

Foreclosures and Federal Response

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National Low Income Housing Coalition

Dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes

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NLIHC, cont'd

- Research
 - Out of Reach
 - Patchwork
 - Tenants and Foreclosure
- Outreach
 - Membership
 - State Coalitions
- Policy Advocacy
 - Advocates Guide
 - What We Mean by Housing

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NLIHC, cont'd

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Overview

- Background
- Mitigating foreclosures
- Dealing with foreclosed properties
- Protecting tenants in foreclosed properties

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Foreclosures

- Likely to continue into 2010
- Shifting causes make it hard to define and enact effective policy solutions
- Nationwide but impact varies widely
- 40% of those affected by foreclosures are renters, few rights and summary evictions for most tenants

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Programs/Polices to Mitigate Foreclosures

- Freddie/Fannie Conservatorship/Stabilization of Financial Institutions
- HOPE NOW
- National Foreclosure and Mitigation Counseling Program
- Hope for Homeowners
- Making Home Affordable
- Freddie/Fannie Programs
- Helping Families Save Their Homes Act of 2009

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Mitigating Foreclosures: HOPE NOW

- HOPE NOW is an alliance composed of counselors, mortgage companies, investors, and other mortgage market participants.
- Participants work together to reach out to homeowners in distress to help them stay in their homes and to create a unified, coordinated plan to help as many homeowners as possible.
- Supports the HOPE for Homeowners Hotline, 1-888-995-HOPE, where borrowers can receive pre-foreclosure counseling

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Mitigating Foreclosures: National Foreclosure and Mitigation Counseling Program

- \$400 million program begun in December 2007
- Increase the availability of counseling services counseling to homeowners at risk of foreclosure
- NeighborWorks America grants to HUD-approved housing counseling intermediaries, to qualifying state housing finance agencies (HFAs), and to NeighborWorks organizations
- The Housing and Economic Recovery Act of 2008 allocated \$30 million of the \$180 million to counseling intermediaries to hire attorneys who assist homeowners with legal issues directly related to their foreclosure, delinquency or short sale
- [http:// www.findaforeclosurecounselor.org/network/nfmc_lookup/](http://www.findaforeclosurecounselor.org/network/nfmc_lookup/)

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Mitigating Foreclosures: HOPE for Homeowners

- FHA program enacted in HERA and amended in Emergency Economic Stabilization Act of 2008 (EESA) and Helping Families Save Their Homes Act
- Owner-occupants can refinance their current loan into a new FHA-insured 30-year fixed rate mortgage
- Mortgages eligible for the program were those originated on or before January 1, 2008

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Mitigating Foreclosures: Making Home Affordable

- Designed to assist 7 to 9 million homeowners
- Refinance program through Fannie and Freddie for those slightly underwater
- Modification program for those in an unaffordable mortgage; TARP recipients

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Mitigating Foreclosures: Fannie/Freddie Programs

- Both entities moved to adopt mortgage modification programs in 2008
- Also implementing Making Home Affordable
- Early efforts to protect renters in foreclosed properties

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Mitigating Foreclosures: Helping Families Save Their Homes Act of 2009

- S 896, P.L. 111-22, 5/20/09
- Amends Hope for Homeowners
- Shields servicers from liability for implementing mortgage loan modifications or loss mitigation plans
- Provides tenant protections

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Dealing with Foreclosed Properties

● Neighborhood Stabilization Program 1 and 2

- NSP1: \$3.9 billion formula grant
- NSP2: \$2 billion competitive program; applications due July 17, 2009
- Funds can be used to buy foreclosed or abandoned homes to rehab, resell, or demolish in order to stabilize neighborhood

● National Community Stabilization Trust

- National nonprofit organization created to connect servicers and investors holding foreclosed properties with local organizations and coalitions working to stem the decline of communities with high concentrations of vacant and abandoned foreclosed properties

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Protecting Renters in Foreclosed Properties

- President Obama signed Protecting Tenants in Foreclosure Act, S. 896, P.L. 111-22, on May 20, 2009
- Includes a nationwide 90 day pre-eviction notice requirement for tenants in foreclosed properties, right to remain for those with leases and special protections for section 8 holders
- Provisions are effective on enactment, May 20, 2009
- Does not preempt more protective state and local laws and all of these provisions expire at the end of 2012

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Protecting Renters in Foreclosed Properties

- Specifically, the new law will
 - Require the immediate successor in interest at foreclosure to provide bona fide tenants with 90 days notice prior to eviction and
 - Allow bona fide tenants with leases to occupy the property until the end of the lease term except the lease can be terminated on 90 days notice if the unit is sold to a purchaser who will occupy the property

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Protecting Renters in Foreclosed Properties

- A bona fide lease or tenancy is one
 - Where the tenant is not the mortgagor or a member of the mortgagor's family,
 - The lease or tenancy is the result of an arms length transaction, and
 - The lease or tenancy requires rent that is not substantially lower than fair market rent or is reduced or subsidized due to a Federal, State or local subsidy

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Protecting Renters in Foreclosed Properties

- Section 8 tenants: the new law amends section 8(o) to provide
 - In the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause
 - The owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner (i) will occupy the unit as a primary residence and (ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice
 - The immediate successor in interest in such property pursuant to the foreclosure assumes such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit

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Protecting Renters in Foreclosed Properties

- What properties are covered by the statute?
 - Any dwelling or any residential property
 - Single family (1-4 units) and multifamily (5 or more units)
 - Federally-related is not a limitation

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Protecting Renters in Foreclosed Properties

- When does the law apply?
 - Effective on enactment: 5/20/09
 - Applies to foreclosures that occur after enactment
 - Pending foreclosures are covered; test is whether title has passed: Is there a successor in interest with full title?

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Protecting Renters in Foreclosed Properties

- When can an effective notice to vacate be given?
 - Must be given by the successor in interest; so effective notice cannot be given before there is a successor in interest, i.e. any point before title passes
 - Notices of the initiation of the foreclosure action are required in some states and desirable in all cases, but they do not serve as a "notice to vacate"
 - When there is a lease, can be given 90 days before the end of the lease term

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Protecting Renters in Foreclosed Properties

- Does the tenant have to pay rent?
 - Yes, failure to pay rent may constitute an independent ground for eviction if the successor in interest will not take the payment or cannot be found, rent should be escrowed

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Protecting Renters in Foreclosed Properties

- What responsibilities does the successor in interest have to maintain the property?
 - The successor in interest has the responsibilities of the landlord as defined in the lease or applicable law.

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Protecting Renters in Foreclosed Properties

- Is the application of the law affected by the immigration status of a tenant?
 - The Act itself does not condition any of the protections on the immigration status of the tenant

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