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HOMEOWNERS ARE NOT THE ONLY VICTIMS OF THE MORTGAGE FORECLOSURE CRISIS; TENANTS IN FORECLOSED RENTAL PROPERTIES ARE BEING DISPLACED NATIONWIDE

TESTIMONY OF JUDITH LIBEN,
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BEFORE THE HOUSE OF REPRESENTATIVES
COMMITTEE ON FINANCIAL SERVICES

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I. Introduction.

Good morning, Mr. Chairman and Members of the Committee. My name is Judith Liben. I am a housing attorney at the Massachusetts Law Reform Institute in Boston. MLRI is a nonprofit statewide legal services support center. We advocate for low-income people, minorities, immigrants, elders, and people with disabilities in their struggles for basic human needs; defend against measures that harm people living in poverty; advocate for systemic reforms that achieve social justice; and provide support that will enable others to carry out these objectives.

Thank you for this opportunity to alert you to the plight of thousands of people who are innocent victims of the current mortgage foreclosure crisis and whose stories until recently have been largely ignored by the media and government officials.

I am referring to tenants living in foreclosed rental properties in cities and towns around the country. The buildings these renters resided in may have been owner-occupied, but more often they were owned by investors and speculators hoping to profit on the rents, who then defaulted on their mortgages, with the properties going into foreclosure. These foreclosed rental properties are typically smaller buildings, condominiums, and single-family rented homes. They are found in cities and surrounding suburbs, in lower-income and also more upscale neighborhoods—in short, almost everywhere.

In recent months, housing advocates in Massachusetts have been working to improve our state's landlord-tenant laws to give more protections to renters in foreclosed properties so they won't be quickly evicted from their homes with nowhere to go. The Massachusetts Senate has passed such legislation and the House of Representatives is now working on the same issue. In the course of that work, we have corresponded with legal services lawyers and housing advocates in other states and have collected newspaper articles (some attached here) all telling similar stories: When banks take possession after foreclosure, they either promptly evict the tenants or refuse to maintain their properties, leaving devastated families and scarred neighborhoods.[1] As more information comes to light, it is now clear that, nationwide, tenants who did nothing wrong except to rent from a defaulting owner are suffering harsh collateral damage from the mortgage fallout. We urge the Committee to look carefully at this pressing issue.

II. Renters in Foreclosed Properties Are Quickly Put Out of Their Homes.

In most states, foreclosure terminates a tenancy, and, if the foreclosing bank takes title, it evicts the renter households very quickly—usually with only three to thirty days' notice.[2] For example,

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[1] We recognize that it is not always the lender that takes title to the rental property after foreclosure. For example, investors might purchase at a foreclosure sale. But, for purposes of this testimony, I will refer to the post-foreclosure owner as "the bank."

[2] There are some notable exceptions to the general rule that most tenancies are terminated by foreclosure. For example, federal Section 8 leases should not be terminated by foreclosure (although foreclosing banks nonetheless often try to evict these tenants). And, in a few jurisdictions, such as **New Jersey, New Hampshire, and the District of Columbia**, tenancies do survive foreclosure, and post-foreclosure owners are prohibited from evicting tenants unless they have independent grounds**.**

in **Nevada**, a legal services lawyer reports: "The Housing Hotline in our office in Las Vegas receives dozens of calls each day from tenants who are being evicted after foreclosure. In Nevada, the new owner need only give 3 days' notice to tenants telling them to get out."

And in **Oregon,** a housing lawyer describes the plight of these families and individuals:

> We get calls from tenants who are given a two-week notice to quit after a bank forecloses on a home. This puts the tenants in a terrible position in that they have to locate, apply, receive approval, and move all in 14 days or risk an eviction on their record. I would say that, in 99% of these cases, the tenants become homeless, double-up in another family's home, or remain in place until they are evicted through court procedures and incur further costs as a result. We have never seen a bank give a family a longer period of time in which to leave or offer them a short-term lease in order to assist the family in moving.

The director of the Housing and Economic Rights Advocates in Alameda County, San Francisco County, and Contra Costa County, in Northern **California**, describes the situation there:

> We have heard from HUD-certified housing counseling agencies and consumer credit counseling agencies that they are receiving calls for assistance from tenants renting homes that have been foreclosed. The tenants' complaints include the foreclosing bank failing to provide utilities as required under state law and high-pressure tactics and outright threats by the foreclosing lender or its agent trying to force the tenant out of the property on an accelerated timeline.
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> Many of these tenants are renting single-family homes in middle-class neighborhoods that were owned as investment properties by individuals. Notably, my office started getting calls in July of this year from homeowners who were going into foreclosure on their single-family *investment* properties with high-cost, subprime mortgages that they could not keep up with.

And in Riverside and San Bernardino counties in California, housing lawyers see two basic scenarios:

> First, a tenant in a home where the landlord loses title through foreclosure is served with a 30-day notice. Because there are no defenses that the tenant can raise, the tenant will have a judgment against him or her for possession and, usually, for money damages, which absolutely ruins their chances for obtaining other housing for up to seven years and will ruin what is usually already-precarious credit.

Further, some states are now providing longer notice periods for selected groups of tenants. For example, in August 2007, **North Carolina** enacted a law increasing to 30 days the court notice given to tenants in property containing 15 or more rental units. **Illinois** recently passed a law extending the notice period for tenants in foreclosed buildings to 120 days or the remainder of the lease, whichever is shorter. See August 31, 2007, article from the *Chicago Daily Southtown*, "New Law Gives Foreclosure Notice to Help Renters," attached here.

The second situation, which involves an "invalid" tenant, occurs during times when there are a lot of foreclosures. Scam artists study the Notices of Default published in newspapers and go to the addresses. If the house is vacant, they break in, change the locks, clean the place up just a bit and advertise them for rent. People then come, pay a heavy security deposit, and rent the house "as is." After paying rent to the fake landlord for three or four months, lo and behold, there's that pesky notice to quit posted on the house by whoever owns through foreclosure, an entity the rent-paying tenant has never heard of. The same procedure as in the preceding example then takes place.

Further aggravating the problem, displaced tenants are now competing with evicted foreclosed homeowners who are looking to rent. This means that, in some areas, rental markets are becoming tighter and more expensive. See August 30, 2007, article from Greensboro, North Carolina, "Mortgage Mess Hits Renters," attached here.

A recent article in the Summer 2007 issue of the housing journal *Shelterforce*, entitled "Losing Ground," describes what is happening in **New York City**.

> Not only are rampant foreclosures helping to accelerate change in the economic and racial make-up of these neighborhoods, but they are also exacerbating the lack of affordable housing in New York City. Foreclosures on two- to four-family and larger multifamily homes have led to wholesale evictions of lower-income tenants. Tenants in multifamily homes suffer as a result of foreclosures when landlords walk away from the home, stop making needed repairs, and fail to communicate with tenants about their housing status. As new owners take over the buildings, particularly in gentrifying neighborhoods, lower-income tenants are driven out to make way for higher rents.

Foreclosing banks claim, often with no support or data, that they must evict all tenants because empty buildings will sell more easily. The banks rarely consider that in many cases it would be more prudent and more profitable to keep the buildings occupied with rent-paying tenants while they search for a new owner. A typical situation is described by a legal services lawyer from Chester, **Pennsylvania**:

> I represented a Section 8 tenant. When the landlord lost the property through foreclosure, the bank bought at the sheriff's sale and promptly served the tenant with an action in ejectment. The Housing Authority was caught off-guard because the landlord had been giving assurance that the mortgage default was being settled. The Housing Authority immediately offered to assign the Section 8 contract and payments to the bank, but the bank refused and instead insisted on proceeding with the ejectment. My thought was that someone at the bank clearly wasn't thinking when they passed up the chance to get paid a few months' rent and opted instead to pay lawyers to start an ejectment action.

In **Massachusetts,** we have found that the banks often are unable to justify their insistence that all tenants must be put out of their homes; their lawyers and brokers merely repeat that the client wants the tenants out, no matter if they are good, rent-paying tenants who have lived in the property for years. As in other states, the banks in Massachusetts claim that they can't sell the buildings unless they are empty. But when a tenant's lawyer (in the rare case where the tenant has obtained legal counsel) or a neighborhood housing advocate asks what price the bank is asking for the building and whether they could work out a deal in which a local nonprofit purchases the property, the answer from the bank is still "no." The banks' lawyers and brokers have their marching orders: get the tenants out. See August 13, 2007, story in *Banker and Tradesman*, "Tenants Displaced After Foreclosures," attached here.

To move the renters out fast, in most states the banks send out agents with "cash for keys" offers, which go something like: "If you leave in five days, we'll give you $500. Otherwise, we'll evict quickly and you'll get nothing." Many households, assuming the courts will evict them anyway, take these offers, although the money is hardly sufficient to find new housing. And, to make things worse, most tenants can't get the return of their security deposits or last month's rent that they gave to the original owner. See "Renter Affected by High Foreclosure Rate," August 15, 2007, from KVBC in Las Vegas, Nevada, attached here.

Even where post-foreclosure evictions are prohibited by state, local, or, in the case of Section 8 leases, federal law, housing advocates report that the banks often ignore the law and threaten tenants with eviction. For example, under the law in the District of Columbia**,** a foreclosing bank cannot evict a tenant unless it has good cause. Nevertheless, as a housing lawyer from DC explains:

> Banks typically send 30-day notices to vacate immediately upon foreclosing, despite the tenants' absolute right to stay and rent after the foreclosure. The majority of tenants are frightened into moving by these notices, even though the notices lack any legal basis. In recent weeks, we have seen a rise in the number of tenants seeking help in responding to these notices to vacate. When tenants do show up in court to fight the eviction, the banks dismiss their cases—but then begin pressuring tenants into "cash for keys" deals that barely offer enough for security deposit on a new place.

III. When Banks Own Rental Properties After Foreclosure, They Refuse to Maintain the Buildings and Often Stop Providing Utilities.

Let me describe how the process typically works in many states.

First, tenants often have no idea that their landlord has defaulted on the mortgage, that foreclosure is threatened, or that a foreclosure court procedure or sale has actually occurred. In many cases, the original owner may continue to collect rent from the unwitting tenants even after he has lost the building in foreclosure. A foreclosing bank may choose not to collect rent in hopes that it won't be viewed as the landlord of the building it now owns. Tenants often don't know what to pay or to whom. See May 30, 2007, article from the **Florida** *St. Petersburg Times*, "Renters, Too, Face Mortgage Fallout," and September 3, 2007, article from the *North County* (California) *Times*, "Foreclosures Put Renters in Limbo," both attached here.

In Massachusetts, we have seen banks refusing to accept rent and then suing the tenants for nonpayment of "use and occupancy" in an amount higher than the rent—an amount never agreed to by the tenants. Low-income tenants, especially, do not have the financial or emotional reserves to deal with these uncertainties. This happens even where there are Section 8 leases (which courts have held survive foreclosure), but the banks, emboldened by the lack of clarity with all other tenancies, attempt to evict Section 8 households, anyway.

The foreclosing bank, often from another state or another country, refuses to recognize any responsibility to existing tenants, may refuse to pay the utility bills, and will not make repairs, no matter how serious the problem. Tenants are literally left in the dark, with no idea about whom to call in emergencies. See *Boston Herald* article, “Why Us? Tenants Say They’re Foreclosure Victims,” attached here.

A housing lawyer from **Minnesota** writes:

> One important problem is that lenders refuse to be landlords. That business model should be a thing of the past—it may have made some financial sense for lenders to simply vacate the property and turn it around. However, now that lenders have dozens of vacant properties that they can’t even sell, it makes sense for them to change their business model. If lenders would agree to allow good tenants to stay, properties would likely be more marketable and would not cause a nuisance to the neighborhood.

A May 11, 2007, Minnesota Public Radio story describes how a Ramsey County, Minnesota, tenant knew nothing about a foreclosure—then her water was suddenly shut off and she was forced into a homeless shelter. See “Renters Put Out by Foreclosures,” attached here.

In Brockton, Massachusetts, a legal services lawyer reports:

> Our office sees a lot of these cases. I recently represented a single mother, a domestic violence survivor who had always been an ideal tenant. She was up-to-date in her rent and didn't cause any problems. Her landlord was foreclosed upon and the bank stopped paying the electricity, which got shut off. After two weeks of trying to get the electric turned on (prior to our representation), the tenant actually had to call the electric company and establish an account for the entire building in her name, as the electric accounts weren't subdivided. The tenant was so diligent she even continued to pay her rent to her landlord for one month after the foreclosure happened. There is no reason for someone like this woman to have to end up facing eviction.

In Oakland, California, the City Attorney and local officials are alarmed as a growing number of households in foreclosed rental properties lose essential services and face displacement. See September 15, 2007, story in the Oakland *Inside Bay Area*, “Mortgage Crisis Hurting Tenants: Some Renters Illegally Evicted From Buildings in Foreclosure,” attached here.

> As the subprime mortgage loan crisis rattles the financial and real estate markets and exposes the vulnerability of many home owners, it also is hitting a hapless population that had nothing to do with the loans—renters in buildings in foreclosure. Across Oakland, scores of renters like Bryson [the subject of the story] are being served eviction notices or being told to move out as banks take over buildings from defaulting landlords. . . . Tenants caught in between the banks and their errant landlords may face difficult straits, he said, including eviction. In some cases, building utilities have been turned off

> because landlords stopped paying the bills. "Some of the stories are very sad," Russo [the Oakland City Attorney] said. "A 75th Avenue apartment has not had water for two weeks, and a woman who is pregnant lives there. . . . The cases are accelerating," Russo said. "It's becoming a humanitarian crisis. . . . I think it is unethical and illegal for financial institutions to foreclose and shove tenants out," Russo said. "These folks in many cases paid their rents and did nothing wrong."

And, of course, neighborhoods where tenants are evicted en masse start to experience the effects as buildings empty out, property values drop, and blight takes over. 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 rent from tenants should help offset other costs of foreclosure.

IV. The Problem Is Significant and Widespread.

In Minnesota**,** officials in Hennepin County keep careful track of foreclosure activity and report that a high percentage of recent foreclosures are on rental properties. A housing lawyer at the Foreclosure Relief Law Project of the Housing Preservation Project in St. Paul summarizes the findings:

> The impact of foreclosures on tenants is significant in Minnesota. In Hennepin County, which includes Minneapolis and the surrounding suburbs, there were 3,039 foreclosures in 2006 (this represented a nearly 100% increase over 2005). An astounding 38% of those foreclosures involved rental properties. The percentage of rental properties is even larger if you look at just the City's share of foreclosures. In Minneapolis, more than half (56%) of the 2006 foreclosures involved rental properties. (These figures are supplied by Hennepin County Taxpayer Services.)
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> In the City of St. Paul (where foreclosures nearly tripled from 2005-2006), the percentage of foreclosed properties occupied by renters is disproportionately large. The City is divided into 17 districts, and the percentage of foreclosures involving rental property ranges from 30% to approximately 70%, with an average of about 40%. (This data supplied by the City Council's research team.)
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> We have anecdotal evidence from Hennepin and Ramsey County homeless service providers telling us that more and more people are seeking shelter because their landlord lost the building to foreclosure. Legal Aid/Legal Service organizations tell us that the number of tenants calling for help because of a foreclosure has increased exponentially over the last several months.

Similarly, in Ramsey County, Minnesota, investor properties accounted for 43% of foreclosed mortgages. See May 11, 2007, Minnesota Public Radio story, "Renters Put Out by Foreclosures" (previously cited and attached).

When journalists from **Maryland**'s *Baltimore Sun* started to research this issue for a special report, they found that "[p]roperties belonging to 'nonowner occupiers'—usually investors—accounted for nearly 30 percent of the city homes that lenders were trying to foreclose on during the first three months of [2007]. . . ." See July 29, 2007, *Baltimore Sun* article, "Tougher Times for Housing Investors; Foreclosure Filings Rise in City Neighborhoods as Real Estate Market Sags," attached here.

In Chicago**,** the Executive Director of the Lawyers' Committee for Better Housing writes:

> We have a presence in eviction court every day, with a staff attorney and volunteers from Chicago law firms providing representation to 400-500 families each year. We are seeing a huge jump in the number of cases where tenants are being evicted due to the foreclosure of their landlord. Our social services specialist spoke with four tenants from the same building one day this month who had just been evicted due to foreclosure. Three of them were current on their rent and were good tenants. With 14-day orders of possession granted to the mortgage holder, they did not know what hit them, didn't know where to turn, and were at risk of homelessness. Seven of the last 46 tenants who contacted us regarding eviction hearings had landlords whose building had been foreclosed. This was over a two-week period.

Although we know of no comprehensive data collection in Massachusetts, the severity of the problem emerges from various sources. For example, during just one week in August, the Massachusetts Housing Court in the western region of the state saw 35 tenant/foreclosure evictions and the Legal Services Center in Boston got calls from 29 clients. In Suffolk County, during a recent 11-week period, 13 percent of the 526 foreclosure auctions advertised involved units occupied by Section 8 tenants assisted by the Metropolitan Boston Housing Partnership. This statistic represents only a portion of rented units involved in foreclosures, since it does not take into account the Section 8 tenancies administered by the Boston Housing Authority and, of course, all the non-subsidized tenancies in the county.

There is every reason to assume that the data from Minnesota and other places would be replicated elsewhere if other jurisdictions collected similar information, especially in urban areas. Although nationwide about 68% of residential units are homeowner units and 32% are rentals, in cities there are often more rentals. For example, the 2006 American Community Survey reports that about 59% of residential units in Boston are rentals, 54% in Houston, 58% in Cincinnati, and 60% in Los Angeles. Thus, it is safe to assume that the proportion of foreclosures affecting rental properties is significant in cities and, as in Hennepin County, also in nearby surrounding suburbs. The anecdotal information and media reports in this testimony do not represent a few isolated cases.

V. Recommendations.

The following are some initial, broad recommendations that we hope this Committee will consider:

First, as the Committee develops legislative and regulatory options to minimize and mitigate mortgage foreclosures, we ask you to include renters threatened with displacement due to foreclosure among the groups whom you may assist.

Second, we ask individual Committee members to confer with state and local officials in their districts about the issue of renters evicted from foreclosed properties and to encourage those officials to enact state laws or local ordinances to better protect tenants in foreclosed properties.

Third, we urge the Committee to support policies and work with federal oversight agencies to discourage foreclosing lenders from evicting their tenants and penalize foreclosing lenders who attempt to evict tenants in violation of applicable state or local law.

Fourth, we urge the Committee to create incentives for post-foreclosure lenders to negotiate with local affordable housing groups, municipal agencies, and others to maintain or re-develop their rental property as affordable housing.

VI. Conclusion.

Renters are generally in a more precarious position than homeowners. From 1997 to 2005, the number of renter households paying over half of their income for housing went from 1 million to 2.1 million. This latest mortgage foreclosure crisis makes this already untenable situation even worse. As the chair of the Center for Housing Policy recently observed in the *Housing Development Reporter*:

> This new study [from the Center] reveals that housing cost burdens have increased faster among America's working family renters than among working family homeowners. . . . Over the past several months, there has been a tremendous amount of attention given to the problems facing homeowners with subprime mortgages. . . . While these problems are significant and this attention is deserved, it is important not to lose track of the serious housing problems facing renters.

We hope that this testimony will focus attention on the dire predicament faced by renter households caught up in the mortgage problems discussed by this Committee today.

Thank you once again for the opportunity to testify before this Committee. I and my legal services and advocacy colleagues in Massachusetts and other states are available to answer any questions and assist in any way to mitigate the painful effect of foreclosure on residential tenants.