

One Million California Tenants and Counting

Fourth Annual Report on California Renters in the Foreclosure Crisis
July 2012



**TENANTS
TOGETHER**

California's
Statewide Organization
for Renters' Rights

TENANTS TOGETHER

Tenants Together is a nonprofit organization dedicated to defending and advancing the rights of California tenants to safe, decent and affordable housing. As California's only statewide renters' rights organization, Tenants Together works to improve the lives of California's tenants through education, organizing, impact litigation and advocacy.

In 2011, Tenants Together continued to lead efforts to mitigate the impact of the foreclosure crisis on tenants. In addition to our policy work, Tenants Together engaged in extensive outreach to tenants in foreclosed properties, with members going door-to-door to educate neighbors about their rights. Tenants Together members in the city of Merced passed the Central Valley's first tenant protection law. The law bans post-foreclosure evictions of tenants without cause.

TENANT FORECLOSURE HOTLINE

Tenants Together is in a unique position to report on the human impact of the foreclosure crisis on tenants. Tenants Together operates California's only hotline for tenants in foreclosure situations. California tenants can reach the **Tenant Foreclosure Hotline**, toll free, at 1-888-495-8020 or submit an online intake form at www.tenants-together.org/hotlineintake to get a call back from a counselor. Since launching, the hotline has assisted more than 6,000 tenants.

FORECLOSURE REPORT

This is our fourth annual foreclosure report. Through our reports, we track recent developments affecting tenants in foreclosed properties, provide analysis of year-end foreclosure data and make recommendations to protect and expand the rights of tenants in foreclosure situations.

SPECIAL THANKS

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EXECUTIVE SUMMARY

This is the fourth annual Tenants Together report on the plight of renters in the foreclosure crisis. Overall foreclosure activity dropped in the last calendar year, but the numbers remain stubbornly high. More than one million tenants have now been directly impacted by home foreclosures.

Tenants are innocent victims in a foreclosure crisis they did nothing to create. Tenants and their communities have continued to suffer from banks' and investors' poor maintenance of foreclosure properties and their inhumane and irrational policies of evicting all occupants from foreclosed properties.

This report consists of three sections: 1) presents research findings from a detailed analysis of 2011 property records; 2) describes recent developments of importance to tenants in this context; and 3) presents recommendations to mitigate the impact of the foreclosure crisis on California tenants.

Key research findings reported:

- Over one million California renters have been directly impacted by foreclosure since the mortgage meltdown began in 2007.
- Approximately 175,000 renters were directly affected by residential foreclosures in 2011.
- Renters occupy an increasing percentage of the homes in foreclosure in California. Apartment building foreclosures have stayed high despite the recent reduction in the number of single-family homes in foreclosure.

Key developments reported:

- The Merced City Council passed the Central Valley's first anti-eviction law in November 2011. The ordinance prohibits eviction of tenants after foreclosure without cause.
- Los Angeles City Attorney Carmen Trutanich commenced the first major government enforcement action against a bank (Deutsche Bank) for its violation of tenant rights after foreclosure.
- Fresno County Assessor-Recorder, Paul Dictos, CPA, announced a proactive initiative to conduct outreach to tenants and homeowners in pre-foreclosure properties.
- The FHFA issued a Request for Information to solicit ideas on how to reposition its REO portfolio as potential rentals to the investment community.

Key recommendations include:

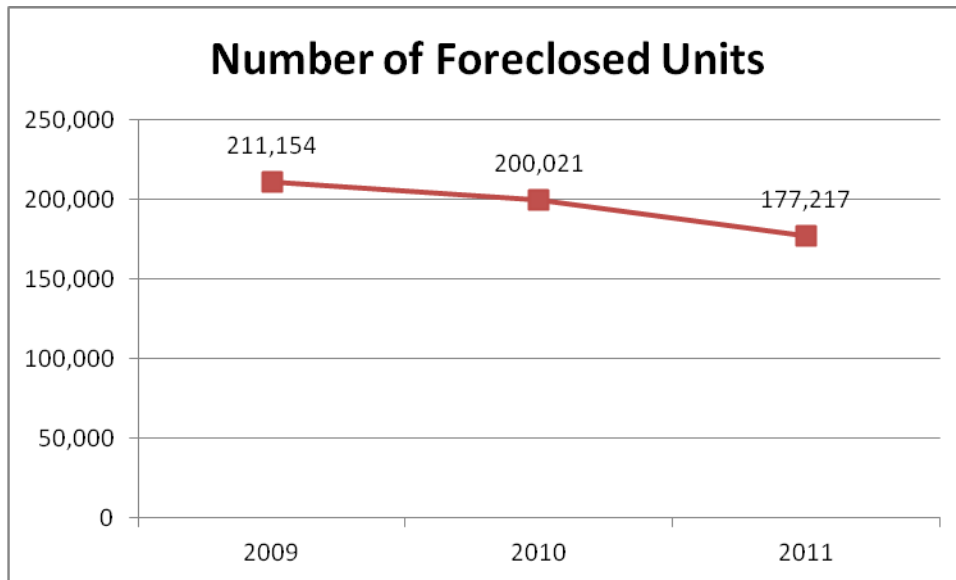
- Expand outreach and education efforts to ensure tenants know their rights.
- Make the federal Protecting Tenants at Foreclosure Act permanent, expressly provide a private right of action for tenants whose rights are violated under the Act and strengthen similar state law protections.
- Pass local just cause for eviction laws to stop eviction of tenants after foreclosure.
- Step up enforcement efforts to hold violators of tenant-protection laws accountable.

I. FORECLOSURE LANDSCAPE FOR TENANTS

A. Foreclosure Numbers Stubbornly Consistent for the Fifth Year in a Row

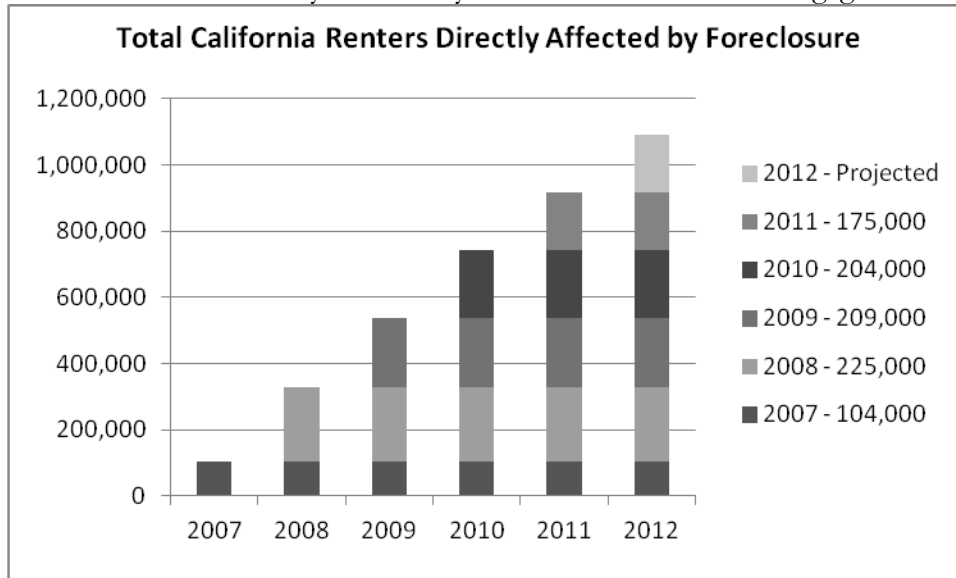
For the fifth straight year, tens of thousands of California properties were foreclosed. In the last calendar year, 156,000 residential properties, consisting of 177,000 units, transferred title through foreclosure. This is a staggering figure when viewed in isolation but becomes even more so when viewed in the context of the five-year crisis.

The overall number of properties transferring ownership through foreclosure dropped from a total of 204,000 in 2009 and 208,000 in 2010 to 156,000 in 2011. This likely resulted from moratoria imposed once the robo-signing scandal came to light, as well as a reduction in the number of adjustable rate mortgages coming due. However, the reductions in foreclosures did not translate equally to all populations. Of particular note for this report, the percentage of foreclosed units that were renter-occupied increased. This is because the reduction in foreclosures was primarily seen in single-family homes and not in multi-unit properties that are predominantly occupied by renters.



B. An Estimated 1 Million California Renters Have Been Directly Impacted since the Start of the Mortgage Crisis - 175,000 in 2011

No doubt 2011 brought some encouraging news in that the total number of people affected by foreclosures dropped. However, even with the overall reduction, the numbers remain staggeringly high. Approximately 175,000 renters were directly affected by residential foreclosures in 2011. Combining the estimates from our prior annual reports, we see that an estimated 1 million California renters have been directly affected by foreclosures since the mortgage meltdown began in 2007.



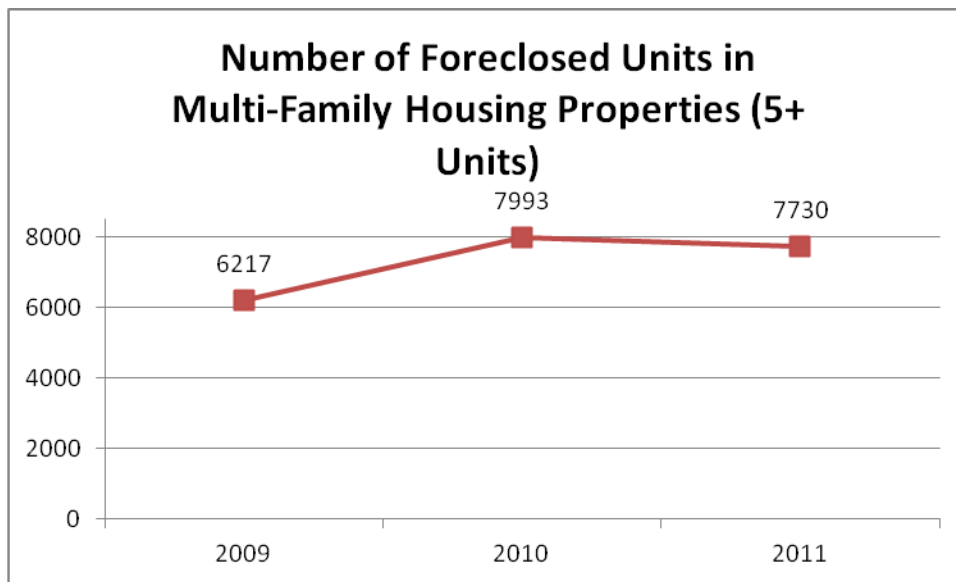
With 15 million renters in the state according to the latest census data, the fact that one million renters have been directly impacted by their landlords' foreclosure is significant. However, even this figure understates how dramatically foreclosures have affected California renters. There are also hundreds of thousands of former homeowners who are now renters. They are not captured by the above data, which examines homes that were renter-occupied at the time of the landlords' foreclosure. These former homeowners-turned-renters lived in a home that went through foreclosure, as did the renters described above, and together comprise a growing class of CA renters directly impacted by foreclosures.

C. Trends in Multi-family Foreclosures

While the number of single-family homes in foreclosure dropped from 142,000 to 125,000 over the last two years, the number of units in multi-family properties has not fallen. For units in multi-family properties, the 2011 levels were nearly identical to 2009.

Looking more specifically at foreclosed units in buildings with 5 or more units, the number rose significantly from 2009 to 2010. That number stayed constant in 2011, even while single-family home foreclosures were declining. Given that the apartment building units are almost exclusively occupied by renters, renters occupy an increasing percentage of the homes in foreclosure in California.

There has been a decrease from 2010 to 2011 in the number of 2-4 unit properties in foreclosure, a trend not seen in the buildings of five or more units. This reduction may be explained by the fact that the 2-4 units qualify for HAMP modifications where the larger properties do not.



II. RECENT DEVELOPMENTS

A. Occupy Movement

Of great importance to housing justice nationwide was the emergence in 2011 of the Occupy Movement. Across California and the nation, the “99%” joined together to protest economic inequality and corporate excesses.

Tenants joined the Occupy Movement in large numbers. Occupations occurred across California – in Oakland, San Jose, Fresno, Merced, Los Angeles and dozens of other cities – in 2011. Occupy Merced was instrumental in mobilizing renters to come to City Hall in support of the city’s new Just Cause for Eviction law.

Tenants Together has publicly commended Occupy Wall Street and the entire Occupy Movement for giving voice to the frustration felt by the 99% and for sparking a long overdue and desperately needed dialogue regarding economic justice.

B. Legislative Update

1. Local Just Cause Ordinance Passes in Merced

The Merced City Council passed the Central Valley’s first anti-eviction law in November 2011. The ordinance prohibits eviction of tenants after foreclosure unless there is just cause for eviction. Foreclosure alone is not a legal basis for eviction of tenants under the law. Members of Tenants Together successfully advocated for passage of this local law, which passed by a final vote of 4-3 and took effect December 22, 2011. With this development, Merced became the 16th city in California to bar arbitrary evictions of tenants post-foreclosure.

The passage of a just cause for eviction law in Merced is significant for a number of reasons. First, as mentioned above, this is the first tenant protection law in California’s Central Valley region. Second, Merced is a city with no history of tenant activism. The experience in Merced shows that even conservative areas with no history of tenant activism may be receptive to local, cost-free solutions that keep homes occupied and prevent blight after foreclosure. On June 4, 2012, the new Merced City Council voted to repeal the ordinance. In response, Tenants Together launched a referendum campaign to prevent the repeal from taking effect. On July 5, 2012, Tenants Together delivered the necessary signatures to require the city council to reverse the repeal or place the question on the November ballot. The fate of the Just Cause Eviction law is likely to end up before voters.

2. Sacramento 2011: A Year of Disappointment

Little was accomplished for tenants in foreclosed properties in Sacramento in 2011. The most important bill for tenants, AB 934 (Feuer), was defeated on the assembly floor by a wide margin. The bill would have overturned the judicially created immunity currently enjoyed by post-foreclosure owners and other landlords. The *Action Apartments v. City of Santa Monica* decision in 2007 for the first time expanded the state’s litigation privilege to protect landlords who serve illegal eviction notices

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and unlawful detainer actions from liability for wrongful eviction. AB 934 would have overturned *Action Apartments*, restoring decades of precedent upholding wrongful eviction claims for evictions that are illegal and actionable under local law.

One success from the previous year should be noted, as it went into effect in January 2011. SB 1149 (Corbett), sponsored by California Reinvestment Coalition and Western Center on Law and Poverty, created stronger “masking” protections for court records in post-foreclosure unlawful detainer actions. Unless post-foreclosure owners obtain a judgment after trial within 60 days of filing the UD, these eviction records should remain unavailable to credit reporting companies that comb public records. This provides significant comfort to tenants contesting illegal evictions in this context.

This session, many bills have been introduced to protect tenants in foreclosure situations. At the time of this report, Tenants Together is sponsoring AB 1953 (Ammiano) to prohibit evictions for rent accrued during period of noncompliance with state law notification requirements after an ownership change. This is particularly relevant in the foreclosure context where banks wait months before notifying tenants of the ownership change and then evict tenants with 3 days notice demanding all accrued rent.

California’s Attorney General, Kamala Harris, is sponsoring two tenant bills as part of a package of measures for homeowners in foreclosure situations. AB 2610 (Skinner) and SB 1473 (Hancock) would provide 90 days eviction notice to all tenants after foreclosure. Specified leases would survive foreclosure under state law, tracking federal (PTFA) lease rights that are set to expire in 2014. The bills would also address a loophole that has allowed easy and unfair eviction of tenants by post-foreclosure owners who treat tenants as “as unknown occupants” and serve eviction papers naming only the former owner.

SB 1191 (Simitian) seeks to address situations where defaulting landlords fail to notify prospective tenants of the foreclosure status of the property. The bill would establish statutory remedies when landlords of 1-4 unit buildings fail to disclose to prospective tenants that the property has a notice of default filed against it.

C. Court Update

1. Judicially Created Immunity for Illegal Evictions Continues to Deny Tenants Access to the Courts

For those unfamiliar with California landlord-tenant case law, one of the surprises of the foreclosure crisis is that so few tenants have sued banks, eviction lawyers and real estate agents for their violations of tenant rights after foreclosure. While there are a number of factors, the primary culprit has been the judicial extension of the “litigation privilege” into the landlord-tenant arena. Courts, starting in 2007, stretched the state’s “litigation privilege” to effectively immunize property owners from liability for illegal eviction activity. As discussed in Section B(2) above, a legislative attempt to remove this judicially created immunity was defeated by real estate industry lobbying in 2011.

2. Several Judges Rule that Typical Post-foreclosure Eviction Notices are Invalid, but the Invalid Notices Continue because of the Lack of a Published Case on the Issue

Tenants after foreclosure typically receive a notice setting forth several timelines for eviction. Often referred to by advocates as 3/60/90-day notices, these notices require the tenant to guess at which timeline applies based on the legal status and nature of their tenancy. Under longstanding principles of law, such ambiguous eviction notices are invalid, but there is no published case applying this in the foreclosure context. While several judges across the state have found that the notices are inadequate, banks continue to use them with impunity because there remains no published opinion to provide definitive guidance.

3. Santa Monica Superior Court Judge Rules that Banks May Not Evict Post-Foreclosure with a Notice for Less than 90 Days, Even for Cause.

The Protecting Tenants at Foreclosure Act (PTFA) provides that a successor at foreclosure takes title subject to a tenant's right to 90-day notice of eviction. On its face, the PTFA would seem to preempt local laws that allow eviction on less than 90-day notice, even for cause such as nonpayment of rent. However, until recently, no California courts had held that the 90-day timeline applies in evictions for cause.

In February 2012, a Boston judge in *Federal National Mortgage Association v. Juana Vidal*¹ ruled that despite serving the tenant a three-day notice in compliance with the state just cause for eviction statute, the bank could not evict a tenant with less than a 90-day notice if she was able to show that she was a *bona fide* tenant under the PTFA. On March 7, 2012, Judge Lawrence H. Cho² who presides over Department S at the Santa Monica Courthouse ruled similarly. In a decision of first impression in California, the court found that because the foreclosure triggered the PTFA, while in compliance with the local just cause ordinance, the bank could not evict a *bona fide* tenant with less than a 90-day notice. Although unpublished and therefore not precedential, the *Stanko* case could have major implications for post-foreclosure evictions for cause.

¹*Fed. Nat'l Mortg. Ass'n v. Vidal*, No. 11H84SP004364, 2012 WL 597929 (Mass. Hous. Ct. Feb 17, 2012)
Can be found at <http://www.nhlp.org/files/FNMA%20v.%20Vidal.pdf>.

²*PNMAC Mortg. v. Stanko*, No. 11U04495, 2012 WL 845508 (Cal. Super. Ct. Mar. 7, 2012).

D. Regulatory and Enforcement Update

1. Los Angeles City Attorney, Carmen Trutanich, Commenced the First Major Government Enforcement Action Against a Bank for its Violation of Tenant Rights after Foreclosure.

On March 4, 2011, the Los Angeles City Attorney, Carmen Trutanich, filed a civil enforcement action³ against Deutsche Bank for allowing hundreds of foreclosed properties to fall into serious disrepair and for facilitating the illegal eviction of hundreds of low-income tenants. In its complaint, the City Attorney alleges that Deutsche Bank has become one of the largest slumlords in the City of Los Angeles. This case stands out as the only major government enforcement action against banks or investors regarding bad acts against tenants in the foreclosure context.

The City Attorney's complaint focuses on 166 properties in Los Angeles. The complaint alleges violations of federal, state and municipal laws regulating housing conditions and evictions by Deutsche Bank through its subsidiaries, Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas. Specifically, the City alleges causes of action under the California's Unfair Competition Law, state public nuisance laws, the Los Angeles Vacant Building Ordinance and the Los Angeles Rent Stabilization Ordinance, among others.

The lawsuit seeks immediate injunctive relief, including a complete inventory, registration and inspection of foreclosed properties; compliance with all applicable state and municipal code requirements; and an end to all illegal evictions. The City Attorney is also seeking restitution to current and former tenants for amounts paid in excess of the actual value of their units and unpaid relocation fees; reimbursement to the City for costs of repair, abatement, inspection and investigation; and penalties.

2. California Bar Association Gives Eviction Mill Attorney a Slap on the Wrist after Illegally Evicting Thousands of California Tenants

For tenants, tenant advocates and legal service attorneys representing them, the first few years of the foreclosure crisis focused on fighting off illegal evictions by abusive eviction mills representing foreclosing banks. Despite repeated complaints, the State Bar of California did not take action to stop abusive and illegal evictions of tenants.

Finally in 2011, the State Bar of California suspended David Endres, Esq. from practice for six months and ordered Endres to pay costs of \$4,000. Endres was notorious for pursuing eviction actions on behalf of major banks after foreclosure in violation of federal, state and local law. Tenants Together welcomed the news that the Bar was pursuing an unethical eviction lawyer but criticized the 6-month suspension as a slap on the wrist for an attorney whose fraudulent robo-

³ Copy of complaint can be found at:

http://www.atty.lacity.org/stellent/groups/electedofficials/@atty_contributor/documents/contributor_web_content/lacityp_014322.pdf.

signing eviction mill caused the mass eviction of thousands of tenants and undermined the integrity of the judicial system.⁴

Endres handled thousands of eviction cases on behalf of major financial institutions including U.S. Bank, HSBC and Aurora Loan Services. The August 23, 2011 suspension order from the State Bar notes that he filed over 1,000 cases between July 1, 2009 and December 31, 2009 alone. To accomplish these mass filings, Endres had non-attorney staff prepare verified pleadings and sign on his behalf. Endres knowingly submitted false verifications to the court. The Bar concluded that “respondent aided the unauthorized practice of law, in willful violation of Rules of Professional Conduct, Rule 1-300(A)” and “sought to mislead judicial officers, in willful violation of Business and Professions Code section 6068(d).”

3. Fresno County Assessor-Recorder takes Lead to Assist Tenants Impacted by Foreclosure

Fresno County Assessor-Recorder, Paul Dictos, CPA, announced an important initiative to assist tenants in foreclosed properties. Dictos will begin mailing know-your-rights material to tenants and homeowners in pre-foreclosure properties. Dictos is the first assessor-recorder in the Central Valley (and one of the only ones in the state) to take this pro-active approach to protecting residents of properties heading into foreclosure.

4. Federal Housing Finance Agency Remains a Powerful Barrier to Improved Federal Policy on Foreclosure and its Impact on Tenants

The Federal Housing Finance Agency (FHFA) was created on July 30, 2008, as part of the *Housing and Economic Recovery Act of 2008*. The Act gave FHFA the authority to oversee the country’s secondary mortgage markets – Fannie Mae, Freddie Mac and the Federal Home Loan Banks. In addition, this law combined the staffs of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (FHFB) and the Government Sponsored Enterprises (GSE) mission office at the Department of Housing and Urban Development (HUD). FHFA's intended mission is to provide effective supervision, regulation and housing mission oversight of Fannie Mae, Freddie Mac and the Federal Home Loan Banks to promote their safety and soundness, support housing finance and affordable housing and support a stable and liquid mortgage market. Despite the intended mission, the new agency continues to be a barrier to improved federal policy, rather than a catalyst for the needed change to end the foreclosure crisis.

In August 2011, the FHFA issued a Request for Information to solicit ideas on how to deal with the growing REO portfolio. The FHFA seeks to reposition its portfolio as potential rentals to the investment community. California Reinvestment Coalition facilitated a group response from California non-profit organizations that work with tenants or homeowners facing foreclosure. The letter identified important policies that the FHFA should adopt to responsibly dispose of the REO

⁴ *California Bar Suspends Attorney for Illegal Foreclosure*: Tenants Together Press Release, September 19, 2011, <http://tenantstogether.org/article.php?id=2170>.

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portfolio. The letter demanded that properties be deed restricted affordable, have just cause eviction protections and prohibit the use of overly restrictive tenant selection.⁵

Many of the same organizations have become very frustrated with the FHFA leadership because there has been no movement on the three big demands: 1) reduce principle reduction, 2) stop dual track, and 3) offer tenants long-term leases. Fannie Mae's policy calls for offering, in most cases, a year-long lease to tenants, but Freddie Mac does not offer more than month-to-month leases. Freddie Mac's policy continues to be a problem because it does not create the stability that tenants need after foreclosure.

⁵ *California Community Groups Concerns with FHFA; Request for Action, or Resignation*: California Reinvestment Coalition, *Letter*, February 29, 2012, <http://calreinvest.org/news/sign-onto-crcs-letter-against-the-federal-housing-finance-agency-ed-demarco>.

III. RECOMMENDATIONS

Tenants Together has advanced a range of policy recommendations to mitigate the impact of foreclosures on renters and communities in California. We will not reiterate all of our recommendations here, but refer readers to our prior reports. The four most urgent recommendations at this time are:

✓ **Step Up Enforcement of Existing Protections**

With the notable exception of the Los Angeles City Attorney, we have seen little or no enforcement of existing protections for tenants after foreclosure. Government officials appear to be under the mistaken belief that tenants will be able to enforce these protections on their own. Due to decreased funding for nonprofit attorneys and the judicial expansion of the litigation privilege, individual tenants are limited in their ability to address violations through private litigation. It is urgent to ramp up government enforcement, and for overburdened government enforcement agencies to weigh-in strongly in favor of overturning the court-created immunity for illegal eviction conduct.

✓ **Expand Outreach and Education Efforts to Ensure Tenants Know Rights**

Proactive attempts to educate tenants about their rights are essential. Tenants who know their rights are far less likely to be displaced prematurely from their homes by banks, investors and their agents. Mailings to tenants in foreclosed properties (as early as possible), web-based information services, hotline counseling, door-to-door outreach and other approaches must be expanded to prevent abuse and unfair treatment of tenants after foreclosure.

✓ **Extend PTFA, Provide Private Right of Action and Pass Similar State Protections.**

The Protecting Tenants at Foreclosure Act is scheduled to expire in 2014. The Act provides important protections for renters. The PTFA should be extended. In addition, a private right of action should be included so that violators can be held accountable.

At the time of this report, Senate Bill 1473 and Assembly Bill 2610 are pending in the California State Legislature. These bills would incorporate key PTFA protections into California law and adopt additional protections. Of particular note is the requirement of 90-days notice for tenancies that are presently excluded from the PTFA protections.

✓ **Pass Local Just Cause For Eviction Laws**

Local just cause for eviction laws remain the most effective way for cities to protect their residents from arbitrary eviction after foreclosure. These laws are cost-free and provide a powerful shield for tenants in this situation. Sixteen California cities have some version of these laws, and there is growing interest in passing these laws in other municipalities.

IV. CONCLUSION

In 2011, California had the third highest rate of foreclosure filings in the United States. According to *Realty Trac* approximately 1 out of every 80 households has a property where the foreclosure process has been initiated. Eleven of the top twenty cities with the highest foreclosure rates are in California—six of those in the state's Central Valley.

As California marks one million tenants directly impacted by foreclosure in 2012, it is imperative that banks, investors and policy makers take seriously the impact of such high numbers. As detailed in this report, Californians are losing their homes and communities are being devastated. Wall Street, Sacramento and Washington must fundamentally shift their approach to the foreclosure crisis and its impact on tenants. Implementation of the above four recommendations would represent an important step toward real economic recovery for California and the stabilization of its housing market.