

The data in Part I highlights the serious impact the foreclosure crisis is having on tenants; this part discusses tenants' rights throughout the foreclosure process.

Foreclosure laws do not generally mention renters.²² It is unsurprising, therefore, that tenants' rights in the foreclosure process usually are limited. Foreclosure laws vary state by state, but the effect of foreclosure on tenants is not significantly impacted by the state's theory of mortgages or the specifics of the state's foreclosure procedures. Therefore, rather than do an exhaustive fifty state survey, this section first will describe tenants' rights generally, using New York State law as an example, then will highlight a few states that have stronger tenant protections.

¹⁹ Benman, *supra* note 3.

²⁰ Carolyn Said, *Foreclosure's Hidden Victims—The Tenants*, S. F. CHRON., Feb. 7, 2008, at A1 (quoting the director of the Neighborhood Law Corporation, Alex Nguyen, as saying that lenders offer tenants cash to vacate the property in ten days, and if the tenants do not accept the offer, they are evicted).

²¹ *Hearing*, *supra* note 2, at 148 (suggesting lenders who evict tenants illegally be penalized); Temple, *supra* note 3 (“[N]ot all renters are aware of the rules, and not all of the entities that take control of properties try to learn them.”); Jay Fitzgerald, *Foreclosures Hit Tenants; Activists: New Owners Trample on Renters' Rights*, BOSTON HERALD, Oct. 29, 2007, at 28 (“many section 8 tenants panic, and don't fight eviction notices”); Carol Yur, *Foreclosure Crisis Hits Many Local Residents*, DAILY CALIFORNIAN, Oct. 23, 2008 (discussing effectiveness of intimidation tactics).

²² *E.g.*, N.Y. REAL PROP. ACTS. LAW § 1303 (McKinney Supp. 2008) (containing no reference to renters and only requiring that the “foreclosing party” provide the mortgagor with notice of foreclosure).

A. Tenants' Rights in Foreclosure: An Overview

To understand tenants' rights when their landlord's property is foreclosed upon, it is not necessary to have a detailed understanding of mortgage law, but a basic overview is helpful. In New York, as well as the majority of states, the mortgage creates a lien on the property that provides security for the debt.²³ The borrower (the "mortgagor") grants a mortgage to the lender (the "mortgagee"), which gives the lender the right to force a sale of the property if the debt is not repaid.²⁴ If the borrower defaults on the debt by failing to make scheduled mortgage payments, the lender may not take the property immediately.²⁵ The lender must bring a foreclosure action, which is a legal proceeding to terminate the borrower's right to the property.²⁶

There are two main types of foreclosure: judicial foreclosure and non-judicial foreclosure.²⁷ Judicial foreclosure in New York first requires the lender to serve the owner with notice that the lender has begun a legal action to force a sale of the property. The lender must file a notice of pendency (generally known as a *lis pendens*) with the county clerk, which provides constructive

²³ Ann M. Burkhart, *Freeing Mortgages of Merger*, 40 VAND. L. REV. 283, 322 (1987) [hereinafter *Freeing Mortgages*]. A "lien" is "a legal right or interest that a creditor has in another's property . . ." BLACK'S LAW DICTIONARY 941 (8th ed. 2004). New York follows the lien theory of mortgages, but a minority of states follow the title theory. *Freeing Mortgages, supra*, at 322. Under the title theory, the "mortgage is a vested fee simple interest subject to complete defeasance by the payment of the mortgage debt." *Garrison v. Garrison*, 460 A.2d 945, 947 (Conn. 1983). This means that the mortgagee (the lender) has title to the property and the mortgagor (the borrower) only has a right of possession until the debt is paid. Ann M. Burkhart, *Lenders and Land*, 64 MO. L. REV. 249, 267 (1999) [hereinafter *Lenders*] (providing an overview of the differences in foreclosure processes in title and lien theory states). The difference between title theory and lien theory states affects the mechanics of the foreclosure process and how renters' leases are terminated, but does not affect whether or not the tenant has the right to remain on the property. *Id.* at 269. Even in title theory states, the mortgagee still has a redemption period, which is determined by state law. *Id.* at 268. A few states lie somewhere in between the title and lien theories. *Id.*

²⁴ N.Y. REAL PROP. ACTS. LAW § 254 (McKinney 2006).

²⁵ See generally §§ 1301-1391, 1401-1461 (McKinney 1979 & Supp. 2008) (describing the process which must occur in order to foreclose on a mortgage) (§§ 1401-1461 to be repealed by L. 1998, c. 231 § 2, effective July 1, 2009).

²⁶ See §§ 1351-52, 1411 (explaining the effect of each of the foreclosure proceedings). New York only allows non-judicial foreclosure if permitted under the terms of the lease, for buildings with six or more units, and the mortgagee does not plan to terminate tenants' leases.

²⁷ Grant S. Nelson & Dale A. Whitman, *Reforming Foreclosure: The Uniform Nonjudicial Foreclosure Act*, 53 DUKE L.J. 1399, 1403 (2004).

notice to the general public of the suit.²⁸ Next, there is a judicial hearing to obtain a “judgment of sale,” which, if the foreclosing lender prevails, directs the county sheriff, or other designated individual, to sell the property.²⁹

Non-judicial foreclosure is generally faster than judicial foreclosure, but, in New York, is permitted only in limited circumstances for residential buildings.³⁰ For non-judicial foreclosure, the lender must publish a notice of sale in a local newspaper and serve a copy on the mortgagor, describing the property, mortgage, sum due, and time and place of the sale.³¹ The sale is then conducted at a public auction.³²

Under either judicial or non-judicial foreclosure, proceeds from the sale are applied to repayment of the debt secured by the foreclosed mortgage (after payment of any outstanding superior liens, such as property taxes), with any surplus paid to the homeowner.³³ The foreclosing lender will acquire the property if there are no bids in excess of the amount set by the lender.³⁴ Both types of foreclosures provide an opportunity for a defaulting mortgagor to pay off the remainder of the debt before the sale and maintain ownership of the property, which is called the “right of redemption.”³⁵ If borrowers do not exercise their right of redemption, all their rights to the property are extinguished by the foreclosure sale.³⁶ When the defaulting mortgagor is a

²⁸ N.Y. REAL PROP. ACTS. LAW §§ 1303, 1331. Lis pendens is “a notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome.” BLACK’S LAW DICTIONARY 950 (8th ed. 2004).

²⁹ N.Y. REAL PROP. ACTS. LAW § 1351 (McKinney 1979 & Supp. 2008).

³⁰ See § 1401 (to be repealed by L. 1998, c. 231, § 2, effective July 1, 2009). See generally FORECLOSURE LAW & RELATED REMEDIES: A STATE-BY-STATE DIGEST 408 (Sindey A. Keyles ed., 1995) (providing information on each state’s judicial and non-judicial foreclosure laws).

³¹ N.Y. REAL PROP. ACTS. LAW §§ 1404-05.

³² § 1408.

³³ § 1409.

³⁴ Generally the lender will only acquire the property if there are no bids in excess of the amount of the outstanding debt. Real estate acquired by the foreclosing lenders is generally referred to as “real estate owned” or “REO” property.

³⁵ N.Y. REAL PROP. ACTS. LAW § 1341 (McKinney 1979). Until purchase, the lender only has a possessory interest in the property that is subject to the borrower’s equitable or statutory right of redemption. In New York, that statutory right of redemption allows the borrower to redeem the property after a judgment of sale, but before the sale is completed. See, e.g., Chase Manhattan Bank v. Josephson, 638 A.2d 1301, 1305 (N.J. 1994).

³⁶ N.Y. REAL PROP. ACTS. LAW § 1352.

landlord, and that landlord fails to exercise the right of redemption and loses the property, tenants are at risk of having their leases terminated.³⁷ Once leases are terminated, the purchaser has the option to evict the tenants.³⁸

Although the time required to complete foreclosure varies by state, judicial foreclosure generally entails a longer process.³⁹ While non-judicial foreclosure ranges from three to eight months, judicial foreclosure generally takes over a year (for example, New York City judicial foreclosure typically lasts eighteen months).⁴⁰

Tenants' statutory rights in this process can be viewed at three points: (i) as of the signing of the lease (because the timing of the lease determines its priority compared to the mortgage), (ii) during the foreclosure process (when tenants have the right to be joined in a judicial foreclosure proceeding), and (iii) between the beginning of foreclosure and the time the tenant moves out (when tenants may have rights regarding notice of the foreclosure or before eviction).

1. Priority

The order of priority between the lease and the mortgage determines whether or not the lease may be terminated by a foreclosure proceeding (absent any of the other factors described in this section).⁴¹ Generally, the priority of property interests is determined by the common-law rule of "first in time, first in right."⁴² This means that creditors who have a lien on a property

³⁷ See 74 N.Y. Jur.2d *Landlord and Tenant* § 236-37 (1999) (explaining that even though foreclosure terminates the lease, the tenant may have a claim for breach of the covenant for quiet enjoyment).

³⁸ See 74 N.Y. Jur.2d *Landlord and Tenant* § 307 (1999); see also *Knickerbocker Oil Corp. v. Richfield Oil Corp.*, 254 N.Y.S. 506, 511 (2d Dep't 1931).

³⁹ See 74 N.Y. Jur.2d *Landlord and Tenant* § 307 (1999).

⁴⁰ See generally Jenny Schuetz et al., *Neighboring Effects of Concentrated Mortgage Foreclosures*, 17 J. Hous. Econ. (forthcoming 2008) (manuscript at 7, on file with Furman Ctr. for Real Estate and Urban Policy) (discussing the effect of foreclosure laws on the length of the process); Nat'l Low Income Hous. Coal., *Foreclosure and Eviction Practices by State*, July, 25, 2008, <http://www.nlihc.org/doc/State-Foreclosure-Chart.pdf> (listing the time frames of foreclosures by state, with the shortest non-judicial foreclosures taking as little as eighty-five days, and lengthier judicial foreclosures taking up to 355 days).

⁴¹ See *infra* pp. 14-17 (discussing states with statutory protection that override priority of liens rules).

⁴² *E.g.*, *United States v. City of New Britain*, 347 U.S. 81, 85 (1954) ("The principle is believed to be universal, that a prior lien gives a prior claim, which is entitled to prior satisfaction . . ."); *United States v. McDermott*, 507 U.S. 447, 449 (1993) ("Absent provision to the contrary, priority for purposes of federal law

that was chronologically first have priority over any subsequent liens on the property. Because mortgages and leases are, in this sense, both liens on property, leases signed prior to execution of the mortgage have priority over the mortgage, and remain in force after foreclosure.⁴³ But this situation would likely occur only if the landlord refinanced the property after leases were already in force.⁴⁴ In this situation, the purchaser at the foreclosure sale becomes the new landlord and the tenancies continue. However, much more commonly, the “first in time, first in right” rule results in lease termination. Except in the aforementioned case of refinancing, property owners generally execute mortgages concurrently with purchase, well before rental leases are signed. Because leases made subsequent to the mortgage are subordinate to that mortgage, when the mortgagee commences a foreclosure proceeding, the mortgage lien takes priority over the lease lien. These leases are then terminated by foreclosure, and the purchaser at the foreclosure sale may evict the tenants.⁴⁵

There are a couple of exceptions from the general rule that subordinate leases are terminated by foreclosure. The first exception is for federally subsidized Section 8 housing and, in New York City and some localities of California, for residents of rent stabilized and rent controlled apartments.⁴⁶ Leases under

is governed by the common-law principle that “the first in time is the first in right.”); *MetLife Ins. Co. v. U.S.*, 194 N.Y.S.2d 168, 172 (1st Dep’t 1959). However, states may statutorily alter the “first in time, first in right rule.” See, e.g., *State of Wash. v. Hi-Lo Foods, Inc.*, 383 P.2d 910, 913 (Wash. 1963) (referring to “the state’s undoubted power to fix priority in liens . . .”); *McMillen Feed Mills, Inc. v. Mayer*, 220 S.E.2d 221, 221 (S.C. 1975) (interpreting a state statute changing lien priority).

⁴³ See, e.g., *Gorin v. Stroum*, 192 N.E. 90, 92 (Mass. 1934) (“[T]he rights of a tenant in possession of real estate, under a lease given prior to the execution of a mortgage of the same premises, are not extinguished by a foreclosure of the mortgage, and that the purchaser at a foreclosure sale . . . becomes the landlord of the lessee.”); *United Gen. Ins. Agency v. Am. Nat’l Ins. Co.*, 740 S.W.2d 885, 886 (Tex. Ct. App. 1987).

⁴⁴ *Gorin*, 192 N.E. at 92.

⁴⁵ In New York, the purchaser may do so by bringing an eviction proceeding and showing the deed or a copy of the deed acquired at the foreclosure sale. N.Y. REAL PROP. ACTS. LAW § 713 (McKinney 1979). The purchaser of the property, of course, has the option not to evict the tenants and instead create new tenant agreements. See Morton P. Fisher, Jr. & Richard H. Goldman, *The Ritual Dance Between Lessee and Lender- Subordination, Nondisturbance and Attornment*, 30 REAL PROP. PROB. & TR. J. 355, 369-70 (1995).

⁴⁶ N.Y. COMP. CODES R. & REGS. tit. 9, § 2504.1 (West 1974); N.Y. COMP. CODES R. & REGS. tit. 9, § 2524.1 (West 1987); Aleksandra Todorova, *Renters Face Eviction as Lenders Foreclose on Properties*, SMART MONEY, Nov. 27, 2007.

Section 8 may only be terminated “for serious or repeated violation of terms or conditions of the lease or for other good cause,” and rent paying tenants in rent regulated apartments cannot be evicted except for statutorily defined reasons that do not include foreclosure.⁴⁷ The second exception is leases that include a Subordination, Non-Disturbance and Attornment Agreement (“SNDA”) provision.⁴⁸ These provisions accomplish three things: first the lease is contractually subordinated to the mortgage even if it is chronologically superior; second, in the event of foreclosure, the lender agrees not to disturb the renter’s tenancy, which generally requires the lender to continue with all the responsibilities of the lease including repairs and utilities; and third, after foreclosure, the tenant agrees to recognize the lender as a landlord.⁴⁹ Therefore, these clauses protect tenants from foreclosure-related eviction.⁵⁰

2. Joinder

Although lease priority determines whether a purchaser may evict tenants, the purchaser must prove ownership of the

⁴⁷ 42 U.S.C.S. § 1437(d)(1)(5) (LexisNexis 2006); N.Y. COMP. CODES R. & REGS. tit. 9, § 2524.1(a) (West 1987) (“As long as the tenant continues to pay the rent to which the owner is entitled, no tenant shall be denied a renewal lease or be removed from any housing accommodation by action to evict . . . except on one or more of the grounds specified in this Code.”); BERKELEY, CAL., ORDINANCE FOR RENT STABILIZATION AND EVICTION FOR GOOD CAUSE, § 13.76.130 (1980); L.A., CAL., RENT STABILIZATION ORDINANCE § 151.09 (1979). See generally Esme Caramello, Clinical Instructor, Harvard Law School, Preserving Section 8 Tenancies After Foreclosure, Presentation before Shriver Center National Center on Poverty Law (Oct. 2, 2008) (outlining the legal issues Section 8 tenants may face after foreclosure); see also *Drury v. Sidney Davis, Inc.*, 116 N.Y.S.2d 118, 119 (Sup. Ct. 1952) (“The judgment of foreclosure does not strip the tenant of the shielding protection given him by the restraints against eviction contained in the emergency rent laws.”); L.A. HOUS. DEPT., FORECLOSURES IN RENT-STABILIZED PROPERTIES (2008).

⁴⁸ The protection provided by SNDAs is probably not significant for residential tenants, as the provisions are more common in commercial leases. For a discussion of such agreements see, Fisher & Goldman, *supra* note 45. See also *Dover Mobile Estates v. Fiber Form Prods.*, 270 Cal. Rptr. 183, 185 (Ct. App. 1990) (“A lease may also be deemed subordinate by virtue of a subordination agreement.”); David P. Kassoy, *The Tension Between Lenders and Credit Tenants Over SNDAs*, 23 L.A. LAW. 16, 16 (2001) (defining and explaining the purpose of SNDAs); Michael H. Rubin & S. Jess Sperry, *Lease Financing in Louisiana*, 59 LA. L. REV. 845, 867, 869 (1999).

⁴⁹ Kassoy, *supra* note 48, at 16.

⁵⁰ Cf. Jeremy B. Fox, *Foreclosure Protection not Always the Deal it Seems*, WASH. BUS. J., Apr. 12, 2002 (cautioning lease signers from hastily entering into SNDA agreements to avoid eviction in foreclosure because of other unintended consequences of the agreements such as requiring consent for subleasing).

property and bring an eviction action against the tenants before an eviction will be legally enforced.⁵¹ In New York, tenants have a right to be joined as parties to judicial foreclosure proceedings.⁵² After a foreclosure sale, the new owner may not evict the tenant unless the tenant was joined as a party to the foreclosure proceeding because it would violate due process to enforce a judgment against someone who was not a party.⁵³ However, the new owner is not barred from bringing another action against the tenant to complete eviction.⁵⁴ In New York, this second action forces tenants to either exercise their right of redemption (an opportunity to pay off the debt and gain ownership of the property), or be precluded from claiming "any title or interest in the subject property," including a possessory interest.⁵⁵ Therefore, except in the unusual case where the tenant is able to redeem the property, failure to be joined to the foreclosure proceeding does not prevent the purchaser from eventually evicting the tenant.⁵⁶

The foreclosing party's failure to join the tenants in the foreclosure action can offer some relief for tenants, however.

⁵¹ *E.g.*, N.Y. REAL PROP. ACTS. LAW § 713(5) (McKinney 1979 & Supp. 2008).

⁵² § 1311(1).

⁵³ *E.g.*, County Fed. Sav. & Loan Ass'n. v. First Penn. Realty Corp., 23 N.Y.2d 680, 682 (1968); Gibbs v. Kinsey, 566 N.Y.S.2d 117, 117 (4th Dep't 1991) ("Due process requires that one be given notice and an opportunity to be heard before one's interest in property may be adversely affected by judicial process."); Nationwide Assocs. v. Brunne, 629 N.Y.S.2d 769, 769 (2d Dep't 1995); Green Point Sav. Bank v. Defour, 618 N.Y.S.2d 169, 171 (Sup. Ct. 1994) (holding that a tenant who is not a party to the foreclosure action is not bound by the judgment and cannot be evicted pursuant to it; "[t]he interest of an occupant of the mortgaged premises who is not served remains unaffected by foreclosure."); SI Bank & Trust v. Sheriff of the City of N.Y., 751 N.Y.S.2d 794, 794 (2d. Dep't 2002); Marine Midland Bank v. Freedom Rd. Realty Assocs., 611 N.Y.S.2d 34, 35 (2d Dep't 1994) ("The absence of a necessary party in a mortgage foreclosure action simply leaves that party's rights unaffected by the judgment of foreclosure and sale."); Polish Nat'l Alliance of Brooklyn v. While Eagle Hall Co., 470 N.Y.S.2d 642, 646 (2d Dep't 1983) (explaining that "RPAPL 1311 codifies the equitable principle that persons holding title to the premises or acquiring any right to or lien on the property subsequent to the mortgage should be made defendants in the foreclosure action.").

⁵⁴ In New York, the buyer would bring a "judgment foreclosing right of redemption" or an "action to determine claims where foreclosure of mortgage was void or voidable." §§ 1352, 1503.

⁵⁵ *E.g.*, 6820 Ridge Realty v. Goldman, 701 N.Y.S.2d 69, 75 (2d Dep't 1999) (finding that failure to exercise right to redeem extinguishes all interests including possessory interests).

⁵⁶ Even these limited procedural safeguards do not apply to month-to-month tenants. *Oligbo v. Louis* (*In re Oligbo*), 328 B.R. 619, 638 (Bankr. E.D.N.Y. 2005).

First, the delay caused by the second proceeding provides tenants with time to prepare to move. Second, it gives tenants an opportunity to be heard in court and to contest the purchaser's title to the property. In the current crisis, mortgages have been sold so frequently that it is sometimes difficult for purchasers to prove ownership. Courts have traditionally been lax about this proof, but two federal district court judges in Ohio recently dismissed thirty-seven foreclosure cases because the lenders did not have proper documentation of ownership.⁵⁷ Third, some purchasers of foreclosed properties may never bring a claim to terminate a tenant's lease. If the tenant continues to pay rent after the foreclosure proceeding, and the purchaser does not bring an eviction proceeding against the tenant, a new tenancy or an attornment (a tenant agreement to be bound to a new landlord) may be created.⁵⁸ In New York, attornment occurs if the tenant pays rent to the purchaser and the purchaser accepts it; both parties are then bound by the terms of the original lease.⁵⁹ Therefore, tenants should always continue to pay rent after a foreclosure sale if they wish to remain on the property.⁶⁰

⁵⁷ *In re* Foreclosure Actions, Nos. 1:07cv1007 et al., 2007 WL 4034554, at *1 (N.D. Ohio Nov. 14, 2007) (“[A]n affidavit alone, in which the affiant simply attests that the plaintiff is the owner and holder of the note and mortgage, is insufficient to comply with Section 1.2.5’s ‘documentation’ requirement.”); *In re* Foreclosure Cases, Nos. 1:07CV2282 et al., 2007 WL 3232430, at *3 n.3 (N.D. Ohio Oct. 31, 2007) (explaining that the courts “must act as gatekeepers” in ensuring that plaintiffs have standing); *Hooksett v. Boynton*, No. 2007-675, 2008 WL 3893223, at *2-3 (N.H. Aug. 20, 2008) (finding insufficient proof that plaintiff was owner of property). Judge Boyko wrote a colorful opinion denying standing to the plaintiffs because they did not meet documentary requirements: “The Court will illustrate in simple terms its decision: ‘Fluidity of the market’-‘X’ dollars, ‘contractual arrangements between institutions and counsel’-‘X’ dollars, ‘purchasing mortgages in bulk and securitizing’- ‘X’ dollars, ‘rush to file, slow to record after judgment’-‘X’ dollars, ‘the jurisdictional integrity of the United States District Court’-‘Priceless.’” *In re Foreclosure Cases*, 2007 WL 3232430, at *3 n.3.

⁵⁸ Fisher & Goldman, *supra* note 45, at 369.

⁵⁹ See 9 WARREN’S WEED NEW YORK REAL PROPERTY, § 96.210 EFFECTING ATTORNMENT TO PURCHASER (Lorraine Power Tharp et al. eds., 5th ed. 2004) (2007); N.Y. REAL PROP. LAW § 224 (McKinney 2006); *Kelley v. Osborn*, 157 N.Y.S. 1100, 1101 (1st Dep’t 1916).

⁶⁰ *E.g.*, MassLegalHelp.org, Landlord-Tenant Relationship After Foreclosure, <http://masslegalhelp.org/housing/landlord-tenant-relationship-after-foreclosure> (last visited Oct. 21, 2008) (informing tenants to send a letter to the purchaser inquiring to whom to send rent, and to put the rent money in a separate account if they cannot determine the new landlord).

3. Notice

Finally, for tenants whose leases are terminated by foreclosure proceedings, it is important whether or not notice of foreclosure is required, and how much time the notice of eviction gives the tenant to vacate. "Notice of foreclosure" refers to the official notice served by the lender on the borrower (and in some cases on the tenants) that foreclosure proceedings have begun. "Notice of eviction" refers to the length of time statutorily required between the termination of a tenant's lease and the day when the tenant must relinquish possession of the property. Notice at either stage provides tenants some opportunity to assess their rights and prepare for the costs and disruption of moving. Most states (in both judicial and non-judicial foreclosure proceedings) do not require notice of foreclosure for tenants.⁶¹ A lender filing for judicial foreclosure in New York, for example, is not currently required to serve notice of foreclosure on tenants (although a pending bill would change that).⁶² Generally in non-judicial foreclosure proceedings publication of the foreclosure sale in local newspapers is required, but notice specifically targeted at tenants is not.⁶³

In those states that do not require notice of foreclosure for tenants, frequently tenants are unaware that their landlords have entered the foreclosure process, and do not realize they are at risk of being evicted from their homes until a notice to vacate the property appears on their door. New owners, especially banks, generally act very quickly once they acquire property to terminate tenants' leases, and in most states, once the lease is terminated, the formal eviction process moves rapidly.⁶⁴ A tenant could be given as little as three days' notice to vacate the property before a judicial eviction action is commenced.⁶⁵ Based on reports

⁶¹ For a discussion of states that currently require notice of foreclosure filing be provided to tenants see *infra* pp. 14-17.

⁶² Assemb. B. 06984, 2007-2008 Leg. Reg. Sess. (N.Y. 2007) (pending bill currently "held for consideration in judiciary," explaining the current state of New York law as "[i]f the residing person at the foreclosed property is a tenant . . . he or she will not receive a notice," and proposing to change it so that tenants are served with notice of foreclosure at the same time as the landlord is served with such notice).

⁶³ *E.g.*, N.Y. REAL PROP. ACTS. LAW § 1402 (McKinney 1979 & Supp. 2008) (repealed by L.1998, c. 231, § 2, effective July 1, 2009).

⁶⁴ *Hearing, supra* note 2, at 141 ("[I]f the foreclosing bank takes title, it evicts the renter households very quickly—usually with only three to thirty days' notice.")

⁶⁵ A notice to vacate gives the tenant some amount of time to leave the

of housing counselors, the National Low Income Housing Coalition estimates that half of the renters evicted due to landlord foreclosures have less than thirty days to leave the property.⁶⁶

B. Tenants' Rights: States with Stronger Protections

Several states protect tenants from the consequences of foreclosure by superseding the general mortgage and foreclosure rules with statutes requiring landlords to have a "just cause" before evicting tenants, or by modifying foreclosure rules to require more lengthy notice periods for tenants who might be evicted.⁶⁷

First, "just cause" or "good cause" provisions provide renters with protections similar to those of Section 8 and rent regulation statutes.⁶⁸ Although these "just cause" laws were not enacted in reaction to the current foreclosure crisis, they are nonetheless effective protections for tenants in the event of foreclosure. Washington, D.C., New Jersey, and New Hampshire all have just cause provisions similar to each other and to rent regulation statutes.⁶⁹ Generally, a just cause provision means that landlords are unable to evict renters except in statutorily defined circumstances (such as nonpayment of rent). Because foreclosure

property before a formal judicial process is begun. OHIO REV. CODE ANN. § 1923.04 (LexisNexis 2004 & Supp. 2008) (requiring notice be provided to tenants that they have three days to vacate the property before an eviction action is commenced); NEV. REV. STAT. ANN. § 40.255 (LexisNexis 2006) (requiring only three days' notice to quit before eviction commenced). Failing to vacate before the formal eviction process begins provides tenants with more time to prepare to move, but an eviction record can make it difficult to find new rental housing.

⁶⁶ Keith Wardrip, Research Analyst, Nat'l Low Income Hous. Coal., *Foreclosure's Invisible Victims: Recent Research on the Foreclosure Crisis 8* (July 23, 2008) (reporting that "86% of housing counselors report that renters typically have less than 2 months to vacate a foreclosed property; [and] 51% report less than 1 month").

⁶⁷ See, e.g., D.C. CODE ANN. § 42-3505.01 (LexisNexis 2006); N.J. STAT. ANN. § 2A:18-61.1 (West 2000 & Supp. 2008); N.H. REV. STAT. ANN. § 540:2 (2007).

⁶⁸ See, e.g., D.C. CODE ANN. § 42-3505.01.

⁶⁹ § 42-3505.01 ("Except as provided in this section, no tenant shall be evicted from a rental unit . . . so long as the tenant continues to pay the rent . . ."); N.J. STAT. ANN. § 2A:18-61.1 (West 2000 & Supp. 2008); N.H. REV. STAT. ANN. § 540:2 (2007). The New Hampshire law is more restrictive than the others because it does not apply to "single-family houses acquired . . . through foreclosure" or "rental units in an owner-occupied building [with] 4 dwelling units or fewer." § 540:1-a(I)(b), (d). In addition, some cities have "just cause" protections. E.g., SEATTLE, WASH., MUNICIPAL CODE § 22.206.160(C) (2008); CHI., ILL., MUNICIPAL CODE § 5-12-130 (2008).

is not listed as a cause to evict tenants, it is not a valid reason for eviction.

Arguably, eviction after a foreclosure would not trigger the protections of the D.C. and New Jersey statutes.⁷⁰ As discussed in Part I, when a lease is junior to the mortgage, purchasers at foreclosure sales are not required to continue tenancies and may evict any tenants.⁷¹ Therefore, purchasers are not necessarily included in the statutory prohibition against “landlords” evicting tenants without just cause, because the right to evict tenants from foreclosure arises before purchasers have taken on any landlord duties. The courts have found, however, that these just cause provisions do apply in foreclosure.⁷² For example, the New Jersey just cause statute covers purchasers by forbidding evictions against any person who “*was* a tenant of a landlord” so that “the owner’s or landlord’s successor in ownership or possession” can gain possession.⁷³ The New Jersey Supreme Court interpreted this language to cover all foreclosure sale purchasers.⁷⁴ The D.C. court also disposed of the problem through statutory interpretation.⁷⁵ Therefore, in jurisdictions with “just cause” rules, tenancies are not terminated by foreclosure even when the lease is junior to the mortgage.

Second, some states have strengthened notice requirements specifically to provide relief for renters in the current foreclosure

⁷⁰ *Guttenberg Sav. & Loan Ass’n v. Rivera*, 428 A.2d 1289, 1298 (N.J. 1981) (holding that the New Jersey Anti-Eviction Act did not apply to tenants evicted due to foreclosure), *overruled by Chase Manhattan Bank v. Josephson*, 638 A. 2d 1301, 1314 (N.J. 1994). The New Hampshire statute avoids this problem because it covers all “lessors” or “owners” of property. N.H. REV. STAT. ANN. § 540:2.

⁷¹ See *supra* note 43 and accompanying text.

⁷² See, e.g., *Adm’r of Veterans Affairs v. Valentine*, 490 A.2d 1165, 1170 (D.C. 1985) (holding that the just cause provision applies to properties after foreclosure, therefore, foreclosure is not an appropriate reason to evict tenants), *aff’d*, *Merriweather v. D.C. Bldg. Corp.*, 494 A.2d 1276, 1276 (D.C. 1985) (“In this appeal the court is asked to decide whether a tenant holding over after foreclosure is entitled to the eviction protections of the Rental Housing Act We hold on the authority of [*Valentine*] that the eviction protections survived foreclosure.”).

⁷³ N.J. STAT. ANN. § 2A:18-61.3b (West 2000) (emphasis added).

⁷⁴ *Chase Manhattan Bank*, 638 A.2d at 1314 (holding that the anti-eviction act “protects tenants from eviction by foreclosing mortgagees irrespective of whether their tenancy was established before or after the execution of the mortgage”).

⁷⁵ The D.C. court skirts the “landlord” problem by stating that “landlord,” “tenant,” and “rental unit” in the just cause statute should not be interpreted technically, but by ordinary usage, so all people “who *have been renting* apartments and who continue to pay the rent” are protected. *Valentine*, 490 A.2d at 1169-70.

crisis. There are two opportunities to provide tenants with time to prepare for a move. First, when the lender initiates foreclosure proceedings, some states require the lender to serve tenants a notice of foreclosure.⁷⁶ For example, California requires that a sign be posted on the rental property when foreclosure is commenced.⁷⁷ Second, after the lender completes foreclosure and terminates tenants' leases, some states have lengthened the time required before eviction is authorized. For example, Illinois recently increased its post-foreclosure eviction notice requirement to 120 days or the duration of the tenant's lease; whichever is shorter.⁷⁸ Tenants, accordingly, have up to 120 days from the date the purchaser terminates their lease before eviction.⁷⁹ This will not provide protection for tenants on month-to-month leases, however, because the duration of their leases, thirty days, is shorter than the new 120 days notice period.⁸⁰ In addition to notice of foreclosure, California also requires a sixty days' eviction notice before tenants must relinquish possession.⁸¹ These

⁷⁶ See, e.g., D.C. CODE ANN. § 42-3505.01 (LexisNexis 2006); MINN. STAT. ANN. § 580.03 (West 2000 & Supp. 2007) ("Six weeks' published notice shall be given . . . and at least four weeks before the appointed time of sale a copy of such notice shall be served . . . upon the person in possession of the mortgaged premises . . .").

⁷⁷ The required sign must say: "Foreclosure process has begun on this property, which may affect your right to continue to live in this property. Twenty days or more after the date of this notice, this property may be sold at foreclosure." CAL. CIV. CODE § 2924.8 (a) (West 2008). Minnesota also requires that tenants receive notice of foreclosure. MINN. STAT. ANN. § 580.03 ("[N]otice shall be given that such mortgage will be foreclosed by sale . . . and at least four weeks before the appointed time of sale a copy of such notice shall be served . . . upon the person in possession of the mortgaged premises . . .").

⁷⁸ 735 ILL. COMP. STAT. ANN. 5/15-1701 (h)(4) (West Supp. 2008) ("In a case of foreclosure where the tenant is current on his or her rent, any order of possession must allow the tenant to retain possession of the property covered in his or her rental agreement (i) for 120 days following the notice of the hearing on the supplemental petition that has been properly served upon the tenant, or (ii) through the duration of his or her lease, whichever is shorter. This item (4) shall only apply if the tenant continues to pay his or her rent in full during the 120-day period.").

⁷⁹ See 5/15-1701 (h)(4).

⁸⁰ Many month to month tenants are low-income. See Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. REV. 503, 508, 540 (1982); see also Maria Lerman Hutkin, *Using Bankruptcy to Pay the Rent Via the Automatic Stay*, 63 S. CAL. L. REV. 181, 205 (1989); Michael H. Schill, *Distressed Public Housing: Where Do We Go From Here?*, 60 U. CHI. L. REV. 497, 516 n.115 (1993); Kathryn B. Richards, Note, *The Illinois Condominium Property Act: An Analysis of Legislative Efforts to Improve Tenants' Rights in the Condominium Conversion Process*, 57 DEPAUL L. REV. 829, 847 (2008).

⁸¹ CAL. CIV. CODE § 2924.8 (a). The rest of the notice sign in California must

increased notice requirements mitigate the effect foreclosures have on tenants by providing them with time to determine their rights in their current home or find a new home.

Although currently most of the nation's tenants are not protected from the consequences of foreclosure, that is changing. The next part of this article will discuss protections that have been proposed across the country.

III. MITIGATING FORECLOSURE'S IMPACT ON TENANTS: ANALYSIS OF LOCAL PROPOSALS

Many state and local governments are debating proposals to shelter renters from the worst consequences of the foreclosure crisis. The next subsection assesses those proposals. But the fact that such proposals are seen as necessary raises questions about why tenants are being forced out of foreclosed properties, rather than being allowed to stay. Subsection B addresses that question.

A. Proposals to Increase the Protections Available to Tenants Whose Landlords are Foreclosed

Some proposals seek to mitigate the impacts of the crisis with increased funding for outreach, and pro bono services to better inform tenants of the rights they already have, advise them about what they can do to protect themselves if their property enters foreclosure, and warn them against fraud by landlords or people posing as landlords.³² Others aim to enact laws that provide

contain the following language: "If you are renting this property, the new property owner may either give you a new lease or rental agreement or provide you with a 60-day eviction notice. However, other laws may prohibit an eviction in this circumstance or provide you with a longer notice before eviction. You may wish to contact a lawyer . . ." § 2924.8 (a). Massachusetts, Minnesota, and Montana also have relatively strong notice laws. Massachusetts requires thirty days from the notice of lease termination before eviction. MASS. GEN. LAWS ANN. ch. 186, § 13 (West Supp. 2008). The Minnesota government modified their tenant protections in August 2008 to require two month's notice of eviction be given no sooner than one month after the tenants' lease is terminated. MINN. STAT. § 504B.285 (West 2002) (amended 2008). In Montana, ten days after a foreclosure sale, the tenants become tenants at will and may be evicted with thirty days notice. MONT. CODE ANN. §§ 71-1-319, 70-24-441 (2007).

³² For example, "Borrower Outreach Days" are now held in Ohio and Chicago. Press Release, Ohio Treasurer of State, Borrower Outreach Day Returns to Youngstown on August 12 (Aug. 4, 2008); Press Release, Chicago Mayor's Office, Borrower Outreach Days Help Hundreds of Chicagoans (Jan. 30, 2008). As a practical matter, even once protections are in place, a lack of information about

tenants more time to prepare for eviction by requiring notice to the tenant that the foreclosure process has started.⁸³ Still others involve plans to mitigate post-foreclosure impacts on tenants that range from including emergency rental and moving assistance for tenants suddenly forced out of their homes to expunging foreclosure evictions from tenants' rental records.⁸⁴

States also are debating how best to prevent utility shut-offs and maintenance decline during foreclosure proceedings.⁸⁵ Landlords in default often stop making utility payments, leaving renters without electricity, water or sewer service before the

the complex foreclosure process can make new rights harder to enforce. For example, tenants report experiencing difficulty identifying their new landlord, which can cause them to fall behind on rent, providing the new landlord with a just cause for eviction. Proposals to improve communication include sending tenants in foreclosed homes information on the foreclosure in multiple languages. See Temple, *supra* note 3 (explaining that San Francisco plans to send multi-lingual notices to tenants about foreclosure).

⁸³ See, e.g., Assem. B. 06984, *supra* note 62 (pending legislation in New York that would require that all tenants receive a copy of the notice of foreclosure served upon the property owner); see also Brian Albrecht, *Renters to Get Early Warning; Often Aren't Aware of Foreclosures*, THE PLAIN DEALER (Cleveland), July 26, 2008, at B1 (discussing new early notification program effort to give tenants six months to prepare to move); *Lawmakers Plan Housing Law Changes*, ASSOCIATED PRESS – ALERT (Cal.), Aug. 5, 2008 (discussing a new proposal requiring landlords to inform potential tenants if the rental property has a notice of default against it). In November of 2007, the U.S. House of Representatives passed a bill that included a requirement that tenants receive notice of foreclosure; however, the Senate has not yet voted on the bill. H.R. 3915, 110th Cong. (as passed by House, Nov. 15, 2007).

⁸⁴ See Allan Appel, *Housing Authority Tackles Prison Re-Entry, Foreclosure Crisis*, NEW HAVEN INDEP., Aug. 14, 2008, available at http://www.newhavenindependent.org/archives/2008/08/housing_authori_3.php; Fran Spielman, *Daley Seeks to Aid Tenants Hurt When Landlords in Foreclosure; Aid Program Can Pay 3 Months' Rent*, CHI. SUN-TIMES, Aug. 15, 2008, at 13 (reporting on a City Hall plan to increase emergency assistance by providing moving expenses and up to three months of rent for those eligible); 37 U.S.C.A. § 406 (West Supp. 2008) (regarding assistance to members of the military transferring stations); Karen Jowers, *New Law Helps Renters Forced Out by Foreclosure*, ARMY TIMES, Aug. 18, 2008, at 29 (reporting on federal government offering moving help to members of the military who are evicted because of landlord foreclosure). Eviction records can make finding a new rental property difficult. In August, Minnesota passed a law expunging an eviction from rental records if the tenants either didn't receive notice of the foreclosure or left the property before the end of the redemption period. Minn. Stat. Ann. § 484.014 (2008). See generally *House Passes HOPE VI Extension with Replacement Housing Changes*, 36 HOUS. & DEV. REP.: CURRENT DEV. 39 (2008) (discussing amendments to the Hope VI public housing revitalization program that would protect elderly and disabled tenants from eviction based on the drug-related and criminal activity of household members or guests).

⁸⁵ See *infra* notes 87-90 and accompanying text.

foreclosure is complete.⁸⁶ Massachusetts already requires utility companies to notify tenants before shutting off utilities provided by the landlord.⁸⁷ But because utility companies often lack information on which properties are not owner-occupied, shut downs still occur.⁸⁸ Legislation pending in Rhode Island would require all foreclosure sale purchasers of properties with existing tenants to continue providing “essential services,” including heat and water utility services.⁸⁹ California debated requiring utility companies to notify tenants if their landlords were behind in payment, but Governor Schwarzenegger recently vetoed the legislation.⁹⁰ That bill also would have addressed another harsh consequence of foreclosure for tenants: loss of the security deposit. Although the original landlords are required to return security deposits, tenants are often unaware of this right or are unable to locate their landlord, and have trouble recovering deposits after foreclosure.⁹¹ The California bill would have

⁸⁶ Lynn Arditi, *Foreclosures Leave Some Tenants High and Dry*, PROVIDENCE J., June 19, 2008, at 1 (reporting on the increasing number of tenants facing water or sewer shut offs because of foreclosure); John Glionna, *Renters Fight to Stay in Foreclosed Buildings*, L.A. TIMES, Mar. 12, 2008, at B1 (reporting utility shut-off to push renters out of the building after their landlord left town); Clive McFarlane, *Duct Tape is No Remedy For Sewer Leak*, WORCESTER TELEGRAM & GAZETTE (Mass.), Sept. 26, 2008 (reporting on residents dealing with raw sewage, rats, roaches and maggots since the landlord abandoned the property while foreclosure proceedings are not yet finalized).

⁸⁷ MASS. ANN. LAWS ch. 164, § 124 (LexisNexis 2002).

⁸⁸ See § 124(D); see also MASS. ANN. LAWS ch. 165, § 11(E) (LexisNexis 1974).

⁸⁹ H. 7892, Gen. Assem., Jan. Sess. (R.I. 2008).

Where any dwelling unit of a foreclosed mortgage estate is occupied by a bona fide tenant of the foreclosed mortgagor, and where the foreclosed mortgagor had provided essential services including, without limitation, heat, running water, hot water, electric, or gas to such tenant, any successor in interest to the foreclosed mortgagor shall continue to provide the same essential services under the same terms and conditions to the tenant.

Id.

⁹⁰ Assemb. B. 2586, 2008 Leg. Reg. Sess. (Cal. 2008) (redefining “landlord” to include anyone who acquires property through a foreclosure proceeding; existing law already requires landlords to provide utility service and return of security deposits). See also California Political Desk, *Governor Vetoes Two Consumer-Oriented Foreclosure Bills*, CAL. CHRON., Sept. 25, 2008 (explaining how the proposed bill would aid tenants in getting their safety deposit back); Marc Lifsher, *Gov. Vetoes Bill Loan Oversight Bill*, L.A. TIMES, Sept. 26, 2008, at 3 (Governor Schwarzenegger indicated that he would sign bills “increas[ing] accountability in the real estate market” instead of the bill introduced by Assemblyman Ted Lieu that cracked down on mortgage company advantage-taking).

⁹¹ *E.g.*, TEX. PROP. CODE ANN. § 92.103 (Vernon 1984) (stipulating the landlord obligation to refund security deposit); MASS. GEN. LAWS ANN. ch. 186, § 15B(e) (West 1969) (“A security deposit shall continue to be the property of the

protected tenants from loss of security deposits by making new owners jointly and severely liable for the repayment.⁹² Finally, of course, existing “just cause” laws provide a model for states seeking to prevent eviction. A pending bill in Massachusetts, for example, would prohibit foreclosure as a cause for eviction, stating that “just cause” must be present in order to evict.⁹³

New tenant protections may bring unintended consequences. It is important, therefore, that this debate look beyond the individual tenants, and also consider how tenant protection laws might impact the availability and quality of rental housing more broadly. Municipalities considering whether to enact increased tenant protections should evaluate potential long-term consequences and be careful to avoid unintended negative impacts. The debated tenant protection proposals are clearly tenant-friendly, and they likely would provide some relief for individuals facing eviction after their landlord is foreclosed. There is also a possibility, however, that these proposals could negatively affect renters more broadly by driving up the cost of borrowing (and, as a result, driving up the rent), or by making renting more difficult. For example, if “just cause” eviction is required and foreclosure sale purchasers are responsible for continuing all prior lease agreements, buying a property at foreclosure could become (or be perceived as) more costly.⁹⁴

Frequently, buyers at foreclosure sales are the lenders themselves who are generally banks that lack the desire or expertise to serve as landlords. If foreclosure becomes more costly for the lending banks, those banks may be less likely to lend money to potential landlords, which would drive up the cost of borrowing, and consequently, increase the rent the landlord charges. Alternatively, the lenders could begin to prohibit the borrower from renting. Increased borrowing costs or anti-renting provisions could lead to a reduction in available rental housing. This would be especially problematic for low-income tenants in

tenant . . . and shall not be subject to the claims of any creditor . . . including a foreclosing mortgagee.”)

⁹² Assemb. B. 2586, 2008 Leg. Reg. Sess. (Cal. 2008) (As passed by the California Legislature, Section 3, Subsection 1, of the enactment suggests that Section 1950.5 of the Civil Code will enforce liability on the new landowner who doesn’t return a security deposit in bad faith).

⁹³ H.R. 4734, 185th Gen. Ct., Reg. Sess. (Mass. 2008). *See also* MASS. ALLIANCE AGAINST PREDATORY LENDING, AN ACT REQUIRING JUST CAUSE FOR EVICTION IN FORECLOSED PROPERTIES, FACT SHEET (2008).

⁹⁴ *See infra* pp. 22-25 (discussing the economic consequences of evicting tenants).

need of affordable housing.

New protections also could increase non-financing costs for landlords, which could similarly reduce the stock of affordable rental housing. If states adopt new eviction protections analogous to current "just cause" provisions (requiring "just cause" for any eviction, as opposed to adopting laws that only prohibit eviction due to foreclosure), it will become trickier for current landlords to evict tenants for a variety of reasons unrelated to foreclosure. Landlords may then be less inclined to rent, or require greater background checks, security deposits or qualifying incomes. This would likely disproportionately affect potential tenants who are low income, have bad credit, or any other characteristics the landlord considered risky. If eviction is more difficult or costly, landlords may fear renting to tenants they perceive as risky, which will reduce the options of renters searching for affordable housing.⁹⁵

Although these concerns are strongest for proposals that adopt "just cause" eviction statutes, they also are present for proposals increasing or requiring notice. Notice requirements provide tenants with greater opportunity to object throughout the foreclosure process, which could slow down foreclosure and thereby increase costs for foreclosing mortgagees. Landlords currently are able to convince tenants (even those who are protected by anti-eviction laws) to vacate through "cash for keys" or intimidation schemes. Notice to these tenants would allow them to become informed about their rights and to resist a landlord's pressure to vacate. Also, notice would allow them to insist that landlords go through the formal eviction processes, which would give the tenants an opportunity to raise defenses

⁹⁵ The debate over whether or not increased regulation of the landlord-tenant relationship will ultimately help tenants and improve affordable housing or hurt tenants in the long run and decrease the available stock of affordable housing is not new. See, e.g., Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 520 (1984) (arguing that regulations such as rent control have a detrimental impact on tenants); Duncan Kennedy, *The Effect of the Warranty of Habitability on Low Income Housing: "Milking" and Class Violence*, 15 FL. ST. U. L. REV. 485, 485 (1987) (arguing against the "mainstream" view that the enforcement of the warrant of habitability will hurt tenants); Charles J. Meyers, *The Covenant of Habitability and the American Law Institute*, 27 STAN. L. REV. 879, 903 (1975) (arguing warrant of habitability will likely harm tenants); Robin Powers Kinning, *Selective Housing Code Enforcement and Low-Income Housing Policy: Minneapolis Case Study*, 21 FORDHAM URB. L.J. 159, 159-61 (1993) (providing a helpful overview of the academic literature on the economics of housing regulations).

and cause delays. Increased time and cost of foreclosure could drive up the costs of borrowing, again reducing the supply, and raising the price, of affordable rentals. While these effects are uncertain, it is important for lawmakers to consider long term results so they don't negatively affect the same population they are aiming to protect.⁹⁶

B. Why Do Purchasers Evict Tenants?

The reason that renters are so affected by the foreclosure crisis is that owners who acquire single family and multi-unit properties through foreclosure are choosing to exercise their option to evict the tenants in the building. Encouraging new owners to allow tenants to remain in their homes could avoid the potential unintended consequences associated with increased tenant protections discussed above, and ultimately be more effective in mitigating the effect of the foreclosure crisis on tenants than simply prolonging evictions.

Purchasers who evict tenants must think their properties are generally more profitable vacant than with tenants, but it is important to ask whether or not this is accurate, and if it is not, why these purchasers do not allow the tenants to remain. It may not make economic sense in many current markets for foreclosure buyers to evict all current tenants. Traditionally, new owners evicted tenants because they believed they could increase profits through renting to higher paying tenants, or improving the property and either selling the property or renting it at a higher rent to new tenants.⁹⁷ However, in the current climate, where vacancy rates are already soaring in markets hit hard by foreclosures, this logic is no longer justified. A growing consensus

⁹⁶ A study of rental housing in areas that have adopted "just cause" tenant protections would be useful in evaluating these concerns. See *Adm'r of Veteran Affairs v. Valentine*, 490 A.2d 1165, 1172 (D.C. 1985) (Terry, Assoc. J., dissenting) (arguing that the courts' decision to prevent eviction after foreclosure could result in "a drying up of available mortgage funds for the purchase of rental properties in the District."); *Guttenberg Savs. & Loan*, 428 A.2d 1289, 1297 (N.J. 1981), *superseded by statute*, N.J. STAT. ANN. § 2A:18-61.1 (West 2000), *as recognized in Chase Manhattan Bank v. Josephson*, 638 A.2d 1301 (N.J. 1994) (presenting arguments from amicus that the Anti-Eviction Act will "accelerate the decrease in the supply of mortgage funds").

⁹⁷ See, e.g., *Chase Manhattan Bank*, 638 A.2d 1301, at 1304 (where a new owner wanted to evict tenants because they were paying below market value rents); Temple, *supra* note 3 ("Lenders who take back properties or investors who pick up foreclosed homes generally prefer the buildings empty, because that makes them easier to sell.").

is emerging among policymakers that banks (or other foreclosure sales purchasers) should not evict current tenants.⁹⁸ Rather than resulting in increased profits, evicting tenants leads to vacant properties. Vacant properties often become run-down, and are at risk for vandalism, neglect, and illegal occupancy, which can cause the value of the property to decline, and put downward pressure on property values of the surrounding community.⁹⁹ If purchasers instead allowed rent-paying tenants to remain, they would not only avoid the decrease in value associated with vacancy, but would also be provided with a steady stream of income from the tenants. In theory, renters would benefit by remaining in their homes, the community would benefit by decreasing the number of vacant properties, and the purchasers themselves would benefit by collecting rents and maintaining the value of their property. Yet, despite this, the purchasers continue with eviction.¹⁰⁰

Perhaps purchasers continue to evict tenants because the

⁹⁸ *Hearing, supra* note 2, at 150.

Banks should understand that it is bad business practice to routinely evict tenants post-foreclosure if the lender wants to preserve value in the property. While it may take some work to be a property manager, the value of the foreclosed property is enhanced if it remains occupied while a new owner is found. This makes good business sense; vacant properties are vandalized more, thus making them less attractive to new buyers. And collecting rents from tenants should help offset other costs of foreclosure.

Id. See also Alex Ulam, *For Banks, Foreclosed Homes Pile Up*, N.Y. REAL ESTATE NEWS, June 2, 2008 (reporting banks having difficulty selling foreclosed properties and, as such, should modify the mortgage instead of foreclosing). The EESA also supports the view that it is best if renters remain in their properties, directing the Secretary to "where permissible" allow "bona fide tenants who are current on their rent to remain in their homes under the terms of the lease." 12 U.S.C. § 5219 (b) (2008). See *Analysis of the TARP: Challenges and Opportunities for Your Business*, CLIENT ADVISORY (Katten, Muchin, Rosenman, LLP), Oct. 13, 2008, at 5 (explaining that because the EESA encourages allowing tenants to remain in their homes post foreclosure that there may be opportunities for investors with experience in managing rental properties to take over management of foreclosed rental properties); Kenneth R. Gosselin, *Hartford Tenant Fights to Stay in Home After Foreclosure*, HARTFORD COURANT, Nov. 11, 2008 (reporting on "what attorneys' believe" is the first legal challenge to enforce EESA provision 5219 (b)).

⁹⁹ See, e.g., W. Dennis Keating, *Preserving Properties on the Edge: Rapid Recycling of Distressed and Abandoned Properties*, JOINT CTR. FOR HOUS. STUDIES HARV. UNIV., March 2007; Vikas Bajaj, *Foreclosure's Residue*, N.Y. TIMES, May 27, 2008, at C1 (discussing the problem of vacant properties).

¹⁰⁰ But see Dominic Holden, *Home Free: Foreclosure Crisis Benefits at Least One Group: Renters*, THE STRANGER (Seattle, W.A.), Sept. 30, 2008, ("For banks, allowing tenants to remain in those houses - even tenants who don't pay rent - may make sense" to prevent the decrease in value from vacancy).

purchasers in the current foreclosure crisis have a different business model than traditional foreclosure purchasers. The business model of the investors who are buying foreclosure properties and evicting the tenants is not clear, but some opponents of the model fear that some investors seek to illegally subdivide the properties.¹⁰¹ Illegal subdivision, or illegal occupancy, refers to using a building in a way that is prohibited by building code requirements.¹⁰² Examples of illegal subdivision include dividing a property into more units than allowed under the code (e.g., converting a single family home into a multi-family home) or allowing occupancy in a portion of the house where it is illegal (e.g., converting an attic into a dwelling unit without a certificate of occupancy or following code rules).¹⁰³ Concern over illegal subdivisions is mounting around the country, in particular at the local level. In Arizona, for example, the legislature recently passed a bill increasing penalties to deal with the growing number of illegal subdivisions, and counties in New Jersey and New York are considering ways to crack down on illegal subdivisions.¹⁰⁴ Illegal subdivision not only results in overcrowding and dangerous conditions on the property itself, but also overloads services from the increased population in the illegal occupancy, and thereby affects neighbors as well. Building and subdivision laws ensure that buildings are safe and that

¹⁰¹ Cf. Sean Holstege, *Desperate Owners Duped by Easy Rent*, ARIZ. REPUBLIC, Aug. 31, 2008 (similarly, owners on the brink of foreclosure with vacant rental properties do not screen potential tenants closely and find their properties being used as drophouses).

¹⁰² BLACK'S LAW DICTIONARY 1465 (8th ed. 2004).

¹⁰³ It is difficult to track how many units are illegally subdivided because both tenants and landlords fear fines or eviction, but a recent analysis by Pratt Center for Community Development found that in New York City at least 114,000 apartments are "underground" housing. The center explains that it is difficult to count the number of illegally subdivided units, but 114,000 apartments appeared in the 2000 census that were unaccounted for by building reports. ROBERT NEUWIRTH, PRATT CTR. FOR CMTY. DEV. AND CHHAYA CMTY. DEV. CORP., *NEW YORK'S HOUSING UNDERGROUND: A REFUGE AND RESOURCE 1* (2008).

¹⁰⁴ The bill permits civil penalties against people who illegally subdivide land, and requires the Real Estate Department to notify the public of illegal subdivisions. ARIZ. REV. STAT. ANN. § 32-2183.03 (West 2008). See also Denisa Superville, *Borough to Target Housing Violations: May Hire Part Time Enforcement Official*, HERALD NEWS (N.J.), May 12, 2007, at A09 (reporting on debates concerning increasing illegal subdivisions); *Online Tool Will Help Park Enforce Land-Use Policies*, TIMES UNION (Albany), Jan. 23, 2008, at A3 (new enforcement initiative against illegal subdivisions); Seung Min Kim, *Franklin Township Looks to Toughen Penalties for Illegal Housing*, STAR-LEDGER (Newark, N.J.), Mar. 28, 2008, at 21 (public hearing to consider a "crack down" on illegal subdivisions).

services are adequate for the community; illegal subdivision can have a wide-reaching effect not only on the subdivided property, but on the surrounding community.

Purchasers at foreclosure sales may believe that they can illegally subdivide the foreclosed home, rent it to a greater number of individuals than permitted under building codes, make a fast profit, and abandon it either before violations are discovered or when wear and tear on the building has made it essentially worthless. Residents risk eviction because of code violations, and post-eviction, the property would likely remain empty while the illegality is corrected. Through vacancy and a decrease in the quality of housing stock, illegal subdividing could have long term consequences on the housing market.

Alternatively, the purchasers of foreclosed homes who evict the existing tenants may hope to flip the property quickly. If they misjudge the market, however, the house could remain empty for long periods, with all the attendant problems of vacancy.

CONCLUSION

Good tenants are innocent victims of the nation's foreclosure crisis. They do not have mortgages, they pay their rent on time, and think they have no reason to fear foreclosure. Then an eviction notice or "for sale" sign appears on their property and the foreclosure crisis ensnares them. In a handful of states, and in rent-regulated or Section 8 housing, "just cause" protects tenants from eviction. But in the vast majority of situations, tenants have no defense if their property is sold at a foreclosure sale and the new owner brings an eviction proceeding against them. These tenants must find new homes in an often increasingly competitive rental market, while their old homes often stay vacant, contributing to neighborhood decline.

As the significant impact the foreclosure crisis is having on tenants becomes clearer, state and local governments are debating how to mitigate the burden on renters. Proposals range from new "just cause" laws and prohibitions against utility shut-offs to notice requirements and moving assistance. The effect these new laws will have on the availability and quality of rental housing in the future is uncertain, as are the motivations of purchasers to continue evictions. Legislators should be mindful of the uncertainties, and consider the economic effects of proposed tenant protections on lenders and landlords in the public debate. In the end, it may be most effective for legislators to shift their

focus towards working with lenders, banks, or other new owners to create incentives not to evict current tenants.

Renters and Foreclosure

Testimony of Vicki Been
Elihu Root Professor of Law
Director, Furman Center for Real Estate and Urban Policy
New York University

Before
New York City Council
Committee on Housing and Buildings

Erik Martin Dilan, Chair
April 21, 2009

Chairman Dilan and all the members of the Committee, I am honored to share with you some of our research on the impact of the foreclosure crisis on renters, and the state of tenants' rights when their landlords suffer foreclosure in New York City. My name is Vicki Been, and I am the Elihu Root Professor of Law at New York University School of Law and Director of the Furman Center for Real Estate and Urban Policy. The Furman Center is a joint research center of NYU's School of Law and its Robert F. Wagner School of Public Service. Founded in 1995, the Center brings the expertise of our law faculty and our urban economics faculty, along with the talents and energy of phenomenal students from all parts of New York University, to bear on urban problems. We are one of the nation's leading academic research centers devoted to the public policy aspects of land use, real estate development and housing.

Let me start by thanking the committee for tackling this very important issue. Tenants are innocent victims of the nation's foreclosure crisis, and often are overlooked in the public policy debates about responses to the crisis. Thousands of tenants put down

security deposits, secured leases and paid their rent on time for years, believing that they were protected from sudden displacement or upheaval, and considering themselves lucky to have avoided the subprime loans that helped to precipitate the mortgage crisis. Then unfortunately, they find their utilities shut off or an eviction notice or “for sale” sign on their door—often with very little warning—and learn that they are among the countless victims of the foreclosure crisis. While tenants in rent-regulated or Section 8 apartments are statutorily protected from foreclosure related eviction, other tenants in New York City and around the country are not.

To aid the committee as it evaluates the proposed bills today, I will provide an overview of available data on the scope of the tenant foreclosure crisis in New York City, and discuss very briefly the range of solutions adopted or under consideration around the country.

How many tenants are affected by foreclosure?

In 2007, we found that well over half of all foreclosure filings in New York City were on 2-4 family or 5+ dwellings, which affected an estimated 15,000 renter households. In 2008, we saw an increase in the number of foreclosure filings on 5+ buildings, which drove the total number of affected renter households in New York City up to about 16,000. Data for the first quarter of 2009 show an even more dramatic increase in foreclosure filings on 5+ buildings. In all of 2007, nearly 4,000 units impacted by foreclosure were in 5+ buildings; but in just the first quarter of 2009, more than 4,500 units were in 5+ buildings that received a foreclosure filing. This stark

increase in the number of tenant households affected is troubling, and makes the committee's attention to this issue all the more important.

How are these tenants affected?

Foreclosure can have many potential negative consequences for tenants. In New York City, many tenants are protected from foreclosure related eviction by rent regulation laws, which allow eviction only for statutorily defined causes (such as non-payment of rent) that do not include foreclosure. Approximately half of rental apartments in the New York City are rent-regulated. However, for most other renters, foreclosure can and often does result in eviction—with several negative consequences. Before eviction, tenants often have to deal with utility shut-offs and a decline in repairs or maintenance. After eviction, tenants' lives are severely disrupted: they may have difficulty paying moving expenses and finding a new affordable apartment, their children may have to be moved from one school to another in the middle of the year, and they likely will be unable to recover their security deposits. Finally, the eviction goes on the tenants' credit records, which can make it more difficult to rent again.

What policy solutions are being adopted and proposed around the country?

There are a range of policies being tried to mitigate the harmful effects foreclosures can have for tenants:

1. Outreach and information: Some jurisdictions are informing tenants about their rights and relevant assistance programs *before* any foreclosure occurs. Even tenants who are legally protected from eviction are often

intimidated out of their homes because they are unaware of their rights.

With better information about their rights and resources available, tenants may be able to protect themselves when they are ensnared in their landlord's foreclosure.

2. Notice: Many states are considering or have adopted legislation requiring that tenants either receive a notice of foreclosure proceedings when their landlord is served with notice, or requiring that tenants receive notice a reasonable number of days before eviction. Although notice does nothing to prevent eventual eviction, it does provide tenants with valuable time to learn about their rights, find new apartments, and prepare to move. A number of states (including Arizona, Nevada and Missouri) are considering legislation requiring tenant notification of foreclosure proceedings, while other states (including California and Minnesota) have already adopted similar legislation.
3. Prevent Utility Shut-offs and Require Maintenance: During the foreclosure process tenants may be left without utilities or repair services. Pending legislation in Rhode Island would require the new owners of the property to continue to provide essential services. To augment that protection, legislation also could require lenders foreclosing on a property to notify utility companies that tenants remain in foreclosed properties and need continued service.
4. Preserve Tenancies by requiring the lenders or new owners of foreclosed properties to honor current leases or execute new leases. Three states

(New Jersey, New Hampshire and Washington, D.C.) protect tenants from foreclosure related eviction with “just” or “good” cause laws, which protect tenants in a similar manner to rent regulation laws. Other states, such as Massachusetts, are considering adopting comparable statutes.

5. Assistance for Displaced Tenants: Some local governments, such as Chicago, are providing emergency relocation rental assistance for displaced low-income tenants.

Tenants have recently gained victories nationally. This winter, Fannie Mae and Freddie Mac announced rental policy for their REO properties, which will offer tenants in the properties either new month-to-month leases or financial assistance for moving. The recently passed American Recovery and Reinvestment Act (ARRA) provides some tenants further protection. Tenants in properties that receive funding under the Neighborhood Stabilization Program must now receive 90 days notice before eviction, and if they have leases, may remain for the remainder of the lease term.¹ For tenants in properties not currently covered by the ARRA, H.R. 1247 introduced March 2, if passed, would extend the ARRA protection to all tenants.

Concerns and Questions

The new programs and legislation discussed above have been put in place too recently to be able to study their impacts on renters, or on the larger housing market. Unfortunately, that leaves us without any empirical guidance as to which of these policies are most effective. Some policies may have long term costs – if they increase the cost of

¹ American Recovery and Reinvestment Act, H.R. 1, signed Feb. 17, 2009, at Title 11, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf.

credit for rental buildings, for example, that could decrease the supply of affordable housing over the long term. The Furman Center hopes to take on these research issues in the future. In the meantime, we commend the Council for working to develop solutions that respond to the plight of the City's renters—the hidden victims of the foreclosure crisis.

Thank you for your time. I'd be happy to answer any questions.



New York Bankers Association

TESTIMONY
OF
MICHAEL P. SMITH
PRESIDENT & CHIEF EXECUTIVE OFFICER
NEW YORK BANKERS ASSOCIATION

BEFORE THE

NEW YORK CITY COUNCIL
COMMITTEE ON HOUSING & BUILDINGS

APRIL 21, 2009
NEW YORK, NEW YORK

Good morning, Chairman Dilan and members of the Committee on Housing and Buildings. My name is Michael P. Smith and I am President and Chief Executive Officer of the New York Bankers Association (NYBA). On behalf of the banking industry and its more than 200,000 employees, I thank you for the opportunity to comment on Int. Nos. 889, 956 and 959, and Res. No. 1725-A, all of which proposals seek to add new responsibilities to financial institutions and other entities who are commencing foreclosure actions in the City of New York. Although we fully appreciate the goals of these proposals – to make sure that tenants have notice of pending foreclosure actions (in the case of Int. 956 and 959) and to ensure that properties are maintained during the foreclosure process (in the case of Int. 889 and Res. No. 1725-A) - we believe that the duties and rights of mortgagors, mortgagees and tenants, are already clearly and appropriately addressed in existing – and potentially conflicting - State law.

We further believe that – particularly during these very difficult economic times - any changes to foreclosure-related procedures, if warranted, should be consistent across the State and nation. This will avoid a patchwork of differing local rules and standards throughout the State and beyond, which can confuse consumers and make compliance unduly and unnecessarily burdensome for lenders and servicers. Therefore, we are concerned that each of these proposals, though well intended, could ultimately result in fewer mortgages being made by reputable financial institutions in New York City. NYBA is comprised of the commercial banks and thrift institutions that do business in New York State. Our

members employ more than 200,000 New Yorkers and have assets in excess of \$9 trillion.

At the outset, I would like to commend the Council, as well as our State and federal leaders for their strong commitment to protect homeowners while maintaining access to appropriate credit through a vibrant banking system. Coupled with the long-standing commitment of our members to eradicate predatory lending practices, New Yorkers have fared better during the current economic and mortgage storm than many of our sister states. In fact, while New York is the fourth most populous state in the nation, for the first quarter of 2009, we are ranked 37th among all states in the rate of foreclosure filings and our statistics continue to compare extremely favorably to the rest of the nation. Indeed, recent statistics from RealtyTrac indicate that New York's foreclosure filings in March, 2009, were 11% lower than in March, 2008 even as the United States as a whole experienced a 46% increase from March 2008. In fact, in February 2009, New York State (inclusive of New York City) accounted for only 1 percent of the properties with foreclosure filings reported nationwide.

Importantly, too, approximately 88% of the foreclosure filings in New York State in February 2009 were lis pendens, which is only the first filing in a foreclosure process that is the longest in the country and can take up to 18 months – providing ample time for borrowers and lenders to effect a meaningful work-out when possible. Maintaining a public dialogue like this is one way to continue that progress.

Since the issue of predatory lending first came into public view almost seven years ago, NYBA has played a leading role in developing solutions to the problem, even though many of our banks do not make subprime loans, and (according to a study by Traiger and Hinckley LLP attached as Exhibit A) fewer than 20% of the subprime loans which have generated much of the recent concern, were originated by banks or their affiliates at all. In this regard, our members have consistently supported strong legislation which would establish meaningful and workable uniform national standards in the subprime market designed to eradicate predatory practices, while not creating unnecessary impediments to the dream of home-ownership, particularly for moderate- and low-income Americans. We have also worked tirelessly with State legislators to craft high cost home loan and subprime lending laws, which are among the toughest in the nation. NYBA has also been at the forefront of financial literacy, bank access and mortgage workout initiatives. We believe that these initiatives, coupled with the strong legislative and regulatory actions already taken in New York State and in Washington, D.C. will ultimately have a meaningful and positive impact on reviving the State's mortgage market. We caution, however, that unnecessarily burdensome and duplicative new local ordinances, if enacted, could undermine, or diminish the resurgence of this important part of our economy.

Like you, our members take foreclosure and its consequences, very seriously. Foreclosure is a last resort for the lender, and lenders will go to great lengths to avoid such a drastic measure. In fact, over the past year, a number of our members have instituted voluntary foreclosure moratoria in order to work cooperatively with the federal government on implementation of several new

mortgage restructuring initiatives, including the Hope for Homeowners Program¹ and the Homeowner Affordability and Stability Plan.² It is important to note, as well, that only a small fraction of foreclosure proceedings in New York, as reported by the foreclosure tracking service, RealtyTrac, currently result in completed foreclosures. Indeed, as the Traiger and Hinckley study shows, the RealtyTrac number may be overstated by as much as 500%, because RealtyTrac counts all foreclosure filings, including those that only begin the process and are later abandoned, duplicate filings on the same property that do not occur in the same month, property that has been put up for sale by a distressed owner, properties scheduled for foreclosure action and foreclosures completed that become other real estate owned by a lender. Even many properties scheduled for foreclosure action do not actually get auctioned because the owner may sell the property directly, find alternative financing to satisfy the lender or negotiate a settlement with the lender that avoids a sale. Therefore, placing additional new requirements on foreclosing entities, such as those contemplated in the proposed ordinances, may not only be overly burdensome and/or duplicative but in the majority of cases, be premature or unnecessary.

¹ Last year, Congress passed and President Bush signed the Housing and Economic Recovery Act of 2008, which among other things, established the “Hope for Homeowners Program” enabling the Federal Housing Administration to refinance the mortgages of at-risk borrowers living in their own homes if (i) mortgage holders write-down the principal of the mortgage; (ii) borrowers agree to share future equity with the federal government; and (iii) the borrower can afford to repay the new loan.

² After President Obama took office in 2009, he announced – and the Treasury Department has since issued guidelines regarding - the Homeowner Affordability and Stability Plan, designed to help 7 to 9 million families restructure or refinance their mortgages to avoid foreclosure. Key components of the Plan include 1) enabling homeowners with conforming loans owned or guaranteed by Fannie Mae or Freddie Mac to refinance at current interest rates through those two institutions, even if they do not meet traditional loan-to-value ratios; 2) reducing monthly payments for owner-occupied mortgage loans to 31% of income; and 3) a new Treasury Department created insurance fund to provide holders of mortgages modified under the program with an additional insurance payment on each modified loan, linked to declines in the home price index.

In this regard, I would like to comment first on Int. Nos. 956 and 959, which require tenant notification of foreclosure proceedings (for buildings with one to five dwelling units, and six or more dwelling units, respectively) within ten days of the bringing of such an action. First, we believe this requirement to be redundant and therefore an unnecessary burden and cost. Under existing State law, in order to distinguish all possible interests in the property, foreclosing entities already must serve all tenants with copies of the foreclosure filings. A failure to serve this notice, results in the tenant's continuing right to his or her tenancy after foreclosure, even in those circumstances where the new landlord/owner would otherwise have a right of eviction. Indeed, if a tenant is not served with a copy of the foreclosure filing and the new owner wishes to evict him or her for any reason after the judgment sale, the new owner is required to institute an additional eviction proceeding – which in New York City can often take many months to conclude. Ironically, if this ordinance is ultimately enacted in its present form, and additional foreclosure notices are required, tenants who are at risk of eviction, may be more likely to be displaced in the near term.

The requirement that a notice of the foreclosure proceedings be served within ten days of the filing creates an unreasonably short timeframe for this requirement, particularly as the defendant may not even have been served within that time. Moreover, in many instances, it is virtually impossible to locate and serve all tenants within ten days – particularly if the property is a large apartment building,

or, as often happens, if a tenant seeks to evade service. Requiring this notice so early in the process, also may serve to unnecessarily alarm tenants, and perhaps even more importantly, provide incentive, for some, to stop paying their rent – thus creating an even harder financial hurdle for the property owner to overcome if he wishes to prevent a foreclosure sale, and retain ultimate ownership of the property.

The proposals also require that the notices contain a statement of tenant rights “under all laws” relating to mortgage foreclosures – an incredibly broad requirement, which may or may not be made clearer by the promulgation of commissioner rules, also contemplated in the proposals. Failure to provide such notice is subject to a civil penalty of \$1,000 per day. Therefore, even if the tenant has been provided notice – once, and perhaps twice – an omission in the statement of tenant rights could result in significant financial loss to the foreclosing entity. This outcome would seem to put foreclosing banks at a substantial risk of liability, and therefore serve as an unintended disincentive to extend mortgages to others than those with the most pristine of credit histories.

Int. 889 and Res. No. 1725-A raise even further concerns, as they seek to re-assign the obligations of property ownership from home and building owners to lenders, even when the lenders are without legal authority to enter the properties. Financial institution mortgagees are, like the Council, concerned about the state of neglect of many properties in the foreclosure process, and we are very aware and troubled by the negative implications these deteriorating properties may have on

the neighborhood in which they exist. However, until the foreclosure proceeding is concluded and the judgment sale has taken place, the mortgagee lender is without legal authority under state law, to enter the premises – unless otherwise agreed to by the parties in the mortgage documents³.

Notwithstanding these legal limitations, financial institution mortgagees occasionally find it necessary to hire property maintenance personnel to secure the safety of properties which are vacant, at the banks' own legal peril. The burden being placed on mortgagees by Int. 889 and by the proposed state legislation (A.5358/S.1182(Klein)) being endorsed in Resolution 1725-A, goes well beyond these safety issues. First, these proposals impose maintenance burdens on lenders, even when the property remains occupied by the mortgagor. Needless to say, lenders who seek to enter occupied homes are not only trespassers under the law but also place themselves at potential peril if challenged by fearful or irate homeowners. Second, the extent of the maintenance requirements are arguably without end - ostensibly requiring mortgagees to maintain and perhaps even repair damages caused by irresponsible property owners, as if the lending institution was the actual homeowner. There appears to be no limit on the costs the mortgagee would be expected to incur; nor are there clear limits as to the mortgagee's maintenance duties. In essence, then, these proposals impose on the lender all the obligations of a full owner, at a time when the lender, at best, has limited rights of access and is not recognized as a lawful owner. Although we understand the desire of the City Council to see New York City properties maintained, this unfair

³ See *Greenpoint Bank v. John*, 256 A.D.2d 548, 682 N.Y.S.2d 438 (2d Dept. 1998)

and onerous proposal is not the answer, and surely, if enacted, will discourage banks from extending mortgages in the City.

It should also be noted that Int. 889 seeks to impose registration requirements on mortgagees who commence foreclosure proceedings that to some extent are duplicative, as much of the information required is available today at County Clerks' offices. Perhaps more troubling, however, is that the proposal mandates the registration of personal contact information of corporate officers. We have been informed in discussions with the Office of Court Administration, that the courts generally do not require or seek this information, as they deem it to be both unnecessary to the process and a violation of individual privacy rights. Such an unnecessary requirement could also place corporate officer/private citizens in jeopardy, which clearly is not the intent of Int. 889. As a large number of foreclosure proceedings do not ultimately result in the loss of the property, an easily accessible public registry such as that contemplated in this proposal, could also create great embarrassment for many homeowners, as they seek to engage in settlement discussions or the re-negotiation of their mortgage terms.

As I stated earlier, we oppose these proposals, not only for their content, but also because we do not believe that new foreclosure laws and regulations should be mandated at the local level. We note, as well, that a significant amount of the mortgagees in New York City are national banking institutions, who at least arguably, would not be covered by the mandates in these proposals. Thus, it is

possible that different New York City properties would have different maintenance obligations, causing confusion, and perhaps inappropriate expectations, for tenants and homeowners.

Despite our concerns about these proposals, we applaud the Council for seeking solutions to the current foreclosure crisis and pledge to collaborate on workable solutions. NYBA and its members have been working on this issue for many years, developing in 2001, "Best Practices for High Cost Home Lending" - even before New York State's comprehensive anti-predatory lending legislation was enacted. NYBA was deeply involved in the development of the original high cost home lending law, which is one of the toughest such laws in the nation and was equally involved in the development of 2008's Chapter Law 472, which added additional protections for subprime and nontraditional loans. NYBA worked tirelessly and cooperatively with the Legislature and the Executive branch throughout the legislative process to ensure that the final product would include uniform standards for the mortgage brokerage, lending and underwriting processes, not target the prime mortgage market and not eradicate the sub-prime market and worked closely with the Court System to help integrate new conferencing procedures mandated by Chapter Law 472. NYBA also played an integral role in 2006, when the New York State Legislature passed the Home Equity Theft Prevention Act, and also supported another recent State law, which requires mortgage loan originators working for bankers and brokers to register and attain continuing education credits. This law will further help protect consumers from predators in the marketplace.

New York's banking industry and the non-profit groups it supports have also had in place, already for many years, a strong and wide-ranging support system to assist troubled borrowers. Programs such as Operation Hope, Neighborhood Housing Services, NeighborWorks, and the Long Island Housing Coalition have long worked, in coordination with local financial institutions, to offer foreclosure prevention counseling. In 2007, NYBA joined forces with New York's multi-agency Halt Abusive Lending Transactions (HALT) Task Force. All of this is in addition to the assistance that banks themselves provide prior to a home purchase and when a borrower is having difficulty.

In response to the recent increase in foreclosures in New York and nationwide, many banks have been aggressively reaching out to help. Several of our largest member banks have established refinancing and grant programs in the billions of dollars to help keep troubled borrowers in their homes. Additionally, many NYBA members are currently following the strict multipart strategy to reach out to distressed borrowers, known as the HOPE Now Alliance, whose current results were described above. Attached for your information, as Exhibit B, are documents that describe the HOPE Now programs and their results, as well as examples of other initiatives taken by some of New York's lending institutions.

Additionally, as a result of a pilot program we developed with Senator Charles Schumer, bank mortgage specialists and neighborhood churches, almost seven years ago, we learned much about the tactics that drive borrowers away from legitimate lenders and toward abusive lenders. In response to what we learned, the industry stepped up its activity in two areas: education and access. We also note that Senator

Schumer has recently asked for federal funds to help prosecute more perpetrators of mortgage fraud – an effort we wholeheartedly support.

Financial education, or financial literacy, is not only the best defense against the predators, it is the best offense for consumers who want a financially secure future. A borrower must have basic knowledge about the mortgage process to navigate such a complex transaction. Financial education resources are plentiful in our communities. Not only do banks and thrifts hold home-buying seminars in their communities, they also provide significant funding for consumer groups and community advocates to help educate borrowers, and many even help borrowers in distress to stave off disaster through loans and grants.

The New York Bankers Association supports a number of financial education programs for all age levels. Notably, our national partner, Operation Hope, is operating a thriving Hope Center in Harlem, providing a comprehensive range of advisory services for distressed borrowers and potential homebuyers. The mission of Operation Hope, and organizations like it, is financial empowerment through in-school curricula for children and young adults, as well as workshops, budget and credit counseling, and mortgage and small business lending counseling for adult consumers. Resources like this are making a difference and will help loosen the grip of the predators on our neighborhoods.

Regarding access, banks in New York are expanding into more and more neighborhoods every day. This has been good for competition and ultimately good for consumers because it means more choices and better alternatives to what the

predators are offering. We support the State's Banking Development District program, which has been instrumental in encouraging banks to set up shop in new neighborhoods. In just the past few years, the number of new districts designated by the Banking Department has nearly doubled.

In summary, the New York Bankers Association welcomes this opportunity to comment on New York's mortgage and foreclosure situation and we pledge to continue to work with you, and other public policy makers on additional efforts to resolve quickly this situation, while not discouraging lenders from providing mortgages to credit worthy borrowers, because of new onerous and unnecessary requirements and obligations. Thank you for the opportunity to appear before you today.

Please also view our related 2009 report *The Community Reinvestment Act of 1977: Not Guilty*

**The Community Reinvestment Act:
A Welcome Anomaly in the Foreclosure Crisis**

**Indications that the CRA Deterred Irresponsible Lending
in the 15 Most Populous U.S. Metropolitan Areas**

January 7, 2008

Prepared by:

TRAIGER & HINCKLEY LLP
Attorneys at Law
880 Third Avenue
New York, NY 10022
(212) 752-1161
www.traigerlaw.com

© 2008 Traiger & Hinckley LLP

This study is not intended to provide and should not be relied on as a source of legal advice.

TRAIGER & HINCKLEY LLP

TABLE OF CONTENTS

- About Traiger & Hinckley LLP ii
- Acknowledgements ii
- Purpose of Study 1
- Summary Conclusions 1
- Discussion 2
 - (1) High Cost Loans 2
 - All Borrowers 2
 - Figure 1: All Loan Market Share 2
 - Figure 2: High Cost Loans as a Percentage of Total Originations
by CRA Banks and Other Lenders 3
 - Low- and Moderate-Income Borrowers 4
 - Figure 3: LMI Loan Market Share 4
 - Figure 4: High Cost Loans as a Percentage of Total Originations
to LMI Borrowers by CRA Banks and Other Lenders 5
 - (2) APR on High Cost Loans 5
 - All Borrowers 5
 - Figure 5: Average Rate Spreads on High Cost Loans Originated
by CRA Banks and Other Lenders 6
 - LMI Borrowers 6
 - Figure 6: Average Rate Spreads on High Cost Loans
to LMI Borrowers by CRA Banks and Other Lenders 7
 - (3) Loan Retention 7
 - Figure 7: Proportion of Loans Held in Portfolio 8
 - (4) Bank Branch Concentration and Property Foreclosure Rates 9
 - Figure 8: Foreclosure Rates and Bank Branch Concentration 9
- Conclusion 11
- Appendix A A 1
 - Figure A-1: Foreclosure Rates and Proportion of High Cost Loans A 1
 - Figure A-2: Proportion of All Loans Held in Portfolio A 2
 - Figure A-3: Proportion of All High Cost Loans Held in Portfolio A 2
 - Figure A-4: Proportion of All Loans to LMI Borrowers Held in Portfolio A 3
 - Figure A-5: Proportion of All High Cost Loans to LMI Borrowers Held in Portfolio A 3
 - Figure A-6: Foreclosure Rates and Bank Branch Concentration A 4
- Appendix B: Methodology B 1

Please also view our related 2009 report *The Community Reinvestment Act of 1977: Not Guilty*

ABOUT TRAIGER & HINCKLEY LLP

Traiger & Hinckley LLP offers a unique, integrated approach to providing fair lending counsel. We combine the expertise of our in-house analytical and legal fair lending groups to offer clients an effective and convenient means of implementing a strong compliance program, as well as responding to specific regulatory issues. Our lawyers and statisticians advise a wide range of institutions on complying with federal and state anti-discrimination laws, including the Fair Housing Act, Equal Credit Opportunity Act, Community Reinvestment Act, and Home Mortgage Disclosure Act.

This study is our third annual analysis of publicly available home purchase mortgage lending data. The prior studies of 2005 and 2004 lending data are available on our website. No lender commissioned or was otherwise involved in conducting any of these studies.

ACKNOWLEDGEMENTS

Traiger & Hinckley LLP gratefully acknowledges the important contributions to this study made by Del V.I., LLC, Geosegment Systems Corporation, and The Schoenkin Group, Inc.

TRAIGER & HINCKLEY LLP

Purpose of Study

Much of the responsibility for the recent spike in foreclosure rates, one of the symptoms of the “subprime crisis,” has been placed on lenders who failed to appropriately assess the risks involved in the loans they originated. Such lenders allegedly overlooked weak borrower credit histories, high loan-to-value ratios, and sketchy borrower income documentation to originate high cost loans that were promptly sold to third parties. Federal Reserve Chairman Bernanke summarized the process that led to the crisis in congressional testimony last fall:

The originate-to-distribute model seems to have contributed to the loosening of underwriting standards in 2005 and 2006. When an originator sells a mortgage and its servicing rights, depending on the terms of the sale, much or all of the risks are passed on to the loan purchaser. Thus, originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans. Moreover, for some originators, fees tied to loan volume made loan sales a higher priority than loan quality. This misalignment of incentives, together with strong investor demand for securities with high yields, contributed to the weakening of underwriting standards.¹

This study isolates the 2006 performance of one category of mortgage lenders—banks originating loans in their Community Reinvestment Act (CRA) assessment areas, referred to herein as “CRA Banks.” Our hypothesis is that the CRA, which requires banks to help serve the credit needs of their local communities, including low- and moderate-income (LMI) neighborhoods, consistent with safe and sound banking practices, may have deterred banks from engaging, at least in their local communities, in lending practices that fuel foreclosures.

To test our hypothesis, we analyzed 2006 Home Mortgage Disclosure Act (HMDA) data to compare the lending performance of CRA Banks² with other lenders in the 15 most populous U.S. metropolitan statistical areas (MSAs). Four areas relevant to the foreclosure crisis were reviewed: (1) the proportion of high cost loans; (2) the pricing of high cost loans; (3) the proportion of originated loans retained by the lender; and (4) the relationship between foreclosure rates and concentration of bank branches.

Summary Conclusions

Our study concludes that **CRA Banks were substantially less likely than other lenders to make the kinds of risky home purchase loans that helped fuel the foreclosure crisis.** Specifically, our analysis shows that:

- (1) CRA Banks were significantly less likely than other lenders to make a high cost loan;

¹ Testimony of Federal Reserve Board Chairman Ben S. Bernanke on Subprime Mortgage Lending and Mitigating Foreclosures, before the Committee on Financial Services, U.S. House of Representatives, September 20, 2007.

² In computing the lending performance of a CRA Bank, only loans originated by the bank are included. While a bank has the option of including affiliate lending in its CRA assessment (12 CFR §228.22(c)), only direct lending must be assessed. We note, however, that the conclusions of this report would not be affected by including affiliate lending in the lending performance of CRA Banks.

TRAIGER & HINCKLEY LLP

- (2) The average APR on high cost loans originated by CRA Banks was appreciably lower than the average APR on high cost loans originated by other lenders;
- (3) CRA Banks were more than twice as likely as other lenders to retain originated loans in their portfolio; and
- (4) Foreclosure rates were lower in MSAs with greater concentrations of bank branches.

Discussion

(1) High Cost Loans

High cost loans³ are a primary driver of the foreclosure crisis, as borrowers who are unable to afford their mortgage payments default on their loans. There is a very high statistical correlation (0.816) between the proportion of lending that is high cost and the foreclosure rate in the MSAs analyzed.⁴ Default rates are expected to rise in 2008, as monthly payments increase on mortgage products that permitted borrowers to pay lower “teaser” rates for the first few years of a loan.⁵

- All Borrowers

Unlike other lenders, whose market share of high cost loans in the 15 most populous MSAs was greater than their overall market share, CRA Banks had a significantly lower market share of high cost loans than of all loans.

All Loan Market Share

2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

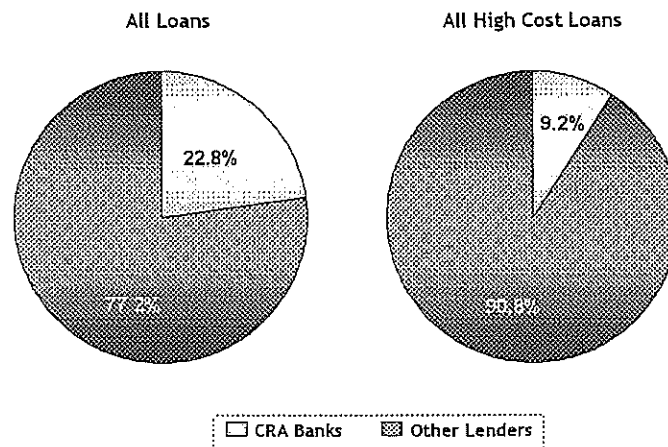


Figure 1

³ For first lien loans, HMDA requires lenders to report the spread between the APR and comparable Treasury yield, where the spread is at least three percentage points. These loans are deemed “high cost.” 12 CFR §203.4(b)(12).

⁴ See, Figure A-1 in Appendix A.

⁵ See, “Rising Rates to Worsen Subprime Mess Interest Payments Set To Grow on \$362 Billion In Mortgages in 2008,” *Wall Street Journal*, November 24, 2007, Page A1.

TRAIGER & HINCKLEY LLP

Indeed, in each of the 15 most populous MSAs, CRA Banks were less likely than other lenders to originate a high cost loan. Overall, CRA Banks were 66 percent less likely than other lenders to originate a high cost loan.

**High Cost Loans as a Percentage of Total Originations
by CRA Banks and Other Lenders**

2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

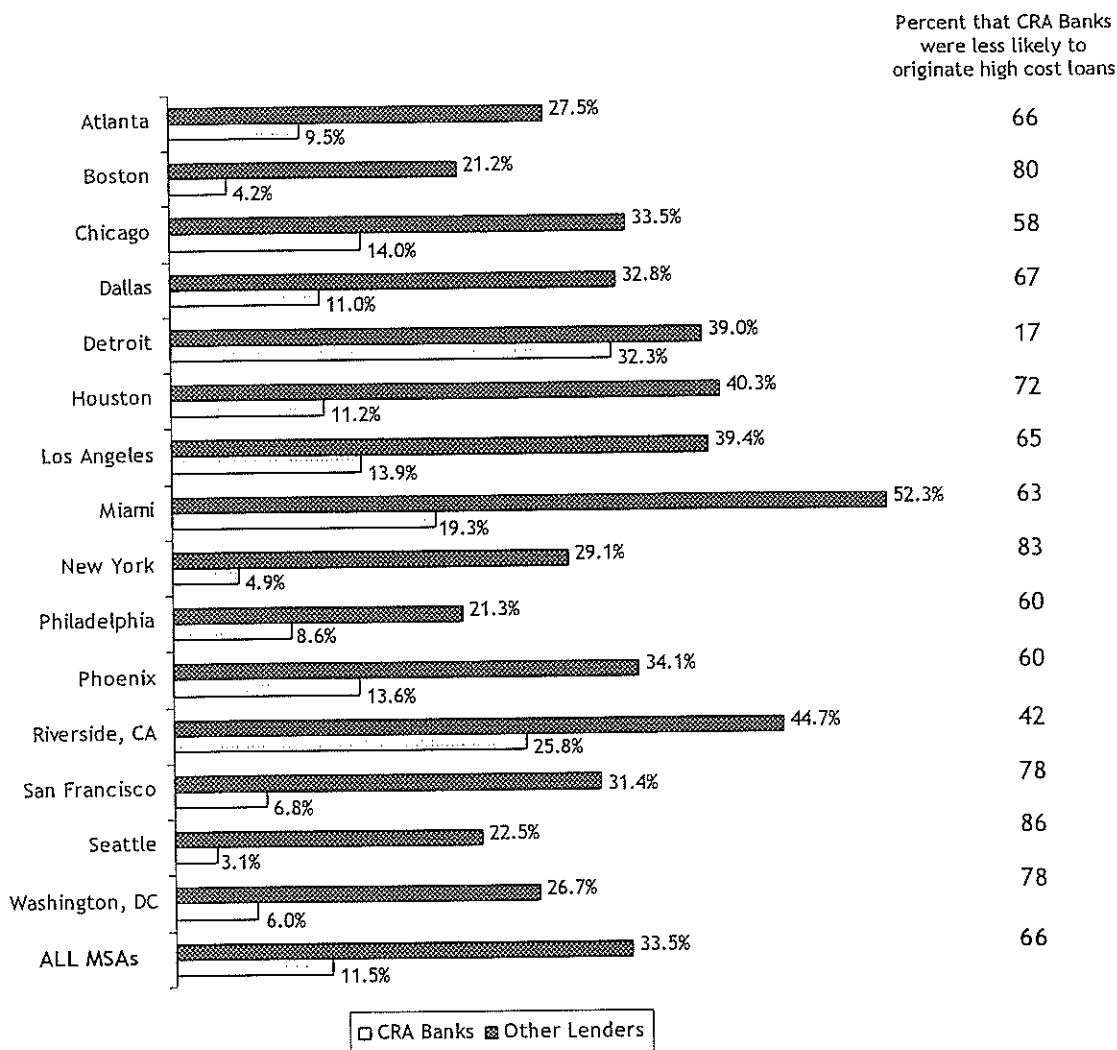


Figure 2

Significantly, the lower proportion of high cost loan originations by CRA Banks was not caused by CRA Banks being more likely to deny a loan application. In the 15 MSAs analyzed, CRA Banks were 16 percent less likely than other lenders to deny an application. (CRA Banks had a 15.2 percent denial rate; other lenders had an 18.1 percent denial rate.)

TRAIGER & HINCKLEY LLP

- Low- and Moderate-Income Borrowers

The foreclosure crisis particularly impacts LMI borrowers:

[Lower-income borrowers] are increasingly devoting more than half of their income to housing costs. . . It is easy to imagine that for low-income households living at the margins of their budgets, even small increases in monthly housing costs can have a significant effect on their ability to cover living expenses and keep up with their monthly payments. If one considers the potential for other payment shocks, such as unforeseen medical expenses, the risks of default and foreclosure are even greater.⁶

Serving the credit needs of LMI borrowers is arguably the most important facet of a CRA performance examination, which evaluates a bank according to the number and amount of LMI loans originated or purchased in its assessment area.⁷ Like total lending, CRA Banks' market share of high cost loans made to LMI borrowers was significantly lower than their market share of all loans to LMI borrowers in the 15 most populous MSAs.

LMI Loan Market Share
2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

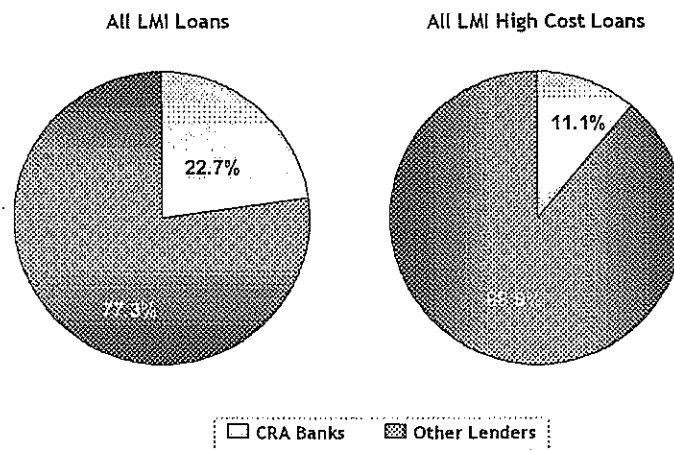


Figure 3

Overall, CRA Banks were 58 percent less likely than other lenders to originate high cost loans to LMI borrowers.

⁶ Cytron and Lanzerotti, "Homeownership at High Cost Recent Trends in the Mortgage Lending Industry," *Community Investments* (published by the Federal Reserve Bank of San Francisco), December 2006 (footnote omitted).

⁷ 12 CFR 228.22(b)(3).

TRAIGER & HINCKLEY LLP

**High Cost Loans as a Percentage of Total Originations to LMI Borrowers
by CRA Banks and Other Lenders**

2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

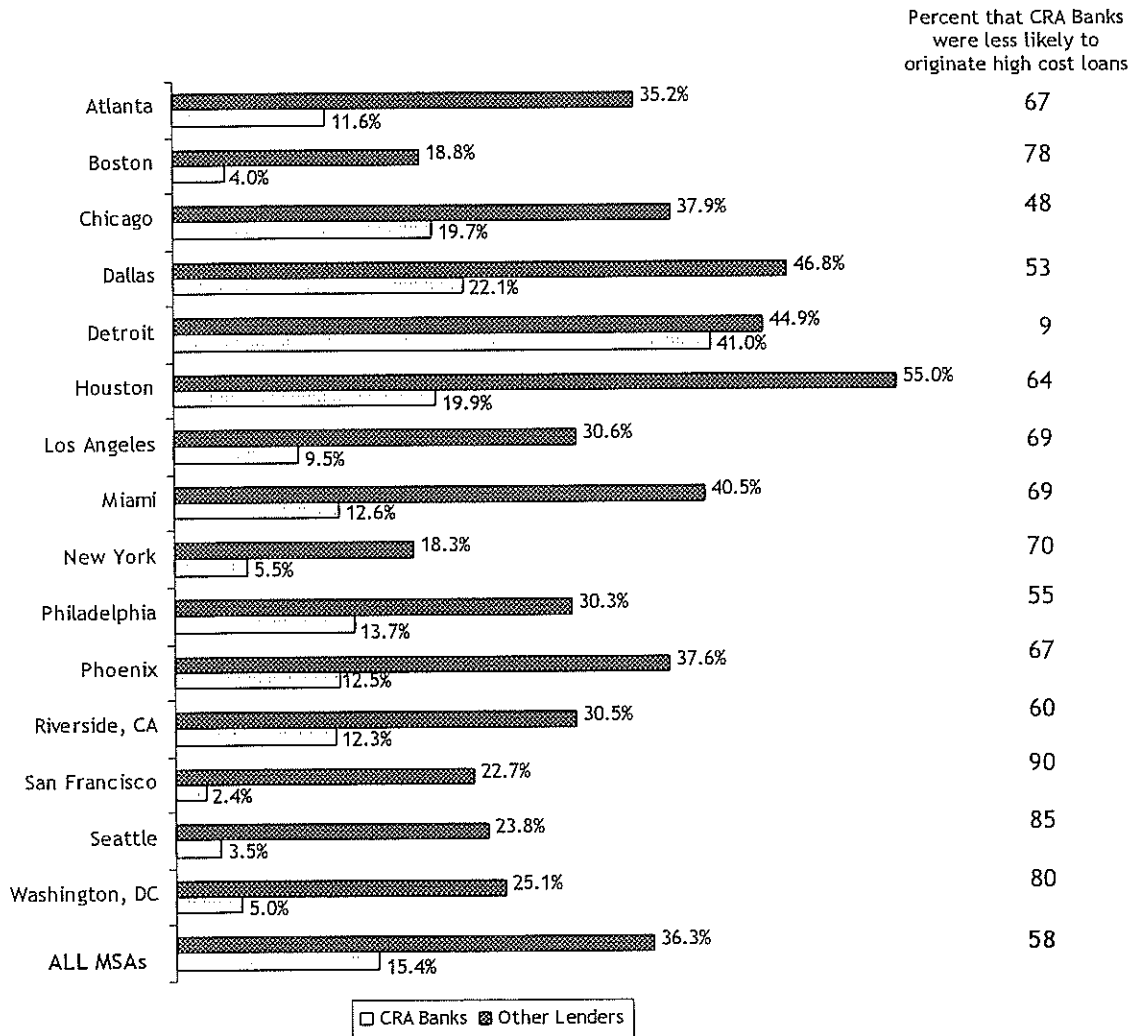


Figure 4

(2) APR on High Cost Loans

- All Borrowers

When CRA Banks did originate high cost loans, the average APR was appreciably lower than the average APR on high cost loans originated by other lenders. Overall, the average high cost loan made by CRA Banks was priced 68 basis points lower than the average high cost loan originated by other lenders.

TRAIGER & HINCKLEY LLP

**Average Rate Spreads on High Cost Loans Originated
by CRA Banks and Other Lenders**

2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

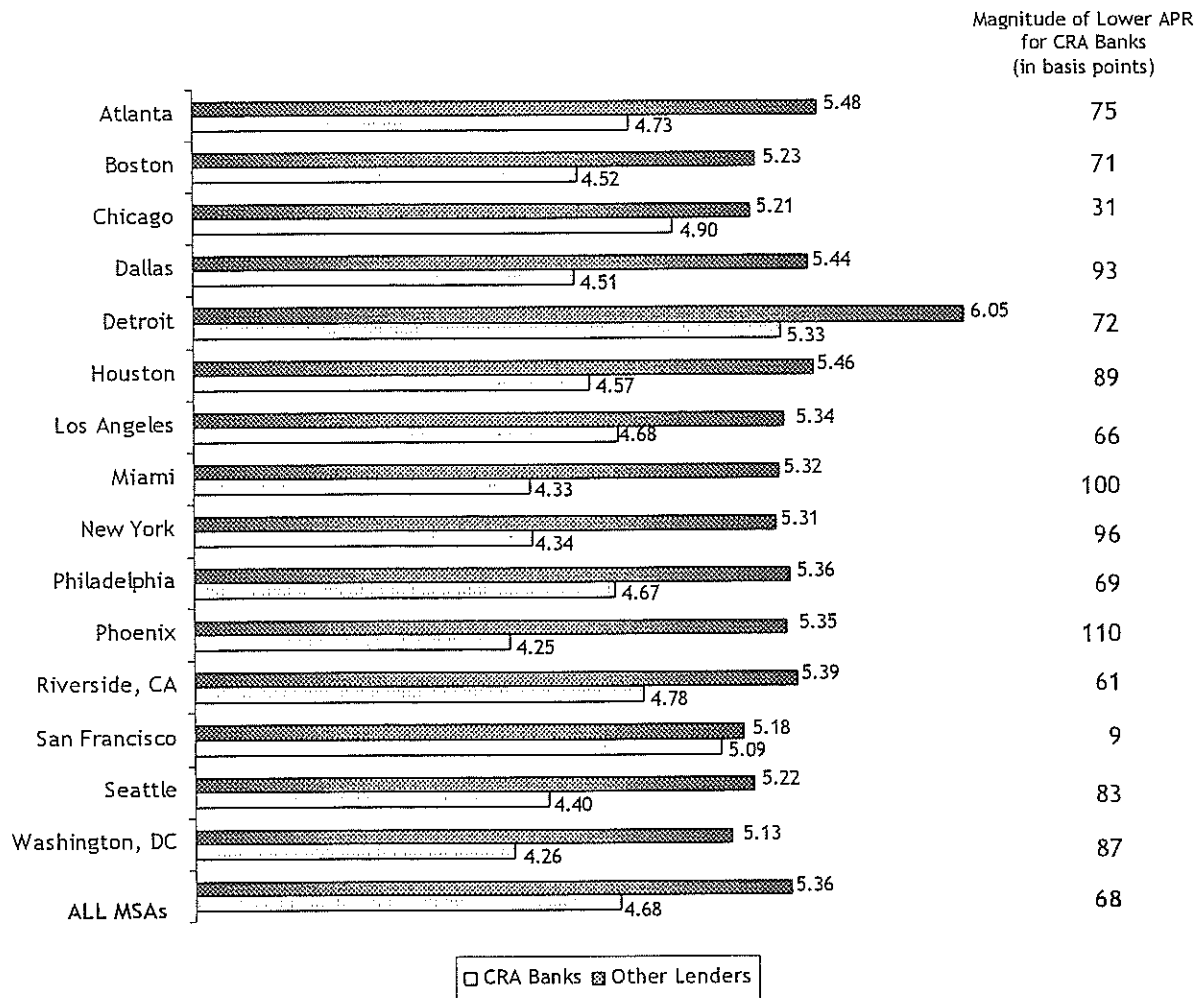


Figure 5

- LMI Borrowers

The APR difference on high cost loans originated to LMI borrowers was even greater than the difference for all loans. Overall, high cost loans made by CRA Banks to LMI borrowers were priced 74 basis points lower than high cost loans originated to LMI borrowers by other lenders.

TRAIGER & HINCKLEY LLP

**Average Rate Spreads on High Cost Loans to LMI Borrowers
by CRA Banks and Other Lenders**

2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

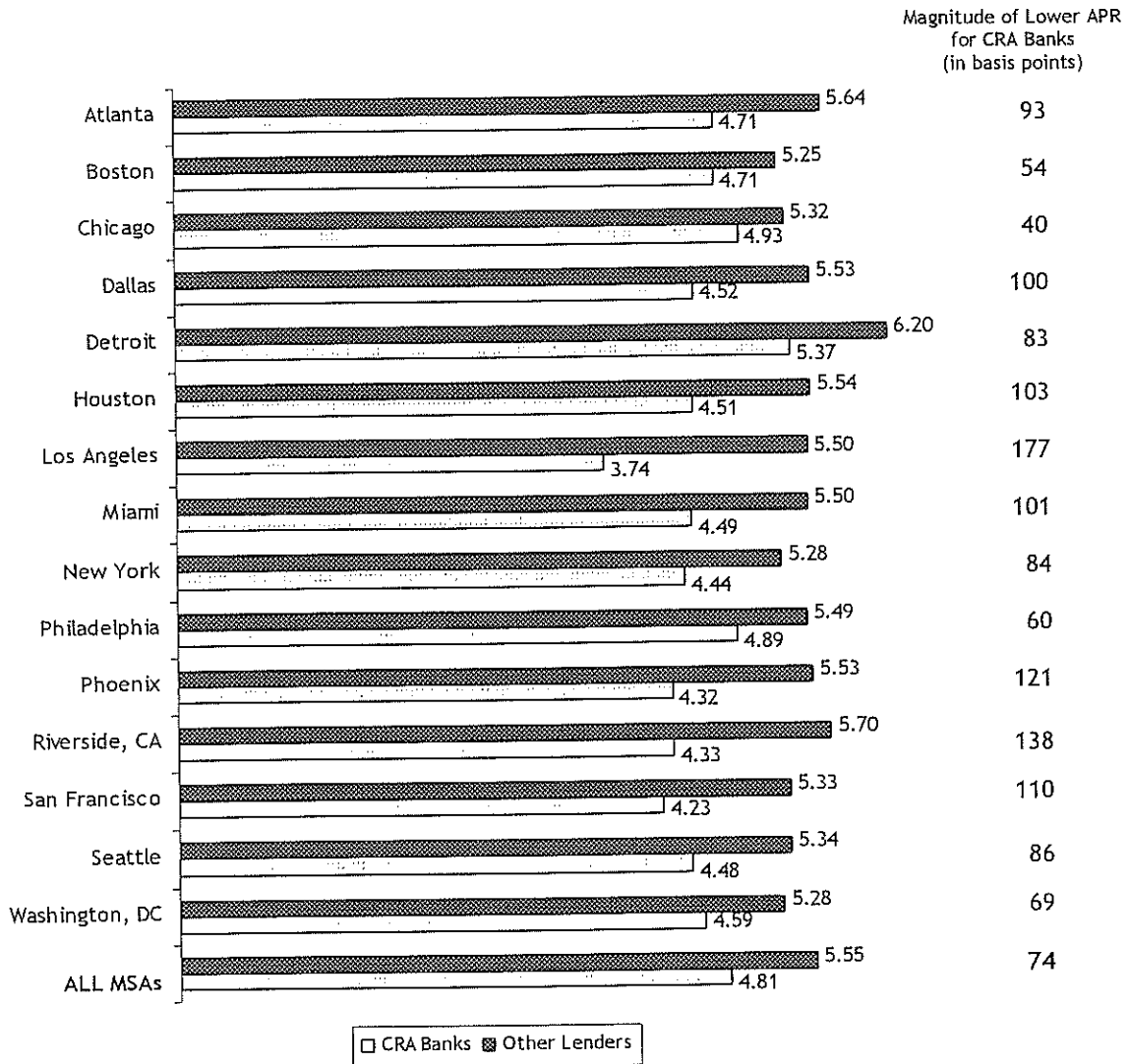


Figure 6

(3) Loan Retention

As noted by Chairman Bernanke above, “originators who sell loans may have less incentive to undertake careful underwriting than if they kept the loans.” Federal Reserve Governor Randall S. Kroszner recently added:

[T]he originate-to-distribute model can leave lenders with weaker incentives to maintain strong underwriting standards. In particular, originators who securitize may inadequately screen potential borrowers unless investors provide oversight and insist on practices that align originator incentives with the underlying risk.

TRAIGER & HINCKLEY LLP

The originate-to-distribute system is thus not only a potential source of risk to the financial system but also raises concerns regarding consumer protection.⁸

CRA Banks were more than twice as likely as other lenders to retain originated loans in their portfolio. While banks in general would be expected to retain more loans than non-depository lenders, our study also found that CRA Banks were significantly more likely to retain loans they originate in their CRA assessment areas than banks without CRA responsibilities in those areas (Non-CRA Banks). As indicated below, this distinction held for all loans, high cost loans, loans to LMI borrowers, and high cost loans to LMI borrowers.

Proportion of Loans Held in Portfolio
2006 Conventional, Owner-Occupied, 1st Lien, Home Purchase Loans in 15 Most Populous MSAs

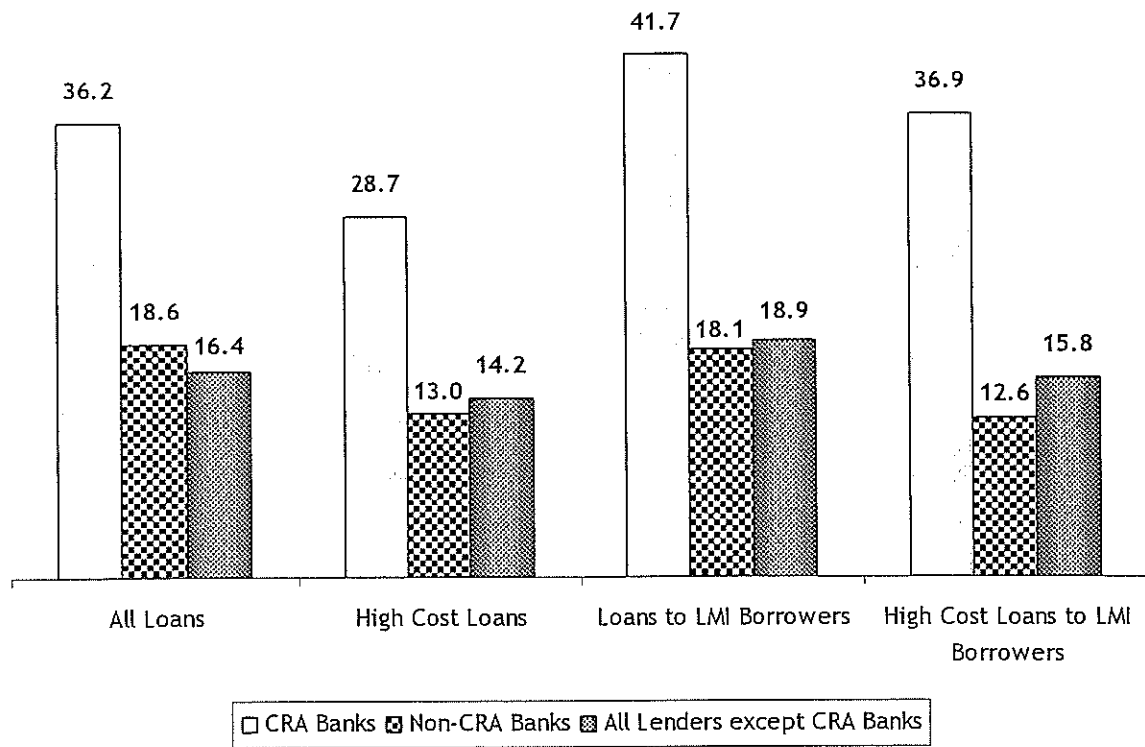


Figure 7

With few exceptions, these overall findings were reflected in the findings for each metropolitan area analyzed. Please see Figures A-2 through A-5 in Appendix A for details.

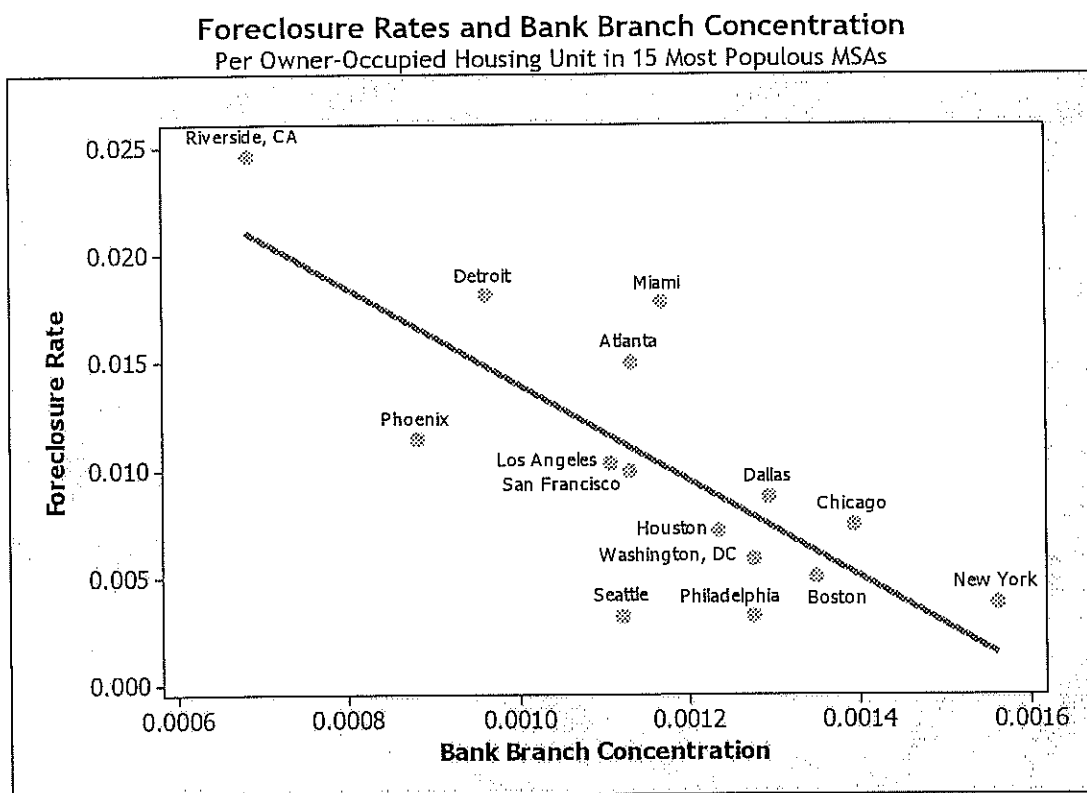
⁸ Speech of Governor Randall S. Kroszner at the Consumer Bankers Association 2007 Fair Lending Conference, Washington, D.C., November 5, 2007.

TRAIGER & HINCKLEY LLP

(4) Bank Branch Concentration and Property Foreclosure Rates

Foreclosure rates are lower in metropolitan areas that have proportionately more bank branches. For the reasons explained below, we suspect that the CRA's focus on service to communities where a bank's branches are located may have caused CRA Banks to more carefully underwrite loans and, consequently, make fewer nonperforming loans.

Overall, our study found a very high negative statistical correlation (-0.764) between the number of bank branches and the number of properties with foreclosure filings per owner-occupied housing unit. The graph below contrasts each MSA's foreclosure rate to its proportional number of bank branches. Note the trend line which indicates that the higher a metropolitan area's concentration of bank branches, the lower the foreclosure rate there.



Sources: Foreclosure data is for the third quarter of 2007 and derived from RealtyTrac's® press release dated November 14, 2007; bank branch data is from the FDIC.

Figure 8

Foreclosure rates are obviously impacted by a range of economic and demographic factors, including, according to the Federal Reserve Bank of Boston, housing prices and unemployment rates.⁹ However, the negative correlation between bank branch concentration and foreclosure rate was substantially higher in absolute value than the correlation between

⁹ Gerardi, Shapiro, and Willen, "Subprime Outcomes: Risky Mortgages, Homeownership Experiences, and Foreclosures," Federal Reserve Bank of Boston Working Paper 07-15 analyzing homeownership experiences in Massachusetts, December 3, 2007.

TRAIGER & HINCKLEY LLP

foreclosure rate and unemployment rate (0.574)¹⁰ and slightly higher in absolute value than the negative correlation between foreclosure rate and change in housing prices (-0.721).¹¹

A bank's CRA responsibilities to a community emanate from the presence of a branch there¹² and, as noted above, a bank's record of serving the credit needs of LMI borrowers in its community is arguably the most important facet of CRA compliance. In addition, CRA examinations assess a bank's distribution of branches and its "record of opening and closing branches, particularly branches located in LMI geographies or primarily serving LMI individuals."¹³ The CRA's emphasis on branches may have helped limit the proportion of high cost lending for two reasons.

First, ready access to a bank branch allows a borrower to conveniently apply for a mortgage loan directly from a local institution. This obviates the need to use a mortgage broker, where loans are often more expensive.¹⁴ In its review of 2004 HMDA data, Federal Reserve Board staff noted:

[T]he incidence of higher-priced lending was significantly higher for borrowers who lived outside the assessment areas of lenders covered by the CRA than for those who lived inside these areas. The HMDA data do not provide a reason for this pattern, but several explanations that warrant further research are possible. For example, the difference may be due, at least in part, to a reliance on different delivery channels for loans within and outside these lenders' assessment areas.¹⁵

Second, the CRA's mandate to serve local communities may, albeit indirectly, encourage CRA Banks to more closely scrutinize the creditworthiness of borrowers who submit loan applications at their assessment area branches. The more loans a CRA Bank makes in its assessment area, especially to LMI borrowers, the greater the likelihood that examiners will conclude it is fulfilling its CRA obligations. Therefore, in order to compete with other lenders in their CRA assessment area, CRA Banks may price loans more aggressively there. Heightened scrutiny of a borrower's creditworthiness minimizes the likelihood of mistaking a person with good credit as a poor credit risk. It may also have the collateral effect of reducing the likelihood that a CRA Bank would inadvertently offer higher cost loans to prospective borrowers who actually qualify for less expensive loans. The lower loan rates, and the fact that creditworthiness has been thoroughly investigated before the loan is approved, may also contribute to the lower foreclosure rates associated with these loans.

¹⁰ Unemployment rate is for the September 2007 civilian labor force (not seasonally adjusted) from the U.S. Department of Labor.

¹¹ Third quarter 2007 annual percent change in median sales price of existing single-family homes (not seasonally adjusted) from the National Association of REALTORS®.

¹² 12 CFR 228.41(c)(2).

¹³ 12 CFR 228.24(d)(2).

¹⁴ See e.g., Joint Center for Housing Studies, Harvard University, "Credit Capital and Communities; The Implications of the Changing Mortgage Banking Industry for Community Based Organizations," March 9, 2004 at 4.

¹⁵ Avery, Canner, and Cook, "New Information Reported Under HMDA and Its Application in Fair Lending Enforcement," Volume 91 Federal Reserve Bulletin Number 3 (Summer 2005).

TRAIGER & HINCKLEY LLP

Conclusion

Our study suggests that without the CRA, the subprime crisis and related spike in foreclosures might have negatively impacted even more borrowers and neighborhoods. Compared to other lenders in their assessment areas, CRA Banks were less likely to make a high cost loan, charged less for the high cost loans that were made, and were substantially more likely to eschew the secondary market and hold high cost and other loans in portfolio. Moreover, branch availability is a key element of CRA compliance, and foreclosure rates were lower in metropolitan areas with proportionately greater numbers of bank branches.

Prior to the foreclosure crisis, some had suggested that the boom in subprime mortgage lending, by easing access to credit for LMI borrowers, rendered the CRA irrelevant or obsolete.¹⁶ However, the demise of subprime lending, even if only temporary, and the lower proportion of high cost loans made by CRA Banks even when the subprime market was thriving, suggest that the CRA still has a vital role to play.

Of course, CRA Banks, even in their own assessment areas, have a relatively small portion of the mortgage market. In the 15 metropolitan areas analyzed, the CRA Bank market share of all loan originations was less than 25 percent, limiting the law's impact on the subprime crisis.

Because the vast majority of mortgage lending is done by other entities, some have suggested extending CRA-like obligations to other lenders as a way of limiting the volume of high cost loans and the problems associated with them. While extending the CRA to bank affiliates and subsidiaries that lend in the bank's community may have some merit, we believe that the presence of local brick and mortar branches was as important a reason for CRA Banks' better performance than fear of a less than satisfactory CRA evaluation.

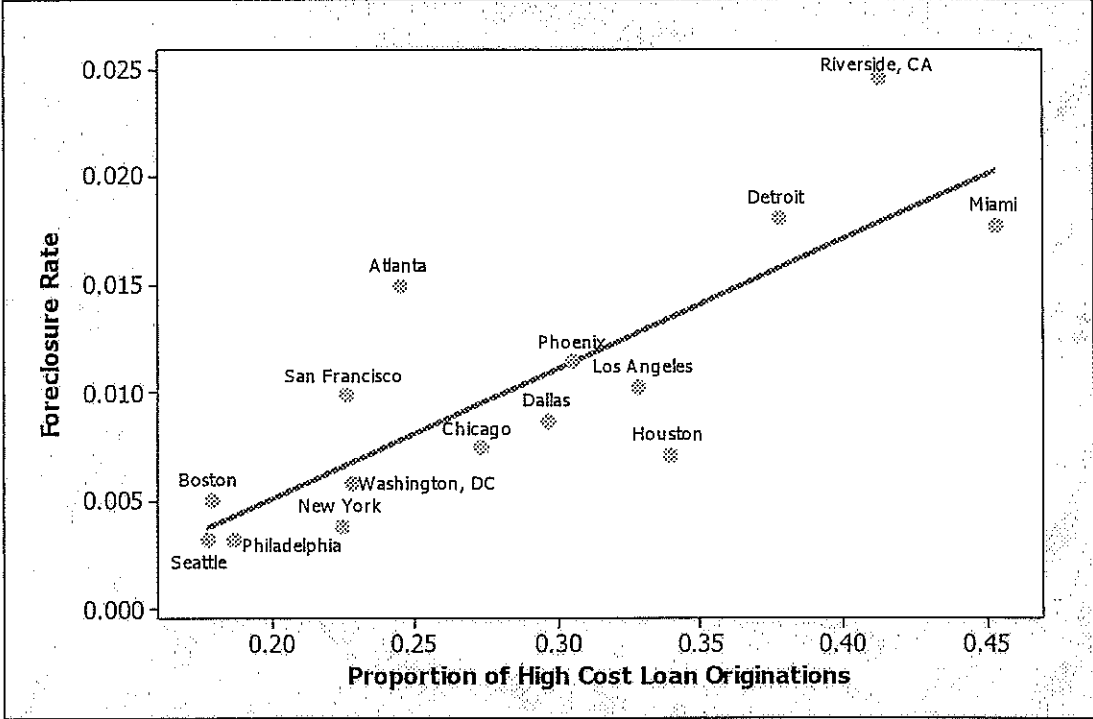
Branches demonstrate a bank's commitment to and investment in a community. The on-going interaction between bankers and residents that occurs at a deposit-taking branch provides insight into credit needs that may enable banks to make more reliable assessments of borrowers' creditworthiness and to avoid making loans that are likely to default. In addition, by providing borrowers with a convenient location at which to apply for mortgage loans, branches may serve as a magnet for attracting creditworthy borrowers. Without a branch nexus, it is doubtful whether the same benefits can be realized for other lenders.

¹⁶ See, e.g., "Gunther, "Should CRA Stand for 'Community Redundancy Act'?", *Regulation* (The Cato Review of Business and Government) Vol. 23, No. 3, 2000.

TRAIGER & HINCKLEY LLP

Appendix A

**Foreclosure Rates and Proportion of High Cost Loans
in 15 Most Populous MSAs**



Source: Foreclosure data is for the third quarter of 2007 and derived from RealtyTrac's® press release dated November 14, 2007

Figure A-1

TRAIGER & HINCKLEY LLP

Loan Retention Proportions for Each MSA

Proportion of All Loans Held in Portfolio

Metropolitan Area	CRA Banks	Non-CRA Banks	All Lenders Except CRA Banks
Atlanta	36.4%	14.0%	19.6%
Boston	46.4%	24.9%	24.3%
Chicago	28.8%	27.9%	17.0%
Dallas	37.9%	22.8%	16.1%
Detroit	16.2%	24.8%	18.0%
Houston	34.4%	12.0%	18.2%
Los Angeles	42.5%	19.0%	14.9%
Miami	36.2%	12.9%	13.1%
New York	34.8%	19.4%	16.8%
Philadelphia	34.4%	16.5%	13.7%
Phoenix	37.1%	20.7%	15.9%
Riverside, CA	31.6%	12.9%	13.9%
San Francisco, CA	53.5%	21.5%	15.3%
Seattle	37.7%	22.8%	14.6%
Washington, DC	39.6%	11.8%	16.2%

Figure A-2

Proportion of All High Cost Loans Held in Portfolio

Metropolitan Area	CRA Banks	Non-CRA Banks	All Lenders Except CRA Banks
Atlanta	33.7%	12.7%	14.5%
Boston	30.0%	14.3%	13.9%
Chicago	20.2%	18.3%	14.0%
Dallas	64.4%	15.4%	17.1%
Detroit	10.3%	24.9%	18.4%
Houston	52.5%	8.8%	15.8%
Los Angeles	24.3%	8.3%	15.7%
Miami	30.2%	11.9%	11.5%
New York	26.3%	12.8%	12.1%
Philadelphia	28.6%	13.5%	12.9%
Phoenix	46.5%	16.0%	14.9%
Riverside, CA	21.8%	5.4%	14.4%
San Francisco, CA	24.0%	11.2%	13.9%
Seattle	48.6%	17.7%	15.9%
Washington, DC	25.4%	11.5%	11.8%

Figure A-3

TRAIGER & HINCKLEY LLP

Proportion of All Loans to LMI Borrowers Held in Portfolio

Metropolitan Area	CRA Banks	Non-CRA Banks	All Lenders Except CRA Banks
Atlanta	51.8%	11.3%	19.7%
Boston	56.1%	23.7%	27.5%
Chicago	30.4%	19.5%	16.4%
Dallas	54.3%	32.0%	20.5%
Detroit	15.2%	19.9%	20.8%
Houston	50.3%	7.7%	18.4%
Los Angeles	40.6%	49.3%	37.8%
Miami	50.3%	15.4%	18.8%
New York	37.6%	19.6%	20.5%
Philadelphia	43.1%	12.3%	13.1%
Phoenix	42.4%	15.1%	15.0%
Riverside, CA	33.2%	11.1%	24.0%
San Francisco, CA	56.8%	33.6%	25.2%
Seattle	35.7%	19.1%	16.9%
Washington, DC	50.3%	10.4%	19.9%

Figure A-4

Proportion of All High Cost Loans to LMI Borrowers Held in Portfolio

Metropolitan Area	CRA Banks	Non-CRA Banks	All Lenders Except CRA Banks
Atlanta	35.4%	9.6%	13.6%
Boston	30.8%	13.6%	16.8%
Chicago	26.6%	14.9%	13.2%
Dallas	77.4%	19.3%	18.7%
Detroit	10.1%	20.5%	19.6%
Houston	62.2%	5.5%	15.9%
Los Angeles	84.1%	62.5%	63.7%
Miami	42.5%	12.8%	12.9%
New York	33.6%	13.3%	14.6%
Philadelphia	28.5%	10.5%	11.6%
Phoenix	48.0%	14.7%	14.2%
Riverside, CA	41.4%	9.3%	43.8%
San Francisco, CA	62.5%	17.6%	37.4%
Seattle	48.8%	13.2%	17.4%
Washington, DC	30.8%	8.1%	11.3%

Figure A-5

TRAIGER & HINCKLEY LLP

Foreclosure Rates and Bank Branch Concentration
Ranked by Foreclosure Rates in 15 Most Populous MSAs

Metropolitan Area	# of Properties with Foreclosure Filings ¹	# of Owner Occupied Housing Units ²	Foreclosure Rate ³	# of Bank Branches ⁴	Proportion of Bank Branches ⁵
Riverside, CA	20,664	838,093	0.0247	570	0.00068
Detroit	22,876	1,261,188	0.0181	1,210	0.00096
Miami	24,144	1,357,812	0.0178	1,583	0.00117
Atlanta	18,940	1,261,351	0.0150	1,428	0.00113
Phoenix	11,242	979,314	0.0115	862	0.00088
Los Angeles	22,338	2,170,255	0.0103	2,401	0.00111
San Francisco	8,988	906,476	0.0099	1,023	0.00113
Dallas	11,618	1,327,280	0.0088	1,718	0.00129
Chicago	17,355	2,328,139	0.0075	3,244	0.00139
Houston	8,500	1,182,763	0.0072	1,460	0.00123
Washington, DC	7,699	1,318,546	0.0058	1,683	0.00128
Boston	5,471	1,082,956	0.0051	1,461	0.00135
New York	13,939	3,609,780	0.0039	5,632	0.00156
Philadelphia	4,912	1,533,934	0.0032	1,956	0.00128
Seattle	2,639	819,357	0.0032	918	0.00112

¹ Source: RealtyTrac® November 14, 2007 press release on third quarter 2007 metropolitan area foreclosure rates.

² Source: U.S. Census Bureau's 2006 American Community Survey.

³ # of Properties with Foreclosures per Owner Occupied Housing Unit.

⁴ Source: Federal Deposit Insurance Corporation, as of June 30, 2007.

⁵ # of Bank Branches per Owner Occupied Housing Unit.

Figure A-6

TRAIGER & HINCKLEY LLP

Appendix B

Methodology

This study examined HMDA-reported conventional, owner-occupied, first lien, home purchase loans (“Loans”) originated in 2006 in the 15 most populous MSAs according to the U.S. Census Bureau as of July 1, 2006. For each MSA, Federal Financial Institutions Examination Council data was obtained on each HMDA-reported origination and HMDA-reporting institution and on the CRA assessment areas of every bank that filed a CRA Disclosure Report (“CRA-reporting bank”). Using this data, each Loan was categorized based on whether it was a high cost Loan, whether it was originated to an LMI borrower, the type of lender originating it, and where it was originated.

Definitions

High Cost Loans (also known as subprime loans) – Loans designated by HMDA as having rate spreads because their Annual Percentage Rates (“APRs”) were at least three percentage points higher than the yields on comparable maturity Treasury securities.

Average Rate Spread – The rate spread is the APR minus the yield on the Treasury security with a comparable maturity and is only reported for High Cost Loans. The average rate spread for a geography is the mean rate spread (i.e., the sum of the rate spreads divided by the total number of High Cost Loans).

LMI Borrower – A borrower whose income is less than 80 percent of the Area Median Income. For a borrower located in an MSA, the Area Median Income is the median family income for the MSA.

Loan held in Portfolio – A Loan with a HMDA-reported Type of Purchaser code of “0,” indicating the Loan was not sold during 2006.

Correlation – A commonly used measure of the strength and direction of a linear relationship between two variables (obtained by dividing the sample covariance of the variables by the product of their sample standard deviations). Correlation ranges from +1 to -1. If one variable tends to increase as the other decreases, the correlation is negative. Conversely, if the two variables tend to increase together the correlation is positive. The stronger the linear relationship between the variables, the higher the absolute correlation between the variables. Therefore, if there is a perfect linear relationship between two variables the correlation is 1 (either positive or negative); if there is no linear relationship between the two variables the correlation is zero.

Notes

- 1) In Figures 8, A-1, and A-6, foreclosure property figures for Nassau and Suffolk counties in New York, Lake County in Illinois, and Kenosha County in Wisconsin are based on estimates. Foreclosure figures for Rockingham and Strafford counties in New Hampshire included in the Boston foreclosure figure were obtained directly from RealtyTrac® rather

TRAIGER & HINCKLEY LLP

than from the November 14, 2007 press release on third quarter 2007 metropolitan area foreclosure rates.

- 2) Calculations for “All MSAs” combine figures for the 15 most populous MSAs, effectively causing MSAs with more Loans to have greater weight.
- 3) The denial rates referred to on Page 2 are for submitted applications and therefore exclude purchases and preapprovals. The figures also exclude HMDA filers who did not originate at least one loan in 2006.

Lender Categories

The study categorized each Loan according to the type of lender that originated it.

CRA Banks – CRA-reporting banks making mortgage loans subject to the CRA (*i.e.*, in their assessment area) in the 15 most populous MSAs.

Non-CRA Banks – Banks that filed a CRA report but whose assessment areas did not include the MSA analyzed.¹⁷

Other Lenders / All Lenders Except CRA Banks – Lenders that were not CRA Banks.

Description of the 15 Most Populous MSAs

The following counties and/or cities comprise the each of the 15 most populous MSAs reviewed:

Atlanta: MSA 12060 Atlanta-Sandy Springs-Marietta, GA – Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton counties in Georgia

Boston: MSA 14460 Boston-Cambridge-Quincy, MA-NH – Norfolk, Plymouth, Suffolk, Middlesex, and Essex counties in Massachusetts; Rockingham and Strafford counties in New Hampshire

Chicago: MSA 16980 Chicago-Naperville-Joliet, IL-IN-WI – Cook, DeKalb, DuPage, Grundy, Kane, Kendall, McHenry, Will, and Lake counties in Illinois; Jasper, Lake, Newton, and Porter counties in Indiana; Kenosha County in Wisconsin

Dallas: MSA 19100 Dallas-Fort Worth-Arlington, TX – Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall, Johnson, Parker, Tarrant, and Wise counties in Texas

¹⁷ The CRA Bank and Non-CRA Bank categories exclude Loans made by banks that did not file a CRA Disclosure Report, presumably because they did not meet the asset size threshold. These Loans constituted 1.6 percent of all Loans made in the 15 most populous metropolitan areas.

TRAIGER & HINCKLEY LLP

Detroit: MSA 19820 Detroit-Warren-Livonia, MI – Wayne, Lapeer, Livingston, Macomb, Oakland, and St. Clair counties in Michigan

Houston: MSA 26420 Houston-Baytown-Sugar Land, TX – Austin, Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, and Waller counties in Texas

Los Angeles: MSA 31100 Los Angeles-Long Beach-Santa Ana, CA – Los Angeles and Orange counties in California

Miami: MSA 33100 Miami-Fort Lauderdale-Miami Beach, FL – Broward, Miami-Dade, and Palm Beach counties in Florida

New York: MSA 35620 New York-Northern New Jersey-Long Island, NY-NJ-PA – Nassau, Suffolk, Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland, and Westchester counties in New York; Middlesex, Monmouth, Ocean, Somerset, Essex, Hunterdon, Morris, Sussex, Union, Bergen, Hudson, and Passaic counties in New Jersey; Pike County in Pennsylvania

Philadelphia: MSA 37980 Philadelphia-Camden-Wilmington, PA-NJ-DE-MD – Bucks, Chester, Delaware, Montgomery, and Philadelphia counties in Pennsylvania; Burlington, Camden, Gloucester, and Salem counties in New Jersey; New Castle County in Delaware; Cecil County in Maryland

Phoenix: MSA 38060 Phoenix-Mesa-Scottsdale, AZ – Maricopa and Pinal counties in Arizona

Riverside, CA: MSA 40140 Riverside-San Bernardino-Ontario, CA – Riverside and San Bernardino counties in California

San Francisco: MSA 41860 San Francisco-Oakland-Fremont, CA – Alameda, Contra Costa, Marin, San Francisco, and San Mateo counties in California

Seattle: MSA 42660 Seattle-Tacoma-Bellevue, WA – King, Snohomish, and Pierce counties in Washington

Washington, DC: MSA 47900 Washington-Arlington-Alexandria, DC-VA-MD-WV – District of Columbia, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, and Warren counties and Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park cities in Virginia; Frederick, Montgomery, Calvert, Charles, and Prince George's counties in Maryland; Jefferson County in West Virginia

**HSBC – North America
Center for Consumer Advocacy
HOME PRESERVATION OFFICE**



HSBC-North America funds a broad range of homeowner programs including pre-homeownership buyer education, down payment assistance, post-closing homeowner counseling and foreclosure intervention. HSBC's Home Preservation Office oversees all homeownership initiatives and creates a single source to manage program administration, monitor progress, and facilitate internal and external communication and learnings. The following is a description of the major home preservation initiatives supported by HSBC-North America.

NATIONAL

Consumer Rescue Loan Program- This program was established in 2002 in partnership with the National Community Reinvestment Coalition (NCRC): Initially designed as an Anti-Predatory Mortgage Loan Fund to rescue consumers who had been victimized by predatory lending practices, the program scope was later expanded to include any mortgage that had become unaffordable due to origination, servicing problems, or a significant change in the consumer's financial circumstances. The program, available to non-HSBC customers, provides a "fresh-start" refinance mortgage, originated by HFC. The rescue loan is underwritten using modified underwriting guidelines, there are no closing cost (points, processing fees or third-party fees) associated with the new loan and the new loan rate is subsidized. HSBC provides annual grants to support the administration of the program by NCRC and has allocated a reserve pool to fund the rescue loans.

Neighbor Works Center for Foreclosure Solutions- HSBC-North America joined this partnership in April of 2006. This national initiative, modeled after the very successful Chicago HOPI program, aims to provide solutions to foreclosures by raising consumer awareness of loss mitigation programs, provide 24/7 telephone counseling through a toll-free nationwide helpline (1-888-995-HOPE). The program provides in-person homeownership and budget counseling by Neighbor Works' (or other qualified non-profit group) local counseling agency. A national consumer awareness campaign, developed by Ad Council in support of this program, is scheduled to launch in 2007.

HSBC Early Intervention Program- HSBC is launching a signature initiative with a national non-profit partner that will provide bridge grants of up to \$5,000 to homeowners who face a temporary financial hardship. The bridge grant may be used to cure mortgage delinquency and to pay down or eliminate delinquent balances on unsecured or credit card debt. Consumers participating in this program will receive budget and homeownership counseling.

Foreclosure Avoidance Program- Initiated in 2004, HSBC established this program in partnership with the Association of Community Organizations for Reform Now (ACORN) to provide special relief to HFC and Beneficial customers. Customers whose mortgage loans are delinquent are advised of the availability of budget counseling and loan modification relief and are encouraged to contact an ACORN housing counselor to receive counseling and to determine eligibility.

REGIONAL AND STATE

Chicago HOPI- Chicago Homeownership Preservation Initiative (HOPI) was launched in 2003 and includes a successful collaborative initiative between the City of Chicago, NHS of Chicago, and the telephone Hotline for Housing Counseling and lenders. This special initiative includes a city-sponsored consumer marketing campaign to reach Chicago residents who are at risk for foreclosure with budget and homeownership counseling, and referral to available city services. The program also facilitates discussions with lenders regarding workout options. The Chicago initiative, using the City's non-emergency "311" Hotline is the program on which national and most local programs are modeled. HSBC has been a participating sponsor since the program's inception.

New York PACE- New York's Preserve Assets and Community Equity (PACE) program was launched in 2005. The program is quite similar to the Chicago program and includes three community partner organizations and focuses its marketing outreach on NYC communities with the highest foreclosure rates. HSBC has been a participating sponsor since the program's inception.

Momentive- This program was established in 2004, to provide homeownership and budget counseling to Indiana residents. It has many of the same components as the Chicago and New York programs and is available to consumers state-wide. HSBC joined the initiative in 2006 and is one of the approximately 10 lenders who provide funding support.

Detroit HOPE- This program launched in 2005, HSBC joined the initiative in 2006. The program enjoys the support of the City of Detroit and over 45 lender partners who provide training and financial support. Detroit HOPE provides consumer budget and homeownership counseling support as the other local programs and, like Chicago, also sponsors weekend homeowner foreclosure prevention workshops. Lenders are invited to attend workshops and are able to provide confidential counseling to their own customers.


OTHER SIGNATURE INITIATIVES

YourMoneyCounts.com – HSBC's consumer education website provides information in a broad range of financial and money management topics. (There are more than 1,900 site visitors per month.)

Adult Financial Literacy Workshops – In partnership with the Center for Neighborhood Enterprise (CNE), HSBC provides financial education workshops at numerous community locations. More than 5,000 families were educated in 2006.

Financial Education Grant Program - Provides \$1MM in grant funding to support consumer financial education, credit management, and home buyer counseling programs. These programs are provided by twelve organizations in nine states, and assisted more than 164,000 families in 2006.

Your Future Counts - In partnership with the Society for Financial Education and Professional Development (SFED), presents credit management and personal-financial management seminars in Historically Black Colleges and Universities (HBCU) campuses nationwide. More than 11, 000 students have attended seminars since program inception in August 2005.



Community Development Group

Homeownership Preservation Office

Launched in 2004, our Homeownership Preservation Office works with community leaders, housing advocates, public officials and investors to help homeowners stay in their homes. We work with our colleagues across the industry to develop policies, practices and solutions to help sustain homeownership.

The Homeownership Preservation Office services include:

- A toll-free hotline for non-profits providing in-depth counseling to Chase mortgage customers who are delinquent or at risk of foreclosure
- Foreclosure prevention workshops for non-profit counselors
- Local market initiatives aimed at foreclosure prevention
- A targeted program to donate or sell distressed properties at reduced prices, in designated areas, to community groups and non-profit housing providers

The Homeownership Preservation Office has worked on industry-wide foreclosure prevention initiatives in Chicago, Atlanta, Detroit, New York City, Indianapolis, Dallas and Houston as well as Colorado and Ohio. The Homeownership Preservation Office has facilitated over 45 foreclosure prevention training sessions to the non-profits and has trained more than 1,300 staff in non-profit agencies since its inception.

Chase's Homeownership Preservation Office is also participating in the NeighborWorks America and Homeownership Preservation Foundation's national foreclosure intervention campaign along with other industry leaders including members of the Financial Services Roundtable's Housing Policy Council.

For more information contact us at HPO.chase@chase.com



Foreclosure Prevention

Buying a new home is usually one of the happiest days in a person's life. However, as time goes by and financial situations change, sometimes people (through no fault of their own) find it difficult to keep up with the monthly payments. As delinquency turns into default, which can then lead to foreclosure, suddenly the homeownership dream becomes a nightmare.

We have several options* that may bring your monthly payments up to date:
I would like to keep my home ... I can no longer afford or want to keep my home ...

- [Full Reinstatement or Payoff](#)
- [Repayment plan](#)
- [Loan modification](#)
- [List and Sell the property](#)
- [Deed-in-lieu of foreclosure \(D.I.L.\)](#)
- [Outside lender refinance](#)

***All programs are subject to lender approval.**

A workout specialist can help you understand your options.
Please call 1-800-422-1498 for more information.

FREE outside financial counseling is available to you.

Consumer Credit Resource Center (CCRC) is a non-profit agency that can advise you on your total financial picture. CCRC is not affiliated with Citigroup. CCRC has no interest in your mortgage loan. CCRC may be able to help you manage your current financial problems. Please give them a call if you want this free outside financial counseling at (866) 240-0357.

Full Reinstatement

Full repayment of all past due payments, and foreclosure/ servicing expenses to bring the loan current. This is the best option as it completely ceases foreclosure and any further collection action.

Full Payoff

A payoff in full leaves no loan balance, the note is paid in full. CitiFinancial Mortgage releases the lien held against the real estate.

[More Information](#)
[Back to top](#)

Repayment Plan

This option is used when you have experienced a temporary reduction in income or if you have run into legitimate, unexpected expenses. A repayment plan is structured to cure the delinquency over a period of months by paying a full payment each month, plus a partial payment on the delinquent amount each month. An initial down payment is required. The amount that you have to pay monthly over and above your regular monthly payment will be based on your financial situation and your initial down payment.

A repayment plan should only be considered if there has been a positive change in your financial situation. For instance, if you were previously unemployed but have now found employment, we may consider a repayment plan provided you are able to make an initial down payment and you can show the ability to pay the increased monthly amount due while keeping your real estate taxes paid current.

[More Information](#)
[Back to top](#)

Loan Modification

If you have experienced a permanent reduction in income due to a severe medical hardship, loss of a spouse, legitimate increase in expenses, or other permanent hardship, a loan modification may be the answer. Based on your individual financial situation, we may be able to reduce your monthly payment amount. We need to emphasize that this is done only in hardship situations.

[More Information](#)
[Back to top](#)

List and Sell the Property

If you believe that you will continue to have difficulty making your mortgage and real estate tax payments and that your hardship or reduced income is permanent, you may have to consider listing your property for sale. Housing values in your area may have declined which may result in an offer to purchase that is less than the total debt due on the property.

In some instances, we may accept less than the amount we are owed. In order for us to consider this option, you must submit a package of financial information along with information about the proposed sale. Call us for all the details.

[More Information](#)
[Back to top](#)

Deed-in-lieu of Foreclosure (DIL)

A DIL is essentially a transfer of the property to the lender in consideration of forgiveness of the debt. There are some advantages to this process over foreclosure.

One benefit is that the lender may waive any right to a deficiency judgment against you if the property is subsequently sold for a loss. A second advantage is that you avoid having a completed foreclosure on your credit bureau record. However, the fact that you gave the lender a DIL may be noted on your credit bureau record.

In a DIL situation, the lender attempts to reduce their loss because the DIL decreases the length of time involved in the acquisition and resale of the property. The lender will consider accepting a DIL if the reason for the default was beyond your control and you have been cooperative in seeking alternatives to foreclosure.

[More Information](#)
[Back to top](#)

Outside Lender Refinance (Short Refinance)

There are many residential lenders in your area that may be able to obtain a loan from a different lender to payoff your defaulted loan with us and give you a fresh start.

[More Information](#)
[Back to top](#)

Foreclosure Consequences

It is very important to know what can happen when a lender forecloses on your home. First, you will lose your home and all the money you have invested in it. Second, the foreclosure goes on your credit bureau record and may negatively impact your ability to obtain another mortgage in the future. Third, in some states, you can be held liable for any loss the lender experiences in selling the home. Fourth, the lender is required to report all foreclosures, short sales/settlements and DIL's to the Internal Revenue Service. You may have increased tax liability, since the IRS may view these events as forgiveness of debt.

In some states, the foreclosure sale can happen in as little as thirty days. Even if you are experiencing financial difficult, foreclosure is not the only option.

[More Information](#)
[Back to top](#)

More Information

In order to assist you we need the following information:

FINANCIAL INFORMATION

Before CitiFinancial Mortgage any of the various repayment options available, it is important that we have a complete picture of your current financial situation. We will send you a package of information that you will need to complete and you may have to provide certain documentation, such as tax returns, recent pay stubs, bank statements and a hardship letter for our review. Please call us today at 1-800-422-1498 for more information, or if you would like to submit this information for review today and have a workout specialist contact you within 5 business days, [click here to download form](#).

THE MARKET VALUE OF YOUR HOME

Perhaps you recently had your property appraised. This information is extremely helpful to the lender to determine the current fair market value of the property. If you do not have an appraisal, another helpful document to determine your property's value is a Comparative Market Analysis (CMA). A CMA compares the listed and sold properties in your area similar to your home. A local Realtor may provide a CMA to you at no charge. Call your local Realtor to see if they will provide a free CMA.

REAL ESTATE TAXES PAID CURRENT

A loan in default with us may also be in default with the local, city or state taxing authorities. In any workout situation, knowing the status of your property taxes is critical. You must insure that your real estate taxes are paid current or risk losing the property at a tax sale.

[Back to top](#)



Equal housing lender

State Licensing
Citi.com

[Privacy](#)
Terms, conditions, caveats and small print
Copyright © 2007 Citigroup Inc.



Wamu: \$2B Subprime Refis Would 'Get Ahead' of Risk

From: American Banker
Thursday, April 19, 2007
By Jim Cole

One day after warning its subprime mortgage portfolio is still deteriorating, Washington Mutual Inc. unveiled plans to offer discounted refinancings to customers facing potential foreclosure.

The Seattle thrift company said it would refinance \$2 billion of adjustable-rate subprime mortgages over the next six months, shaving 50 basis points off its rates and converting the loans to 30-year fixed-rate ones. It also pledged to graduate eligible borrowers to prime-rate mortgages.

"I view this as absolutely the right business decision for us and the right answer for the consumer. Washington Mutual absolutely does not win in any way, shape, or form if consumers lose their homes or if consumers go delinquent," David Schneider, the president of Wamu's home loans group, said in an interview Wednesday. "What we're trying to do is get ahead of what we see as a potential risk."

Wamu holds \$17.6 billion of subprime first mortgages and \$2.8 billion of home equity credits on its balance sheet, and it services \$33.5 billion of subprime mortgages for others.

Mr. Schneider said the program was designed over the past month for customers who are current today but may have trouble repaying their loan when the rate resets. If demand exceeds \$2 billion of loans, the program could be expanded, he said.

"If 10,000 customers take advantage of this opportunity to work with us to improve their financial position, and there are another 5,000 that want to, then we're going to continue to work with our customers," he said.

Wamu is not the first banking company to go down this road. Bank of America Corp. and Citigroup Inc. provided \$1 billion to a similar refinancing program unveiled this month by the nonprofit Neighborhood Assistance Corp. of America.

Bruce Marks, the nonprofit's chief executive, criticized Wamu's program Wednesday, saying it will trap borrowers in subprime mortgages.

"If someone is making their payments on time, they should get a fixed rate at the prime rate, period, regardless of credit score," he said.

The industry is taking such steps as lawmakers and regulators lean on lenders to work with customers to prevent foreclosures. (See related story on page 1.)

"While there is public talk about it and some discussion on Capitol Hill and in the media, that is not what drove this decision for us," Mr. Schneider said. "This is the right business decision."

Analysts said the Wamu program is clearly preferable to the alternative.

"They want to keep as many houses off the foreclosure block as possible," Paul Miller, an analyst at Friedman, Billings, Ramsey & Co. Inc., said in an interview Wednesday.

Announcing first-quarter results Tuesday, Wamu said it expects to sock away up to \$1.5 billion against bad loans this year. Previous estimates had put the reserve at \$300 million.

"We anticipate a need to increase provisions for subprime and home equity loans where there is less loan-to-value protection," Tom Casey, Wamu's chief financial officer, said on the earnings conference call.

The subprime troubles clouded an otherwise solid first-quarter performance. The \$349 billion-asset Wamu said net income fell 20% from a year earlier, to \$784 million. Earnings per share fell 12 cents, to 86 cents, but beat the average Wall Street expectation by 2 cents.

Revenue fell 4%, to \$3.62 billion. Interest income fell 2%, to \$2.08 billion, and noninterest income fell 6%, to \$1.54 billion. Analysts singled out the retail banking operation, where first-quarter profits rose 4%, to \$569 million.

"It's too bad it is so hard to get a grasp on the mortgage credit risk, because there are some good things going on at the retail bank," Frederick Cannon of KBW Inc.'s Keefe Bruyette & Woods Inc. said in an interview Wednesday.

Harry Killinger, Wamu's chairman and CEO, tried to put a positive spin on subprime lending.

"We have seen some positive signs in the subprime area," he said in an interview Tuesday, citing as evidence "lower levels of first-payment defaults and less issues on investor repurchase requirements."

But Wamu's nonperforming assets rose 60%, to \$3.26 billion, and represented 1.02% of total assets, versus 0.59% a year earlier.

Killinger said aside from the subprime lending business, Wamu's first quarter was solid. "I'm really seeing the benefits of the diversification," he said, citing the performance of credit cards, retail banking, and commercial lending. "Clearly, the business that is in the difficult part of the cycle is home lending, particularly in the subprime area, but we are pleased to have such a difficult environment in subprime and still be able to produce the solid results for the quarter."

Wamu shares jumped nearly 5% Wednesday. <http://www.americanbanker.com/> <http://www.sourcemediacom.com/>

© 2007 American Banker and SourceMedia, Inc. All rights reserved.

© 2007 American Banker and SourceMedia, Inc. All Rights Reserved. SourceMedia is an Investcorp company. Use, duplication, or sale of this service, or data contained herein, except as described in the Subscription Agreement, is strictly prohibited.

[Subscribe](#) | [About American Banker](#) | [Advertise](#)
[Contact American Banker](#) | [Customer Service](#) | [Privacy Policy](#)
[Site Map](#) | [Subscription Agreement](#)



Current PACE Supporters

- Astoria Federal Savings
- Citibank Foundation
- Deutsche Bank Americas Foundation
- Fannie Mae
- Freddie Mac
- HSBC USA
- Independence Community Foundation
- JPMorgan Chase Foundation
- M&T Bank Charitable Foundation
- North Fork Bank
- Washington Mutual
- Starr Foundation

Hope Now's Mission is to:

Maximize the preservation of homeownership while minimizing foreclosures. Assist borrowers who have the willingness and wherewithal to remain in their homes, but need some help to do it. Our goal is to keep people in their homes and when that is not possible, prevent foreclosure.

Over 100,000 people counseled in February alone!

Over 1 million homeowners in distress have avoided foreclosure!

Alliance Statement

HOPE NOW is an alliance between counselors, servicers, investors, and other mortgage market participants. This alliance will maximize outreach efforts to homeowners in distress to help them stay in their homes and will create a unified, coordinated plan to reach and help as many homeowners as possible. The members of this alliance recognize that by working together, they will be more effective than by working independently.

The Department of the Treasury and the Department of Housing and Urban Development encouraged these leaders to form this alliance, which includes (as of October 9, 2007):

American Financial Services Association
American Securitization Forum
Assurant, Inc.
Bank of America
CCCS Atlanta, Inc.
Citigroup, Inc.
Consumer Bankers Association
Consumer Mortgage Coalition
Countrywide Financial Corporation
Fannie Mae
The Financial Services Roundtable
First Horizon National Corporation
Freddie Mac
GMAC ResCap
Homeownership Preservation Foundation

Housing Partnership Network
The Housing Policy Council
HSBC North America Holdings, Inc.
JPMorgan Chase & Co
National City
NeighborWorks America
Mortgage Bankers Association
Option One Mortgage
PMI Mortgage Insurance Co.
Securities Industry and Financial Markets Association
State Farm Insurance Companies
SunTrust Mortgage, Inc.
Washington Mutual, Inc.
Wells Fargo & Company

Alliance Action Plan

- The alliance will conduct a new, national direct mail campaign to contact at-risk borrowers, encouraging them to either call their lender or a credit counselor.
- This alliance has agreed to adopt a standard process model that will strengthen and speed work flow, productivity, and communications between servicers and counselors.
- The alliance will work to expand the capacity of an existing national network to receive, assess, counsel, refer, and connect borrowers to servicers.

- The American Securitization Forum, which represents servicers, investors, and other secondary market participants, has announced that counseling fees can be reimbursed from securitization transactions in appropriate circumstances.
- The alliance will develop common communications guidelines that will be used to respond to at-risk borrowers in order to offer them the best possible solutions, customized for each borrower.
- The servicers have agreed to work toward cross-industry technology solutions to more effectively connect servicers and counselors together in order to better serve the homeowner.
- The alliance will develop a common set of metrics to measure the initiative's progress.

Consumer Help

Before you call your servicer, please have the following documents handy:

Your loan number

Your address and any secondary loan numbers

If you do not know who your servicer is, check the following sources:

Your monthly mortgage billing statement

Your payment coupon book

Servicer	Hotline
Aurora Loan Services	800-550-0509
Avelo Mortgage, LLC.	866-992-8356
Bank of America	800-846-2222
Carrington Mortgage Services	800-790-9502
CitiFinancial/Citi Trust Bank	800-422-1498
CitiMortgage Conv/FNMA	800-695-0384
CitiMortgage/Gov't & Freddie Mac	866-272-4749
CitiResidential Customer Care	800-430-5262
Countrywide Home Loans	800-669-6650
EMC Mortgage, Inc.	877-362-6631
First Horizon Home Loans	800-364-7662
GMAC/Homecomings/ResCap	800-799-9250
Home Loan Services, Inc. (d/b/a First Franklin Loan Services and NationPoint Loan Services)	800-500-5022
HomEq Servicing	888-270-6663
HSBC Consumer Lending	800-333-5848
HSBC Mortgage Services	800-365-6730
HSBC Mortgage Corporation	888-648-3124
IndyMac Bank	800-880-6848
JPMorgan Chase Prime Loans	800-446-8939
JPMorgan Chase Non-Prime	877-838-1882

JPMorgan Chase Home Equity	866-582-5208
JPMorgan Chase Default HPO Help Line	866-345-4676
Litton Loan Servicing	800-999-8501
National City Mortgage Corporation	800-523-8654
Nationstar Mortgage, LLC.	888-480-2432
Ocwen Loan Servicing, LLC.	877-596-8580
Option One Mortgage Corporation	888-275-2648
Saxon Mortgage Services	888-325-3502
Select Portfolio Servicing	888-818-6032
SunTrust Mortgage, Inc.	800-443-1032
Washington Mutual, Inc.	866-926-8937
Wells Fargo Home Mortgage	877-216-8448
Wells Fargo Financial	800-275-9254
Wilshire Credit Corporation	888-917-1050

Frequently Asked Questions

What is HOPE NOW?

HOPE NOW is an alliance between counselors, servicers, investors, and other mortgage market participants to maximize outreach efforts to at-risk homeowners and help them stay in their homes. [Click here \(hyperlink to membership page\)](#) to see full list of Alliance members.

If I can't pay my mortgage, why should I call my mortgage lender/servicer?

Your mortgage lender can help you identify the options available to you, should you have trouble paying your mortgage.

When should I call my lender?

You should contact your lender *as soon as you know you will have difficulty meeting your mortgage payments*. You do not have to wait until your interest rate re-sets, nor do you have to wait until you are already behind in your payments. In fact, the sooner you call, the more options will be available to you. No matter what your situation is, CALL TODAY.

What if I don't want to call my lender?

Call the Homeowners HOPE™ Hotline - 1.888.995.HOPE. This hotline is staffed by HUD-approved credit counselors who can guide you through possible options.

How do I join HOPE NOW?

If your company or organization would like to join HOPE NOW, please contact Eric Selk, Project Manager, Eric@hopenow.com.

What is a loan workout?

Either a loan modification or a repayment plan.

What is a loan modification?

A modification occurs any time any term of the original loan contract is permanently altered. This can involve a reduction in the interest rate, forgiveness of a portion of principal or extension of the maturity date of the loan.

What is a repayment plan?

A plan that allows the borrower to become current and catch up on missed payments that are appropriate to the borrower's circumstances.

Hotline Services

HOMEOWNER'S HOPE
HOTLINE:

888-995-HOPE

Worried about foreclosure?

If you feel like you may be in danger of facing foreclosure, the time to call 888-995-HOPE is now - Homeowner's HOPE™, a counseling service provided by the Homeownership Preservation Foundation, can work with you to find a solution. The sooner you call, the sooner you can regain your peace of mind. Remember, you're not alone. Millions of people across the United States have trouble with their mortgage every year.

We can help.

Through our 888-995-HOPE hotline, the Homeownership Preservation Foundation has a single mission: to help homeowners avoid foreclosure. We are an independent nonprofit that provides HUD-approved counselors dedicated to helping homeowners.

The help we offer is free.

Our counselors are experts in foreclosure prevention and trained to set up a plan of action designed just for you and your situation. When you talk to us, you won't be judged and you won't pay a dime. That's because we don't just offer general advice - we help you take action. Counselors will arm you with education and support that assists you in overcoming immediate financial issues...at no cost to you

**Oral Testimony of Elise Brown
before the
Committee on Housing and Buildings
Tuesday, April 21, 2009**

My name is Elise Brown, and I am the supervising attorney of the Foreclosure Prevention Project at MFY Legal Services, Inc. I am here today to address Introduction Nos. 889, 956 and 959.

MFY Legal Services provides legal services to more than 6,500 low-income clients in New York City every year. We are the largest legal services provider for mental health services consumers in New York City, and we have many other projects that help low-income New Yorkers with housing-related problems, including Neighborhood Preservation Project, East Side SRO Law Project, Manhattan Legal Aid to Seniors, Lower Manhattan Justice Project, and Foreclosure Prevention Project, which we launched in September 2008 in response to our clients' growing demand for legal representation and information about foreclosure and related issues.

Int. No. 889

Studies have shown that one foreclosure can depress the 80 closest neighbors' property values by nearly \$5,000. This effect is exacerbated if property involved in a foreclosure action is not maintained. The property value declines caused by foreclosure hurt local businesses and erode state and local government tax bases. More urgently, in the case of foreclosed properties that are occupied, failure to maintain property creates serious risks to public health and safety. Int. No. 889 seeks to address the problems associated with the failure to maintain property during the pendency of a foreclosure action.

While MFY commends the Council in addressing this issue, we have several suggestions that we believe would strengthen the bill.

MFY is concerned that the proposed statute is limited to “[a]ny mortgagee that commences an action . . . to foreclose upon a mortgage on real property . . .” It is MFY’s experience in defending such actions that often the person or entity that commences the action is not the mortgagee but rather a mortgage loan servicer. Hence MFY proposes that the statutory language be modified to apply to “any entity or individual which initiates an action for foreclosure . . . “ This language is identical to that contained in proposed Int. Nos. 956 and 959.

Moreover, often a mortgagee commences a foreclosure action and then assigns the note and mortgage to another entity, which steps into the mortgagee’s shoes. The current version of this bill does not address this frequent industry practice.

Finally, MFY is concerned about the lack of parallelism in the final two sentences of subsection (a) of proposed section 27-21091. The penultimate sentence provides that a mortgagee must disclose to DHPD w/in ten days of:

- (1) stipulated discontinuance of such foreclosure action; or
- (2) issuance of a judgment in such foreclosure; or
- (3) the sale of such foreclosed property.

But the final sentence states that information pertaining to a foreclosure action posted on DHPD’s website will be removed the first business day of the month following disclosure of:

- (1) such discontinuance; or
- (2) sale of such property; or
- (3) one year after notification of an order of foreclosure.

It is unclear whether the “issuance of a judgment” in the penultimate sentence is intended to reference the same thing as “an order of foreclosure” in the final sentence. MFY respectfully suggests that consistent language be employed to avoid confusion.

MFY strongly supports that portion of the bill that requires registration of foreclosure actions pending and filed in the five boroughs and encourages adoption of a proposed amendment to the administrative code of the city of New York requiring registration of foreclosure actions and maintenance of the subject property by the plaintiff while the action is pending.

Int. Nos. 956 and 959

MFY supports the effort to provide additional notice to tenants who reside in buildings made the subject of foreclosure actions as set forth in Int. Nos. 956 and 959. To expand protection to New York City residents, MFY proposes that the notice be provided to all “occupants” of such buildings. Use of the narrower term “tenants” would permit the foreclosing person or entity to dispute a tenant’s tenancy rights in defense of its failure to provide the required notice.

The third sentence of Int. No. 956 requires clarification and is omitted altogether from Int. No. 959. That sentence currently provides that “if the names of any such tenants are unknown, such notification shall be done by affixing such notice in a prominent place at such building.” As written, the sentence absolves the foreclosing person or entity from notifying all tenants by mail if any tenant’s name is unknown.

MFY thus suggests that the third sentence of Int. No. 956 be modified to provide:

“However, if any such tenant’s name is unknown, notification to that tenant shall be done by affixing such notice in a prominent place at such building” and that a comparable sentence be inserted into Int. No. 959. Again, MFY proposes that “occupant” replace “tenant.”

MFY also believes it is important that, given the growing foreclosure crises in New York City, the statutes provide a time limit within which the DHPD commissioner promulgates the rules referenced in Int. Nos. 956 and 959.

Finally, MFY suggests that subsection (b) of each proposed statute be amended to clarify that the civil penalties imposed for violation of the notice provisions of subsection (a) may be enforced by and payable to each occupant to whom such notice was not provided.

Conclusion

MFY applauds the Council for addressing the very real problems encountered by residents of property in foreclosure and encourages the Council to continue to address problems arising out of and related to foreclosures in New York City. MFY is committed to working with the City Council to better protect both tenants and homeowners in New York City. Thank you for holding today's hearing and for considering these important bills.

Elise Brown
Supervising Attorney
Foreclosure Prevention Project
MFY Legal Services, Inc.
299 Broadway, 4th Floor
New York, New York 10002
(212) 417-3753
ebrown@mfy.org
www.mfy.org



Neighborhood Housing Services Jamaica, Inc.

89-70 162nd Street Jamaica, New York 11432

Tel : (718) 291-7400 Fax : (718) 295-6505

www.nhsj.org

TESTIMONY

**Patricia Kerr, Program Director
Neighborhood Housing Services of Jamaica, Inc.**

April 21, 2009
Council chambers, City Hall
New York, NY

Honorable Altman and Members of the New York City Council, I am Patricia Kerr, Program Director for Neighborhood Housing Services of Jamaica, Inc. and I would like to thank you for the opportunity to speak today in support of legislation which will mandate notification of tenants living in properties that are being foreclosed.

My organization has provided comprehensive services relating to homeownership and neighborhood stabilization for low- and middle-income residents in Southern Queens for the past 35 years. During that period, our products and services have primarily concentrated on homeownership opportunities for existing homeowners and first-time buyers.

In 2004, when foreclosure intensely ravaged our communities, we became acutely aware of the needs and the lack of resources and services for tenants, the forgotten population that is at-risk of displacement, eviction and eventually homeless. These are families with children, elderly and disabled, who need counseling and services to help them through difficult times that affect the health and welfare of their stability. In an effort to better serve the community, NHS of Jamaica formed a partnership with Queens Community House to help tenants facing their homes as result of foreclosure.

The primary problem for tenants facing foreclosure is that they are the last to be informed of the issues, and are not prepared to relocate or make other living arrangements. Many of them are left in the homes with no knowledge of the foreclosure process. Some visit our office at the near end of the process, after foreclosure has taken place. Notification to tenants at the beginning of the process would enable families to make necessary plans, seek new housing for relocation.

Neighborhood Housing Services of Jamaica, Inc. strongly supports Int. No. 889, No. 956 and No. 959.

Thank your for your attention and support of this very important issue.

MEMORANDUM

TO: Neighborhood Housing Services of Jamaica
FROM: Vandana Chak, Esq.
DATE: April 20, 2009
RE: Comments on Local Law to Amend the Administrative Code of the City of New York, in relation to entities commencing action to recover real property in foreclosure action. Int. No. 959, Int. No. 956 and Int. No. 889.

Dear Madam:

This memorandum is being submitted to you at your request so as to add to the comments on the positive steps of streamlining of information and public notice suggested in the proposed amendments by the Committee on Housing and Buildings. In 2004, I examined extensively the impact of foreclosures and predatory lending on new immigrant communities in the borough of Queens and was fortunate to add my support to your efforts. I have since also defended such foreclosure actions in court, besides participating in giving education seminars on the issues.

Int. No. 889: §27-2109

A web based data base to provide public information at relevant milestones in the foreclosure process, from filing of foreclosure to sale of property, is a very valid and appropriate step by the Committee in the context of preservation of properties and neighborhoods.

Comment

§27-2109.1

- Among the requirements of registration within 10 days of various milestones enumerated from foreclosure filing to sale, the Committee is advised to **also INCLUDE the milestone of "Publication of Notice of Sale"**. This is a critical

step a mortgagee takes between the milestone of Final Judgment of Foreclosure and Foreclosure Sale.

It is often the case that foreclosure actions in sub-prime mortgages in targeted neighborhoods proceed ex-parte and end in ex-parte judgments of foreclosure. Toxic foreclosures include characteristics of equity lending to seniors by securing it with a home mortgage, which for various reasons ends in a foreclosure of a home the senior has lived in for most of their lives. In a property flipping situation the foreclosure moves so fast to judgment that the affected party does not have time to find appropriate counsel. Therefore, as available remedies are far more difficult to implement after a sale the public registration requirement should also include registration of the date of filing of the critical Notice of Auction/Sale that mortgagee has to provide to begin the pre-sale publication process after judgment.

- The requirement must INCLUDE the name, address, phone number of the purchaser who purchases the property at any time after commencement of a foreclosure action and also that of its CEO, if an entity.

Comment

§27-2109.1 (c)

Clarity is a key component of legislative action. Therefore, the sentence “The responsibility of maintenance of such real property shall cease upon the sale of such property or discontinuance of such action.” must qualify the subject of this directive by including after the words “responsibility of”, the words “**the owner prior to the sale of**

the property for” and include at the end of that sentence “ and shall devolve on the owner who purchases on sale or is owner after discontinuance.”

It is important to understand the immensity of the foreclosure rates and what current statistics show on Foreclosure Filings Going to Auction.

In his report John Levy, reporting for Bloomberg.com ,”Foreclosures Rose 53% in June and Bank Seizures Tripled”, July 10, 2008, finds that U.S. foreclosure filings increased 53 percent in June from a year earlier and bank seizures rose the most on record as deteriorating property values and higher rates on adjustable mortgages forced more people to give up their homes. **New York** filings increased 22 percent from a year earlier to 5,367, with one in every 1,473 households in a stage of foreclosure, ~~the 32nd highest~~ ~~rate.~~

An analysis of the foreclosure auction in the Chicago region by Woodstock Institute August 2008, finds that an increasing share of foreclosure action is going to lenders. When foreclosures go to auction, there are two possible outcomes. Either a third party investor or junior lien holder, purchases the property by outbidding the established minimum bid or, there are no acceptable bids and the property reverts to the plaintiff, or foreclosing lender, and enters into its REO portfolio. Small multi-unit rental buildings are making up a growing share of REO foreclosure actions in the City of Chicago. In 2007, these properties accounted for over 36% of REO auctions in the City. In first half of 2008 only there was a 78% increase in properties reverting back to lender over that of the first half of 2007. In its conclusion the analysis states as follows:

“As foreclosure action continues, the focus of policy intervention will likely continue to shift towards dealing with the growing inventory of vacant properties. One important effort to limit the number of vacant properties must be increasingly aggressive efforts by lenders and mortgage servicers to reach troubled borrowers prior to foreclosure. Servicers must proactively modify so that borrowers can afford monthly payments over the long term and stay in their homes. However, given the growing number of homeowners in distress and the unsuitable loans many borrowers received, it is likely that not everyone will be saved. Therefore, strategies must also focus on limiting the impact of vacant properties on neighborhoods and cities. Many municipal governments have been working to develop or enhance strategies around vacant building ordinances that places additional responsibilities and costs on owners of vacant properties.”

Comment

(c) It is also recommended that for legislative uniformity the terms “Any entity or individual” as used in §27-2109.2 (b), be applied similarly in §27-2109.1(c).

(c) It is also recommended that for legislative uniformity the terms “or individual” be added after the word “entity”.

Int. 956: §27-2109.2

Comment

§27-2109.2

The notice requirement that is limited to the tenant must also **include an occupant**. This is suggested in light of common practices where written leases are not provided to tenants, owners rent beds rather than rooms, where over 106 million residents are unbanked, who, may be caught by a straw relationship. The occupant is as important a resident who would benefit in making informed decisions from the notice requirement of the proposed legislation. This will not be an onerous requirement in properties with 5 and less units.

The Mortgage Asset Research Institute defines the following are examples of mortgage fraud schemes and the parties that typically are involved.

- **Real Estate Fraud:** In cases of real estate fraud, an individual may use fraudulent documents to steal the title or deed to the property of a legitimate owner. Most commonly, the perpetrator will then obtain a loan on the property with intent to commit mortgage fraud. They will then often take the money and default on the loan, leaving the legitimate owners with the outstanding debt.
- **Appraisal Fraud:** A common example of appraisal fraud involves property flipping. Here a property is purchased using an initial mortgage. The property is then appraised at a much higher value, using an unscrupulous appraiser. It is then resold quickly for maximum profit. Other appraisal fraud involves inflating the value of a property in order to obtain a second mortgage or to pad the commissions of real estate brokers or agents.
- **Mortgage Loan Fraud:** A potential buyer obtains a loan using fraudulent income, credit, employment or appraisal documents to obtain a mortgage for which they are not qualified. This type of fraud hurts lenders as many unqualified buyers are eventually forced to default on their loans. Often, these buyers are assisted by professionals who hope to increase their profits.

In case of the first two examples a web database of names, addresses and contact information of owner before and after a foreclosure sale and holding the owner responsible to maintain the property would assist in streamlining the process of responsibility in maintaining property.



FOR THE RECORD

ANHD INC is a 501(c)(4) not-for-profit social welfare organization which advocates on behalf of New York City community-based, non-profit housing organizations and the neighborhoods they serve.

TESTIMONY OF
DAVE HANZEL, DIRECTOR, BEFORE
THE NEW YORK CITY COUNCIL
HOUSING AND BUILDINGS COMMITTEE

April 21, 2009

Good Afternoon. Thank you, Chairman Dilan and committee members, for this opportunity to testify about Intros 889, 956 and 959.

My name is David Hanzel and I am the Director of ANHD INC. ANHD INC. is a not-for-profit social welfare organization which advocates on behalf of 98 New York City neighborhood-based housing groups- CDCs, affordable homeownership groups, supportive housing providers and community organizers. As you all know, ANHD INC. advocates for comprehensive, progressive housing polices and programs to support affordable, flourishing neighborhoods for all New Yorkers, especially our lower income residents.

ANHD INC believes that in the unfortunate event of foreclosure in multi-family properties, there are many steps that must be taken to ensure tenants are protected, the properties remain in good physical condition, and that the surrounding neighborhoods are not de-stabilized. We support the aforementioned bills as they take important steps to realize these goals and thank the Council for crafting a response that puts tenants and their homes first. We must also point out that there are additional resources that must be committed and partners who must be engaged in order to achieve a comprehensive solution to the foreclosure crisis.

Our estimates are that up to 54,000 New York City apartments may be at risk of going into foreclosure because their predatory equity-backed landlords over paid for the properties and were unsuccessful at removing working class tenants in favor of more affluent residents. ANHD INC has worked closely with our member groups as well as the Partnership to Preserve Affordable Housing and several Council Members, including Speaker Quinn, Council Member Vann and Council Member Garodnick to identify, organize, and stabilize over-leveraged multi-family residential properties. However, finding and implementing a systemic solution to the threat posed has proved challenging.

Intros 889, 956 and 959 will ensure HPD is alerted in a timely manner to buildings that may experience a deterioration of physical conditions or abandonment, and that tenants in these properties have important information concerning their homes. We suggest that in addition to receiving notification, tenants are provided with information concerning their rights and contact info for governmental agencies, legal service providers, and advocacy organizations that may be able to provide additional resources.

In addition to the introductions before us today, ANHD INC also believe the New York State Legislature must pass and Governor Paterson must sign into law, S. 1182 and A. 5358, which would require the holder of a mortgage who prevails in a foreclosure proceeding to maintain the property involved in the foreclosure action in a safe and habitable condition until it is disposed of.

ANHD INC has also worked with the FDIC and the Obama Administration on the proposed Public-Private Investment Fund (PPIF). We have pushed the Obama Administration to create a Multi-Family Preservation Program as part of the Public-Private Investment Fund to adequately address the toxic assets associated with these predatory equity-backed securities through an orderly de-leveraging and establish guidelines to protect the assets and tenants.

We also believe it is crucial that the FDIC work with other regulatory agencies to establish new guidelines for financial institutions that require lending on rent regulated multi-family properties be based on realistic underwriting assumptions. New York State law already specifies such regulations for residential lending on single-family homes.

Thank you for this opportunity to testify and for your efforts to protect rent-paying tenants and their homes.



Urban Justice Center
123 Williams Street, 16th Floor
New York, NY 10038
Tel: (646) 602-5600 -- Fax: (212) 533-4598
<http://www.urbanjustice.org>

FOR THE RECORD

*Foreclosures
Public Hearing
City Hall
New York, New York
April 21, 2009*

Urban Justice Center - Community Development Project

Testimony before the Housing and Buildings Committee

Good morning. My name is Harvey Epstein; I am the Project Director of the Community Development Project at the Urban Justice Center. The Urban Justice Center is a project-based umbrella legal services and advocacy organization serving New York City residents. In the past 25 years, the Urban Justice Center has provided direct legal assistance, systemic advocacy and community education to low and moderate income rent regulated tenants in New York City. The Community Development Project (CDP) of the Urban Justice Center formed in September 2001 to provide legal, technical, research and policy assistance to grassroots community groups engaged in a wide range of community development efforts throughout New York City. Our work is informed by the belief that real and lasting change in low-income, urban neighborhoods is often rooted in the empowerment of grassroots, community institutions.

The Urban Justice Center represents owners who are subject to foreclosure. Many of these homeowners are subject to predatory lending practices which is the direct cause of the foreclosure. In addition, we represent tenants who reside in building in which the landlord is being foreclosed on. Unfortunately, we have limited resources and are not able to represent everyone who needs this legal assistance. Without a right to counsel, these tenants are extremely vulnerable to threats of eviction. What these working poor individuals and families need is a right to counsel in eviction and foreclosure proceedings. However, until we prioritize that, we need to create a legal system that educates residents about foreclosure cases so they are aware of the proceeding and understand their rights.

The bills and resolutions currently pending before the New York City Council are important protections for low income tenants in properties that are being foreclosed on in the City of New York. Right now, tenants who are not protected under rent regulation have few if any rights to preserve their tenancies when a property owner is foreclosed on. Therefore, the more notice a tenant has about the pending action, the more opportunities they have to find alternative housing arrangements or make arrangements with the new owner. Without knowledge and notice, the tenants are at the will of the new owner. Many of these tenants are working poor families who are unaware of the legal rights or understand the legal system. With

more notice and greater protections, these unregulated tenants can prepare if they are required to relocate. In addition, requiring the new owner to maintain the property while residential tenants reside there protect them from further landlord neglect which has probably occurred during the pendency of the foreclosure proceeding.

889 (registration requirement); The registration requirements set forth in the bill will provide tenants and the public more information about the filing of foreclosure actions and the parties involved. It will also provide an additional way for tenants to be informed about the progress of the foreclosure and the new owner if the building is finally foreclosed on.

Intros 956, 959 (notice requirements) – These bills provide needed information to tenants who reside in buildings that are subject to foreclosure. It provides the tenant with actual notice of the proceeding which will allow them to prepare to relocate if the owner is unable to keep its property. I believe that Intro 956 would be vastly improved if it required the entity that commenced the foreclosure action to make diligent efforts to learn who resides in the building so they can be appropriately named not just say if the names are unknown, they can post the notice on the property.

Reso 1725 – While this is no longer before the council, I believe this resolutions is important to the residents of the City of New York. We must send a message to Albany that the Council believes that owners of foreclosed properties must be responsible for the conditions of those buildings as well as the impact that run down properties have on the neighborhood and residents. Foreclosed properties that are left unattended can attract unhealthy elements to a community that can further deteriorate a community, harm the lives of the residents in the building and further decay the neighborhood. The state must act on A-5358 and S 1182. This resolution will provide the support the state needs to pass those bills into law.

So why these bills are important?

First, passing these bills and resolutions into law will effectively protect housing in New York City.

Second, it will allow tenants to in foreclosed properties to be aware of the proceeding so they are not surprised if they are subsequently evicted.

Finally, they require the foreclosing entity to deal with the residential tenants and allow those tenants to talk to the bank and negotiate with them during the pendency of the foreclosure action.

Thank you for introducing these bills today and giving me the opportunity to testify on this important issue.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Josh Zinner

Address: 73 Spring St., Suite 506 NY/NY

I represent: Co-Director, Neighborhood Economic Development

Address: Advocacy Project

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: VANDANA CHAK Esq

Address: 350 Fifth Avenue, Suite 3304 NY
NY 10118

I represent: NHS Jamaica

Address: Jamaica, Queens

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: CHRISTINE ROLAND

Address: 108-25 62nd Dr. FH 11375

I represent: QUEENS Community House

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Harvey Epstein

Address: 172 East 4th Street

I represent: Urban Justice Center

Address: 123 Williams Street

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

4/21/09

I intend to appear and speak on Int. No. ⁹⁵⁹ 889-956 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: PATRICIA KERR

Address: 89-70 162nd St. - Jamaica

I represent: NHS of Jamaica

Address: 89-70 162nd St

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

956

I intend to appear and speak on Int. No. ⁹⁵⁹ 889-956 Res. No. _____

in favor in opposition

Date: 4-21-09

(PLEASE PRINT)

Name: Joseph Rosenberg

Address: 100 Gold St

I represent: HPD

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4-21-2009

(PLEASE PRINT)
Name: MICHAEL P. SMITH

Address: 99 PARK AVENUE NY NY

I represent: NEW YORK BANKERS ASSOCIATION

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 889, 956, 959 Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)
Name: Dave Hanzel - ANHD

Address: 50 Broad St., Suite 1125, NYC 10004

I represent: ~~ANHD~~ ANHD

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 889, 956, 959 Res. No. _____

in favor in opposition

Date: 4/21/09

(PLEASE PRINT)
Name: Elise Brown (105 Stanton St NY NY)

Address: 299 Broadway, 4th Floor

I represent: MFY Legal Services

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 889-256-959 Res. No. _____

in favor in opposition

Date: 4-21-09

(PLEASE PRINT)

Name: Barbara Flynn

Address: 100 Gold St

I represent: HPD

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/21/09

(PLEASE PRINT)

Name: Uichee Beer

Address: 40 Washington Square S. NY NY 10014

I represent: Furman Center

Address: Same

Please complete this card and return to the Sergeant-at-Arms