

Hidden Impact:

California Renters in the Foreclosure Crisis

MARCH 2009



**TENANTS
TOGETHER**

California's
Statewide Organization
for Renters' Rights

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 and advocacy.

TENANT FORECLOSURE HOTLINE

Tenants Together operates a hotline for tenants in foreclosure situations. The hotline is the first of its kind to emerge in California in response to the foreclosure crisis. Tenants Together launched the hotline to address a growing problem – the harassment and displacement of tenants who are innocent victims of the mortgage crisis. Some of the information in this report comes from the numerous callers who have used our hotline service. California tenants can reach the Tenant Foreclosure Hotline at 415.495.8012.

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TENANTS TOGETHER

995 Market Street, Suite 1202
San Francisco, CA 94103
415.495.8100
www.TenantsTogether.org

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EXECUTIVE SUMMARY

Renters in properties going through foreclosure are innocent and hidden victims of a foreclosure crisis they did nothing to create. Renters face many problems in these properties, everything from utility shut-offs to eviction and loss of security deposits. The stories are heartbreaking: seniors forced to live without basics like running water, rent-paying tenants evicted with little or no notice, and families pushed into homelessness for no good reason. Banks typically evict all residents after foreclosure. Thousands of renters are being driven from their homes so that properties can sit vacant.

The scope of the problem is staggering. Tenants Together conservatively estimates that *at least one third of residential units in foreclosure in California are rentals*. This means that more than 225,000 renters in California lived in properties that went through foreclosure in 2008 alone.

These figures understate the problem because they are based on data collected from county records. By surveying callers to our Tenant Foreclosure Hotline, we found that many renters live in properties incorrectly labeled “owner-occupied” in the county-based data. The ‘at least one third’ estimate that we announce in this report appears to be just the tip of the iceberg. We are confident that further research based on actual property usage, as opposed to county records, will show a significantly higher percentage of foreclosed properties occupied by renters.

This report describes the scope of the problem, provides an overview of common hardships endured by California renters in foreclosed properties, and proposes solutions. Among the various proposals, we note that “just cause for eviction” laws are a particularly effective and cost-free way to stop the unjust displacement of innocent renters after foreclosure who seek nothing more than the right to continue living in their homes as rent-paying tenants.

We hope this report helps bring the plight of renters out of the shadows and into the policy discussions about the foreclosure crisis. No longer can the mortgage meltdown be viewed solely as a homeowner problem.

INTRODUCTION

An estimated 14 million Californians are renters. Renters are disproportionately low-income Californians who cannot afford to own property in California's expensive real estate market. The plight of renters in the current economy has been largely overlooked.

California has been hit particularly hard by home foreclosures. In 2008, nearly a quarter of a million residential properties in California went through foreclosure. Compared with other states, California experienced a disproportionate share of loans to purchasers who did not plan to live in the properties.¹ These investment properties were rented out to tenants who are now paying the price for years of rampant real estate speculation across the state.

While media and policymakers have focused mostly on the impact that the foreclosure crisis has had on property owners and the real estate market, renters who have done nothing to contribute to the crisis are suffering greatly. Our organization recently launched a Tenant Foreclosure Hotline to assist renters in this difficult situation. The phone is ringing off the hook.

Renters are facing utility shut-offs, eviction, loss of security deposits, and other related problems when their homes go into foreclosure. Due to loopholes in tenant protection laws and lax enforcement of existing laws, renters are living through nightmare situations – even basic rights like the right to running water cannot be taken for granted by renters in foreclosed properties.

As a matter of fundamental fairness, California renters deserve greater protection in these difficult circumstances. Among other protections, the following are necessary:

- **Stronger eviction protections:** Banks and investors should not be able to evict renters without cause. Renters who hold up their end of the rental agreement should not be evicted unless there is a good reason for eviction. Eviction by banks so that property can sit vacant for months or years is unconscionable. These evictions result in homelessness for renters and neighborhoods blighted by prolonged vacancies.
- **Stronger habitability protections:** Banks and investors should be compelled to maintain basic habitable conditions for renters who remain in occupancy after foreclosure. Water shut-offs, electricity shut-offs and refusal to fix unsafe conditions at these properties cannot be tolerated.
- **Stronger security deposit laws:** Renters who do vacate the property must have their security deposits returned. Banks are in the best position to return these deposits. It is unfair to require vacating renters to track down the former owner (who may be judgment-proof anyway) to get back their deposits.
- **Stronger notification requirements:** Renters need to know what is going on with their homes. Lenders and defaulting owners should be required to notify renters of the impending foreclosure as soon as possible, no later than the filing of the notice of default.
- **Stronger enforcement of existing laws:** The Attorney General, District Attorneys, City Attorneys and private attorneys have an important role to play in enforcing existing laws to protect renters. Laws on the books have little effect unless someone enforces them.

¹*Delinquencies Increase in Latest MBA National Delinquency Survey* (Mortgage Bankers Assn., September 6, 2007).

SCOPE OF THE PROBLEM: FINDINGS

We obtained aggregate California data from Foreclosure Radar, a foreclosure data service, drawn from county parcel tax records. Unlike prior media reports that have focused on the number of *properties* in foreclosure, our custom data tallied the number of *units* at issue. The difference is important. Many properties in foreclosure contain multiple rental units, so what is listed as "one" foreclosed property actually includes many renter households. Unit data is a more appropriate basis for determining the impact of foreclosure on households, families and individuals.²

Our analysis of this unit data revealed that approximately one third of the residential units in foreclosure in 2008 were rentals. Assuming average household size, this means that more than 225,000 renters lived in units that went through foreclosure in 2008 alone. However, this county-based data only tells part of the story.

We randomly selected 100 callers to our Tenant Foreclosure Hotline who were renters in single-unit properties that were not-owner occupied. We then checked their addresses against county-based data for each of these individual properties. Comparing the actual usage to the county-based data, we found that 62% of these renter-occupied homes were listed incorrectly as "owner-occupied." We also sampled callers on a county-by-county basis, again finding between 50% and 75% of renter-occupied properties listed incorrectly as "owner-occupied."

Further research and investigation are warranted to determine the reason for so many inaccurate owner occupancy listings. One likely explanation is that borrowers falsely represented their properties as "owner-occupied" to obtain more favorable loan terms and to benefit from California's homeowners property tax exemption, when in fact they rented these properties to tenants.³ Regardless of the reasons for the discrepancy, our findings strongly suggest that data based on county records alone dramatically undercounts the number of foreclosed homes that are actually rentals.

There is also another category of renters that are entirely omitted from the county-based data: boarders who rent a room from an owner-occupant. Particularly in properties at risk of foreclosure, owner-occupants often rent out rooms to boarders to generate income to pay the mortgage.⁴ When foreclosure hits these shared properties, both owner and renter are impacted, yet data from the county would count these homes as owner-occupied, not renter-occupied. This is just another example of how renters are undercounted in data based solely on county records.

We are confident that a study based on actual usage of properties, as opposed to how the properties are described in county records, will reveal a significantly higher percentage of renter-occupied households. We look forward to participating in additional research efforts to quantify the renter impacts of the foreclosure crisis in California.

²See *Renters in Foreclosure: Defining the Problem, Identifying Solutions* (National Low Income Housing Coalition, January 2009).

³See *Renters in Foreclosure* (NLIHC, January 2009) ("lending and tax benefits that the system bestows on owner-occupied properties ... mean that the incentive exists for owners to misrepresent a property's rental status in a loan application or to not inform tax authorities about a property being a rental in subsequent years."). For a discussion of this issue outside California, see *False Claims on Rental Property Prompt Investigation* (Edythe Jensen, The Arizona Republic, November 18, 2005).

⁴ *Homes at Risk, More Owners Consider Taking in Boarders* (John Leland, New York Times, July 16, 2008).

THE FORECLOSURE PROCESS IN CALIFORNIA

Prior to 2007-2008, few tenant advocates in California were familiar with the foreclosure process. Suddenly, there is a great need to understand how foreclosure works. The following is an outline of the typical foreclosure process in California as it relates to renters:

- **Owner Default** - The property owner (landlord) breaks the terms of his or her mortgage loan by missing a payment. The bank can begin the foreclosure process even if the property owner misses only one monthly payment, but banks usually do not begin the process until the property owner misses three payments.⁵ The bank is not required to contact the renters at the property to notify them of the owner's default.
- **Notice of Default** - The next step the bank (or other lender) takes is to file a Notice of Default with the county recorder's office. A copy of the notice is mailed to the property owner. There is no requirement that the bank notify renters of the Notice of Default.
- **Trustee Sale** – 90 days after serving the Notice of Default, the bank may serve the property owner with a Notice of Trustee Sale (“Notice of Sale”) which includes the scheduled date for the property to be sold at auction.⁶ The Notice of Sale must be posted on the property being sold, and must be published in the newspaper. The Notice of Sale must be posted in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. The bank must also mail a copy of the Notice of Sale to renters at the property, addressed to “Resident of property subject to foreclosure sale.” The Notice of Sale must contain specified language advising renters of their rights.⁷
- **New Owner Buys Property, or Bank Takes Ownership** – At least 20 days after the Notice of Sale, the house may be sold at auction. If nobody buys the house at auction, then the bank is the new owner. With limited exceptions, the foreclosure sale extinguishes leases.
- **Notice to Quit** – The new owner after foreclosure can give the renter a 60-day notice to quit, or 30-days if the borrower (i.e., the former owner) lives at the premises. For renters protected by local “just cause for eviction” ordinances and for Section 8 renters, different rules apply.
- **Unlawful Detainer Action** – If the notice to vacate expires and the renter has not vacated, the bank may file an eviction lawsuit called an unlawful detainer action against the renter. The renter's response is due five days from service of the lawsuit. The owner has the burden of proof at trial. If the renter prevails, the renter can stay at the premises. If the owner prevails, judgment will be entered against the renter, a writ of possession will issue, a sheriff's notice to vacate will be posted, and then the sheriff will come remove residents from the property.

⁵ Per SB 1137, a state law passed in 2008, the bank must contact the property owner, or exercise due diligence to contact the owner, 30 days before filing a Notice of Default. This requirement only applies to owner-occupied properties.

⁶ Under recently enacted SBx2 7, an additional 90 days may be required before service of the Notice of Sale if the bank does not have a “comprehensive loan modification program,” as defined in the statute. This additional 90-day period only applies to owner-occupied properties.

⁷ California Civil Code section 2924.8(a). These requirements were part of SB 1137, enacted in 2008.

IMPACT OF FORECLOSURES ON RENTERS

A. Evicted Through No Fault of Their Own

***Current Law:** Leases are generally extinguished by foreclosure, but this does not mean the tenant must vacate at foreclosure. Renters are entitled to 60-day written notice to vacate following the foreclosure. Renters in certain cities cannot be evicted for foreclosure because of local “just cause for eviction” laws. Section 8 renters have additional protections, including 90-day notice of termination.*

Most renters in foreclosed properties will face eviction attempts after the foreclosure sale. Banks claim that they “do not want to be landlords” despite the fact that they have taken ownership of renter-occupied properties. Many banks have policies calling for the properties to be vacated to prepare them for sale.⁸ The vast majority of foreclosures of rental properties involve eviction of renters.

Renters are often confronted with demands that they vacate on extremely short notice. In a typical “cash for keys” offer in California, the bank’s real estate agent will offer about \$1000 or \$1500 to renters on condition that they vacate in as little as 10 days. Renters are pressured to take these offers. Misinformation is common. Renters are not informed that they have a minimum of 60 days to vacate under California law, and that no obligation to vacate can arise until a written notice to quit is served. Some renters who vacate pursuant to “cash for keys” offers report that they are never paid.

Some California cities⁹ have enacted “just cause for eviction” laws. Other jurisdictions are free to enact new just cause laws, or this could be done at the state level. These laws represent a cost-free way for government to protect renters from unfair foreclosure evictions. A “just cause” law requires that a landlord have a specified reason for eviction, and foreclosure is not one of the recognized reasons in any of California’s just cause jurisdictions. Attempts to evict in violation of local just cause ordinances may give rise to civil and, in some cases, criminal liability. Nonetheless, there are widespread reports of banks and their real estate agents evicting renters after foreclosure even in just cause cities.

Likewise, many section 8 renters are improperly evicted. Section 8 renters are entitled to 90-day notice,¹⁰ and there is currently a dispute as to whether foreclosure provides a basis to evict section 8 renters at all. Clarification is needed at the federal level to make sure that foreclosing lenders do not displace section 8 renters and interfere with housing assistance contracts that are vital for low-income renters.

Some Proposals to Stop Foreclosure Evictions:

- Enact just cause for eviction laws
- Pressure banks to adopt policies to preserve tenancies after foreclosure
- Clarify protections for section 8 renters to prevent disruption of tenancy

⁸ The City of Oakland noted these policies in a series of lawsuits against banks for illegal eviction. See, e.g., *People v. McNulty, Alameda Superior*, Case No. 09-440648, ¶11 (“It is the stated policy of Defendant Chase Home Finance, LLC to ‘maintain its properties in an unoccupied status until they are sold.’”) In contrast, Fannie Mae and Freddie Mac have instituted policies to enter into new rental agreements after foreclosure, but these policies apply to few California rentals.

⁹ Berkeley, Beverly Hills, East Palo Alto, Glendale, Hayward, Los Angeles, Maywood, Oakland, Palm Springs, San Diego, San Francisco, Santa Monica, Thousand Oaks, and West Hollywood. Not all units in these cities are protected.

¹⁰ California Civil Code section 1954.535.

B. Denied Information About What Is Going On With Their Homes

***Current Law:** Banks are not required to serve the Notice of Default upon renters. Banks must serve the Notice of Sale upon renters, with specified contents, at least 20 days before the sale.*

Renters are usually the last to know of foreclosure. Renters who have paid their rent and done nothing wrong are suddenly pawns in a game they did not sign up to play.

Defaulting homeowners know for many months about the impending foreclosure. After they miss several mortgage payments, they receive a Notice of Default from the lender months before any trustee sale can occur. Lenders are not required to serve the Notice of Default upon renters, and generally landlords do not notify renters of the Notice of Default. The first notice required to be served on a tenant is the Notice of Trustee Sale, which is served a mere 20 days before the foreclosure sale. This creates panic for the renter and a very short time line in which to make major housing decisions.

At minimum, lenders should be required to serve all residents of the property with the Notice of Default. The Notice of Default is a public document, so there is no privacy concern. Until the law requires lenders to provide this notice to renters, county recorders can take the lead in notifying building residents when a Notice of Default is filed. San Francisco's Assessor/Recorder, at the request of Tenants Together and other tenant organizations, has announced California's first government plan to notify renters of the filing of the Notice of Default. The notification will also inform renters of their rights and available resources.

Some Proposals to Keep Renters Informed:

- Require lender and landlord to notify renters of the Notice of Default
- County recorders should notify renters of the Notice of Default, and provide information on renters' rights and available resources

C. Evicted Without Receiving 60-Day Notice

***Current Law:** 60-day notice is generally required for eviction of renters after foreclosure. No law specifically directs banks to exercise due diligence to determine whether renters are at the property, so some renters do not receive notice.*

In some very disturbing cases, renters first learn of the foreclosure when an unlawful detainer (eviction lawsuit) is served or, even worse, when the sheriff shows up to evict all residents of the property. Ordinarily, these cases involve properties that on paper are “owner-occupied,” but are in fact renter-occupied. Lenders who do not exercise due diligence to determine who is living in the property move forward to evict the phantom “owner-occupant” without ever serving proper notice on the renters who actually reside at the property. When the sheriff appears to enforce the eviction order, all residents of the property are removed. These renters may become homeless when forcibly evicted with little or no notice. For these renters, the legal requirement of “60-days” notice may exist in law, but not in their reality.

Tenants Together has discovered that over 60% of our hotline callers in single family homes live in properties that are incorrectly listed as “owner occupied” when in fact they are renter-occupied. This raises a serious concern that many landlords have misrepresented their intended use of these properties, perhaps to lenders as well as to counties. Renters in these properties need to be particularly cautious when banks take over ownership of the property. Otherwise, banks may improperly proceed with evictions of nonexistent owner-occupants that have the result of displacing the true occupants without proper notice.

Some Proposals to Make Sure Renters Are Not Evicted Without Proper Notice:

- Require lender to exercise due diligence to determine if property is occupied by renters
- Sheriffs should adopt policies not to carry out evictions, or at least to delay eviction, where renters have not received proper notice

D. Forced to Live Without Water, Gas or Electricity

Current Law: Utility Shut-Offs: *It is illegal to shut off utility service in order to cause renters to move out. In multi-unit buildings, the California Public Utility Code provides additional protections. Generally, renters must be provided the opportunity to assume the account, without liability for the prior owner's nonpayment, and can deduct the utility payments from their rent.*

Many renters across the state face situations where the defaulting property owner and/or the foreclosing lender refuse to pay for utility services like water, gas and electricity, despite the fact the lease requires the landlord to make these payments. In some cases, utilities are shut off, posing an extreme health and safety risk for renters, particularly seniors and families with children. As a practical matter, where utilities and other housing services are eliminated, renters are often forced to vacate.

California law prohibits utility shut-offs in many circumstances, particularly where the property owner shuts off service in order to drive renters out of the property.¹¹ Nonetheless, reports of utility shut-offs have increased with rising foreclosure rates, either due to owner negligence or willful attempts to drive renters out of their homes.

In multi-unit buildings, the California Public Utilities Code generally prohibits shut-offs without notice to the renter, and requires renters to have the opportunity to assume the account, without liability for the prior owner's nonpayment.¹² Renters are provided the right to deduct the utility payments from their rent. State law needs to be tightened up to make sure renters occupying single-family homes have the same protections.¹³

In addition, local officials can take action to stop utility shut-offs in multi-unit buildings by issuing emergency declarations,¹⁴ as has been done in Oakland and San Francisco. Where local public health or building officials certify that termination would result in a significant threat to the health and safety of residential occupants or the public, utility providers may be prohibited from shutting off service.

Some Proposals to Make Sure Utilities Stay On:

- Clarify bank's obligation to maintain utility service for occupied residences if that was the landlord's responsibility before foreclosure
- Extend Public Utility Code protections to single family homes
- City officials can adopt emergency declarations halting shut-offs
- Banks should adopt and follow policies to make the necessary payments to keep utility services on for renter-occupied units
- Water agencies and other utility providers should adopt and follow policies to maintain service in renter-occupied units

¹¹California Civil Code section 789.3. AB 1333, introduced by Assemblymember Loni Hancock (D-Berkeley), to prohibit shut-offs after foreclosure passed the California legislature in 2008, but was vetoed by Gov. Schwarzenegger.

¹²California Public Utilities Code sections 777; 777.1; 10009; 10009.1.

¹³ Assemblymember Alberto Torrico (D-Fremont) introduced AB 2586, sponsored by Western Center on Law and Poverty, to extend these protections to single family homes. The legislation was vetoed by Governor Schwarzenegger in 2008. Nearly identical legislation, SB 120, was recently introduced by Senator Alan Lowenthal (D-Long Beach).

¹⁴ California Public Utilities Code sections 777.1(e)(5); 10009.1(e)(5). For a detailed discussion, see the public memorandum issued by the San Francisco City Attorney (January 16, 2009) available online at:

<http://www.ci.sf.ca.us/site/uploadedfiles/cityattorney/FORECLOSURE-MEMO.PDF>

E. Cannot Reach Owners To Get Repairs Done

***Current Law:** California law requires landlords to maintain basic habitability standards in rental properties.¹⁵ California law also requires property owners to notify renters of who is responsible for the management of the property. When ownership changes the new owner is supposed to provide notice within 15 days to the tenant of the new manager,¹⁶ although the law is not clear as to the consequence for an owner that fails to comply.*

Defaulting owners often neglect rental properties. Perhaps they feel they have bigger problems than worrying about the conditions of their rental units. While defaulting owners continue to demand and collect rent, they are often unreachable for any other purpose. Requests for repairs go unanswered. As a result, renters live in substandard conditions or pay for repairs that the landlord is obligated to perform.

After the foreclosure sale, these problems are compounded. Banks are notoriously bad when it comes to communicating with renters. Many renters have no idea what is going on in the property and who is responsible for repairs. Banks will often fail to act in response to repair requests, claiming they are not landlords.

Some Proposals to Make Sure Repairs Are Done:

- Increase enforcement of housing code requirements by city officials
- Strengthen requirement that owner provide information to renters as to whom to contact for repairs by imposing penalties for failing to comply

¹⁵ California Civil Code section 1941.1, et seq.; *Green v. Superior Court* (1974) 10 Cal.3d 616 (warranty of habitability implied in all residential rentals).

¹⁶ California Civil Code section 1962.

F. Losing Their Security Deposits

***Current Law:** Property owners must return security deposits within three weeks of the date the renter vacates or document appropriate deductions. In the case of a transfer of ownership, the former owner is required either to return the deposit to the renters or to transfer it to the new owner. The new owner is jointly liable along with the former owner to return the deposit after the renter vacates. Banks claim this does not apply after foreclosure.*

In California, successor owners of property are jointly liable to return security deposits to renters once the renters vacate.¹⁷ The idea is that the renter's right to the deposit should be protected, leaving disputes regarding the deposit between the prior and current owner. This is fair and necessary given that renters who vacate usually need to get back the deposit to put toward new housing costs.

Banks in California take the position that they are not required to return security deposits.¹⁸ As defaulting landlords often do not return the deposits before the foreclosure, this puts renters in the position of moving and never getting back their deposits. Renters must then file small claims actions against the bank and former owner to get the money back, a process that takes months and may lead to a judgment that is difficult to enforce. Renters who have not yet vacated are generally well advised to insist on return of security deposit as a condition for moving.

Some Proposals to Protect Security Deposits:

- Clarify state law to provide that a foreclosing lender, like any other property owner, must return security deposits to renters who vacate.

¹⁷ California Civil Code section 1950.5.

¹⁸ AB 2586 would have clarified that banks are successor owners under the security deposit laws and other tenant protection laws. The bill passed the legislature but was vetoed by Governor Schwarzenegger in 2008. SB 120 has been introduced which contains the same provisions on security deposits.

G. Subject to Rent Skimming

***Current Law:** Rent skimming law prohibits a landlord from collecting rent and failing to use those funds to pay the mortgage during the first year of ownership of the property.*

A common complaint among renters in properties at risk of foreclosure is that they pay landlords who simply pocket the money, rather than paying the mortgage. California has anti-rent skimming laws,¹⁹ but they are very narrow. These laws only apply during the first year after the borrower acquires the property. After that, landlords are free to collect rent and not pay the mortgage, thereby benefitting from the rental income, but failing to hold up their end of the deal. Renters resent that they dutifully pay their rent while their landlord engages in a course of conduct that undermines their right to stay in the property. Renters have little recourse in this situation.

Some Proposals to Protect Renters from Rent Skimming:

- Expand rent skimming laws beyond the first year of the mortgage.

¹⁹ California Civil Code section 890.

H. Victims of Fraud and Deceptive Practices

Current Law: California law generally prohibits fraud and deceptive business practices, although enforcement can be difficult.

Renters are subject to countless types of scams in the foreclosure process – far more than can be covered in this report. In some cases, the conduct is criminal. Individuals posing as owners of vacant foreclosed properties “rent” the properties to unsuspecting renters. These renters pay security deposits and first and last month’s rent, only to find out later that they have no right to live in the property. Perpetrators of some of these scams have been arrested recently.

Another similar scam involves defaulting landlords who continue to collect rent from renters *after* the foreclosure sale. These landlords have no right to collect rental payments once the foreclosure sale occurs as they no longer own the property, but renters who are kept out of the loop sometimes do not know this. These landlords continue to demand rent, and threaten to evict renters if they do not pay. Many renters pay this rent under pressure by the former landlord.

A common deceptive practice involves landlords who fail to disclose an imminent foreclosure to an unsuspecting renter. The practice is particularly troubling when landlords who are already in default enter into new leases and collect large security deposits. Typically, these landlords will not return the deposits months later when foreclosure occurs. Furthermore, the foreclosure extinguishes the lease and the bank moves forward to evict. Renters who in good faith entered into a year-long rental agreement are then stuck a few months later without a home and having lost their security deposit.

Some Proposals to Protect Renters from Fraud and Deceptive Practices:

- Prioritize prosecution of landlords and others who defraud renters
- Require landlords to disclose the fact of default to renters or prospective renters

I. Credit Damaged

***Current Law:** Eviction lawsuits are sealed for the first sixty days after they are filed. For renters who stay and contest foreclosure evictions in court, the eviction will show up on their credit record unless they win within the first 60 days after the case is filed.*

Eviction lawsuits show up on credit reports unless the tenant prevails within the first sixty days after the case is filed. Although foreclosure evictions do not allege any fault on the part of the tenant, most credit reports do not contain this level of detail. Instead, prospective landlords will simply see that the renter was a defendant in an unlawful detainer action. Many landlords will refuse to rent to renters who have previously been evicted.

This puts renters who might otherwise seek to challenge foreclosure evictions in court in a very difficult position. Unless they win the case within 60 days, they may be stuck with a mark on their record that will make it more difficult to find new housing.

Sealing the court records for longer than 60 days would help alleviate this problem. These records should be sealed unless and until a landlord prevails in the action. This would provide a more meaningful opportunity for renters to assert their rights to challenge evictions in court.

Some proposals to protect renters' credit:

- Stop the foreclosure evictions in the first place by enacting just cause for eviction laws
- Increase the period in which court eviction records are not publicly available

J. Unable to Get Legal Services

Current Law: Renters have no right under California law to legal representation in eviction cases.

Landlord-tenant law is a highly specialized area, and renters without counsel face an uphill battle. Navigating the intricacies of the judicial system can be particularly difficult for seniors, persons with disabilities and renters with limited English proficiency. In many cases, foreclosure evictions that are clearly illegal go unchallenged simply because renters are unable to find legal representation. As noted repeatedly in this report, laws are of little effect unless renters have means to enforce their rights in court.

Currently, legal services agencies in California, and across the nation, are overwhelmed with requests for assistance from renters in foreclosed properties.²⁰ “Access to legal assistance can make the difference between maintaining and losing housing, and funding for such legal assistance, including training and information on rights, must be increased.”²¹

Some Proposals to Promote Access to Legal Services:

- Increase funding for legal services to renters
- Guarantee a right to counsel in some or all eviction cases

²⁰ Assemblymember Mike Feuer (D-Los Angeles) has introduced legislation, AB 590, to expand the provision of legal services to indigent parties in critical civil cases such as eviction matters.

²¹ *Without Just Cause, A 50-State Review of the (Lack of) Rights of Tenants in Foreclosure* (National Law Center on Homelessness & Poverty and the National Low Income Housing Coalition, February 25, 2009).

K. Forced Into Homelessness

Many renters, including families with children, are ending up homeless due to foreclosure evictions.²² Meanwhile, their former home sits vacant while they are in shelters or on the street. The problems discussed in this report, including loss of security deposits, inadequate notice of eviction, and damage to credit from evictions, exacerbate the situation by making it harder for renters to locate and afford new housing.

To mitigate the impact of foreclosure eviction, banks should be required to provide statutory relocation payments to renters evicted after foreclosure. Some limited government efforts to provide relocation funds are underway. The United States military recently adopted a policy to provide relocation funds to military personnel who are renters and are forced to vacate due to foreclosure.²³ The City of Fairfield, CA launched a program to assist lower-income renters victimized by the foreclosure crisis to obtain replacement housing by providing grants for security deposits.²⁴ But to date banks have not been required to pay for any of the relocation they are causing. While requiring banks to pay relocation assistance would not be a sufficient substitute for eviction protection, it would at least help renters evicted in this situation land on their feet.

Furthermore, 60-day notice is simply inadequate for renters to vacate after foreclosure. The National Low Income Housing Coalition has called for federal requirement of a minimum of 90-day notice of eviction for renters in foreclosure situations. A longer notice period would help protect renters from homelessness by allowing additional time to secure new housing.

Some Proposals to Protect Renters from Homelessness:

- Enact just cause for eviction laws to stop these evictions in the first place
- Increase eviction notice period to minimum of 90 days
- Enact relocation payment laws to help renters who must move afford new housing

²² *Without Just Cause* (NLCHP & NLIHC, February 2009). There are many media reports on renters becoming homeless, including *Mom Forced to Live in Car with Dogs* (Thelma Gutierrez and Wayne Drash, CNN, May 20, 2008).

²³ Department of Defense Memorandum, August 8, 2008, available online at: <http://www.militarytimes.com/static/projects/pages/jftr7508.pdf>.

²⁴ *Renters, Too, Feeling Effects of Foreclosure Crisis* (Lisa P. White, Contra Costa Times, February 13th, 2009)

RECOMMENDATIONS

It is time to restore some fairness by providing basic protections for renters in foreclosure situations. These problems are solvable. Most of the solutions have no cost to the government or to taxpayers. Others, such as increased funding to organizations providing legal services to renters fighting evictions, have up front costs but save money in the long run by preventing homelessness.

The following is a checklist of recommended action at the various levels of government. Some of these recommendations will be unnecessary if others are adopted:

- Federal
 - Increase eviction notice period for renters to at least 90-days in foreclosures
 - Provide that existing leases survive foreclosure
 - Clarify protections for section 8 renters to prevent disruption of tenancy and interference with housing assistance contracts
 - Require banks follow specified practices in dealing with renters who remain after foreclosure by refraining from eviction, honoring leases, maintaining habitability, and returning security deposits
 - Apply just cause for eviction limitations and affordability restrictions to any property where bailout funds are involved
 - Increase funding for legal services for renters
- State
 - Enact just cause for eviction law to stop foreclosure evictions of renters
 - Increase eviction notice period in foreclosure situations
 - Provide that existing leases survive foreclosure
 - Require banks to pay statutory relocation funds to renters displaced by foreclosure
 - Require lender and landlord to serve a copy of the Notice of Default on renters
 - Clarify bank's obligations to maintain utility service for occupied residences and to return security deposits if renters vacate
 - Strengthen protections against utility shut-offs, particularly in single family homes
 - Provide renters a right to counsel in eviction proceedings and increase funding for legal services for renters
- Local
 - Enact just cause for eviction laws to stop foreclosure evictions of renters
 - Issue declarations under California's Public Utility Code to stop utility shutoffs
 - Notify renters through recorder's office of the filing of notices of default
 - Prosecute those who defraud renters or engage in illegal shut-offs and evictions
 - Encourage sheriffs to refuse to evict, or at least delay eviction, where renters did not receive proper notice
 - Perform outreach and education to renters about their rights in foreclosure situations and available resources

In addition, banks, their real estate agents, utility service providers and others who have power over renters' housing needs must be part of the solution. Banks should follow best practices that include refraining from eviction, honoring leases, maintaining habitability, and returning security deposits. Utility service providers, whether public agencies or private companies, should agree to keep utilities on in renter-occupied properties. Attorneys and real estate agents working for banks must refrain from harassing renters or participating in any illegal eviction efforts.

CONCLUSION

Across the country, momentum is growing for greater protections for renters caught up in the mortgage meltdown. Media reports on the plight of renters are more prevalent.²⁵ Federal legislation has been introduced to provide 90-days notice to renters evicted in foreclosures,²⁶ as recommended by the National Low Income Housing Coalition. Mortgage giants Fannie Mae and Freddie Mac have adopted policies against foreclosure evictions of innocent renters. Compassionate sheriffs in a handful of counties have taken a stand against unjust foreclosure evictions.²⁷ Community groups are organizing neighbors to fight foreclosure evictions, most notably ACORN's nationwide direct action campaign to mobilize communities against these evictions.²⁸

Some progress has been made at the local level in communities in California. For example, Los Angeles has expanded its eviction protection laws to cover all foreclosed properties in the city, San Francisco has issued a declaration prohibiting utility shut-offs, and Oakland has sued banks for evicting renters in violation of the city's just cause for eviction ordinance. Tenant activists in these communities have worked closely with government officials to help protect renters in foreclosure situations.

At the same time, little has been accomplished at the state level to protect renters. The lone exception was the enactment of SB 1137 in 2008, requiring notice to renters in advance of the trustee sale and increased eviction notice (60 days instead of 30 days) for renters after foreclosure. Other legislative efforts to protect tenants after foreclosure were vetoed by Governor Schwarzenegger.

This report has outlined some of the major problems facing renters in foreclosure situations. We hope the report helps promote awareness about the plight of renters in foreclosed properties. Immediate action is necessary to protect renters caught in this unfair situation that they had no role in creating.

²⁵ *Protection for Renters* (Editorial, New York Times, March 17, 2009).

²⁶ H.R. 1247 (Rep. Keith Ellison, D-Minn).

²⁷ Sheriff Dart in Cook County, Illinois, received extensive media attention for refusing to evict renters who did not receive proper notice of eviction. See, e.g., *Sheriff: I will stop enforcing evictions* (Ofelia Casillas and Azam Ahmed, Chicago Tribune, October 9, 2008).

²⁸ *Effort Takes Shape to Support Families Facing Foreclosure* (Fernanda Santos, New York Times, February 17, 2009).