PATH

Projects for Assistance in Transition from Homelessness

Housing Series: The Impact of Foreclosure on Renters

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> Maria Stephens, a mortgage underwriter who made $80,000 a year, faced a reversal of fortune so swift and devastating she still can't quite fathom it. The single mom went from paying $1,900 a month in rent to bunking at a Virginia homeless shelter with her three young sons, an unexpected victim in the foreclosure crisis. First, her landlord told her that his home had been foreclosed on, then Ms. Stephens lost her job, and her new landlord decided to sell his property. "I told my sons, 'As long as we're together we'll be ok.'" (www.CNN.com/2009/US/03/08/renters.foreclosure#cnnSTCText)

Don't foreclosures impact only homeowners? And hasn't the recent foreclosure crisis affected only homeowners who borrow too much money from the bank and are unable to pay their mortgages? As Ms. Stephens' story shows, the answer to both of these questions is "no." More than a third of the people in the United States are renters. A large percentage of the low- and very low-income population rent, with the current foreclosure crisis concentrated in poor neighborhoods.[1] These statistics mean that PATH consumers and their neighbors in poor neighborhoods bear the brunt of this economic crisis.

Typically, when a homeowner is in foreclosure, the homeowner and the bank are the only ones aware of the foreclosure. This situation also applies to owners of multi-family buildings. In too many cases, renters in these buildings receive their first notices when the sheriff knocks on the door to evict them.

As the foreclosure crisis unfolded, public officials and banks did not focus on renters. Fortunately, the impact of foreclosure on renters gradually began to receive increasing attention. Congress, bank officials, local governments, and States implemented strategies to protect renters, their neighborhoods, and local economies from the devastation of mass foreclosures. Application of new renter protection policies vary city by city and bank by bank. Some communities are more assertive than others in protecting the rights of renters. Taking advantage of new laws and policies requires active education in low-income communities, including among PATH providers and consumers.

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[1] National Low Income Housing Coalition, *Renters in Foreclosure: Defining the Problem, Identifying Solutions*, January 2009, www.nlihc.org. *See also* Vicki Been & Allegra Glashausser, *Tenants: Innocent Victims of the Nation's Foreclosure Crisis*, 2 ALBANY GOVERNMENT LAW REVIEW 1 (2009).

Notifying Renters of Foreclosure and Honoring Leases

Low-income renters do not have deep resources; when they lose one apartment, they cannot always afford another. Homelessness is often the result. It is critical then, when foreclosure of a building is imminent, that low-income renters receive as much notice as possible so that they can explore other housing options. On May 20, 2009, President Obama signed the Helping Families Save Their Homes Act, Public Law 111-22. This law became effective immediately and began to help many families maintain their housing or secure other suitable housing options. Its ultimate effectiveness, however, depends on service and housing providers learning about the law and educating others, including renters, judges, lawyers, realtors, bankers, and other community stakeholders.

This new law helps renters by:

- Giving renters notice of foreclosure
- Providing renters with 90 days to move from the date of the notice
- Offering renters on month-to-month term leases notice of the foreclosure with 1 month to move
- Requiring new owners of foreclosed properties to honor existing leases
- Requiring new owners of foreclosed properties to accept the obligations of original Section 8 voucher leases
- Ensuring that banks and mortgage companies tell homeowners the name of the owner of the mortgage loan, so that mortgage payments are paid to the bank that holds the mortgage and rents are paid to the true owner
- Clarifying that it is illegal for a new owner, bank, or mortgage company to evict a tenant immediately and to offer "cash for keys" or a financial incentive if the tenant moves

State and local laws typically give tenants 30 to 60 days to move after the court enters an eviction order or the tenant agrees to move. The Helping Families Save Their Homes Act replaces the 30–60 day period with a national 90-day period, and gives tenants who lose their homes due to foreclosure the possibility of legal action against the owner.

The new law also requires that new owners treat Section 8 voucher leases as if they were private leases. This status means that the new owner, be it the bank or a purchaser of a foreclosed home, must accept rent and honor existing private and Section 8 voucher leases. As always, a new owner may evict a tenant for violating the lease or because the owner wants to live in the house or apartment. These reasons are "good cause evictions." The new law does not change the notice requirements for these evictions. These changes are for evictions not based on "good cause," such as foreclosures.

The National Housing Law Project (NHLP) created a *Renters in Foreclosure Toolkit*, available from the National Low Income Housing Coalition (NLIHC).

The Toolkit includes:

- NLIHC's one-page explanation of the new tenant protection provisions

- Questions and answers for tenants of buildings sold at foreclosure after May 20, 2009
- NHLP cover memo, tenant protections
- Letter from a Section 8 tenant to landlord
- Letter from a non-Section 8 tenant to landlord
- Sample notice for all tenants
- Sample notice for Section 8 voucher holders from a Public Housing Authority (PHA)
- Sample letter to judges who handle landlord tenant cases
- Sample letter to PHA and Section 8 Housing Choice voucher administrators
- 701-704, Public Law 111-22

Protecting Tenants

Cities with rent control usually prohibit evictions unless based on "good cause." Unless a tenant violates the lease, eviction is not possible. These prohibitions, however, did not stop banks and mortgage companies from illegally evicting tenants.[2] PATH providers can help change these practices by educating banks, landlords, and tenants, and by joining other local groups working to protect tenants through the Helping Families Save Their Homes Act.

State Protections

The Helping Families Save Their Homes Act supersedes local laws, unless the local laws are more protective of the tenant. Various States passed tenant protections before the Federal law passed, but most of those laws were less protective than the Helping Families Save Their Homes Act, and therefore superseded by the Federal regulations. For example, California enacted a law in 2008 that requires the owner to give tenants a 60-day notice of a foreclosure and impending eviction, where rent control is not in effect. Under the new Federal law tenants—including those holding Section 8 vouchers—must receive a 90-day notice. Montana, Minnesota, Illinois, New Hampshire, Massachusetts, and New Jersey were some of the States that provided tenant protections in 2008. Each of these States provided tenants with at least a 30-day notice to vacate after foreclosure or required the new owner to comply with landlord-tenant law and use the judicial eviction process. The Helping Families Save Their Homes Act ensures a 90-day notice in all States.

At all stages of the eviction process, including in court, the Fair Housing Act may help tenants obtain additional time to move.[3] The new landlord may also decide, or be convinced, to accept the rent rather than evict the tenant. If an owner, including a bank or mortgage company, simply sends an eviction notice, it is critical to inform renters that eviction is not possible without a court order.

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[2] *Oakland Settles with Chase over Foreclosure Evictions*, http://www.bizjournals.com/sanfrancisco/stories/2009/06/29/daily90.html.

[3] *See, e.g.*, *Fair Housing Information Sheet #4: Using Reasonable Accommodations to Prevent Eviction*, *available at* http://bazelon.org/issues/housing/infosheets/fhinfosheet4.html.

Fannie Mae and Freddie Mac Mortgages

Before the Helping Families Save Their Homes Act became law, a renter's ability to avoid a surprise eviction depended in part on the source of the owner's mortgage. If Fannie Mae or Freddie Mac was the mortgagor, the tenant had some protections. Starting in January 2009, Fannie Mae adopted a policy allowing renters to remain in their homes after the owner loses the home to the bank through foreclosure. The new policy allows residents of about 4,000 properties to sign new leases with Fannie Mae while the property is up for sale. Similarly, Freddie Mac implemented a moratorium on foreclosure sales of occupied properties from November 26, 2008 until March 6, 2009. The moratorium resulted in postponed foreclosures for more than 13,000 borrowers to give them more time to change the terms of the mortgage, benefiting renters as well as owners. Freddie Mac lifted its moratorium on foreclosures on March 31, 2009. More importantly for renters, Freddie Mac launched a rental initiative that let former borrowers and existing renters temporarily stay in homes with month-to-month leases after foreclosure. How long Freddie Mac will continue this initiative is unclear at present.

Neighborhoods at Risk

Foreclosures raise many concerns in addition to notice and eviction. For renters, homeowners, and their communities, foreclosures may cause problems of habitability and neighborhood deterioration. Property owners may use unscrupulous methods to evict tenants, such as shutting off utilities. If the new owners are banks or mortgage companies new to the property management business, they may fail to undertake their responsibilities to pay for property maintenance and utilities. In many cities, the number of homes lost to foreclosure blighted entire neighborhoods. The following section briefly addresses each of these issues.

Foreclosed and Unsold Properties

PATH consumers often live in poor neighborhoods where rents are lower, and where properties frequently receive rental vouchers or maintenance with government rental assistance. Foreclosures that lead to abandoned homes lower the quality of the neighborhood and strain the ability of PATH consumers to move about safely. Many cities around the country try to minimize the harm done by vacant and abandoned properties. The U.S. Conference of Mayors describes many of these efforts in a recent report, "Vacant and Abandoned Properties: Survey and Best Practices."

PATH providers may want to explore how their communities respond to this crisis. Many cities enacted or strengthened local ordinances that require building owners to maintain foreclosed and vacant properties. In foreclosure proceedings, banks and mortgage companies become the owners, and they are the ones required to maintain the properties. Yet mortgage companies and banks often know little about managing properties, which can have detrimental effects on the maintenance of properties and the individuals and families who reside there.

Kansas City, St. Paul, Baltimore, Pine Bluff, Boston, Cincinnati, and Buffalo are some of the cities cracking down on these new owners. Buffalo, for example, instituted aggressive prosecution of banks with control of vacant properties. Some cities forced banks to go to court and agree to maintain their properties.[4] PATH providers may find it profitable to contact their Mayors, City Attorneys, code enforcement officials, and neighborhood associations to coordinate their cities' anti-blight efforts with the specific housing needs of PATH consumers. One useful tool is the above-mentioned U.S. Conference of Mayors' survey of best practices for cities' management of abandoned homes.[5]

[4] U.S. Conference of Mayors, *Vacant and Abandoned Properties: Survey and Best Practices*, June 2008, www.usmayors.org.

[5] *Id.*

Utility Terminations

When a property goes into foreclosure, the former owner is no longer responsible for paying utilities. It may take months before renters learn who the new owner is. In the meantime, the utility company shuts off services because bills are unpaid. Even when they learn the identity of the new owner, it might be a bank or mortgage company that believes its only obligation is to sell the property quickly. Often, renters have to live in hazardous and unhealthy apartments with no access to water, light, or heat.

Many State laws prevent utility companies from terminating service if doing so would create a hazardous condition. But, companies may shut off service once they notify residents and give them an opportunity to enter a new contract. PATH and other low-income tenants are unlikely to be able to pay security deposits for utilities, and they are often unable to assume responsibility for utilities in a multi-family building.

San Francisco and Oakland are two cities that recently enacted policies protecting tenants from utility shut-offs.[6] The Oakland policy gives tenants 120 days to locate their landlord, assume payment of utilities, or make other arrangements. The San Francisco policy, issued jointly by the Building Department and the City Attorney's Office, prohibits utility companies from terminating services in master-metered multi-unit residential buildings, irrespective of foreclosure status.[7] PATH providers and their colleagues should explore the possibility of working with their city's agencies to adopt similar if not broader protections.

Financial and Housing Search Assistance

Tenants who pay rent to private landlords through Section 8 rental vouchers are subject to losing housing if the bank forecloses on the homeowner. It is the responsibility of the housing agency to preserve Section 8 rental vouchers for tenants, [8] help tenants apply them to new housing, [9] and act appropriately if a new owner refuses to accept vouchers. In many cases, banks and mortgage companies wrongfully evicted tenants for non-payment of rent by refusing to accept the tenant's Section 8 voucher. Knowledgeable PATH providers can avoid such evictions by working with housing agencies, legal services, and landlords.

The Housing Authority of New Haven (HANH) in Connecticut, like many housing agencies across the country, created a program to address the plight of PATH consumers and other low-income renters who lose homes through foreclosure. The housing agency set aside 50 vouchers to prevent homelessness for renters who might lose apartments due to foreclosure. Second, the HANH set aside project-based vouchers for buildings where continuing home ownership is at risk, putting the low-income tenants at risk, too.

All housing agencies that receive funding from the U.S. Department of Housing and Urban Development (HUD) must also provide housing search assistance. If an individual with a rental voucher has a disability, as many PATH consumers do, the housing agency must provide a list of accessible apartments and "otherwise assist the family in locating an

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[6] National Housing Law Project, 39 HOUSING LAW BULLETIN 89 (March 2009), www.nhlp.org.
[7] *Id.*
[8] *See* 24 CFR part 982.
[9] *Housing Choice Voucher Portability Procedures and Corrective Action*, PIH 2008-43(HA).

available accessible dwelling unit."[10] Housing searches may not have a maximum term, although they may not be indefinite.[11]

Housing agencies also have some flexibility regarding rental limits for subsidized housing. For example, if an individual or family finds an accessible apartment whose rent exceeds HUD's fair market rent ceiling, the housing agency may permit a higher rent. Depending on the amount exceeding HUD's fair market rent ceiling, the housing agency, HUD regional office, or HUD headquarters must authorize the higher rent.[12] "Accessible apartment" in this context, includes units that accommodate an individual's *physical and mental* disabilities.

Housing agencies, including PATH providers, should work with supportive service and disability organizations as well as other governmental agencies to secure housing for individuals who lose their housing or are at imminent risk of losing their housing due to foreclosure. This process applies not simply to helping PATH consumers search for housing, but to the housing agency's PHA Plan process. The PHA Plan establishes the housing agency's allocation and delivery of resources during the year.[13] If the PATH provider has an opportunity to contribute to the Plan's development, the housing agency may provide increased housing opportunities and more effective services and housing for PATH consumers.

Conclusion

The economic crisis affected everyone, but had its greatest impact on poor and vulnerable individuals and families. While it is always difficult for PATH providers to deliver adequate and appropriate services with limited funding, the current crisis made it even more challenging. Nonetheless, PATH providers around the country work every day to devise creative solutions to address the housing needs of the people they serve.

About the Housing Series: Access to affordable housing is essential to prevent and end homelessness. Locating housing resources is a daunting task, even without the stereotypes and generalizations that result in discrimination against people experiencing homelessness and mental illness. PATH providers know firsthand the scarcity of housing for individuals with limited incomes. To assist PATH providers in finding affordable housing, the PATH Technical Assistance Center created the Housing Series. The Housing Series consists of information, resources, and tools to help providers obtain housing for the people with whom they work. The Housing Series is available on the PATH website under "Topics." Additional resources and tools will be added periodically. Please send comments on the Housing Series and suggestions for additional resources to path@samhsa.hhs.gov.

[10] HUD Section 504 Regulation, 24 CFR Sec. 8.28(3).
[11] New Freedom Initiative, Executive Order 13217: *Community-Based Alternatives for Individuals with Disabilities and the Housing Choice Voucher Program*, Notice PIH 2005-5 (HA) at 2.
[12] *Id*. at 5.
[13] *Id*. at 3.