

WITHOUT JUSTIFICATION: BANKS CONTINUE MASS DISPLACEMENT OF INNOCENT TENANTS AFTER FORECLOSURE

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INTRODUCTION

As a result of the mortgage meltdown, national banks have become major post-foreclosure landlords. Despite tenant-protection laws and the clear financial benefit to continuing to rent to tenants after foreclosure, most banks have resisted embracing their role as landlords. Instead, they maintain policies and practices that result in the mass displacement of tenants after foreclosure, only to have homes sit vacant in stagnant real estate markets.

Tenants Together, California's statewide organization for renters' rights, is in a unique position to report on the impact the foreclosure crisis has had on tenants and banks. The organization, which operates California's only hotline exclusively for tenants in foreclosure situations, has counseled over 4,000 tenants across the state who find themselves in foreclosed properties through no fault of their own. Tenants Together has pushed banks to embrace their role as landlords and rethink their rental policies in light of current realities. In May 2010, Tenants Together delivered its *2010 Win-Win Proposal: A Proposal for Banks to Continue Renting to California Tenants after Foreclosure* ("Win-Win Proposal") to all major national banks. The Win-Win Proposal urges banks to comply with tenant-protection laws and to continue to rent to tenants after foreclosure.

This report analyzes the responses to the Win-Win Proposal, comparing each bank's rental policies as well as discussing the impact their respective policies and practices have had on tenants and their communities.

I. THE FORECLOSURE CRISIS HAS HIT CALIFORNIA TENANTS HARD

Tenants are innocent and hidden victims of a foreclosure crisis they did nothing to create. The scope of the problem is staggering: Tenants Together estimates that at least 37 percent of residential units in foreclosure in California are rentals. In 2009 alone, over 200,000 tenants were directly affected by home foreclosures, most of these tenants have been displaced from their homes.ⁱ 2010 figures are expected to equal or exceed the 2009 totals.ⁱⁱ

The displacement of innocent tenants after foreclosure has had a destabilizing impact on cities across the state. A community's social fabric is damaged as families lose their homes, children are pulled from their local schools, adults are severed from their neighborhood jobs, and local businesses lose their customers. Increased homelessness also necessitates greater government services and related costs.

II. FEDERAL LEGISLATION HAS MADE CLEAR THAT BANKS BECOME LANDLORDS AFTER FORECLOSURE

In May 2009, President Obama signed the Protecting Tenants at Foreclosure Act (PTFA)ⁱⁱⁱ, which made clear that banks acquiring tenant-occupied homes step into the shoes of the pre-foreclosure owner, inherit the terms of the existing rental agreement, and have the obligations of landlords.

At the outset, it is important to note that nothing in the federal law requires banks to evict at all. Instead, the PTFA provides minimum protections for tenants if a bank decides to evict after foreclosure.

Pursuant to the PTFA, banks that seek to displace tenants after foreclosure are required to serve month-to-month tenants with a 90-day notice to vacate. If a tenant has a long-term lease, the post-foreclosure landlord must allow the tenant to continue renting the property through the end of the lease term, with the exception that the lease can be terminated on 90 days notice if the unit is sold to a buyer who intends to occupy the property as a primary residence. The federal law also leaves intact additional protections tenants have in some cities under local ‘just-cause for eviction’ laws that prohibit post-foreclosure evictions.

III. TENANT ADVOCATES AND POLICY MAKERS ASK BANKS TO REFORM RENTAL POLICIES, FANNIE MAE AND FREDDIE MAC ARE FIRST TO RESPOND

A. Tenants Together Issues Win-Win Proposal

In response to the devastating impact the foreclosure crisis has had on tenants and their communities, in May 2010, Tenants Together issued its *2010 Win-Win Proposal: A Proposal for Banks to Continue Renting to California Tenants after Foreclosure* to all major national banks. The Win-Win Proposal demands that banks (1) comply with state law by notifying tenants of a new ownership and management; (2) comply with state law regarding the maintenance of rental property; (3) adopt policies to continue to rent to tenants after foreclosure, including to those with month-to-month rental agreements; (4) adopt and enforce zero-tolerance policies with respect to agents of the bank who violate tenant-protection laws; and (5) comply with state law by returning security deposits to tenants who vacate after foreclosure.

The Win-Win Proposal notes that continuing to rent to tenants not only benefits tenants and their communities, it also serves banks’ financial interest. By keeping tenants in their homes, banks could be collecting rental income and maintaining the value of their properties. A recent Bloomberg News article estimated that, in a single year, banks could have gained an estimated \$1 billion in rental income in California alone by continuing to rent to tenants after foreclosure^{iv}

Without Justification: Banks Continue Mass Displacement of Innocent Tenants After Foreclosure

Banks are forfeiting possible rental income, incurring costs for real estate agents to negotiate buy-out agreements and for lawyers to litigate eviction cases, seeing their properties' values plummet as a result of prolonged vacancy, and creating legal liability for themselves as the owners of blighted, vacant properties.

B. Policy Makers Recognize Value of Keeping Tenants in their Homes

In September 2010, the U.S. Federal Reserve convened a summit to "examine the problems associated with vacant and abandoned property and to explore innovative approaches to neighborhood stabilization." At the conference, Board Governor Elizabeth Duke concluded that "Home-ownership, long promoted by federal policy and facilitated by local housing organizations, cannot and should not be the only alternative for REO[real-estate owned] properties" and proposed that "including rental options among the mix of stabilization strategies makes particular sense at a time of high unemployment."^v

C. Fannie Mae and Freddie Mac Lead the Way

Fannie Mae and Freddie Mac, the government-sponsored financial institutions, have adopted policies that set a good example for national banks to follow. Fannie Mae has a policy that allows its tenants the option of entering into a new month-to-month rental agreement or a new 12-month lease after foreclosure. Freddy Freddie Mac has a policy that allows tenants to enter into a new month-to-month rental agreement after foreclosure. Currently, of the banks responding to our Win-Win proposal, only JPMorgan Chase has rental policies approaching those of Fannie Mae and Freddie Mac.

As is discussed further below, the rental policies Fannie Mae, Freddie Mac, JPMorgan Chase, and the rest of the national banks are often mired with compliance problems.

III. BANKS' RESPONSES TO WIN-WIN PROPOSAL REVEAL THEIR VASTLY DIFFERENT RENTAL POLICIES

A. Responsiveness to Win-Win Proposal Varied Significantly by Bank

Tenants Together mailed the Win-Win Proposal to banks in May 2010. Despite numerous follow-up efforts by Tenants Together, responsiveness to the Win-Win Proposal varied significantly by bank:

- **JPMorgan Chase, Wells Fargo, and Citibank** provided detailed responses, however the degree to which each bank has met the demands of the Win-Win Proposal has varied significantly.
- **US Bank** provided a cursory response that failed to address issues on their merits or set forth policies that meet the demands of the Win-Win Proposal.
- **Deutsche Bank** failed to accept its basic obligations under the PTFA, claiming that, as a trustee, it has "neither power nor duty to manage foreclosed properties."
- **Bank of America and OneWest** failed to provide a written response.

National Banks' Response to Win-Win Proposal

	Has Policy to Notify Tenants of New Ownership	Has Policy to Maintain Premises	Has Policy to Offer Month-to-Month Tenants The Right to Stay as Renters After Foreclosure	Has Zero-Tolerance Policy for Violations of Tenant-Protection Laws	Has Policy to Return Security Deposit
JPMorgan Chase	Yes	Yes	Yes	Yes	Yes
Wells Fargo	Yes	Yes	No	No	No
Citibank	Yes	No	No	No	No
US Bank	No specific response	No specific response	No specific response	No specific response	No specific response
Deutsche Bank	Claims that, as trustee, it has "neither power nor duty to manage foreclosed properties"				
Bank of America	Did not respond in writing to proposal				
OneWest	Did not respond in writing to proposal				

B. Policies to Inform Tenants of a New Ownership and Management, Maintain the Habitability of a Property, and Return Security Deposits Vary Significantly by Bank

Pursuant to the PTFA, banks step into the shoes of the pre-foreclosure landlord and are subject to the terms of the existing rental agreement and the California law that governs it. As a result, banks are responsible for informing their tenants of a change in ownership, maintaining the property in a habitable condition, and returning security deposits once their tenants move out. Policies regarding these obligations vary significantly by bank:

- **JPMorgan Chase** confirmed that it has policies to inform its tenants of a change in ownership, maintain the habitability of its rental property, and to return security deposits in accordance with California law.
- **Wells Fargo** confirmed that it has policies to inform its tenants of a change in ownership and maintain the habitability of its rental property. It does not return security deposits.
- **Citibank** confirmed that it has policies to inform its tenants of a change in ownership. It did not confirm it has policies to maintain the habitability of its rental property. It does not return security deposits.
- **Bank of America, OneWest, Deutsche Bank, and US Bank** failed to confirm that they have specific policies to inform tenants of a change in ownership, maintain the habitability of their rental property, or return security deposits.

C. Policies to Continue to Rent to Tenants Vary Significantly by Bank

All banks that responded to the Win-Win Proposal stated that they have policies to continue to rent to tenants with bona fide, long-term leases, as required by the federal law. Policies to continue to rent to tenants with month-to-month rental agreements vary significantly by bank, with most refusing to do so:

- **JPMorgan Chase** has a policy that allows tenants with bona fide, month-to-month tenancies to enter into a new month-to-month rental agreement after foreclosure.
- **Citibank and Wells Fargo** do not have policies to continue to rent to tenants with month-to-month leases after foreclosure.
- **Bank of American, OneWest, Deutsche Bank, and US Bank** failed to confirm that they have specific policies to continue to rent to tenants after foreclosure.

IV. ALL BANKS ARE UNDERMINING THEIR POLICIES AND VIOLATING TENANT-PROTECTION LAWS

Every bank that responded to the Win-Win Proposal claims to have policies to comply with existing tenant-protection laws. However, their on-the-ground actions often undermine these policies.

All banks contract, directly or indirectly, with real estate agents and eviction law firms that routinely harass and mislead tenants in foreclosure situations into leaving their homes. Their actions often violate tenant-protection laws and, in many cases, the banks' rental policies.

All banks use real estate agents to offer relocation assistance (commonly referred to as "cash-for-keys") to their tenants after foreclosure. Through these agreements, tenants accept a certain amount of cash in exchange for moving out of their homes quickly. However, the amount of time and money tenants receive through these agreements is often not enough to find a suitable housing alternative or cover moving costs. In addition, cash-for-keys payment amounts vary widely and often require tenants to waive rights to their security deposits as part of the agreement. As a result, tenants often receive little to nothing of value for vacating their homes on short notice. Many tenants report being harassed and misled by real estate agents into accepting low cash-for-keys offers rather than staying in their homes pursuant to their rights under existing tenant-protection laws or bank policies.

In June 2010, California Attorney General Jerry Brown responded to this industry-wide practice by launching a formal investigation of 24 banks, servicers, and eviction lawyers for potential violations of tenants' rights after foreclosure. According to Brown, "Tenants who live in properties in foreclosure are the forgotten victims of the collapse of the housing market... We'll fight every step of the way to ensure they aren't rousted from their homes in violation of the law."^{vi}

V. RECOMMENDATIONS

As a result of the ongoing mortgage meltdown, national banks will continue to acquire large numbers of tenant-occupied properties at foreclosure. With their roles as landlords clarified by the Protecting Tenants at Foreclosure Act, all banks should adopt the demands of Tenants Together's Win-Win Proposal:

- **Notify Tenants of New Ownership and Management:** Comply with the notification requirements of Section 1962 of the California Civil Code, including disclosure to tenants of contact information for the property manager.
- **Maintain Utility Services and Habitability:** Continue to provide utility services that were the responsibility of the pre-foreclosure landlord, and maintain units in habitable condition per California law.
- **Do Not Evict Except for Cause:** Refrain from evicting tenants after foreclosure unless the tenant has violated terms of tenancy.
- **Monitor Agents for Compliance with Tenant Protections:** Monitor contractors/agents for compliance with this policy and with state and local laws protecting tenants, and terminate contractors who fail to comply.
- **Return Security Deposits:** Comply with the requirements of California Civil Code section 1950.5. Return security deposits after tenants vacate, unless there are grounds for deductions.

In addition, in order to prevent further violations of tenant-protection laws, banks should use property managers rather than real estate agents to interact with tenants and manage their tenant-occupied, foreclosed properties.

CONCLUSION

The failure by most national banks to meet the demands of the Win-Win Proposal reveals an irrational unwillingness to accept their legal responsibilities as landlords and embrace the opportunities it provides. The ongoing mortgage meltdown will keep banks as landlords for years to come. To gain revenue, provide greater stability to their tenants, and earn the goodwill of their communities, banks should promptly meet the demands of Tenants Together's Win-Win Proposal and change their rental policies.

ⁱ 2010 Report: *California Renters in the Foreclosure Crisis*. Tenants Together, May 2010

ⁱⁱ Based on Tenants Together's detailed analysis of California property records compiled by ForeclosureRadar.com up to October 20, 2010.

ⁱⁱⁱ Protecting Tenants at Foreclosure Act. Public Law 111-22, Effective Date May 20, 2009, as amended by Pub L. No. 111-203

^{iv} "California Foreclosures Jeopardize Renters as Banks Seize Homes." *Bloomberg News*. Ari Levy and Dan Levi. April 6, 2009.

^v U.S. Federal Reserve Board Governor Elizabeth Duke. *Stabilizing Neighborhoods: Lessons Learned from the Field*. September 1, 2010.

^{vi} *Attorney General Brown Investigates Whether Tenants' Rights are Violated in Foreclosures*. Press Release, Office of the California Attorney General. June 28, 2010.