

January 2010

Renters Evicted en Masse: Collateral Damage Arising from the Subprime Foreclosure Crisis

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Creola Johnson, *Renters Evicted en Masse: Collateral Damage Arising from the Subprime Foreclosure Crisis*, 62 Fla. L. Rev. 975 (2010).

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RENTERS EVICTED EN MASSE: COLLATERAL DAMAGE
ARISING FROM THE SUBPRIME FORECLOSURE CRISIS

*Creola Johnson**

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I. INTRODUCTION

Across the country, innocent renters are becoming victims of their landlords' inability to avoid foreclosure on their rental properties. Many are not receiving the legal rights that they are entitled to under federal and state law.¹ For example, Marjorie Benedum and her husband Mel Harris came home from church in December 2009 to find a sheriff's notice on their door warning them to move out in ten days or be evicted from their Baltimore home.² The notice came as a shock to Benedum and Harris as

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1. See, e.g., Gabe Treves, *Fannie Mae Violates Its Own Policy by Throwing Tenants out After Foreclosure*, NEWS BLAZE, Feb. 3, 2010, <http://newsblaze.com/story/20100203121442zzzz.nb/topstory.html> (discussing the growing number of complaints from California renters against Fannie Mae, because it is relying on real estate agents to handle its foreclosed properties even though these agents are violating both federal law and Fannie Mae's own policies that are supposed to protect innocent tenants from eviction).

2. Jamie Smith Hopkins, *More Maryland Renters Caught amid Foreclosure: Lenders and*

they had never failed to pay their rent on time.³ They learned their impending eviction was a result of a foreclosure on the property against their landlord.⁴ What the couple did not know when they found the notice of eviction is that they were entitled to stay in the property for ninety days under a new federal law.⁵ Luckily, this family learned their rights from a local attorney and did not have to immediately vacate their home, but not every family is so fortunate.⁶

Lenders, as mortgagees, are foreclosing on homes as more and more borrowers find themselves unable to pay their mortgages.⁷ Lenders have been relying on the assumption that taking the homes via foreclosure is the best course of action since they can be resold to cover the outstanding mortgage indebtedness.⁸ Relying on such an assumption has proven to be wrong in too many instances because doing so ignores current market conditions and results in innocent people being evicted from affordable housing and in residential properties becoming vacant and public nuisances.⁹

Many of the borrowers facing foreclosure are non-occupant owners. No doubt, some tried to be prudent investors who saw owning real estate as a long-term investment. Others were speculators or flippers—people who obtained adjustable rate loans to purchase homes for the sole purpose of reselling the homes at a profit within a year or two of purchase.¹⁰ However, when the housing bubble burst and economic conditions took a turn for the worse, many borrower-landlords became trapped with mortgage payments

Agents are Seeking Rapid Evictions Despite New State and Federal Laws Passed to Protect Tenants, BALT. SUN, Dec. 30, 2009, at A1, available at 2009 WLNR 26138268.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *See, e.g.*, Press Release, Connecticut Attorney General's Office, Attorney General Warns Law Firms, Banks & Real Estate Companies to Stop Illegal Evictions (Feb. 1, 2010), available at <http://www.ct.gov/ag/cwp/view.asp?A=2341&Q=455062> [hereinafter Attorney General Warns].

8. *See Neighborhoods: The Blameless Victims of the Subprime Mortgage Crisis: Hearing Before the Subcomm. on Domestic Policy of the H. Comm. on Oversight and Government Reform*, 110th Cong. 99 (2008) (statement of Doug Leeper, Code Enforcement Manager, City of Chula Vista, California) (stating that lenders did not prepare for fallout from issuing too many risky loans and that they believed they could simply sell the house after the borrower's default).

9. *See* Attorney General Warns, *supra* note 7 (quoting Connecticut Attorney General Richard Blumenthal as saying “[m]indless and needless automatic evictions benefit no one—devastating tenants, the neighborhood and the new property owner” and that these evictions “not only harm tenants, but turn vacant properties into eyesores and even crime havens, [thereby] diminishing values neighborhood wide”).

10. *See* Ada Focer, *Flip . . . Flip . . . Flip . . . Flop: Mortgage Fraud and Property “Flipping” Skew Low-Income Housing Markets*, SHELTERFORCE, Sept.–Oct. 2000, <http://www.nhi.org/online/issues/113/focer.html> (“Land or property flipping (as distinct from loan flipping which is repeated refinancing by predatory lenders) happens when property is purchased and quickly resold for a large profit, after little or no meaningful rehabilitation.”).

they could not afford and residential properties they could not sell.

The innocent victims of these borrower-landlords are consumers like the couple in Baltimore who simply had the misfortune of renting a house or apartment from a landlord unable to pay the mortgage. Despite having never defaulted on their rental payments to the landlord and the enactment of a new federal law giving tenants ninety days to vacate foreclosed properties, renters are being ordered to leave in as little as three days or face eviction.¹¹ Some tenants are not even aware of the landlord's trouble until the sheriff's deputy arrives to evict them or until their utilities are turned off due to the landlord's failure to pay the utility bills.¹² Scrambling to quickly come up with sufficient cash for moving expenses and a security deposit to get a new place to rent, some tenants then find themselves on the brink of homelessness.¹³

Because of a policy of automatically evicting tenants upon foreclosure, some lenders, along with their lawyers and property managers, have been accused of violating federal and state laws by lying to tenants¹⁴ or harassing and intimidating them to get them to vacate the foreclosed properties.¹⁵ Such harassment and intimidation from lenders and their agents include threatening to change the tenants' locks or removing the tenants' property for failure to contact the lenders or their agents within 24 hours.¹⁶ Moreover, lenders and their agents have been accused of

11. See, e.g., Peralte C. Paul, *Law Helps Renters Forced out When Landlord Defaults*, ATLANTA J.-CONST., Nov. 9, 2009, at A1, available at 2009 WLNR 22405022 (stating that many lawyers are ignorant about the new law and that banks are hesitant to volunteer information about the new law to tenants).

12. See *Assembly Approves Torrico's Protections for Renters in Foreclosed Properties*, CAL. CHRON., May 30, 2008, <http://www.californiachronicle.com/articles/printFriendly/63512>, available at 2008 WLNR 10237454.

13. See, e.g., NAT'L COAL. FOR THE HOMELESS ET AL., FORECLOSURE TO HOMELESSNESS 2009: THE FORGOTTEN VICTIMS OF THE SUBPRIME CRISIS 5 (2009), <http://www.nationalhomeless.org/advocacy/ForeclosuretoHomelessness0609.pdf> (reporting that of a survey of 178 organizations with direct knowledge about local homeless matters, 159 responded that some of their clients had become homeless as a result of foreclosure and that tenants were more heavily impacted than owner-occupants of foreclosed properties).

14. See, e.g., Judy Peet, *Foreclosure-Based Evictions Leave Many Renters Homeless*, STAR-LEDGER (Newark, N.J.), Jan. 17, 2010, at 21, available at 2010 WLNR 1029022 (stating that the biggest violators in rural and suburban areas are real estate agents and that "lenders, lawyers and management companies' are misinforming tenants in the cities").

15. See, e.g., Attorney General Warns, *supra* note 7 (reporting that Connecticut Attorney General Richard Blumenthal issued cease and desist orders to "at least [fifteen] bank and mortgage servicers, nine law firms and six real estate companies" telling them they must comply with renter foreclosure protection laws or face enforcement proceedings).

16. See, e.g., Press Release, Massachusetts Attorney General's Office, AG Coakley Reaches Settlements with Real Estate Company and Broker for Serving Alleged Deceptive and Threatening Notices to Tenants of Foreclosed Properties (May 12, 2010), available at http://www.mass.gov/?pageID=cagopressrelease&L=1&L0=Home&sid=Cago&b=pressrelease&f=2010_05_12_remax_classic_schettino_aods&csid=Cago [hereinafter AG Coakley Reaches

threatening tenants with eviction lawsuits, threatening to damage the tenants' credit by reporting them to the credit reporting agencies, shutting off the tenants' water or electricity, and filing eviction lawsuits, all the while citing to non-existent or incorrect legal authority to create an aura of legitimacy for their eviction demands.¹⁷

Even if a lender's eviction of an innocent tenant is arguably grounded in the law, a blanket policy of evicting tenants is irrational given the current market realities. Forecasters were hopeful that America's housing market would show signs of improvement due to an \$8,000 tax credit offered to first-time home buyers;¹⁸ however, home prices are predicted to remain stagnant or stabilize while the inventory of foreclosed homes continues to rise and the selling prices of foreclosed homes remain substantially below regular home prices.¹⁹ Because lenders have tightened their lending standards, a growing number of potential borrowers do not qualify for mortgage loans.²⁰ With real estate prices still well below desirable levels, a lender following a rational foreclosure policy would refrain from evicting

Settlements].

17. *See, e.g.*, Complaint at 3–4, *California v. Jarvis*, No. RG08380738 (Cal. Super. Ct. Apr. 8, 2008) [hereinafter Complaint]; Ken Dixon, *Blumenthal Wants Tenants' Protection in Foreclosures*, CONN. POST, Feb. 1, 2010, <http://www.ctpost.com/news/article/Blumenthal-wants-tenants-protection-in-345647.php>, available at 2010 WLNR 2155955 (reporting that one non-profit legal aid organization discovered that a real estate agent told an innocent renter four or five statements that “were blatantly false, in an attempt to persuade the tenant to leave”). *See also* AG Coakley Reaches Settlements, *supra* note 16 (charging with Re/Max Classic of Fairhaven and a real estate broker with violating state and federal laws protecting tenants from eviction in cases involving foreclosure against landlords).

18. *See* Dina ElBoghdady, *Existing-Home Sales Rose 6.8 Percent in March*, WASH. POST, Apr. 23, 2010, at A15 (predicting stabilization of housing market due in part to tax credit), available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/04/22/AR2010042203410.html>; Javier C. Hernandez, *New-Home Sales Rise, but Factory Orders Slip*, N.Y. TIMES, Nov. 26, 2009, at B3, available at 2009 WLNR 23891794 (reporting the rise in home sales but noting other indicators of the continuing recession).

19. *See* Hernandez, *supra* note 18 (stating that “median prices, which have been relatively stable, fell slightly from a year earlier, to \$212,200, raising the possibility of a second collapse of the housing market”); Renae Merle, *Housing Recovery Could Take a Decade, Economists Warn*, WASH. POST, Jan. 27, 2010, at A12, available at 2010 WLNR 1671514 (stating that “[h]ome prices have fallen 30[%] since reaching their peak in 2006, and many economists think they will take another tumble this year as more foreclosures pile on the market”); Luke Mullins, *Home Prices Stabilize Further, but More Drops May Be in Store*, U.S. NEWS & WORLD REP., Jan. 26, 2010, <http://www.usnews.com/money/articles/2010/01/26/home-prices-stabilize-further-but-more-drops-may-be-in-store.html>, available at 2010 WLNR 1735274. After the \$8,000 tax credit expired in April 2010, new-home sales plunged a record 32.7% in May 2010 to their lowest level in almost three decades. David Streitfeld, *New-Home Sales in May Fell Below 1981's Low*, N.Y. TIMES, June 24, 2010, at B1, available at http://www.nytimes.com/2010/06/24/business/economy/24home.html?_r=1&ref=housing (“The new housing market has never been this bad, at least not since the government started tracking such things in 1963.”).

20. *See* Bob Tedeschi, *F.H.A. Lending Standards Tightened*, N.Y. TIMES, Jan. 28, 2010, at RE7, available at 2010 WLNR 2020674.

tenants who are not in default under their leases and who are capable of maintaining the foreclosed properties until the housing market turns around and the properties can be sold at a profit.²¹

Part II of this Article describes the consequences of thousands of tenants being evicted from residential properties obtained by lenders in foreclosure proceedings against the borrower-landlords. The tenants suffer consequences such as losing their security deposits, struggling to find alternative housing, experiencing disruptions in family life, and even becoming homeless. In addition to individualized consequences, societal consequences include the costs imposed upon communities to provide social services to the evicted tenants and their families and the burden on cities in dealing with homes left vacant due to the lenders' inability to sell and properly maintain these houses.²² Moreover, foreclosure-based evictions of innocent renters are proving to be a burden on the law enforcement officials tasked with enforcing lenders' debts by evicting innocent tenants.²³

Part III of this Article analyzes the effectiveness of a new federal law, the Protecting Tenants at Foreclosure Act (PTFA),²⁴ as well as various state laws designed to afford protection to tenants who are not in default under their leases. The PTFA only gives a bona fide tenant who has a lease term greater than ninety days the right to stay for the remainder of the term and all other bona fide tenants the right to stay ninety days after notice is

21. *Legislative and Regulatory Options for Minimizing and Mitigating Mortgage Foreclosures: Hearing Before the H. Comm. on Financial Servs.*, 110th Cong. 140, 143 (2007) (appendix statement of Judith Liben, Housing Att'y, Massachusetts Law Reform Institute), available at <http://www.nlihc.org/doc/Liben-Congressional-Testimony.pdf> [hereinafter Judith Liben testimony] ("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.").

22. A few attorneys general are suing to hold parties responsible for harm caused by their unlawful foreclosure-based evictions. *See, e.g.*, AG Coakley Reaches Settlements, *supra* note 16 (reporting on a settlement reached by Massachusetts Attorney General Martha Coakley with Re/Max Classic of Fairhaven and Simone Schettino for sending illegal eviction notices to tenants renting from landlords who lost the property as a result of foreclosure); Assurance of Discontinuance at 4, *Massachusetts v. Re/Max Classic of Fairhaven*, No. 10-1898 (Suffolk Super. Ct. May 11, 2010) (obligating Re/Max Classic to provide to tenants with written notices containing mandatory language in compliance with the law and obligating Re/Max to pay a \$10,000 fine and hold six free public seminars, which are to be conducted by South Coastal Counties Legal Services and which are to be targeted towards homeowners facing foreclosure and tenants living in foreclosed buildings" and that explain "the options available to homeowners facing foreclosure" and "explain the rights of tenants living in foreclosed buildings"); Assurance of Discontinuance at 3, *Massachusetts v. Simone Schettino*, No. 10-1897 (Suffolk Super. Ct. May 11, 2010) (obligating real estate broker Simone Schettino to, among other things, pay a fine for sending illegal eviction notices to tenants living in foreclosed properties).

23. *See infra* notes 57–58 and accompanying text (discussing one sheriff's temporary refusal to evict renters due to foreclosures against the landlord).

24. The PTFA is Title VII of the Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22, 123 Stat. 1632 (to be codified in scattered sections of 12, 15, 31, 38 & 42 U.S.C.) [hereinafter Save Homes Act].

given.²⁵ Part III shows that because the PTFA failed to specify what the notice must contain and failed to prohibit common practices that lead to unlawful evictions, it falls short of striking a proper balance between protecting innocent tenants and granting the lenders commercial leeway in foreclosure proceedings. Not only does the new federal law not go far enough to protect tenants, but also most tenants are not aware of the limited rights afforded to them under the PTFA.

To minimize the impact of the current foreclosure crisis on innocent tenants, Part III proposes amendments to the PTFA that include requiring the lender to maintain the property until the ninety-day period has expired and follow procedures designed to provide easily understood notice to the tenant about his or her rights and options long before a foreclosure sale is complete. All tenants should receive notices containing clear instructions about how to pay the rent. These requirements are necessary to prevent lenders from intimidating tenants into vacating the foreclosed property immediately and from falsely claiming non-payment of rent as grounds for eviction.²⁶ To afford tenants who have only the ninety-day period to remain a chance to save cash for relocation expenses, Part III recommends that the PTFA be amended to allow these tenants to stay rent-free. However, lenders could cut short the ninety-day rent-free period by paying the tenant a reasonable amount to relocate. Part III further proposes ways in which national, state, and local officials can inform tenants of their rights under the existing law. All stakeholders—lenders, tenants, neighbors, cities, and taxpayers—benefit from a policy of allowing responsible tenants to remain in rental property until the end of their lease term. This not only allows lenders to receive a steady stream of rental revenue, but this also allows the tenant to maintain affordable housing and prevents foreclosed properties from becoming vacant public nuisances.

II. RENTERS ARE HIT HARD BY FORECLOSURE CRISIS

The foreclosure crisis is affecting many tenants. While no one has an exact figure, studies estimate that nearly 40% of all foreclosures involve residential properties that are not occupied by the owners.²⁷ Because tenants are not usually named or joined as defendants in foreclosure

25. *See id.* § 702(a).

26. *See, e.g.,* Donna Rolando, *Knowing Rights Helped Ridgefield Park Tenant Keep Her Home*, THE RECORD (Bergen County, N.J.), Feb. 7, 2010, at R4, available at 2010 WLNR 4922742 (stating that new owners of foreclosed properties sometimes deliberately hide from tenants information about where to pay rent, because they know tenants must maintain rental payments to avoid eviction).

27. KEITH E. WARDRIP & DANILO PELLETIERE, NAT'L LOW INCOME HOUS. COAL., PROPERTIES, UNITS, AND TENURE IN THE FORECLOSURE CRISIS: AN INITIAL ANALYSIS OF PROPERTIES AT THE END OF THE FORECLOSURE PROCESS IN NEW ENGLAND 2 (2008), <http://www.nlihc.org/doc/RN-08-01-Multi-Unit-Foreclosure-FINAL-05-06-08.pdf>.

proceedings,²⁸ researchers are unable to accurately estimate the number of renters affected by the foreclosure crisis. A study by Harvard University's Joint Center for Housing Studies found that nearly 20% of foreclosures involve small investor-owned residential rental properties.²⁹

Higher estimates of affected tenants exist in certain parts of the country.³⁰ For example, a real estate agent who specializes in selling foreclosed properties estimated that 50% to 60% of the homes he has listed for sale in California were occupied by renters, many of whom first learned of their predicament when the real estate agent told them they had to move.³¹ Policy Matters Ohio, a nonprofit organization that researches economic issues impacting Ohioans, recently released a study finding that 3,918 foreclosures in the year 2007 were on rental properties in Cuyahoga County (the seat of Cleveland) and that this figure reflected a 29% increase over the previous year.³² The study also found that the foreclosure filing rate for rental properties grew at a rate higher than filings for owner-occupied properties.³³ Moreover, rental foreclosure filings represented approximately 30% of all residential property foreclosure filings in Cleveland and East Cleveland in 2007.³⁴

28. See Nat'l Law Ctr. on Homelessness & Poverty & Nat'l Low Income Hous. Coal., *Without Just Cause: A 50-State Review of the (Lack of) Rights of Tenants in Foreclosure* 7 (2009), http://www.nlchp.org/content/pubs/Without_Just_Cause1.pdf (stating that only twelve states "explicitly require that tenants be named as parties to foreclosure proceedings in order for foreclosure to automatically terminate tenancies or otherwise provide the new owner with immediate possessory rights in the property"); David Rothstein, Policy Matters Ohio, *Collateral Damage: Renters in the Foreclosure Crisis* 9 (2008), http://www.policymattersohio.org/pdf/CollateralDamage2008_0619.pdf.

29. See JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *AMERICA'S RENTAL HOUSING: THE KEY TO A BALANCED NATIONAL POLICY* 1–2 (2008), http://www.jchs.harvard.edu/publications/rental/rh08_americas_rental_housing/rh08_americas_rental_housing.pdf (examining rental housing affordability issues in the context of the foreclosure crisis and stating that "[t]he plentiful supply of mortgage capital . . . fed a substantial rise in high-risk lending to absentee owners of one- to four-unit rental properties").

30. See, e.g., TENANTS TOGETHER, *HIDDEN IMPACT: CALIFORNIA RENTERS IN THE FORECLOSURE CRISIS* 6 (2009), <http://www.tenants-together.org/downloads/ForeclosureReport.pdf> (finding that an analysis of data from a foreclosure firm about foreclosures in California "revealed that approximately one third of the residential units in foreclosure in 2008 were rentals" and estimating that at least 225,000 renters were impacted by these foreclosures); Ellen Yan, *Renters at Risk in Mortgage Crisis*, *NEWSDAY*, Mar. 4, 2009, at A34, available at 2009 WLNR 4129512 (stating that one real estate firm, which represents banks in getting foreclosed properties ready for sale in Suffolk, New York, encounters tenants in at least 30% of the foreclosures).

31. See Leslie Berkman, *Foreclosures Leave Tenants out in Cold, Too*, *PRESS-ENTER* (Riverside, Cal.), June 22, 2008, at H1, available at 2008 WLNR 11877063.

32. See Rothstein, *supra* note 28, at 3–5 (reporting that two-thirds of the foreclosure filings were in Cleveland, where more than half of the city's households are rentals).

33. *Id.* at 3. The likely explanation for this is that a small-investor landlord that is experiencing a financial crunch is likely to let the rental property go into foreclosure before letting his or her owner-occupied property go into foreclosure.

34. *Id.* at 4.

Research shows that many tenants do not understand their rights upon being ordered to vacate.³⁵ For example, a 2006 survey of Illinois renters found that 37% of them did not understand their rights as tenants and 64% of them stated that their quality of life as renters would greatly improve if they knew their rights and responsibilities.³⁶ Therefore, one can understand why tenants, fearful of eviction proceedings, would quickly vacate their premises after receiving notice of a foreclosure.³⁷ Sometimes judges do not understand eviction laws and issue eviction orders depriving innocent tenants of their statutory time period within which to vacate the premises.³⁸

Besides judges exacerbating the foreclosure problem for renters, lenders are accused of capitalizing on the ignorance and fears of tenants by intimidating them into vacating the foreclosed properties.³⁹ For example, in Oakland, California, the conduct of lenders and their agents toward renters has been outrageous. In fact, the city attorney sued one real estate firm that acted as property manager for several banks and boasted of its track record of “generat[ing] results” for banks by “significantly reducing the[ir] carrying costs from time of acquisition to time of disposition.”⁴⁰ The city attorney accused the firm of violating Oakland’s “just cause” ordinance in numerous ways, including: intimidating tenants into taking paltry “cash for keys” offers to vacate; turning off tenants’ heat and electricity; visiting tenants’ premises to press them for a move-out date; refusing to return tenants’ phone calls in reply to notices to vacate; refusing requests for information about the foreclosure or the identity of the new property owner; failing to provide a just cause for eviction such as proof of nonpayment of rent; and failing to advise tenants of their right to seek advice from Oakland’s rent board.⁴¹

35. See, e.g., C.W. Nevius, *Renters’ Eviction Notices Often Illegal in S.F.*, S.F. CHRON., Dec. 18, 2008, at B1, available at 2008 WLNR 24233377.

36. See DOUGLAS SCHENKELBERG ET AL., HOUS. ACTION ILL. ET AL., INSECURE IN YOUR OWN HOME: WHAT IT MEANS TO RENT IN ILLINOIS 4, 11, 13 (2006), <http://www.nlihc.org/doc/repository/IL-Insecure.pdf> (discussing findings of the Illinois Renters Survey, which has the objective of understanding the experiences of tenants in Illinois and makes recommendations regarding how best to improve the quality of life for them).

37. See, e.g., Nevius, *supra* note 35.

38. For an example of a California judge evicting a tenant in contravention of state law, see *O’Flynn v. Suval—Judge Disregards Law to Evict Disabled Tenants* (Tenants Together/Cal.’s Statewide Org. for Renters’ Rts., San Francisco, Cal.), Issue 1 2009, at 7.

39. See, e.g., John M. Glionna, *Renters Fight to Stay in Foreclosed Buildings*, L.A. TIMES, Mar. 12, 2008, at C1, available at 2008 WLNR 4809680 (“Area activists agree . . . low-income renters who have the right to remain in their homes are increasingly being harassed in foreclosure proceedings by lenders eager to be rid of them.”); Mary Ann Milbourn, *Renters Also Fall Victim to Wave of Foreclosures*, PRESS OF ATLANTIC CITY, June 1, 2008, at D1, available at 2008 WLNR 10430558 (noting that the president of the Orange County (California) Association of Realtors states that out-of-state lenders are the biggest intimidators of tenants in foreclosure and that they do not know about the state’s thirty-day notice requirement to evict a tenant).

40. Complaint, *supra* note 17, at 2–3; see Christopher Heredia, *Oakland Sues Landlord, Claims Illegal Evictions*, S.F. CHRON., Apr. 10, 2008, at B2, available at 2008 WLNR 6684260 (announcing filing of the suit).

41. Complaint, *supra* note 17. The firm settled after being sued. See also AG Coakley Reaches Settlements, *supra* note 16 (reporting that real estate company’s written notice contained

A. *Renters and Their Families Pay Huge Financial and Social Costs*

When lenders and their agents engage in tactics to force tenants out, it costs tenants a lot to immediately vacate their current housing and find other suitable housing. The overwhelming majority of renters are not refunded their security deposits or the remainder of the current month's rent previously paid to the landlord.⁴² Without such a refund, tenants will need to quickly find enough money to pay a new security deposit, along with the first and, sometimes, last month's rent.⁴³ Besides security deposits, tenants need cash to cover moving expenses and utility deposits to obtain utility services at the new place. However, due to the current contraction of consumer credit, tenants may find reasonably priced credit unattainable and may resort to usurious credit such as payday loans in order to obtain cash to cover all of the relocation costs.⁴⁴ There are numerous news stories of innocent tenants unable to afford relocation expenses, especially given that security deposits can be as high as \$1,500.⁴⁵ An Ohio study estimated that the average costs to a tenant displaced by foreclosure to be \$2,558.⁴⁶ Tenants who live in cities with high-cost rental properties for moderate-to-low income earners, like New York, can expect to pay more to find alternative housing after eviction.⁴⁷

threats to change the locks on the foreclosed rental property and to remove all occupants from the property if the occupants did not call the company or its agent within 24 hours).

42. See Rothstein, *supra* note 28, at 10 (reporting that "80[%] of renters lose their entire security deposit and roughly 15[%] receive some of their deposit and rent back").

43. See SCHENKELBERG, *supra* note 36, at 8 (stating that roughly 25% of renters had been asked by a landlord "to pay a security deposit equal to at least twice their monthly rent"). The required security deposit varies based on where the rental unit is located and the size and type of the unit.

44. See generally Creola Johnson, *It's Working for the Military; It'll Work for America: Why Civilians Deserve Equivalent Protection From Payday Lenders* (June 24, 2010) (unpublished manuscript on file with author) (discussing how payday loans, which are marketed as a short-term solution for a financial emergency, ensnare consumer borrowers in a cycle of an indebtedness that increases the likelihood of sending borrowers into bankruptcy court for relief).

45. See, e.g., Tim Logan, *Renters Often Become the Forgotten Victims*, ST. LOUIS POST-DISPATCH, June 20, 2008, at B1, available at 2008 WLNR 11664140 (relating the story of a single mother with four children trying to find alternative rental housing after losing her place to foreclosure and expressing frustration that at every place she visited, the prospective landlord wanted either \$1,000 or \$1,500 for a security deposit).

46. See Rothstein, *supra* note 28, at 5, 11 (reporting that two-thirds of the foreclosure filings were in Cleveland, where more than half of the city's households are renters, and estimating that based on the number of rental units, it is possible that renter families experienced \$10 million in losses because of foreclosure filings).

47. Research shows that rental properties in Westchester County, a suburb north of New York City, are severely unaffordable for low-to-moderate income tenants. See, e.g., Barbara Whitaker, *Few Options for Displaced Tenants*, N.Y. TIMES, Feb. 6, 2005, at 14WC7, available at 2005 WLNR 1655835.

In addition to incurring economic costs directly related to the loss of the rental property,⁴⁸ tenants suffer in other ways. The abruptness of the displacement presents transportation challenges to renters having to find alternative housing if they are reliant on public transportation or are struggling to afford gas prices in order to get to work. Renters may also experience difficulties obtaining affordable and trustworthy childcare for infants and toddlers. Abrupt displacement by foreclosure also presents challenges to a tenant's family in the form of uprooting children from school and transferring them to other schools. Children who switch schools frequently tend to experience behavioral problems and poor performance. One study found that "students with two or more school changes in the previous two years were *half* as likely to be proficient in reading as [their stable peers]."⁴⁹ Officials in Flint, Michigan, have been so troubled by foreclosures and the dislocation of renters and their children that public officials have implemented a program that pays a monthly rental subsidy of \$100 to qualifying parents to help them stay in the same school district.⁵⁰

B. *Displacement of Renters by Foreclosure Imposes Costs on Communities*

Besides renters and their families, the community and municipality in which the renter family is located are also impacted by the foreclosure crisis. Taxpayers bear the burden when public agencies provide social services to evicted tenants and their families, as well as direct financial benefits like the rent subsidy mentioned above.⁵¹ Churches and other nonprofit organizations also help tenants by offering services and financial help, such as paying security deposits to help tenants secure alternative housing.⁵² The eviction of innocent tenants by foreclosing lenders has caused one county sheriff to: 1) hire a social worker to help evicted tenants find alternative housing; 2) assign an attorney to investigate potential instances of mortgage fraud; and 3) expand the sheriff's financial crimes unit to include investigations into claims of mortgage fraud to protect

48. Tenants who attempt to fight eviction will also incur legal fees if they do not qualify for legal aid.

49. Russell W. Rumberger, *The Causes and Consequences of Student Mobility*, 72 J. NEGRO EDUC. 6, 9 (2003) (emphasis added).

50. See Erik Eckholm, *To Avoid Student Turnover, Parents Get Help with the Rent*, N.Y. TIMES, June 24, 2008, at A15, available at 2008 WLNR 11845950 (stating that "the recent rash of foreclosures on landlords is adding to the problem, forcing renters from their homes" and reporting that Michigan's Department of Human Services pays the subsidy directly to the landlords of the tenants).

51. See *id.*

52. See, e.g., Stephanie Armour, *Renters Can't Escape Housing Foreclosure Crisis*, USA TODAY, Apr. 22, 2008, at B1, available at 2008 WLNR 7456462 (reporting that a tenant family displaced by foreclosure lost its \$5,000 deposit and would have been homeless had the church not lent them the money for a new security deposit).

innocent tenants.⁵³ Consequently, aid to innocent renters evicted by lenders unduly strains public and private resources.

Rather than relying on governmental agencies and charitable organizations, some tenants displaced by foreclosure resort to living with friends and families, thus coining the new term “doubling up.”⁵⁴ This could lead to overcrowding and safety hazards.⁵⁵ Displaced renters who are not fortunate enough to have such a support system become a greater burden to the community by resorting to homeless shelters or subsidized transitional housing.⁵⁶

The eviction of innocent tenants also negatively impacts the law enforcement community to the extent they are involved in evictions. Sheriff Thomas Dart temporarily suspended foreclosure evictions in Cook County, Illinois (which includes Chicago), because he believed that lenders were leaving it up to the sheriff’s deputies to determine who lived in foreclosed properties and that innocent tenants were being forced out by lenders.⁵⁷ During a CNN interview, he stated:

“These mortgage companies . . . don’t care who’s in the building They simply want their money and don’t care who gets hurt along the way. On top of it all, they want taxpayers to fund their investigative work for them. We’re not going to do their jobs for them anymore. We’re just not going to evict innocent tenants. It stops today.”⁵⁸

53. Press Release, Cook County (Illinois) Sheriff’s Office, Safeguards Added to Eviction Process (Oct. 16, 2008), available at http://www.cookcountysheriff.org/press_page/press_eviction_safeguards_10_16_08.html.

54. See Rothstein, *supra* note 28, at 10 n.25 (stating that while little data is available about families in this living condition, “[d]oubling up is becoming an increasingly popular route for families facing foreclosure, eviction, or homelessness”).

55. *The Impact of the Foreclosure Crisis on Public and Affordable Housing in the Twin Cities: Hearing Before the H. Subcomm. on Housing and Community Opportunity*, 111th Cong. 4 (2010) (statement of Erika Poethig, Deputy Assistant Secretary, Policy Development & Research, U.S. Department of Housing and Urban Development), available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/poethig_testimony.pdf [hereinafter *Hearing*] (stating that “‘doubling up’ may be an important short-term transitional fix to avoid homelessness, but poses serious concerns about overcrowding if these households are unable to find affordable rental housing down the road”).

56. See, e.g., ROTHSTEIN, *supra* note 28, at 10 (stating that three families out of fifty interviewed temporarily stayed at a shelter).

57. Cook County Sheriff Tom Dart brought the issue of the impact of foreclosure-based evictions to light when he announced that the sheriff’s department was “just not going to evict innocent tenants” any longer. M.J. Stephey, *The Sheriff Who Wouldn’t Evict*, TIME, Oct. 13, 2008, <http://www.time.com/time/nation/article/0,8599,1849454,00.html>.

58. *Illinois Sheriff Scolds Banks for Evictions of ‘Innocent’ Renters*, CNN.COM, Oct. 9, 2008, <http://www.cnn.com/2008/US/10/08/chicago.evictions/index.html> (reporting foreclosures more than tripled from 1999 to October 2008).

As a result of their irresponsible lending to risky landlords,⁵⁹ many lenders have made law enforcement unwilling participants in what is essentially debt collection work, not crime prevention or detection. With their resources already strained, law enforcement units are being made to enforce lenders' loans by throwing dutifully paying renters out on the street with very little notice and no resources with which to find alternative living arrangements. Moreover, foreclosures have a disproportionate impact on minority communities.⁶⁰ When the lenders put law enforcement personnel in a position of perceived unfair action against renters, law enforcement will be impeded in their effectiveness and reputation in crime prevention and criminal investigative work in minority communities, which tend to be more distrustful of law enforcement than predominately white communities.

When lenders follow a blanket policy of evicting tenants, they not only unfairly burden renter families and local government that help them, but also lenders further inflict harm on neighborhoods because these evictions increase the number of abandoned and blighted properties. The dramatic increase in foreclosures and the subsequent eviction of tenants and homeowners have led to a dramatic rise in vacant blighted properties.⁶¹ Because the supply of residential houses substantially exceeds the demand for them, many vacant residential properties have become eyesores as they deteriorate due to neglect. The residences then become a target for criminals, such as thieves stripping the homes of copper and other valuable materials.⁶²

This increase in vacant blighted houses decreases the value of neighboring properties and, in turn, lowers the tax revenues cities can collect.⁶³ For instance, a study of the city of Philadelphia's housing market found that homes within 150 feet of an abandoned property "experienced a net decrease[] in sales price of \$7,627."⁶⁴ Three counties in Michigan have a projected combined \$34 million decrease in tax revenue for the year 2009 as a result of the foreclosure crisis.⁶⁵ Declining property tax revenues for

59. See 155 CONG. REC. S5060 (daily ed. May 4, 2009) (statement of Sen. Schumer) (describing various substandard practices used by lenders to underwrite mortgages on multifamily rental properties and stating that "[t]his kind of basic underwriting malpractice has left tens of thousands of families in New York State and other States (sic) vulnerable").

60. See NAT'L COMM'N ON FAIR HOUS. & EQUAL OPPORTUNITY, *THE FUTURE OF FAIR HOUSING: REPORT OF THE NATIONAL COMMISSION ON FAIR HOUSING AND EQUAL OPPORTUNITY* 34 (2008), available at http://www.nationalfairhousing.org/Portals/33/reports/Future_of_Fair_Housing.pdf (noting that the foreclosure crisis has significantly impacted minority communities).

61. See Creola Johnson, *Fight Blight: Cities Sue to Hold Lenders Responsible for the Rise in Foreclosures and Abandoned Properties*, 2008 UTAH L. REV. 1169, 1174–80 (2008) (discussing how lenders' foreclosure practices have caused a spike in abandoned blighted properties).

62. *Id.* at 1182 & n.73 (explaining how foreclosures lead to vacant properties and how such vacancies result in increased criminal activities).

63. *Id.* at 1181.

64. Anne B. Shlay & Gordon Whitman, *Research for Democracy: Linking Community Organizing and Research to Leverage Blight Policy* 21 (Temple Univ., Working Paper, 2004), available at <http://comm-org.wisc.edu/papers2004/shlay/shlay.htm>.

65. See Steve Neavling, *Foreclosures Drain Cash from Counties: \$34 Million in Lost*

cities has a domino effect, including less revenue for cities to provide social services such as police and fire protection.⁶⁶

Moreover, these abandoned and blighted properties often become public nuisances and can endanger the surrounding communities. Long-term vacancies in neighborhoods lead to a higher prevalence of arson, drug-dealing, prostitution, gang activity, and murder.⁶⁷ Abandoned properties often become dangerous fire hazards, dumping sites for toxic materials, and breeding grounds for vermin and insects.⁶⁸ Dealing with all of these conditions has caused cities to tap into already severely limited budgets to provide services to secure the vacant properties.⁶⁹ Lenders who hold the mortgages on vacant properties should be responsible for these services.

Because many lenders have abdicated their responsibilities, cities are engaged in protracted and expensive litigation to hold lenders responsible for damages for abating the nuisance at thousands of blighted foreclosed properties and expenses incurred to providing services at the properties.⁷⁰ Some cities file individual nuisance abatement and receivership/foreclosure actions against lenders, but they are often unsuccessful because, as a result of securitization of residential mortgages, cities do not know which entity actually holds the mortgages on the blighted properties.⁷¹ Additionally, because such civil proceedings often prove ineffective, some cities, such as Buffalo and Cleveland, have resorted to criminal proceedings to force lenders to repair or demolish abandoned properties.⁷²

Along with individual civil or criminal proceedings that seek to hold one lender responsible for a single residential property, cities like Baltimore, Buffalo, and Cleveland are also using very costly mass litigation to sue large financial institutions to hold them responsible for thousands of foreclosed and vacant properties.⁷³ Baltimore's lawsuit was the first one against a large mortgage lender (Wells Fargo) and accuses the lender of predatory lending practices in violation of the Fair Housing Act, and claims that these practices led to large-scale foreclosures that were primarily in the city's predominately African-American communities.⁷⁴

Property Taxes to Force Cuts in Services, DETROIT FREE PRESS, Oct. 16, 2008, at A1, available at 2008 WLNR 26543521.

66. See *Abandoned Property: Effective Strategies to Reclaim Community Assets*, HOUSING FACTS & FINDINGS (Fannie Mae Found., Washington, D.C.), May 13, 2004, at 5.

67. See *id.* at 6.

68. *Id.*

69. *Id.*

70. See Johnson, *supra* note 61, at 1187–94.

71. *Id.* at 1185–86, 1188–95.

72. *Id.* at 1195–97.

73. *Id.* at 1198.

74. *Id.* at 1198–99.

With an estimated 10,000 vacant buildings, Buffalo sued thirty-six lenders for violations of nuisance and property maintenance codes to recover the cost of maintaining or demolishing numerous abandoned homes.⁷⁵ Cleveland's lawsuit against twenty-one financial institutions claims that their funding of subprime loans to mortgage lenders (like Wells Fargo) created a public nuisance as a result of the thousands of foreclosures against residential properties in Cuyahoga County.⁷⁶ At this time, all of these cases are pending, but if any city is successful, other cities are sure to follow suit.⁷⁷ Whether cities use civil or criminal proceedings, they have to incur considerable additional costs for a foreclosure crisis that lenders are partially responsible for creating.

Apart from the far-reaching financial burden and negative impact on communities from blighted and vacant properties, the displacement of renters through foreclosures also exacerbates the affordable housing crisis.⁷⁸ Displacement forces renters to compete for a decreasing stock of affordable rental properties⁷⁹ with both the consumers who historically rent and borrowers who are losing their principal residences to foreclosure.⁸⁰ This increased demand for rental property coupled with the constrained supply, driven by a stagnant new building construction, creates a shortage in affording rental property that may lead to rising prices that the displaced renters cannot afford.

75. *Id.* at 1223–24.

76. *Id.* at 1213, 1215.

77. Cities can consider suing other bad actors. For example, Minneapolis and three of its neighborhood associations filed suit against a real estate company, TJ Waconia, along with its principals and related companies, and won their first legal battle when a judge appointed a legal custodian to manage and sell 141 blighted properties. Donna Leinwand, *Cities Sue Home Lenders*, USA TODAY, May 16, 2008, at A15, available at 2008 WLNR 9268777.

78. See, e.g., *The Impact of the Foreclosure Crisis on Public and Affordable Housing in the Twin Cities: Hearing Before the H. Subcomm. on Housing and Community Opportunity*, 111th Cong. 1 (2010) (statement of Minnesota Rep. Jim Davnie), available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/davnie.pdf (stating that Minnesota is “struggling with limited resources—like so many other states—to provide affordable housing opportunities for tens of thousands of homeowners displaced by the ongoing foreclosure crisis, and the nationwide economic recession”).

79. Michael Bodaken & Todd Nedwick, *Saving America's Affordable Rental Housing Stock: The Need and the Role of National Banks*, COMMUNITY DEVELOPMENTS, Spring 2008, available at <http://www.occ.treas.gov/cdd/Newsletters/spring08/articles/landscape/cdn08spring03.htm> (stating that the “nation’s supply of its most affordable apartments is decreasing at an alarming rate”).

80. See, e.g., *The Impact of the Foreclosure Crisis on Public and Affordable Housing in the Twin Cities: Hearing Before the H. Subcomm. on Housing and Community Opportunity*, 111th Cong. 3 (2010) (statement of Michael Dahl, Public Policy Director, HOME Line) [hereinafter *Dahl Statement*], available at http://www.house.gov/apps/list/hearing/financialsvcs_dem/dahl.pdf (stating that HOME Line received forty-seven telephone calls “from across Minnesota from tenants living in a property faced with a foreclosure” and stating that if the foreclosure crisis is the only issue addressed, “additional fundamental problems with the housing market will remain”).

The subprime foreclosure crisis has truly become an example of capitalism at its worst. Prior to the housing bust, federal banking regulators had a hands-off approach to the oversight of the residential mortgage industry and that led to lenders relaxing traditional underwriting standards and issuing to borrowers subprime loans on terms with high likelihood of default.⁸¹ As a result, having privatized their profits, lenders are now externalizing the inevitable costs of their irresponsible lending on to everyone, including innocent renters via foreclosure-based evictions. Part III below analyzes whether a recent federal law will afford innocent renters sufficient protection from these evictions.

III. LEGISLATIVE MEASURES TO PROTECT INNOCENT TENANTS AFFECTED BY FORECLOSURES

Generally, a purchaser at a foreclosure sale that is held in accordance with state law is entitled to possession.⁸² Most of the time, the lender-mortgagee, as the foreclosing creditor, is the only bidder at a foreclosure sale and, therefore, becomes the “purchaser.”⁸³ Prior to Congress’ enactment of the Protecting Tenants at Foreclosure Act (PTFA), the mortgagee’s ability to use a foreclosure judgment or sale to evict the tenant depended on whether, under state law, the lease predated the mortgage or the tenant was joined as a defendant in the foreclosure proceedings.⁸⁴

A. *Protecting Tenants at Foreclosure Act of 2009*

In 2009, Congress passed the PTFA, which gives a tenant limited protection regardless of whether the lease predates the foreclosure or the tenant is joined in the foreclosure action.⁸⁵ It applies to all residential properties in foreclosure.⁸⁶ If the tenant has fewer than ninety days left on the lease, the tenant is entitled to the ninety-day notice before the new

81. See Edmund L. Andrews, *Efforts to Regulate Risky Mortgage Innovations Are So Far Ignored*, N.Y. TIMES, July 15, 2005, at C1, available at 2005 WLNR 11102219.

82. See ROBERT S. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT § 10:5 (1980).

83. See BAXTER DUNAWAY, 2 LAW OF DISTRESSED REAL ESTATE § 16:39 (2009) (“In the majority of foreclosure sales, the lender will be the only bidder. It is necessary for the lender to bid in order to protect its own interest as well as that of the borrower. . . . [C]ourts will closely scrutinize the sale, particularly where the borrower is subject to a deficiency judgment after the sale.”); Janet A. Flaccus, *Pre-Petition and Post-Petition Mortgage Foreclosures and Tax Sales and the Faulty Reasoning of the Supreme Court*, 51 ARK. L. REV. 25, 49 (1998) (reporting that “[t]hird parties purchased at the foreclosure sale in [23%] of the cases”); Anthony John Handzlik, Comment, *Mortgage Foreclosure as Fraudulent Conveyance: Is Judicial Foreclosure an Answer to the Durrett Problem?*, 1984 WIS. L. REV. 195, 211 (1984) (stating “[u]sually the mortgagee is the only bidder and, in about [99%] of public foreclosure sales, it is the purchaser”).

84. See MILTON R. FRIEDMAN & PATRICK A. RANDOLPH, JR., FRIEDMAN ON LEASES § 8:1.2 (2009); SCHOSHINSKI, *supra* note 82, § 10:5 (“It is well settled that a leasehold interest antedating a mortgage . . . on the lessor’s estate is unaffected by foreclosure.”).

85. See Save Homes Act, *supra* note 24.

86. *Id.* § 702(a).

owner can evict the tenant.⁸⁷ If the tenant's lease has more than ninety days left on it, the tenant has the right to remain in the foreclosed property until the end of the lease.⁸⁸ However, if the new owner is going to use the unit as a primary residence, the new owner may evict the tenant after the ninety-day notice, even if the remaining lease term exceeds ninety days.⁸⁹ To take advantage of the ninety-day period, the tenancy must be "bona fide," meaning that the tenancy is the result of an arms-length transaction, the rent is not substantially below market value, and the tenant is not the mortgagor or the mortgagor's child, spouse, or parent.⁹⁰

The PTFA is very short—fewer than two pages long—and only gives a bona fide tenant a limited right to stay, thereby creating more questions than it answers. Perhaps a longer, more comprehensive statute would have led to a raucous fight over whether such legislation was necessary and, therefore, a political compromise led to passage of the PTFA even though it left many very important questions unanswered.⁹¹ The PTFA is silent about 1) the contents of the notice that is to be given to the tenant; 2) the obligations of the tenant to pay rent during the pendency of the foreclosure case and after the foreclosure sale; 3) the obligations of the lender to maintain the property until the tenant vacates; 4) the improper practices of the lender to force out tenants; and 5) the penalties the lender is subject to for violating the law.⁹²

In states lacking strong protections for innocent renters, the PTFA will largely be ineffective because it fails to address the fact that unlawful foreclosure-based evictions take place primarily due to tenants not knowing their rights and lenders exploiting that ignorance.⁹³ The next Part of this Article considers New Jersey law as instructive of which kind of protections are necessary to inform tenants of their rights to ensure they can act on them and, thereby, avoid becoming a victim of an unlawful eviction. Later, in Part III.C., this Article proposes amendments to the PTFA to limit the ability of lenders and their agents to force tenants out either through deception or intimidation.

87. *Id.* § 702(a)(1).

88. *Id.* § 702(a)(2).

89. *Id.* (stating that the tenant has only ninety days if the new owner plans to occupy the foreclosed property as a residential home).

90. *Id.* § 702(b). Paying below market value does not apply to tenants whose housing is subsidized via a Section 8 voucher. *Id.*

91. *See infra* note 150 and accompanying text (stating that only one Republican in the U.S. Senate voted for the PTFA, which passed by a vote of fifty-seven to thirty-nine).

92. *See Save Homes Act, supra* note 24, §§ 701–04.

93. *See Dixon, supra* note 17 (stating that according to legal aid attorneys, "illegal evictions have been occurring regularly since last spring, when a federal law took effect protecting renters from new owners" in foreclosure-based evictions).

B. *New Jersey Law Affords Renters Strong Protections Worth Considering*

The PTFA does not preempt state or local laws that give additional protections.⁹⁴ Consequently, tenants in a minority of jurisdictions—cities such as Oakland, San Francisco, and Seattle, and states such as New Jersey and New York—are given various rights in the event of the lender’s foreclosure against the landlord.⁹⁵ These laws afford the consumer more protections than the PTFA.⁹⁶

In comparison to the other states, the state reputed to have the strongest protections for tenants, New Jersey,⁹⁷ stands out as a model for assessing what amendments to the PTFA can be added to afford all Americans additional protections. In New Jersey, a tenant cannot be evicted without good cause under the state’s Anti-Eviction Act, specifying only eighteen good-cause eviction grounds.⁹⁸ In a 1994 case involving a lawsuit where the mortgage predated the lease, Chase Manhattan Bank argued that it was not a landlord covered by the Anti-Eviction Act and, therefore, could evict the tenant after its foreclosure proceeding was complete.⁹⁹ The Supreme Court of New Jersey held in *Chase Manhattan Bank v. Josephson* that regardless of whether a tenant’s lease predates or antedates the creation of the mortgage, the lender-mortgagee cannot obtain an eviction order without good cause.¹⁰⁰ The court found the language of the 1986 amendment to the Act plain, which made it applicable to “the owner’s or landlord’s *successor* in ownership,” holding that the Act encompassed both foreclosing mortgagees and purchasers at foreclosure sales.¹⁰¹

The court recognized the Act’s overarching purpose of protecting innocent tenants from eviction and the “critical shortage of rental housing

94. See *supra* notes 82–89 and accompanying text (discussing the PTFA).

95. See, e.g., ARIZ. REV. STAT. ANN. §§ 33-1476, -2143 (2010); CONN. GEN. STAT. ANN. § 21-80 (West 2010); D.C. CODE ANN. § 42-3505.01 (LexisNexis 2010); FLA. STAT. § 723.061 (2003); MASS. GEN. LAWS ANN. ch. 40, § 1-9 (West 2010); N.H. REV. STAT. ANN. § 540:2 (LexisNexis 2006); N.J. STAT. ANN. § 2A:18-61.1 (West 2000); N.Y. UNCONSOL. LAW § 26-408 (McKinney 2010); OAKLAND, CAL., CODE § 8.22.300 (2003). See also Florence Wagman Roisman, *The Right to Remain: Common Law Protections for Security of Tenure: An Essay in Honor of John Otis Calmore*, 86 N.C. L. REV. 817, 819, 827 (2008).

96. For instance, the Rental Housing Act of 1985 for the District of Columbia sets forth only ten grounds for “good cause” eviction, but foreclosure is not listed as one of them, and only three are related to tenant conduct: nonpayment of rent, breach of the lease, or commission of a crime within the housing accommodation. See D.C. CODE ANN. § 42-3505.01 (LexisNexis 2001).

97. See Roisman, *supra* note 95, at 827 (discussing the New Jersey statute).

98. See N.J. STAT. ANN. § 2A:18-61.1 (West 2000) (providing that “[n]o lessee or tenant . . . may be removed by the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes . . . except upon establishment of one of [eighteen] grounds as good cause”); LEGAL SERVS. OF N.J., TENANTS’ RIGHTS IN NEW JERSEY 56 (2009), <http://www.lsnj.org/PDFs/TenantsRightsLSNJorg.pdf>.

99. See *Chase Manhattan Bank v. Josephson*, 638 A.2d 1301, 1303 (N.J. 1994).

100. *Id.* at 1308.

101. *Id.* at 1309 (emphasis added).

space in New Jersey.”¹⁰² The Act’s application to mortgagees and purchasers would therefore “protect those tenants from having to confront the devastating effects of eviction not through any fault of their own but merely because they had rented property from landlords that were either unwilling or unable to meet their mortgage obligations.”¹⁰³ Because foreclosure is not mentioned in the Act, the New Jersey Supreme Court held that the foreclosure does not constitute good cause to evict the tenants.¹⁰⁴ If the mortgage predates the lease, however, the foreclosing mortgagee or foreclosure sale purchaser has the right to: 1) negotiate a new lease with the tenant; 2) increase the rent to a reasonable rate; and 3) offer a renewal lease having no unreasonable changes in substance and terms of the original lease.¹⁰⁵ As a result of New Jersey’s Anti-Eviction Act and case law interpreting it, tenants in New Jersey have “a perpetual tenancy, virtually a life interest, in favor of a tenant of residential premises covered by the Act,” as long as there are no statutory grounds for eviction.¹⁰⁶

Despite strong protections provided by statute and case law, the New Jersey legislature passed the New Jersey Foreclosure Fairness Act (NJFAA) in 2009 to extend additional rights to tenants.¹⁰⁷ Tenants’ rights advocacy groups and New Jersey’s Department of the Public Advocate supported passage of this law because of an increasing number of complaints about lenders misinforming innocent tenants about their rights and intimidating them into vacating foreclosed properties.¹⁰⁸

Because tenants were unaware of their rights and lenders took advantage of this lack of knowledge, the NJFAA mandates that tenants be provided with written notice about their rights to arm them with “the information necessary to fight improper evictions.”¹⁰⁹ The NJFAA requires a purchaser of foreclosed residential properties to provide to tenants written notice in English and Spanish within ten days after the purchaser takes ownership.¹¹⁰ If the residential premises have ten or fewer units with tenants, the new owner must provide the written notice to each tenant.¹¹¹ If the facility has more than ten units, the new owner must post the notice in common areas.¹¹²

102. *Id.* (quoting statement attached to Assembly Bill A-1586, a precursor to the Act).

103. *Id.* at 1310.

104. *Id.*

105. See N.J. STAT. ANN. §§ 2A:18-61.1f, :18-61.1i, :18-61.3b (West 2010); *Josephson*, 638 A.2d at 1310–11. If the tenant defaults after the lender takes over the property, the lender may initiate eviction proceedings against the tenant.

106. See *Ctr. Ave. Realty v. Smith* 624 A.2d 996, 999 (N.J. Super Ct. App. Div. 1993).

107. See New Jersey Foreclosure Fairness Act, 2009 N.J. Sess. Law Serv. Ch. 296 (West). This act amends the Mortgage Stabilization and Relief Act, N.J. STAT. ANN §§ 55:14K-82 to -93 (West 2009).

108. See Press Release, New Jersey Department of the Public Advocate, New Laws to Help Tenants in Foreclosed Properties (Feb. 22, 2010) (on file with author).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

The statute mandates the precise words the notice must contain and it includes, among other things, a statement 1) indicating that the landlord has lost ownership; 2) identifying who the new owner is; and 3) instructing when, where, and to whom the rental payment should be sent.¹¹³ These provisions are necessary because some lenders were hiding this information in order to be able to claim the tenant's non-payment of rent as a basis for eviction.¹¹⁴ To keep lenders from deceiving tenants about their right to stay, the notice must state that an eviction can only occur through a court process where the tenant has a right to be heard, that a tenant can be evicted only for good cause, and that a foreclosure alone cannot constitute grounds for eviction.¹¹⁵ The notice must state that it is unlawful for anyone to try to make the tenant leave by any tactic, including terminating utility services or failing to maintain the lease premises.¹¹⁶ The notice informs tenants that violators of the NJFAA are subject to criminal and civil penalties.¹¹⁷

The last sentence of the required written notice tells the tenant to contact a lawyer if someone is pressuring the tenant to leave.¹¹⁸ This requirement hints at practices now prohibited under the NJFAA that lenders use to pressure a tenant into leaving.¹¹⁹ From the time of the foreclosure filing until one year after transfer of the foreclosed property occurs, neither the foreclosing creditor nor its agent can put any pressure on the tenant to leave.¹²⁰ This prohibition is meant to be broad enough to cover the lender as well as an array of agents (i.e., lawyers, realtors, and property managers) acting on behalf of the lender.¹²¹ Prohibited pressure tactics include misrepresenting the tenant's rights, shutting off utility services, failing to maintain the property in a habitable condition, raising the rent in violation of rent control statutes and ordinances, and implying that a tenant must accept a lender's monetary offer to vacate.¹²²

The prohibition on using an offer to vacate to pressure a tenant into leaving is relevant because many lenders use "cash for keys" programs to get tenants to move out even before the foreclosure proceeding is

113. *Id.*

114. *See, e.g.,* Rolando, *supra* note 26.

115. New Jersey Foreclosure Fairness Act, 2009 N.J. Sess. Law Serv. Ch. 296 (West) (stating that, "EXAMPLES OF 'GOOD CAUSE' ARE FAILURE TO PAY RENT, WILLFULLY DAMAGING THE PREMISES, OR PERSONAL OCCUPANCY BY THE NEW OWNER OF THE HOUSE OR APARTMENT THAT YOU NOW LIVE IN").

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

complete.¹²³ The NJFAA prohibits anyone from communicating with a tenant to induce the tenant to vacate the property except if the communication is a “bona fide monetary offer” made in accordance with the Act.¹²⁴ The bona fide offer has to be in writing and must include the written notice discussed above.¹²⁵ All of these requirements are necessary to keep a lender or its agents from tricking a tenant into believing he or she must accept the offer.

In addition to the notice required if the lender makes a monetary offer to vacate, the New Jersey Supreme Court recently issued an order that requires a written notice to be sent to the tenant during the pendency of a foreclosure proceeding.¹²⁶ The owner’s failure to provide this notice means the foreclosure cannot be completed.¹²⁷ This order is designed to prevent lenders from deceiving a tenant into believing that the foreclosure filing against the landlord automatically terminates the tenant’s right to stay.¹²⁸

If foreclosing parties or their agents fail to provide the required notices or use illegal means to pressure tenants to leave, the NJFAA allows tenants to sue the violators for either triple damages or \$2,000 per violation, including the recovery of attorney’s fees and costs.¹²⁹ The new law also gives municipalities the power to hold foreclosing lenders responsible for code violations if the property is abandoned.¹³⁰

The foregoing analysis of New Jersey law forces lenders and their agents to give tenants standardized, written notices at least two points in time, that make clear to tenants they have 1) the right to stay in the foreclosed property; 2) the right to have continued utility and maintenance services; and 3) the right to be free from pressure leave. The conduct prohibited under the NJFAA is the kind of conduct perpetrated by lenders that usually leads to improper evictions. Because engaging in the prohibited conduct or failing to give the required notices subjects the lender and its agents to civil and criminal penalties, lenders in New Jersey now know it could cost them too much to risk following improper tactics to try to force tenants to leave.

123. See, e.g., *Public Advocate: Tenants Continue to be Pressured to Leave Homes Because of Foreclosures*, U.S. FED. NEWS, Oct. 25, 2009, available at 2009 WLNR 21156324 [hereinafter *Public Advocate*].

124. New Jersey Foreclosure Fairness Act, 2009 N.J. Sess. Law Serv. Ch. 296 (West).

125. *Id.*

126. N.J. Supreme Court, Notice to the Bar, available at <http://www.judiciary.state.nj.us/notices/2010/n100104b.pdf> (amending Rules 4:64-1 and 4:65-2). The notice must be in bold and in a font size of fourteen-point or larger and must be titled “IMPORTANT NOTICE ABOUT TENANTS’ RIGHTS.” *Id.*

127. See Press Release, New Jersey Department of the Public Advocate, *supra* note 108. Pursuant to the order, the sheriff must also post the notice on the property. *Id.*

128. See *id.*

129. See New Jersey Foreclosure Fairness Act, 2009 N.J. Sess. Law Serv. Ch. 296 (West).

130. *Id.*

*C. Federal Statute Needs to Do More to Protect Tenants from
Lenders' Deceptions*

Unlike the New Jersey Foreclosure Fairness Act, the Federal Protecting Tenants at Foreclosure Act (PTFA) is too deficient to be effective in affording tenants protection from foreclosure-based evictions. Although the PTFA requires the lender to give at least ninety days' notice,¹³¹ it does not specify when notice should be given and what the contents of the required notice should be. Long before a foreclosure proceeding is initiated, the landlord-mortgagor has defaulted. As a result, the lender-mortgagee has the ability to serve notice on the tenant residing in the property at the same time a foreclosure complaint is filed against the landlord-mortgagor. However, many renters have no idea that the landlord is facing foreclosure until a sheriff's deputy appears at the renter's doorstep *after* the foreclosure sale has been completed. Because a foreclosure proceeding can take several months to complete, tenants should be given notice of the foreclosure filing against the landlord simultaneously with the filing of the foreclosure lawsuit or shortly thereafter so tenants can start weighing their options. The tenant should also receive notice when the foreclosure sale is complete since this is usually the event triggering how much time the tenant can remain in the property.

In addition to making clear when the required notices should be given, the PTFA should require lenders to use process servers to serve the required notice.¹³² Use of law enforcement personnel would be unwise because it pits them against innocent renters and, therefore, is likely to cause the renters undue stress and to harm law enforcement efforts to build strong community relations.¹³³ If service cannot be effectuated through a process server, then the lender should be required to mail the notice to the tenant and post the notice on the tenant's door.

Congress should amend the PTFA to make clear what the required notices should contain. These notices should be similar to the notices required under New Jersey law. Therefore, the PTFA should require lenders to use a standardized notice form that provides instructions that make clear the tenant's rental payment obligations during the pendency of the foreclosure case and after the foreclosure sale. The form should also notify the tenant that the lender and its agents cannot make the tenant

131. See Save Homes Act, *supra* note 24, §§ 701–04.

132. If the lender is foreclosing on a home with less than three units, the lender should be required to use a process server to serve on an adult tenant occupying the property the notice after the foreclosure complaint is filed against the landlord and after foreclosure sale. This should be required within ten days of notice of default has been served on the landlord in a non-judicial foreclosure jurisdiction or within ten days of the filing of the foreclosure complaint in a judicial foreclosure jurisdiction.

133. See *supra* notes 57–58 and accompanying text (discussing Sheriff Dart's refusal to evict innocent tenants affected by the foreclosure crisis).

waive any of his or her rights and are prohibited from engaging in tactics designed to deceive the tenant into leaving voluntarily or force the tenant out of the rental property. The standardized notice form also should inform tenants that they have the right to: 1) stay for at least ninety days after the required notice has been received;¹³⁴ 2) live free of any pressure or harassment from the lender or its agents to leave early; and 3) receive the same utility and maintenance services required of the previous landlord.

One could argue that the tenant should have to pay the utilities.¹³⁵ Allowing tenants to make utility payments directly to the utility company permits the lender to avoid taking on this traditional landlord obligation. However, requiring lenders to provide the same services that were provided by the landlord¹³⁶ is a better measure because it protects innocent tenants from being out of pocket for expenses caused by the landlord's failure to honor its contractual obligations.

In addition to obligating the lender to pay the utilities previously paid by the landlord, the PTFA should free tenants from their obligation to pay rent during the ninety-day period. The current obligation to pay rent is highly detrimental to tenants who have only ninety days to vacate because it leaves them so little time to save enough money to secure alternative housing. A tenant's obligation to pay rent should continue only if the tenant's term under the lease is greater than ninety days. For example, if Marjorie Benedum¹³⁷ had seven months remaining under her lease as a result of passage of the PTFA, she would have an obligation to pay rent the entire lease term. But if she had only ninety days, she should be able to live rent-free for that time under the author's proposal. Many tenants having only the ninety-day period under the PTFA will be month-to-month tenants or tenants counting on automatic lease renewals for another term or the ability to formally renew the lease term; therefore, they would not be prepared financially to move quickly and would need the rent-free ninety-day period to save for relocation expenses.

Lenders will no doubt balk at the idea of allowing the tenant to stay on the premises rent-free for the ninety-day period. Because home prices have not returned to their pre-2008 values, a lender's best option may be to continue renting the property. As previously discussed, foreclosures have caused an increase in abandoned, blighted properties, resulting in depressed property values.¹³⁸ The ninety day rent-free period could provide

134. If the tenant has more than ninety days left on the lease term, the standardized notice form would inform the tenant of the right to stay for the remainder of the lease term.

135. Minnesota has a bill that would permit tenants to pay utilities if the landlord fails to do so. H.R. 3348, 85th Leg., Reg. Sess. (Minn. 2008).

136. For example, Rhode Island's bill would require the lender to provide the same services that were provided by the landlord. H. 7892, 2008 Gen. Assem., Jan. Sess. (R.I. 2008).

137. *See supra* notes 2–6 and accompanying text (introducing Marjorie Benedum and her husband as victims of foreclosure-based evictions).

138. Johnson, *supra* note 61, at 1181.

the lender with an opportunity to assess whether the current tenant is the right person to keep as a tenant and to assess whether the lender should risk the negative consequences of allowing the rental property to become vacant.¹³⁹

One compromise could be to allow the lender to shorten the ninety-day period if the lender pays the tenant reasonable relocation expenses. Considering that one study found that the average costs for a tenant displaced by foreclosure to be \$2,558, Congress should amend the PTFA to permit lenders to offer a renter a minimum of \$2,600¹⁴⁰ in return for the renter's waiver of the right to remain in the property for the ninety-day period.¹⁴¹ Some banks already recognize the benefit in paying the tenant cash for keys and allowing the tenant to remain rent-free in exchange for the tenant's agreement to a move-out date.¹⁴² Under a recently passed statute in Connecticut, a lender's cash-for-keys offer must include a payment to the tenant twice the amount of the monthly rent or \$2,000, whichever is greater.¹⁴³ The recommended standardized notice under the PTFA should also inform tenants that they have the right to try to negotiate for an amount higher than \$2,600 if such compensation is necessary to secure safe, affordable housing. While some renters may be sophisticated enough to negotiate,¹⁴⁴ others may not know it is possible and should be encouraged to negotiate for a better deal. Once the tenant has received the required fee to vacate, the tenant should have at least fifteen more days to vacate the premises. The goal of this proposed amendment would be to enable the tenant to have sufficient money and reasonable time to find suitable rental housing. If the lender fails to make a bona fide offer to vacate within ten days of the foreclosure sale, the tenant should have the full ninety days before being obligated to vacate the premises or pay rent. To prevent foreclosed properties from becoming public nuisances, lenders

139. *Id.*

140. A minimum payment of \$2,600 to reduce the tenancy period may not afford tenants a reasonable amount to start over in cities with a high cost of living. Because the cost of living varies from city to city, even within the same state, lawmakers should consider making the \$2,600 amount a base amount that can be increased in accordance with an index of a city's estimated cost of living for renters.

141. *See supra* notes 43–46 and accompanying text.

142. *See Yan, supra* note 30 (stating that a real estate firm that represents banks in getting foreclosed properties ready for sale in Suffolk, New York, offers “cash for keys” agreements that pay tenants from \$500 to \$1,500 and allow them to stay rent-free in exchange for a move-out date).

143. *See* CONN. GEN. STAT. ANN. § 47a-20f (West 2010) (requiring that “if there is no evidence of the amount or value of the security deposit paid by the tenant or no security deposit was paid by the tenant, [the offer to vacate early shall] be in the amount of two months’ rent or two thousand dollars (sic), whichever is greater”).

144. *See, e.g.,* Mary Shanklin, *Renters Told: Get Out*, ORLANDO SENTINEL, May 28, 2009, at A1, available at 2009 WLNR 10103666 (reporting that after the bank offered one renter \$1,500 to leave, the renter persuaded the bank to pay him \$3,400 based on the fact that he and his spouse had painted the rental home and invested in other ways in the home).

should also be obligated to maintain the properties until they are sold or transferred to another entity.¹⁴⁵

Finally, Congress should amend the PTFA to remove a sunset provision set at December 31, 2012. This is the most unfortunate provision of the Act. Current statistics only point to a worsening foreclosure crisis; consequently, no reason exists to believe that the negative impact of foreclosures on renters will disappear by 2012. In Ohio, one of the states worst hit by foreclosures, the number of foreclosures increased more than 3% in 2009.¹⁴⁶ This topped off a steady increase in foreclosures every year since 2000.¹⁴⁷ Michael Dahl, public policy director for HOME Line, an organization that provides free legal and educational services to tenants in Minnesota, testified that his agency received eighteen calls in 2000 from Minnesotan tenants asking about foreclosures compared to 1,265 calls in 2009.¹⁴⁸ Given this steady yet staggering increase in tenants facing foreclosures in the first decade of this century, it is unfathomable to think that the number of foreclosures in America will be anything near the pre-crises level by 2012.¹⁴⁹ Thus, ending the protections of the PTFA in 2012 will endanger many innocent tenants and possibly further prolong the housing crisis. Only one Republican senator voted for the PTFA, and this vote occurred when the Democrats had a super-majority in the U.S. Senate.¹⁵⁰ If foreclosures continue to be a problem in 2012 as predicted, attempts by Democrats to extend the expiration date of the PTFA may not be possible now that Democrats lack a filibuster-proof majority.¹⁵¹

145. See *supra* notes 61–70 and accompanying text (explaining how the foreclosure crisis has led to a spike in abandoned properties, which in turn has increased the number of public nuisances). In many jurisdictions, lenders already have an obligation to maintain properties obtained in foreclosure. For example, New York recently passed a law requiring a plaintiff obtaining a judgment in a mortgage foreclosure case involving residential property “that is vacant, or becomes vacant after the issuance of such judgment, or is abandoned by the mortgagor but occupied by a tenant . . . shall maintain such property until such time as ownership has been transferred through the closing of title in foreclosure, or other disposition.” See NY CLS Real Property Actions and Proceedings Law § 1307 (2010). Similar laws and ordinances have been enacted or are being proposed in various jurisdictions, thereby requiring lenders to bear the negative consequences of their lending decisions. See Johnson, *supra* note 61, at 1237–45 (discussing proposed and recently-enacted legislation designed to combat the rise in abandoned and blighted properties)

146. Kevin Kemper, *Foreclosures Continue Climb in '09 to Close out a Forgettable Decade*, COLUMBUS BUS. FIRST, Jan. 22, 2010, available at <http://columbus.bizjournals.com/columbus/stories/2010/01/25/story6.html>.

147. *Id.*

148. See *Dahl Statement*, *supra* note 80, at 1.

149. See *id.* (describing the various factors existing before and after the current foreclosure crisis that may exacerbate the affordable rental housing problem and arguing that the PTFA should be permanently extended).

150. U.S. Senate, Roll Call Votes 111th Cong., 1st Sess. (2009), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=1&vote=00182 (reporting the roll vote indicating that Olympia Snowe, R-Maine, was the only Republican who voted for S. Amtd. 1036, which became the PTFA). Research did not reveal any congressional comments revealing why all but one Republican decided to vote against the PTFA.

151. See Susan Page et al., *GOP Win in Mass. Jolts Obama Plans*, USA TODAY, Jan. 21, 2010,

In summary, Congress should amend the PTFA to remove the sunset provision and to add provisions that make it a comprehensive foreclosure protection statute that, among other things, informs tenants of their rights and prohibits lenders from engaging in improper eviction tactics.

D. The Recommended Protections Place a Constitutionally Permissible Burden on the Mortgagee's Contract and Property Rights

Lenders may argue that the PTFA and the other protections recommended above impermissibly burden the lenders' freedom-of-contract and property rights. However, courts have held that it is constitutionally permissible to burden a lender's contract and property rights. For example, in *Chase Manhattan Bank v. Josephson*, the New Jersey Supreme Court held that a good-cause eviction statute was constitutional under New Jersey law to prevent a mortgagee-bank from evicting a tenant after completion of the foreclosure process.¹⁵² The New Jersey statute placed broad restrictions on property owners and landlords by shielding tenants from arbitrary and capricious eviction and limiting the reasons for which a tenant can be evicted to a number of statutorily specified "good cause" grounds. The New Jersey statute went so far as to prevent evictions at the end of a tenant's lease term if a good cause cannot be established. The court ruled that "[r]estrictions on the use of property, if in furtherance of a valid governmental purpose, serve the public interest and are considered a proper exercise of the police power even though they may result in some economic disadvantage."¹⁵³ The court concluded that a statute can constitutionally be enforced when the public interest served "clearly outweighs the impairment" caused by its enforcement.¹⁵⁴

Like the New Jersey Supreme Court, a New York court found anti-eviction statutes to be a reasonable "regulatory burden" serving the "justified . . . public purpose[s] of providing adequate housing" and "avoidance of dislocation" of tenants and held that compelled tenancy does not amount to a physical taking.¹⁵⁵ In *Dawson v. Higgins*, rent control laws restricted owners from evicting tenants under a claim of necessity for their own personal use and occupancy because tenants had occupied the units for more than twenty years.¹⁵⁶ The court held that the law was not an

at A1, available at 2010 WLNR 1328524 (suggesting that Republican Senator Scott Brown's election ends the Senate's filibuster-proof majority and, therefore, will frustrate the efforts of President Obama to get his agenda enacted into law).

152. *Chase Manhattan Bank v. Josephson*, 638 A.2d 1301, 1303 (N.J. 1994).

153. *Id.* at 1313 (quoting *N.J. Ass'n of Health Care Facilities v. Finley (In re Review of Admin. Promulgation of Health Care Admin. Bd.)*, 415 A.2d 1147, 1154 (N.J. 1980)).

154. *Id.*

155. *Dawson v. Higgins*, 588 N.Y.S.2d 93, 96–97 (N.Y. Sup. Ct. 1992).

156. *Id.* at 97–98.

unconstitutional physical taking of private property under the Fifth Amendment.¹⁵⁷

The PTFA and its proposed amendments are not like the statutes upheld in *Josephson* and *Dawson*, as none of the author's proposed amendments allow the tenant to keep the leased premises long-term or indefinitely.¹⁵⁸ Evidence exists that the burden on innocent renters is enormous in comparison to the burden on lenders,¹⁵⁹ especially given the fact that irresponsible lending was a major contributor to the current foreclosure crisis. Therefore, proposed amendments to the PTFA are modest and should not be considered an unconstitutional taking.

E. *Concerted Mass Media Campaign is Necessary to Inform Tenants of Their Rights*

The PTFA is largely unknown to renters and ignored by lenders and their agents because it was not implemented with any sort of public communications campaign to make the public aware of its protections. A public awareness or social marketing campaign is necessary to enable tenants to act on their rights.¹⁶⁰ "The term social marketing, primarily borrowed from the public health field, describes efforts to disseminate important information to change behaviors considered adverse to social and health conditions."¹⁶¹ In the context of this Article, adverse conditions include the individual and societal harm (discussed previously) as a result of innocent tenants being forced out of their rental properties due to

157. *Id.* at 98.

158. The Supreme Court long ago upheld rent control ordinances that limit a landlord's right to increase the rent or to evict tenants renting under existing tenancies. *See Block v. Hirsh*, 256 U.S. 135, 158 (1921).

159. The National Preservation Working Group and National Low Income Housing Coalition recently sent a proposal to the majority and minority leaders of the U.S. House of Representatives and U.S. Senate urging that the anticipated economic stimulus package include \$8 billion in funding for the rehabilitation of affordable rental housing to serve low-income families. The National Preservation Working Group prepared the letter and sent it to Speaker Pelosi, Senate Majority Leader Reid, House Republican Leader Boehner, and Senate Minority Leader McConnell. Letter from Am. Ass'n of Homes & Servs. for the Aging et al., to Nancy Pelosi, House Speaker, Harry Reid, Senate Majority Leader, John Boehner, House Republican Leader, and Mitch McConnell, Senate Minority Leader (Nov. 7, 2008), *available at* <http://www.chapa.org/pdf/HousingStimulusPWG.pdf>.

160. Social marketing is only one name for such campaigns. Others include public relations or public awareness campaigns. *See, e.g.*, Barbara Smith, Consultant, Org. for Econ. Co-Operation & Dev., Presentation Notes from Address at the Organisation for Economic Co-Operation and Development and Pension Fund Regulatory and Development Authority International Conference on Financial Education: What Makes a Successful Public Awareness Campaign? (Sept. 21–22, 2006), *available at* <http://www.oecd.org/dataoecd/45/50/37371299.pdf>.

161. MALAIKA MCKEE-CULPEPPER, STATE HIGHER EDUC. EXECUTIVE OFFICERS, SOCIAL MARKETING HIGHER EDUCATION: CHALLENGES AND ISSUES IN CREATING A SOCIAL MARKETING CAMPAIGN FOR TRADITIONALLY UNDERREPRESENTED GROUPS 7 (2005), *available at* <http://www.sheeo.org/pubs/Social%20Marketing%20Report-McKee.pdf>.

foreclosure proceedings against the landlord.¹⁶² Scholars have advocated the use of social marketing campaigns for various problems, including saving the environment from global warming and saving unwanted babies from abandonment.¹⁶³ Likewise, this Article advocates for a social marketing campaign to save innocent tenants from foreclosure-based evictions and to save the public from the social and financial burdens arising from such evictions.

Research shows that a social marketing or mass media campaign can be effective when it is an information campaign intended to benefit the individual receiving the information or society as a whole, as opposed to private self-interests that benefit primarily the one sponsoring the campaign.¹⁶⁴ Frequency, style, and content are also factors in a successful campaign and will be illustrated later in the discussion about a successful marketing campaign launched by a New Jersey state agency.¹⁶⁵

Social marketing campaigns are necessary to make the public aware of its rights when such rights are not intuitive. For example, all fifty states have passed safe haven laws that allow mothers to legally abandon their babies with authorities.¹⁶⁶ These laws are counterintuitive to what pregnant women would normally believe, because traditionally, women have been arrested and incarcerated for abandoning their babies.¹⁶⁷ Therefore, research shows that safe haven laws are only effective when accompanied by social marketing. Similarly, because the enactment of the PTFA was not accompanied by a social marketing campaign, it will likely fail to protect most tenants because it gives rights to tenants that are not intuitive—many tenants will believe they must vacate due to the lender's successful foreclosure against the landlord for failure to pay the mortgage.

Fortunately, Congress can readily find a successful model for a social marketing campaign for protecting tenants from foreclosure-based evictions. The New Jersey Department of Public Advocate has designed a social marketing campaign to inform tenants of their rights under New Jersey's Anti-Eviction Act.¹⁶⁸ In 2008, the Department of the Public

162. See *supra* notes 42–81 and accompanying text.

163. See generally Susan Ayres, *Kairos and Safe Havens: The Timing and Calamity of Unwanted Birth*, 15 WM. & MARY J. WOMEN & L. 227 (2009) (noting that the use of public awareness programs to promote safe haven laws has led to a decrease in infant deaths in a number of states); Albert C. Lin, *Evangelizing Climate Change*, 17 N.Y.U. ENVTL. L.J. 1135 (2009) (arguing that publicizing information about climate change may result in increased participation in finding solutions for the problem).

164. Charles K. Atkin, *Mass Media Information Campaign Effectiveness*, in PUBLIC COMMUNICATION CAMPAIGNS 265, 265 (Ronald E. Rice & William J. Paisley eds., 1981).

165. *Id.* at 271. See *infra* notes 168–87 and accompanying text (discussing a marketing campaign that increased awareness of tenants' rights under New Jersey's Anti-Eviction Act).

166. Ayres, *supra* note 163, at 227.

167. *Id.* at 250–73 (presenting case studies showing that safe haven laws accompanied by public campaigns were effective, while those that did not include awareness campaigns failed).

168. For a discussion of this campaign, see *supra* Part III.B.

Advocate started receiving an increase in calls from individual tenants, as well as housing advocates, complaining about lenders and their agents using tactics to pressure tenants into leaving their foreclosed rental properties.¹⁶⁹ To combat these tactics, then-Public Advocate Ronald Chen launched a tenants' rights education campaign ("Tenants' Rights Education Campaign") commencing with a press release¹⁷⁰ and a press conference in December 2008.¹⁷¹ At the press conference, Chen informed the public about the problem of unlawful foreclosure-based evictions against innocent renters, educated tenants about their rights under New Jersey's Anti-Eviction Act, and warned potential violators of the Act that they could be disciplined and fined.¹⁷² Chen impressed upon the public New Jersey's commitment to protect tenants' rights by having at the press conference an array of supporters, including victims of unlawful foreclosure-based evictions, the commissioner of New Jersey's Department of Banking and Insurance, and representatives of various consumer-related organizations, including Legal Services of New Jersey, New Jersey Citizen Action and the New Jersey Tenants Rights Organization.¹⁷³

This press conference was just one in a series of steps the Public Advocate took to ensure that the Tenants' Rights Education Campaign succeeded in reaching four audiences: 1) tenants living in properties that may become the subject of foreclosure; 2) organizations that advocate for consumers; 3) public officials who may play a role in attempted foreclosure-related evictions; and 4) lenders and their agents that may attempt to get tenants to vacate foreclosed properties. No doubt, some consumers learned about their rights as a result of this press conference

169. See Judy Peet, *Tenants Take Fall for Unpaid Mortgages: Thousands Become Homeless Despite Rights*, STAR-LEDGER (Newark, N.J.), Jan. 17, 2010, at 21, available at 2010 WLNR 1029022 (quoting New Jersey Public Advocate Ronald K. Chen as saying "[r]ealtors, lenders and property managers are all taking advantage of the fact that tenants don't know their rights" and stating that his office received more than 200 complaints in 2009 by tenants who were told to vacate their rental properties due to foreclosures against them); Bridget Smith, *Foreclosures Spawn Rash of Illegal Evictions*, COURIER-POST (Cherry Hill, N.J.), Dec. 24, 2008, available at 2008 WLNR 26826555 (quoting Laurie Brewer, a spokeswoman for the Advocate's office, as stating that "calls pour in daily" to her office). Nonprofit groups representing consumers also noticed an increase in complaints. See, e.g., Richard Newman, *State Warns About Illegal Evictions*, N.J. REC., Dec. 24, 2008, at B1, available at 2008 WLNR 24845411 (stating that the New Jersey Tenants Organization had recently received a dozen complaints).

170. Jeffery C. Mays, *Boarded-up and Foreclosed, Houses Await Action by Newark and Partners*, N.Y. TIMES, May 17, 2009, at 13, available at 2009 WLNR 9390373; Press Release, New Jersey Department of the Public Advocate, *Tenants in Foreclosed Properties Have Rights—Cannot Be Evicted Due to Foreclosure Under NJ Law* (Dec. 23, 2008), available at http://www.state.nj.us/publicadvocate/news/2008/approved/081223_tenantforeclosures.html [hereinafter New Jersey Press Release].

171. Newman, *supra* note 169 (warning that real estate professionals could have their licenses suspended and be fined up to \$10,000); New Jersey Press Release, *supra* note 160.

172. New Jersey Press Release, *supra* note 170.

173. *Id.* at 170.

because print, radio, and television media covered the press conference, and the story was reported extensively.¹⁷⁴

Besides making sure the issue received press coverage, Chen and his staff expanded the Tenants' Rights Education Campaign to reach tenants by: 1) placing opinion editorials in numerous newspapers in New Jersey;¹⁷⁵ 2) distributing thousands of brochures, in English and Spanish, explaining tenants' rights and responsibilities;¹⁷⁶ 3) participating in several programs educating the public about tenants' rights;¹⁷⁷ and 4) providing an explanation of tenants' rights and instructions about how tenants can obtain help on the Public Advocate's website.

In addition to making tenants aware of their rights, Chen made a concerted effort to use the Tenants' Rights Education Campaign to empower consumer advocacy organizations with the knowledge necessary to aid their clients; to persuade state and local public officials to use their positions of power to help tenants stay in their rental properties; and to admonish lenders and their agents to ensure their practices do not violate tenants' rights. For example, Chen and his staff made several presentations to nonprofit organizations to educate them about how to assist renters affected by foreclosures¹⁷⁸ and collaborated with members of county

174. For example, the author's search in Westlaw uncovered numerous newspaper stories about Chen's press conference. *See, e.g.*, Newman, *supra* note 169.

175. *See, e.g.*, Ronald K. Chen, Editorial, *N.J. Renters Have Rights When Foreclosure Looms*, TIMES (Trenton, N.J.), Feb. 9, 2009, at A9, available at 2009 WLNR 2547196; Press Release, New Jersey Department of the Public Advocate, Op-Ed. from Public Advocate Ronald K. Chen on Tenants and Foreclosure (Feb. 10, 2009), available at http://www.state.nj.us/publicadvocate/news/2009/approved/090210_oped_on_tenant_foreclosure.html.

176. *See* N.J. DEP'T OF THE PUB. ADVOCATE, DISCUSSION POINTS 5 (2009–2010), http://www.njleg.state.nj.us/legislativepub/budget_2010/Department_Response/public_advocate_responses10.pdf [hereinafter DISCUSSION POINTS] (stating that, at that time, 13,000 brochures had been distributed to “tenants, nonprofits, and government agencies across the state”); Donna Rolando, *Renters Have Rights in Foreclosures: Advocates Battle Illegal Evictions*, N.J. REC., Jan. 11, 2009, at R3, available at 2009 WLNR 669341; Press Release, New Jersey Department of the Public Advocate, Public Advocate: Tenants Continue to Be Pressured to Leave Homes Because of Foreclosures (Oct. 22, 2009), available at <http://www.state.nj.us/publicadvocate/news/2009/approved/091022tenantforeclosurerelease.html> (stating that the Public Advocate's office “has blanketed local agencies with more than 20,000 brochures that give tenants the information they need to protect their own rights”). The English version of the brochure is featured on the home page of the Public Advocate. Home Page of the New Jersey Public Advocate, <http://www.state.nj.us/publicadvocate/> (last visited Apr. 21, 2010) (follow “The Rights of Tenants During Foreclosure” hyperlink). *See also* Tenants' Rights Brochure in Spanish, [http://www.state.nj.us/publicadvocate/public/pdf/tenants%20in%20foreclosure%20brochure7%201218%20\(2\)-SPANISH.pdf](http://www.state.nj.us/publicadvocate/public/pdf/tenants%20in%20foreclosure%20brochure7%201218%20(2)-SPANISH.pdf) (last visited Apr. 21, 2010).

177. *See, e.g.*, Press Release, New Jersey Department of the Public Advocate, New Jersey Public Advocate to Address Tenants [sic] Rights at “Tenants 101” Meeting (Oct. 28, 2009), available at <http://www.state.nj.us/publicadvocate/news/2009/approved/091028tenantrightsadvisory.html>.

178. *See A Voice for the People*, 2009 ST. OF N.J. DEP'T OF THE PUB. ADVOC. ANN. REP. 3, available at <http://www.state.nj.us/publicadvocate/home/pdf/annual%20report%202009.pdf>

foreclosure taskforces to reduce the impact of the foreclosure crisis.¹⁷⁹ Moreover, the Public Advocate's Office contacted all public officials who could possibly be involved in helping or harming tenants by sending letters explaining tenants' rights to each city mayor,¹⁸⁰ municipal clerk,¹⁸¹ police chief, local sheriff, county prosecutor, and local legislator.¹⁸²

To reach lawyers representing lenders, property managers, and real estate professionals, Chen was a guest commentator in a New Jersey law journal and worked with the state bar association to educate the lawyers about improper evictions by foreclosing lenders and their agents.¹⁸³ He

[hereinafter ANNUAL REPORT] (reporting that the public advocate and his staff "attended and presented at dozens of events where we discussed tenants' rights with municipal officials, housing and poverty advocates, public libraries, religious organizations, and an array of others that work with tenants").

179. See DISCUSSION POINTS, *supra* note 176 (reporting that Chen and his staff participated in the Essex-Newark Foreclosure Taskforce and the Union County Foreclosure Task Force).

180. See, e.g., Letter from Ronald Chen, Pub. Advocate, State of N.J., to Joseph Monahan, Mayor, Midland Park, N.J. (Jan. 29, 2009), available at http://www.mpnj.com/economic_aid_forms/NJ%20Dept%20of%20Public%20Advocate%20Tenant%20Rights%20In%20Foreclosure%201_2009.pdf (requesting Mayor Monahan to "help in this effort to ensure the rights of tenants are protected, because it is not uncommon for landlords to rely upon local law enforcement to execute tenant evictions or to pressure tenants to leave their home").

181. See Letter from Laurie Facciarossa Brewer, Dir. of Commc'ns, N.J. Dep't of the Pub. Advocate, to Municipal Leader (July 12, 2009), available at <http://www.stratfordnj.org/pdf/tenant-foreclosure.pdf> (explaining briefly tenants' rights under New Jersey law and directing the municipal leader to tenants' rights information on the Public Advocate's website). Letters to the municipal leaders encouraged each leader to place the icon of the tenants' rights information on the Public Advocate's website onto municipal leaders' websites and offered the municipal leader technical assistance to modify its website to include the information. *Id.* Several municipal websites now contain information about tenants' rights and have links directing the viewer to the Public Advocate's website. See, e.g., Borough of Roselle Homepage, <http://www.boroughofroselle.com> (last visited Apr. 21, 2010) (stating "[t]he NJ Public Advocate has brought to Roselle Borough's attention that some tenants are being inappropriately forced out of their homes when the building in which they are living has been foreclosed As part of our effort to ensure that tenants are aware of their rights, click on the following link to the NJ Public Advocate webpage to find out about the rights of tenants in foreclosed properties."); Official Website of the Borough of Stratford, <http://www.stratfordnj.org> (last visited Apr. 21, 2010); Township of Teaneck Homepage, <http://www.teanecknj.gov> (last visited Apr. 21, 2010) (follow "Tenants Foreclosure Information from NJ Public Advocate" hyperlink).

182. See DISCUSSION POINTS, *supra* note 176; ANNUAL REPORT, *supra* note 178 (stating "[w]e collaborated with the Attorney General's Office on a guidance letter to sheriffs advising them to reflect the rights of tenants in all notices regarding foreclosure sales and in subsequent evictions"); *Public Advocate*, *supra* note 123 (stating "the Department has sent letters explaining the rights of tenants and the obligations of public officials to the mayor and chief of police of every municipality, county prosecutors, sheriffs, freeholders, and state legislators").

183. ANNUAL REPORT, *supra* note 178; Ronald K. Chen, Commentary, *Don't Lose Sight of Ethical Duties to Tenants in Foreclosures*, 195 N.J. L.J. 163 (2009) (explaining New Jersey's Anti-Eviction Act, describing various misrepresentations in notices by lenders and their agents to tenants, and concluding that lawyers who make such misrepresentations are in violation of the Rules of Professional Conduct).

collaborated with the Administrative Office of the Courts and was successful in getting the New Jersey Supreme Court to establish the previously discussed rule requiring a standardized notice be sent to tenants during the foreclosure process.¹⁸⁴ Chen also sent letters to the chief executive officers of New Jersey's largest real estate companies recommending that they use model language for accurate notices during and after the completion of the foreclosure process.¹⁸⁵ He also collaborated with New Jersey's Real Estate Commission, which in turn sent letters to all real estate licensees warning them to comply with the Anti-Eviction Act.¹⁸⁶

As a result of the Public Advocate Office's public awareness campaign, its direct representation of tenants, and its advancing of legislative and judicial changes in the foreclosure process, Chen reported that his office has helped hundreds of tenants remain in their rental properties, thereby reducing the number of foreclosure-based evictions.¹⁸⁷ Therefore, the Public Advocate's Tenants' Rights Education Campaign represents a successful model for how the federal government can launch a public media campaign to make all renters aware of their rights under the PTFA and to warn those who are part of the problem of foreclosure-based evictions to comply with this new law.

Like New Jersey, the federal government should develop a social marketing campaign to inform tenants of their rights under the PTFA. President Obama could develop such a campaign because he has already demonstrated that he and his staff are capable of launching a social marketing campaign when the failure to do so signals political trouble.¹⁸⁸ Because the federal government does not have an agency comparable to New Jersey's Public Advocate,¹⁸⁹ this Article suggests that the U.S.

184. See ANNUAL REPORT, *supra* note 178; *supra* notes 126–28 and accompanying text (discussing the notice required by the New Jersey Supreme Court).

185. See DISCUSSION POINTS, *supra* note 176, at 6; ANNUAL REPORT, *supra* note 178.

186. See ANNUAL REPORT, *supra* note 178; Letter from Robert L. Kinniebrew, Executive Dir., Real Estate Comm'n, to All N.J. Real Estate Licensees (Dec. 23, 2008), available at <http://www.nj.gov/dobi/notices/pn081223.pdf> (reminding licensees of rule prohibiting giving false or misleading statements to tenants and warning that "[l]icensees who issue letters that fail to comply with this rule are subject to sanctions pursuant to N.J.S.A. 45:15-17t, including revocation or suspension of one's license and/or fines up to \$5,000 for a first violation and up to \$10,000 for subsequent violations").

187. See ANNUAL REPORT, *supra* note 178, at iii.

188. After passage of the historic healthcare legislation in March 2010, President Obama and his staff launched a marketing campaign to make Americans aware of the benefits of the new law and to counteract assaults on the new law by Republicans and other opponents of healthcare reform. See, e.g., Peter Nicholas & Christi Parsons, *Bill's Passage Is Just the First Battle in a Long War*, L.A. TIMES, Mar. 23, 2010, at A1, available at 2010 WLNR 6013968 (describing efforts by the Obama administration to increase awareness of the new law and stating that President Obama's cabinet members would participate in endeavors "to reshape public perceptions [about the new healthcare law], with events tailored for cities and rural areas").

189. See Steven H. Hobbs, *Shout from Taller Rooftops: A Response to Deborah L. Rhode's*

Department of Housing and Urban Development (HUD) is the logical choice for a federal agency to initiate a public campaign promoting awareness of the PTFA. HUD has an Office of Public Affairs, which is designed to educate Americans.¹⁹⁰ Its home webpage states that it uses “communications tools such as press releases, press conferences, the Internet, media interviews, New Media and community outreach” to “provide[] Americans with information about housing policies and programs that are important to them.”¹⁹¹ Yet the Office of Public Affairs has no link on its homepage for renters facing foreclosure and does not mention the PTFA or the limited right to stay after completion of foreclosure against the landlord.¹⁹² The homepage for the Office of Public Affairs has a hyperlink labeled “Find Rental Assistance”; however, when one clicks on it, one cannot find any reference to the PTFA or the tenant’s limited right to stay.¹⁹³

Undoubtedly, HUD’s Office of Public Affairs has staff capable of doing some sort of marketing campaign. Considering the success of the New Jersey Public Advocate’s Tenants’ Rights Education Campaign, HUD’s Office of Public Affairs should implement a marketing campaign strategy that: 1) informs tenants of their rights under the PTFA; 2) counsels advocacy groups on how they can protect their clients from foreclosure-based evictions; 3) enables state and local public officials to use their positions to aid tenants in exercising their rights; and 4) admonishes lenders, lawyers, real estate agents, and other potential wrongdoers to refrain from misleading tenants or pressuring them into vacating foreclosed properties.

Access to Justice, 73 *FORDHAM L. REV.* 935, 942 (2004) (describing the Public Advocate’s office as a “publicly-financed public interest firm” that has broad investigative powers and that is “comprised of unique divisions that vigorously advocate[] for the poor, the powerless, and the dispossessed”); Martin A. Bierbaum, *On the Frontiers of Public Interest Law: The New Jersey State Department of the Public Advocate—The Public Interest Advocacy Division*, 13 *SETON HALL L. REV.* 475, 481 (1983) (“The [Department of the Public Advocate] was conceived to be a combination public defender, ombudsman, and troubleshooter—‘a triple threat champion for citizens beset by arrogant bureaucrats and self-aggrandizing private interests.’” (citation omitted)).

190. See Public Affairs, U.S. Department of Housing and Urban Development, http://portal.hud.gov/portal/page/portal/HUD/program_offices/public_affairs (last visited Apr. 21, 2010).

191. *Id.*

192. *Id.*

193. *Id.* (follow “Find Rental Assistance” hyperlink). The homepage also has a link titled “Avoid Foreclosure,” but when one clicks on it, one can find only information for *homeowners* facing foreclosure. *Id.* (follow “Avoid Foreclosure” hyperlink). HUD’s website does contain a notice to public housing agencies, informing them of the rights of tenants under the PTFA if they are participants in Section 8 programs. See Protecting Tenants at Foreclosure Act—Guidance on New Tenant Protections, PIH Notice 2009-52 (Dec. 15, 2009), available at <http://www.hud.gov/offices/pih/publications/notices/09/pih2009-52.pdf>.

Various collaborations would be necessary to reach these intended groups. For example, in making tenants aware of their rights under the PTFA, the Office of Public Affairs could collaborate with local housing authorities, legal aid firms, consumer advocacy organizations, and local housing coalitions to create press releases, hold press conferences, and produce tenants' rights brochures that instruct tenants on how to protect their rights and direct them to organizations that can help them. To reach the intended public officials, the Office of Public Affairs could first have the directors of each HUD regional office¹⁹⁴ collaborate with the governors and attorney general of each state in which the director serves.¹⁹⁵ This collaboration should result in the drafting of letters explaining, at a minimum, the tenants' limited right to stay under the PTFA and may also inform them of additional rights provided under each state's law. The letters should be disseminated to every state and local public official that has any involvement in foreclosure-related issues affecting renters and provide guidance as to how these public officials can use their particular positions to aid tenants in exercising their rights. Because the content of a marketing campaign is very important to its success, the letters should demonstrate how state and local officials could benefit their communities by protecting the tenants' right to stay.¹⁹⁶

In summary, the above discussion shows that a public awareness campaign can be relatively inexpensive yet effective in helping tenants to protect their rights and getting potential wrongdoers to comply with the law. The New Jersey Public Advocate's campaign was inexpensive because he and his staff used print, radio, and television news media repeatedly to deliver their message, spoke at numerous programs to reach various intended groups, e-mailed letters to various public officials to gain their cooperation, and harnessed the power of the Internet via the Public Advocate's website and via links by state and local public officials to the Public Advocate's website.¹⁹⁷ The Public Advocate followed principles of effective marketing by frequently getting the message out in an inexpensive manner, by using various styles to reach the intended groups, and by delivering a clear and succinct message to each group. Like New

194. HUD has ten regional offices. See OFFICE OF THE FED. REGISTER, UNITED STATES GOVERNMENT MANUAL 235 (2009/2010), http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_government_manual&docid=217558tx_xxx-42.pdf.

195. All of the Public Advocate's letters had the state of New Jersey's seal, as well as then-Gov. Jon Corzine's name. This shows that the governor's collaboration and approval of the marketing campaign created authenticity. For an example of the letterhead on which the letters were typed, see Letter from Laurie Facciarossa Brewer, *supra* note 181.

196. See *supra* text accompanying note 165 (stating that frequency, style, and content are factors in a successful campaign).

197. See *supra* notes 168–87 and accompanying text. The campaign was inexpensive because the only substantial expense was the cost of the brochures. Telephone Interview with Laurie Brewer, Dir. of Commc'ns, N.J. Dep't of the Pub. Advocate (Mar. 19, 2010).

Jersey's Public Advocate, HUD's Office of Public Affairs needs to identify all intended audiences, develop quality content messages that are clearly understood by all intended audiences, collaborate with organizations perceived as credible to help deliver the messages, and use all methods of communication to convey the messages. This social marketing campaign will ensure that the Protecting Tenants at Foreclosure Act is not a dead letter.

IV. CONCLUSION

America is experiencing its worst foreclosure crisis in history, and tenants are the silent victims of this crisis. The timely rental payments and responsible tenant behavior of people like Marjorie Benedum and her husband Mel Harris¹⁹⁸ are being rewarded with a sudden, undeserved eviction and the task of quickly finding comparable housing. Because the current legal framework does not put lenders on the hook for the risky loans they gave to property buyers looking to get rich quick during the housing boom, lenders continue to burden individuals, communities and society at large with the consequences of their risky lending practices. Eviction of an innocent tenant inflicts harm to the following: 1) the tenant's pocketbook; 2) the tenant's family (children uprooted from schools, etc.); 3) the limited resources of the community in which the tenant resides; 4) the law enforcement officers tasked with enforcing lender's bad loans by evicting tenants; and 5) the nearby residents and cities in which the vacant properties are located.

While the Protecting Tenants at Foreclosure Act is a good start—giving bona fide tenants ninety days to remain in foreclosed properties—tenants need more protection. The proposed amendments to the Act do not extend the time the tenant should be allowed to stay or give the tenant a perpetual tenancy like New Jersey law does. Instead, the proposed amendments, if adopted, would give tenants standardized notice forms that inform them of their rights in such manner that tenants will be empowered to fight improper eviction actions by lenders. Lenders would be out of pocket additional costs if they choose to compensate tenants to vacate the premises early. In that case, the lenders must maintain the vacant properties to prevent them from becoming public nuisances and burdens on local municipalities.

The huge individual and societal costs now occurring far outweigh any potential burden to the lender under the proposed amendments. In the end, the proposed amendments create a win-win situation because the tenant benefits from maintaining affordable housing for a period of time and the lender benefits from a responsible tenant who remains in the property.

198. *See supra* notes 2–6 and accompanying text.