

Testimony of Atty. Amy Eppler-Epstein
New Haven Legal Assistance Association
In Support of Funding for Legal Services
February 23, 2009

My name is Amy Eppler-Epstein, and I have been an attorney at New Haven Legal Assistance since graduating from law school in 1986. My work has been primarily in the area of housing law, representing tenants. I want to tell you about some of the work we've been doing in an area that you have been hearing a lot about these days: foreclosures. Although a lot of the news has focused on the high rate of homeowners losing their homes to foreclosure, legal services advocates in CT have been focusing on another problem: the effect of foreclosures on tenants. I want you to hear what kind of advocacy work will be lost if legal aid programs are forced to lay off staff as a result of the economy's impact on IOLTA.

Back in 2003, I had a client, Stephanie Tappin, come to me with a marshal's notice saying he was coming to put her and her 5 children out on the street in 9 days, because her landlord had lost the house to foreclosure and the bank wanted her out. This was the first she knew of the foreclosure case; she had never been named in the case, and never had the chance to go to court. It took a victorious appeal to the CT Supreme Court to make clear that banks could not simply put out tenants when the landlord goes into foreclosure: they have to give the tenants their own day in court, either by naming them in the foreclosure case, or bringing an eviction action against them once the foreclosure is finalized.

Now, in 2008 and 2009, we have been fighting another battle: throughout the state, banks are foreclosing on the landlords of multi-family properties, and then automatically evicting the tenants, leaving properties boarded up and vacant, targets for vandalism and crime; causing neighborhood destabilization and blight; and dislocating hundreds of families who are forced to uproot their families and move despite following all the rules and paying their rent. Legal services advocates throughout the state have combined our efforts to tackle this problem, and are achieving results: in December, after threatening suit under a provision buried in the federal bank bailout law, we were able to get Fannie Mae, and more recently Freddie Mac, to institute a nationwide moratorium on evictions. They agreed to stop evicting tenants after foreclosure, and develop programs to offer such tenants month to month leases while Fannie Mae and Freddie Mac market the properties for sale. Just last week, we were here testifying before the Housing Committee on a bill that we proposed to require other lenders to do the same. Under the bill, lenders who have foreclosed on a landlord can only evict the tenants for good cause (such as non-payment of rent or damage to the property), or if the lender has a contract to sell the property that requires the property to be vacant. I am attaching some newspaper articles that describe in greater detail this important advocacy work.

One thing that these stories show is that *writing* a good law is often not enough; you need to have good advocates to make sure that the law is enforced. In the case of Fannie Mae and Freddie Mac, it took legal services advocates first to *find* the tenant protections in the federal law, and then to threaten suit, in order to get it enforced. Similarly, the Tappin case required a Supreme Court appeal to clarify what protections the law provided for tenants. Just last week, I had to fight with a bank's attorney in housing court, to force him and his client to abide by the provisions of the recent tenant protections enacted by the Connecticut legislature during the special session in November. This is why it is so important to provide enough legal aid lawyers to be able to operate in courtrooms throughout all parts of the state, and make sure that these laws are enforced throughout Connecticut.

Further, these stories show that in protecting the rights of the poorest and most vulnerable in society, legal services advocates at the same time protect the rights of us all. When we make sure that banks cannot put low income tenants on the street with no opportunity for them to be heard in court, those same protections apply to all tenants. When we ensure that Fannie Mae offers leases instead of eviction cases to tenants whose landlords have lost the property to foreclosure, that protection applies just as much to a middle class renter, as to a poor one. Similarly, the systemic protections for victims of domestic violence, or for children, that are the subject of the work of some of my colleagues, benefit more than just the neediest population.

I have been before this legislature at various times in my 22 years with legal services, urging your support for various pieces of legislation to help my clients. This is the first time that I have ever come here to ask for your support to help legal services; because never before have we faced such a dire funding situation.

My colleagues and I at legal services are very committed to the work that we do. We see it as our mission to help low income people, who are so often marginalized and voiceless, get a fair shake from our legal system. Our salaries are far below those of our peers who take jobs in the private bar; and in the past few months, they have been even lower, as the lawyers at NHLAA have taken a 20% pay cut in response to this funding crisis.

I urge you to do whatever you can to help us fill the funding gap caused by the collapse of IOLTA funding, so that we can continue to do this important work throughout the state, to help our clients.

Bank Shot

Lenders say they can put you on the street if your landlord didn't pay the mortgage.

By Carole Bass

Stephanie Tappin and Geneva King live in two different houses in two different towns. But they both made the same mistake: renting from landlords who didn't pay the mortgage.

Tappin and King paid their rent. But when they signed their leases, the houses they live in were already in foreclosure. The landlords didn't bother to tell them. Neither did the mortgage companies that were foreclosing.

Instead, each lender sent a state marshal to knock on the door. Each marshal bore a court order that didn't even have the tenant's name on it.

They gave Tappin and her kids—five of them, plus a 1-year-old granddaughter—nine days to get out of their Hamden home.

When the marshal came to King's house in New Haven, her daughter was in labor. That was a Thursday. He said he'd be back on Monday to put them out.

That was last year, but the families haven't moved yet. Their evictions are stalled while their legal aid lawyer challenges them in court.

The question isn't whether Tappin and King have to leave. They know they do. In fact, both have negotiated deals with the lenders—which now own the houses—giving them time and money to move out.

The question is whether Connecticut law allows lenders to do what they tried to do to Tappin and King: use the foreclosure process to put legal, rent-paying tenants on the street with just a few days' notice, and with no chance to appear in court to plead their case. That's the question the state Supreme Court will consider in a case it heard this week. For hundreds or thousands of Connecticut families, the court's answer could mean the difference between a relatively smooth flight to a new home and a crash landing in an emergency shelter.

Ordinarily, a landlord who wants to evict a tenant—even a tenant who doesn't pay the rent, trashes the place and keeps the neighbors up all night partying—has to go through a legal procedure known as summary process.

That law gives tenants certain protections. They receive a formal eviction notice, known as a notice to quit. They have the right to go to court. Some elderly and disabled people, as well as those with federal Section 8 rent subsidies, can be evicted only for "good cause"—not just because the owner wants the place empty. Other tenants can ask a judge to delay their eviction for up to six months while they find a new place to live.

The lenders that foreclosed on Tappin's and King's homes tried to short-circuit those legal protections. Instead of filing for summary process, they rolled their evictions right into the foreclosure proceedings.

That's fine when the person being kicked out is the same person being foreclosed on. And it's fine—or at least, perfectly legal—when the per-

son being kicked out is a tenant, and the lender names him or her as a formal party to the foreclosure case. That way, the tenant receives all available information and gets a chance to speak up in court.

But here's what Homecomings Financial Network did to Stephanie Tappin, and Washington Mutual did to Geneva King: They got the foreclosure judge to issue an "execution for ejectment"—basically an eviction notice—with the landlord's name on it. Then they got a state marshal to serve the notice on the tenants.

Both lenders are represented by the Hartford law firm of Hunt Leibert Chester & Jacobson,

named as a party in court. The exception: A "transferee" who knew or should have known that the property was under foreclosure, because the lender filed a lis pendens—a notice on the town's land records.

The statute doesn't define "transferee." Tappin's lawyer, Amy Eppler-Epstein of the New Haven Legal Assistance Association, cites a law dictionary and other Connecticut property laws to argue that it means someone who acquires ownership or title. In other words, someone who buys or is given the property—not a tenant.

In fact, Eppler-Epstein argues, the legislature amended Section 49-22 specifically to stop

In several places, Homecomings Financial's brief appears to veer from the truth, the whole truth and nothing but. Some examples:

- The lender quotes legislative testimony to support its interpretation of the 1984 amendment. Eppler-Epstein points out that the testimony cited was on a previous version of the amendment, which did not pass. The relevant language was dropped before it came to a vote.

- Homecomings claims that Tappin is trying to reopen the foreclosure judgment. Not true, Eppler-Epstein says. Nobody challenges Homecomings' right to the property.

- Homecomings accuses Tappin of trying to create "a second set of appeal rights in mortgage foreclosure actions." Tappin's complaint is that she never had a first opportunity to challenge her ejectment.

- If the court sides with Tappin, Homecomings warns, "a lender has no means to insulate itself against these risks except to stop issuing loans in urban areas where multi-family homes and other rental properties may exist." In other words: Protect these tenants, and we'll be forced to redline.

Stephanie Tappin is leaving the house in Hamden. Her godparents bought a four-bedroom place in New Haven, which they'll rent to her when they're done fixing it up. She has promised Homecomings she'll be out by March 3.

Because of that agreement, Homecomings asked the state Supreme Court to declare the case moot when it heard oral arguments on Feb. 10. The lender also cited a bunch of other procedural reasons why the court should not consider Tappin on its merits.

But Eppler-Epstein wants the court to clear up the law. A housing lawyer for poor people, she's seeing quite a few of these cases, she says.

"I would assume thousands" of people could be in the same situation as Tappin and King, she says. Hunt Leibert "is not the only law firm I've encountered it with. I have spoken with other lenders' attorneys who tell me they routinely eject tenants without naming them in foreclosures.

Most of those tenants don't get lawyers. They're stuck with whatever time the marshal gives them, or whatever they can negotiate on their own.

These folks would still have to leave if the lender evicted them through summary process. But there's "a huge difference," Eppler-Epstein says. "It's the difference between having five days to uproot your family and having a reasonable process that can be a number of months."

In the end, Tappin got more than a year to find a new home. Still, says the 39-year-old Wal-Mart cashier, "I was in love with this house. I think it's cruel" what Homecomings put her through. "I wouldn't wish it on anyone—not even my worst enemy."

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Tossed out: Stephanie Tappin (rear) and her family were given just a few days to leave their apartment when the building was foreclosed on.

which handles thousands of Connecticut foreclosures. They insist there's nothing wrong with what they did.

Homecomings Financial "did all it was required to do," wrote the lender's lawyer, Geoffrey Milne, in his state Supreme Court brief in *Tappin vs. Homecomings Financial Network*.

All it was required to do legally, he means. Does he think his client has any moral responsibility to give a single mom caring for six kids—who signed a lease and paid the rent—more than a few days' notice to leave their home? We don't know. Milne didn't respond to four phone messages.

Legally, the case turns on whether Tappin is a "transferee" under Section 49-22(a) of the Connecticut General Statutes.

The law says that in order to eject someone as part of a foreclosure, that person must be

lenders from doing what they did to Tappin and King.

Eppler-Epstein contends the amendment was designed to keep owners from transferring title in a sneaky, last-minute attempt to stave off the foreclosing lender.

But Homecomings Financial argues that the legislature intended to stop an owner from transferring any kind of "interest" in the property, including "possessory interest."

A tenant's lease is a possessory interest. That makes Tappin a transferee, Homecomings says.

Absurd, Eppler-Epstein replies. The whole purpose of the 1984 amendment was to give tenants their due process rights, which the old law didn't provide. To read the amendment as Homecomings does, she says, would make it "a meaningless change" that does nothing to fix the due process flaw.

U.S. NEWS

Fannie Mae to End Tenant Evictions in Foreclosures

BY KELLY EVANS

Fannie Mae is finalizing a national policy that will allow tenants to remain in their homes even if their landlord goes into foreclosure—a landmark decision for tenants.

The policy will be in effect Jan. 9, Fannie Mae said Sunday, and reflects growing pressure on the mortgage company from a legal-aid group that threatened to sue over recent evictions. The company said it will also ensure its current holiday moratorium on new evictions is being followed until the new policy takes effect.

"We're delighted that Fannie Mae has agreed to change their policy," said Amy Marx, an attorney with New Haven Legal Assistance in Connecticut. "And we're hopeful others will follow suit."

In late November Fannie Mae and Freddie Mac said they would suspend tenant evictions temporarily during the year-end holidays. New Ha-

ven Legal Assistance said that despite the pledge, Fannie Mae was proceeding with more than a dozen new eviction cases in Connecticut. The advocacy group said the evictions would violate legislation passed earlier this year to rescue the two mortgage finance giants that required them to permit bona fide tenants who are current on their rent to remain in their homes under the terms of their lease.

In his letter Sunday to the New Haven group, Fannie Mae General Counsel Curtis Lu wrote: "As far as we know, this will be the first nationwide program of its kind." Copies of the letter were sent to Christopher Dodd (D., Conn.), chairman of the Senate Banking Committee and Barney Frank (D., Mass.), House Financial Services Committee chairman.

"Freddie Mac hasn't announced a similar policy reversal, though a spokesperson said they are 'currently evaluating additional actions.'"

The decision by the govern-

ment-backed mortgage giants represents just a slice of the market and excludes many properties purchased with riskier loans that are now falling into foreclosure, Fannie Mae and Freddie Mac, however, are uniquely structured to be able to address the issue, which effectively now has them acting as a type of landlord or property-management company to administer month-to-month leases to renters of their foreclosed properties.

Tom Meyer, a spokesman for Deutsche Bank, one of the biggest trustees of mortgage-backed securities, said Deutsche Bank isn't in a position to be able to follow Fannie's lead on foreclosures.

Deutsche Bank has no capacity to intervene, Mr. Meyer indicated, saying "the whole issue comes down to ownership" of the foreclosed properties. A given property "is held in trust by us but it is effectively owned by the hundreds or thousands of people that own a tiny sliver of mortgages

in any one pool," Mr. Meyer said.

It might fall to the local servicers of the mortgages to decide to halt evictions, he added, because they are responsible for steps such as hiring real-estate agents to put foreclosed properties on the market. It isn't clear how much power—or will—a servicing company has to effect a moratorium on tenant evictions.

It's a frustrating situation, says David Rothstein, a researcher at nonprofit group Policy Matters Ohio who has looked at the effect of such evictions in his state. "When there's a renter in these properties they're less likely to be vandalized, they're better maintained, and it's better for the communities," he said.

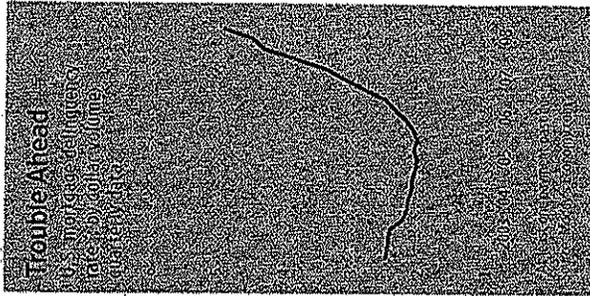
In a recent report Mr. Rothstein found foreclosure filings on renter-occupied units in Cuyahoga County, where Cleveland is located, were up 28% in 2007 from the previous year. The average cost of an eviction

per family ran about \$2,500—meaning a total \$10 million loss of wealth, Mr. Rothstein said.

The social and economic pain of eviction has made the subject a regional cause more than a national one. That in turn has made it difficult for groups to marshal the political muscle to enact state or federal legislation barring tenant evictions in foreclosures.

A New York University study found at least 15,000 renter households in New York City were affected by foreclosure last year. Since then, the number likely has increased. In the Boston area, a group of Harvard University students has been going door to door notifying tenants of their rights in an eviction; many such tenants are unaware of their rights and accept "cash for keys" offers from lenders—often \$500 or \$1,000—to leave.

"We had seen the devastating impacts of Fannie Mae of-



ffering cash for keys to tenants and evicting most of the rest," Ms. Marx said. "We eagerly await the implementation of the new policies."