

# The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

## Testimony Supporting

An Act Concerning Modifications to the Foreclosure Mediation Program, HB 5410  
Testimony of Yale Law School Community and Economic Development Clinic<sup>1</sup>  
To the Committee on Housing  
March 10, 2010

Senator Duff, Representative Barry, and distinguished members of the Banks Committee: we appreciate the opportunity to write to you today in support of the passage of An Act Concerning Modifications to the Foreclosure Mediation Program. Our testimony primarily concerns Section 3 of the Act.

As part of a New Haven-based, 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. With this mission in mind, we are writing today to emphasize that all Connecticut residents stand to gain from this bill's passage.

In May 2009, spurred by accounts of tenants suddenly evicted by foreclosing lenders, Congress passed the Protecting Tenants at Foreclosure Act (PTFA). The Act substantially improved tenant rights at foreclosure across the United States. No longer would residential leases be immediately extinguished at foreclosure and tenants mechanically evicted. Instead, a tenant can continue to live in his home for 90 days after notification the completion of the foreclosure or for the remainder of his lease — whichever time period was longer.

As Senator Dodd explained on the Senate Floor during discussions for the federal bill, protecting tenants in foreclosure helps remedy the fundamental unfairness of imposing the costs of the foreclosure crisis on tenants who did not contribute to it. Senator Dodd explained, "Tenants who are in good standing on their properties... should not be affected because the property ended up in foreclosure through whatever rationale that may have happened to the landlord....[P]utting people out on the street is not what we ought to be doing at a time such as this."<sup>2</sup>

Evicting tenants because their landlords are in foreclosure is inherently unfair. But there are also strong public policy reasons for keeping tenants in foreclosed properties. First, forced

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<sup>1</sup> This testimony was prepared through the Yale Law School Community and Economic Development Clinic under the supervision of Robin Golden.

<sup>2</sup> 155 CONG. REC. S5114 (daily ed. May 5, 2009) (statement of Sen. Dodd).

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relocation imposes substantial monetary and emotional costs on tenants — and the hurried nature of automatic foreclosure evictions only reduce tenants' abilities to manage those costs and mitigate the disruption to their lives. Finding new housing on short notice — at a similar rent, in a similar neighborhood — is often difficult, stressful, and time-consuming. Accordingly, foreclosure imposes a hefty cost on a vulnerable population.

Moreover, the vacancies created by evicting tenants at foreclosure are far from benign. By emptying the property, the foreclosing lender subjects it to the risk of substantial devaluation from vandalism and looting. Supporting this contention are numerous stories of copper wiring, plumbing, and even furnaces disappearing from homes within 24 hours of vacancy.<sup>3</sup> Evicting tenants from a foreclosed property can destroy that property's value.

Further, vacant properties can do substantial harm as part of a neighborhood system. Foreclosure-related vacant properties contribute to blight, destabilize neighborhoods, and drive neighborhood-wide property devaluation. Such spillover effects from foreclosure and vacancy are well documented. For example, the Center for Responsible Lending has estimated that lost valuation due to foreclosures will cost neighborhoods \$502 billion in 2009, or approximately \$7,200 per home.<sup>4</sup> Other studies have reported similarly reduced sale valuations for homes located in close proximity to foreclosures.<sup>5</sup> Further, a recent study clarified the connection between foreclosure and declines in value, finding that the *visual and structural disrepair* of properties that are in foreclosure and are subsequently vacant is the driving force behind these neighborhood valuation losses.<sup>6</sup> The study indicates that ameliorating visual disrepair — either through owner-expenditures or maintaining care-taking occupants — could be a critical method of stabilizing neighborhood property valuations in the context of the foreclosure crisis.<sup>7</sup> Given that increasing owner expenditures in this challenging economy seems quite unlikely, maintaining tenant-occupancy is particularly important, and a more feasible solution, for stabilizing overall property values.

Further, the connection between vacant properties and criminal activity is similarly well supported. On the theoretical level, Political Scientists James Q. Wilson and George Kelling

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<sup>3</sup> See, e.g., Erik Eckholm, *Foreclosures Force Suburbs to Fight Blight*, N.Y. TIMES, Mar. 23, 2007, <http://www.nytimes.com/2007/03/23/us/23vacant.html?scp=1&sq=foreclosures%20blight&st=cse>.

<sup>4</sup> Center for Responsible Lending, *Soaring Spillover: Accelerating Foreclosures to Cost Neighbors \$502 Billion in 2009 Alone; 69.5 Million Homes Lose \$7,200 on Average*, May, 2009, <http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-3-09.pdf>.

<sup>5</sup> See, e.g., Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 71 HOUSING POL'Y DEBATE 57-79 (2006) (finding that each foreclosure of a one- to four-unit property within an eighth of a mile of a single-family home reduces that home's value by 0.9%); Zhenguang Lin, Eric Rosenblatt & Vincent W. Yao, *Spillover Effects of Foreclosures on Neighborhood Property Values*, 38 J. REAL EST. FIN. & ECON. 387 (2009).

<sup>6</sup> John P. Harding, Eric Rosenblatt & Vincent W. Yao, *The Contagion Effect of Foreclosed Properties*, 66 J. URB. ECON. 164 (2009).

<sup>7</sup> *Id.*

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famously argued that such vacancy-related minor problems like broken windows give the impression of declining community order and thus embolden additional – and more serious – criminal activity.<sup>8</sup> Numerous studies spanning the United States have supported the practical application of this idea, finding a substantial positive correlation between vacant properties and crime.<sup>9</sup>

But, of course, much of this property and neighborhood deterioration is preventable. Many foreclosed homes do not face vandalism because tenants are not forced to vacate their homes immediately after the foreclosure. Tenant occupants permitted to remain can 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. The federal bill has taken a critical step by providing this protection for our neighborhoods while providing a fair solution for individual tenants.

Retaining tenants can also help property sales in other ways. 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. Senator Dodd emphasized this possibility in his Senate testimony as well, asserting that it was in the interests of that owner to retain a tenant — unless they imagine they could realize grossly larger payments by finding a new one.<sup>10</sup> In light of the recession and declining home prices, however, this latter scenario seems extremely unlikely.

We are aware that there are operational details required for banks and servicers to temporarily manage properties with tenants, **but tackling these is well within banks' current capacity.** Banks have already established the infrastructure to comply with the extended protections for tenants required by the federal law, and they will undoubtedly improve their efficiency in this area while the federal law stands.

Without codifying and extending the Protecting Tenants at Foreclosure Act, the problems associated with evicting tenants will begin anew after 2012. Connecticut has been a leader in this country in taking bold steps that proved effective in addressing this national crisis. We ask that Connecticut continue this leadership role and once again demonstrate its commitment to its residents and its neighborhoods by extending the impact of the federal Protecting Tenants at Foreclosure Act through codification in Connecticut law.

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<sup>8</sup> James Q. Wilson & George L. Kelling, *Making Neighborhoods Safe*, ATLANTIC MONTHLY, Feb. 1989.

<sup>9</sup> See, e.g., Anthony A. Braga & Brenda J. Bond, *Policing Crime and Disorder Hot Spots: A Randomized Controlled Trial*, 46 CRIMINOLOGY 3 (2008) (studying Lowell, Massachusetts and finding reduced crime in neighborhoods where vacancy markers like broken windows and stray trash had been removed than in similar neighborhoods where such clean-up efforts were not undertaken); William Spelman, *Abandoned Buildings: Magnets for Crime?*, 21 J. CRIM. JUST. 5 (1993) (studying Austin, Texas and finding that crime rates on blocks with open vacant properties were twice as high as rates on matched blocks without such structures).

<sup>10</sup> *Id.*