

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

Testimony Supporting

H.B. No. 6143, An Act Concerning Protections for a Tenant Whose Landlord Is Subject to a Foreclosure Action
Testimony of Suneela Jain¹
To the Committee on Housing
February 19, 2009

Senator Gomez, Senator McKinney, and distinguished members of the Housing Committee: I appreciate the opportunity to speak to you today in support of the passage of Bill 6143.

My name is Suneela Jain, and I am one of the Student Directors of the Community and Economic Development Clinic at Yale Law School. I live and vote in New Haven, in the districts of Senator Martin Looney and Representative Gary Holder-Winfield.

As part of a city-wide, collaborative effort to stabilize our communities, called the ROOF Project, our clinic provides information and other resources to help identify and implement comprehensive responses to the mortgage foreclosure crisis. We strive to balance community needs with those of struggling mortgage holders: where homeowners can be saved we aim to save them, but where continued debt payments are no longer feasible, our goal is to mitigate the consequences for the community of the placement of one more home on the market. That is why I have come before you today, to speak about how all Connecticut residents stand to gain from this bill's passage.

The damage that the mortgage crisis is imposing on unwitting renters is only recently drawing national attention.² As a result of banks' and servicers' automatic eviction policies, responsible, rent-paying tenants are being summarily evicted from the homes that they occupy. These policies serve neither the needs of the community nor the sales prospects of the lenders. Based on meetings that we have had with brokers about barriers to the sale of foreclosed properties, we strongly believe that Bill 6143 is necessary both to stop further decline in our state's neighborhoods, and to protect Connecticut renters.

A universal lamentation among real estate brokers is the deterioration of properties left vacant post foreclosure, both from neglect and purposeful looting. At a recent broker meeting, one realtor observed that it is easy to immediately identify which houses on a street have been foreclosed; you need only look for the dirty or broken windows, the overgrown lawn, and icy, dirty walkways. Among the real estate listings in New Haven are the following descriptions: "Foreclosure. Sold as is. . . . Plumbing is missing. Hole in roof;" and "Conveniently located 3

¹ This testimony was prepared through the Yale Law School Community and Economic Development Clinic under the supervision of Robin Golden and Sameera Fazili.

² See, e.g., *Fannie Mae Lets Renters Stay Despite Foreclosures*, NY Times, Dec. 14, 2008, <http://www.nytimes.com/2008/12/15/business/15evict.html>.

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family in need of total rehab. . . . Bring flashlight.”³ Plumbing, copper wiring, even a furnace, can be stolen within 24 hours of occupant eviction. These ubiquitous stories are backed by actual statistics. In our three hardest hit neighborhoods, we have seen property value declines of 40-50% on multifamily homes. Throughout New Haven, the losses on individual properties have been as high as 90% following the removal of tenants. In addition to deterring wary buyers, home deterioration can actually cut financing to those who might consider the low prices a bargain. According to our realtors, banks will consider a property that is, for example, missing a furnace or plumbing, not viable, and hence will not extend credit. In addition, an FHA loan is premised upon an FHA appraiser visually inspecting the property, and conditions like water damage must be repaired before closing.

This deterioration is preventable. Many of the foreclosed homes would NOT face vandalism if tenants were allowed to remain in the homes until and unless a new buyer required that the building be vacant. We believe that Bill 6143 will help to forestall property deterioration, and thus support the efforts of realtors to market Connecticut properties. The major way that the Bill does this is by stopping automatic evictions, and allowing responsible tenants to stay in their homes. Tenant occupants stave off vandals and looters, and keep properties in livable condition. They are a readily available fire alarm, alerting owners to problems in the building.

Retaining tenants can also help property sales in other ways. Avoiding vacancies helps to maintain communities by limiting the cumulative consequences that multiple foreclosures can have on neighborhoods.⁴ Responsible tenants can also be presented as a benefit to potential investors, who have the option of buying an investment property with an income stream built in.

An understandable concern of realtors and lenders alike is bad tenants. Virtually all realtors have seen, or at least heard about, situations in which bad tenants make property more difficult to sell. Fortunately, this Bill **does nothing to empower bad tenants**. The Bill allows for tenant evictions in the case of, among other things, non-payment of rent, illegal activity, material noncompliance with a rental agreement, or destruction of property.

This Bill does not claim to extinguish the problem of bad tenants. Rather, it forces banks and other institutions to distinguish the good tenants from the bad, and, until a sale is conditioned otherwise, allows the former – those tenants who have paid their rent and are facing eviction through no fault of their own – the simple opportunity to remain in their homes.

Thus far, banks and servicers have refused to consider the consequences of automatic evictions on property values and communities. By October of last year, bank repossession of multi-unit

³ See www.realtor.com for property listings of New Haven homes.

⁴ *Stabilizing Communities Affected by Foreclosures: Lessons Learned from Vacant and Abandoned Properties Initiatives*, Maya Brennan, Center for Housing Policy, http://www.housingpolicy.org/assets/foreclosure-response/StabilizingCommunities_LessonsfromVacantProperties.pdf.

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homes nationally jumped from 8,955 to 22,386.⁵ In Connecticut, seven leading banks alone have brought more than 1,500 eviction actions, affecting many more actual tenants. These banks have more than 150 eviction cases currently pending in Connecticut courts.⁶

Without action the problem will continue to grow. As current economic difficulties compound, as more homeowners confront ballooning interest payments in their adjustable rate mortgages, and as vacant properties continue to pull down the value of entire neighborhoods, we can only expect that the amount of suffering will get worse. Especially in cities like New Haven which are full of multi-family housing stock.

There are **operational details** that will need to be sorted out in order to have banks and servicers temporarily manage properties, **but tackling these is well within current capacity**. Banks can draw on the willing involvement of community groups, municipalities, and the expertise of local brokers. The fact that Fannie Mae and Freddie Mac have embraced the responsibility of property management, and the fact that tenant protection schemes already exist in other states, notably New Jersey, demonstrate that property management of this type is entirely feasible.

The time to act is now. Connecticut has been a leader in this country in terms of implementing a successful mortgage mediation program, in taking bold steps that proved effective in addressing this national crisis. We ask that Connecticut once again move towards a position of leadership, and demonstrate its commitment to its residents, by adopting Bill 6143.

⁵ http://money.cnn.com/2008/12/15/news/economy/fannie_housing/?postversion=2008121515.

⁶ The leading banks are Deutsche Bank, Bank of America, Bank of New York, Citigroup, JP Morgan Chase, US Bank and Wells Fargo. These numbers are based on an internal analysis performed by clinic students of eviction actions on the Connecticut Judicial Branch website.