2010 Report: California Renters in the Foreclosure Crisis

May 2010

TENANTS TOGETHER
California's Statewide Organization for Renters' Rights

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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 is in a unique position to report on the human impact of the foreclosure crisis on renters. The organization operates California's only hotline exclusively 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.tenantstogether.org/hotlineintake to get a call back from a counselor. Since launching, the hotline counselors have assisted approximately 4,000 tenants.

2010 FORECLOSURE REPORT

This report discusses recent developments affecting tenants in foreclosed properties and analyzes foreclosure data from 2009. The current report follows our initial report entitled *Hidden Impact: California Renters in the Foreclosure Crisis,* issued in March 2009. That groundbreaking report sounded the alarm on the impact of the foreclosure crisis on tenants and made a number of recommendations to protect and expand the rights of tenants in foreclosure situations. In the year following the release of our first report, many of our recommendations have been adopted, but there still remains a long way to go to assure meaningful protections for tenants who are victims of the foreclosure crisis.

SPECIAL THANKS to the following people for their assistance in making this report possible: Tenants Together's Hotline Counselors Linda Akesson, Eva Auyeung, Sarah Brett, Rod Brown, Judith Burandy, Emily Charles, Heather Freinkel, Christian Gribneau, Nela Hadzic, Margaret Hough, Nadia Iqbal, Claire Johnson, Sarah Lange, Sam Levign, Ryan Murphy, Amy Weiss; Kevin Stein of the California Reinvestment Coalition; Danilo Pelletiere of the National Low Income Housing Coalition; Dean Preston, Andy Blue, and Judy b. of Tenants Together.

ABOUT THE AUTHOR

This report was authored by Gabe Treves, Tenants Together's Program Coordinator. He is in charge of Tenant Together's foreclosure-related work. His work to expand and protect the rights of tenants in foreclosure situations includes managing the Tenant Foreclosure Hotline as well as pressuring banks to adopt more sensible policies, engaging regulatory agencies to assure compliance with existing tenant protection laws, and working with the media to bring attention the plight of tenants caught up in the foreclosure crisis. Mr. Treves has an extensive background in research, having worked as a labor union researcher for six years.

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EXECUTIVE SUMMARY

Tenants are innocent victims in a foreclosure crisis they did nothing to create. In 2009, tenants and their communities continued to suffer from banks' inhumane and irrational policies to evict all occupants of their foreclosed properties. The results have been devastating, with hundreds of thousands of California tenants needlessly displaced and communities left with vacant homes and blight.

This report includes three sections: the first highlights recent developments affecting tenants, the second presents Tenants Together's research findings from a detailed analysis of 2009 property records, the third section presents recommendations to mitigate the impact of the foreclosure crisis on California tenants.

Key developments reported:

- The enactment of the Protecting Tenants at Foreclosure Act (PTFA), the first federal legislation to expand tenants' rights in nearly 20 years
- The adoption of just cause for eviction laws in the cities of Richmond and Ridgecrest, and the expansion of similar laws in Los Angeles and San Francisco, to protect tenants from post-foreclosure eviction
- Ongoing harassment and violations of tenants rights by real estate agents and eviction lawyers working on behalf of banks and private investors acquiring foreclosed properties

Key 2009 research findings reported:

- At least 37 percent of homes in foreclosure are rentals
- More than 200,000 California renters were directly affected by home foreclosures in 2009 alone, most of whom have been displaced from their homes
- From 2008 to 2009, there was a 70 percent increase in the foreclosure rate of apartment buildings of 5 or more units
- The massive displacement of tenants across California remains, first and foremost, a problem caused by banks, with 85 percent of properties acquired at foreclosure by financial institutions

Key Recommendations made:

- Make the federal Protecting Tenants at Foreclosure Act permanent
- 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

This is Tenants Together's second annual foreclosure report. These reports are designed to shed light on the plight of tenants in foreclosure situations and work towards solutions to this ongoing crisis.

FORECLOSURE-RELATED DEVELOPMENTS AFFECTING TENANTS

I. New Laws Expand Tenants' Rights in Foreclosure and Define Banks' Obligations as Landlords

Since our March 2009 report, federal, state, and local governments have enacted laws to protect tenants in foreclosure situations.

A. The Protecting Tenants at Foreclosure Act Enacted

On May 20, 2009, President Obama signed into law the Protecting Tenants at Foreclosure Act (PTFA), which protects most tenants in foreclosure situations. The PTFA provides tenants with the right to a 90-day notice to vacate after foreclosure. The act also requires new owners after foreclosure to allow tenants with leases to continue occupying the property until 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 PTFA also provides similar protections for Section 8 voucher holders and clarifies that post-foreclosure owners assume Housing Assistance Payments (HAP) contracts on foreclosed properties. The protections of the PTFA are scheduled to expire at the end of 2012.

The PTFA is important for California tenants, not only because it provides more time to tenants to stay in their homes after foreclosure, but also because it clarifies that banks and other post-foreclosure owners of property step into the shoes of the pre-foreclosure owner and have the obligations of landlords. Post-foreclosure owners had maintained that they were not "successors" under California law and therefore were not responsible for repairs, return of security deposits, and other landlord obligations. The passage of the PTFA makes those arguments untenable. Put simply, banks assume all landlord obligations after the foreclosure.

B. Stronger Statewide Utility Shut-Off Protection Adopted

The California Legislature enacted SB 120, a bill that extends protections against utility shutoffs to renters living in single-family homes. The bill, sponsored by the Western Center on Law and Poverty, and authored by Senator Alan Lowenthal (D- Long Beach), was signed by the governor and is now law. This plugs up a major loophole that resulted in utility shutoffs that endangered the health and safety of tenants living in foreclosed single-family homes. Tenants now have the right to be notified of impending utility shutoffs, to put accounts in their own names without liability for delinquent amounts, and to deduct from their rent any costs they incur for utility services that were the responsibility of the landlord.

C. Local Just Cause for Eviction Laws Enacted

In cities with local ordinances restricting the legal grounds for evictions ("just cause for eviction laws"), foreclosure alone is not a legal grounds for eviction. Presently, 16 California cities have such laws. In 2009, two California cities, Richmond in Contra Costa County and Ridgecrest in Kern County, passed just cause for eviction laws that prohibit the eviction of tenants due to foreclosure. (Ridgecrest's law is scheduled to sunset in September 2010.) Los Angeles and San Francisco recently extended their eviction protections to cover all tenant-occupied units after foreclosure. The passage and expansion of just cause for eviction laws represents a cost-free and effective way to stop evictions of tenants after foreclosure.

II. Banks Maintain Irrational Policies to Evict Tenants after Foreclosure

Despite on-going efforts to persuade banks to continue to rent to tenants after foreclosure, banks have stubbornly continued their mass eviction of tenants.

By driving tenants out, banks are turning away huge amounts of money in potential rental income. Tenants Together estimates that banks forfeited over $776 million in rental income in 2009 alone. Additionally, banks are incurring costs for lawyers to litigate eviction cases and for real estate agents to negotiate 'cash-for-keys' deals. Once the properties are vacated, they become prime targets for vandalism, further contributing to plunging property values, and creating legal liability for banks as the owners of blighted vacant property. Furthermore, banks continue to tarnish their standing in local communities by maintaining their policies to evict rent-paying tenants.

The federally-sponsored financial institutions Freddy Mac and Fannie Mae are major post-foreclosure landlords and the first to take steps to adopt more tenant-friendly policies. Freddy Mac's new policies allow tenants to enter into new month-to-month leases, while Fannie Mae's new policies gives tenants the option to enter into a new month-to-month lease or a new 12-month lease. While these policies come short of providing long-term security for tenants and have been mired by implementation problems, they represent a significant step in the right direction.

III. Banks, Private Investors, Real Estate Agents, and Eviction Law Firms Continue to Violate Tenant-Protection Laws

Despite the adoption and expansion of tenant protection laws, banks, and private investors that acquire properties at foreclosure continued to contract with real estate agents and eviction law firms that routinely harass and mislead tenants in foreclosure situations.

A. Real Estate Agents

Real estate agent misconduct toward tenants is rampant in California. Banks and private investors contract with real estate agents to vacate and sell their foreclosed properties. Many of these real estate agents see tenants as obstacles to the commission they will get once the property is sold. Real estate agents are empowered by banks and private investors to offer tenants 'cash-for-keys,' a cash incentive to move out quickly. Many real estate agents pressure tenants into signing these agreements through misinformation and scare tactics. In accepting the 'cash-for-keys' offers, many tenants sign away their legal rights to stay in their homes without being informed of their legal rights.

B. Eviction Law Firms

Eviction law firms regularly file improper eviction lawsuits against tenants living in foreclosed properties. Presently, most tenants move out rather than fight these improper lawsuits because they do not know their rights, cannot afford legal representation, and/or do not want to risk damaging their tenant history by appearing as a defendant in an eviction case.

Tenants Together research indicates that a small number of eviction lawyers handle the majority of bank eviction. These include the Endres Law Firm (Davis); Pite Duncan (San Diego); Law Offices of Randall Naiman (San Diego); Jackson & Associates (Irvine); McCarthy Holthus (San Diego); The Law Offices of Les Zieve (Huntington Beach); and Ruzicka & Wallace (Irvine), among others.

IV. Regulators Begin to Step Up: Issue Advisories and Launch Investigations

The California Department of Real Estate and the federal Office of the Comptroller of the Currency have taken preliminary steps to address the bad actors that violate tenants' rights in the foreclosure crisis.

A. Office of the Comptroller of the Currency

In response to complaints filed by tenants being harassed by agents of national banks after foreclosure, the Office of the Comptroller of the Currency ("OCC") directed its examiners to evaluate banks' compliance with the PTFA as part of its certification requirements. This development came after a campaign by Tenants Together and the California Reinvestment Coalition to bring tenant complaints to the attention of the OCC.

B. California Department of Real Estate

In response to complaints filed by Tenants Together on behalf of its members being harassed and misinformed by real estate agents working for banks after foreclosure, the California Department of Real Estate has opened three investigations into alleged misconduct.

V. The Impact of the Foreclosure Crisis on Tenants Continues to Grow

The ongoing displacements of tenants, often in direct violation of their rights, continues to have a devastating impact on tenants and their communities.

A. Impact on Tenants

Most tenants do not find out their homes have been foreclosed until they are facing imminent displacement. A foreclosure can impact every aspect of a tenant's life. Tenants in pre-foreclosure situations often face health hazards as their defaulting landlords become unresponsive to their needs and let their homes deteriorate. Once a foreclosed property is acquired by a bank, habitability problems often go from bad to worse. After tenants are displaced, most are denied the return of their security deposits and many struggle to find suitable housing alternatives. Many tenants are forced to live far from their jobs, schools, and social networks, while others end up homeless. In addition, despite paying their rent on time, a growing number of tenants are being displaced from their second, third or even fourth home in recent years, all because of their landlords' foreclosures. This undermines housing stability and is particularly traumatic for seniors, families with children, and persons with disabilities.

B. Impact on Communities

When tenants are displaced as a result of foreclosure, the entire community is affected. Areas with high foreclosure rates suffer from prolonged vacancies and blight when homes are emptied of tenants, and property values decline accordingly. Homelessness rises due to widespread evictions, requiring more government services and related costs. Further, when tenants are forced to move away from the community, stores lose customers, businesses lose employees, and schools lose students.

VI. Tenants Across California Work to Protect and Expand Their Rights

In cities throughout California, tenants in foreclosure situations continue to work to strengthen their rights by:

- Pushing back against harassment by banks and private investors acquiring foreclosed properties and their agents
- Filing complaints with regulators and other oversight bodies
- Organizing their communities to demand just cause for eviction laws to protect tenants from post-foreclosure evictions
- Lobbying for tenant-friendly legislation at the state level
- Organizing and participating in large-scale demonstrations as part of a growing, national movement for bank-accountability
- Sharing their stories through media to bring more attention to the issue, pressure elected officials to get involved, and pressure banks to do the right thing

A. Ridgecrest: A Case Study in Community Organizing

In May 2009, Tenants Together received numerous calls to its Tenant Foreclosure Hotline from tenants at La Mirage, a 300-unit complex in Ridgecrest, Kern County. Most of La Mirage's residents were tenants who, despite always paying their rent on time, were facing eviction because their landlords were going into foreclosure.

In a short period of time, Tenants Together worked with local residents to educate the community about the impeding evictions and get the city council to enact a just cause for eviction law to provide tenants in foreclosure situations protection against foreclosure evictions and stabilize the community at large.

In June 2009, city officials concerned about the evictions, hosted a well attended community forum to discuss the scope of the problem and the proposed just cause for eviction law. The community forum was attended by local residents as well as representatives from Tenants Together, Greater Bakersfield Legal Assistance, and city officials. Subsequent hearings on the measure at City Hall were also well attended by concerned local residents. The local media provided extensive coverage of the plight of the La Mirage tenants. In August 2009, the Ridgecrest City Council voted 3 to 2 to adopt the eviction protection law.

Ridgecrest serves as an important example for other jurisdictions. Located in Kern, a county not known for tenant activism, Ridgecrest passed the county's first tenant protection laws in direct response to impending large-scale foreclosure evictions. Many tenants were able to remain in their homes as a result of the local laws. This organizing victory demonstrates what a small group of determined tenants can accomplish at the local level to stop unjust foreclosure evictions.

2009 RESEARCH FINDINGS

While the media and policy makers have begun to pay more attention, tenants remain innocent and, often, forgotten victims of the foreclosure crisis. By quantifying the impact of the foreclosure crisis on tenants, this reports hopes to bring tenants' struggles out of the shadows.

This report's research findings result from a detailed analysis of property records of all foreclosed residential properties in California in 2009.*

I. Scope of the Crisis

The foreclosure crisis has had a devastating impact on tenants. Using conservative standards, our research indicates that in 2009:

- 211,154 residential units were foreclosed
- 77,145 rental units were foreclosed
- 37% of foreclosed units were rentals
- 208,795 renters were directly affected

*All property records reviewed were from ForeclosureRadar.com. The number of rental units was determined by property type. Single Family Homes and Condominiums are 29% and 31% rentals, respectively, based on analyses of ForeclosureRadar data. 83% of the units in 2-unit buildings are rentals, and 83% of the units in 3-4 unit buildings are rentals, based on American Community Survey (ACS) data. Apartment buildings of 5 or more units are considered 100% rental units. To determine the total renters affected, the number of rental units was multiplied by the rental vacancy rate (4.7% per ACS) and the resulting number of occupied units was multiplied by average rental household size (2.84 persons per household per ACS).

II. Types of Properties Being Foreclosed

In 2009, the majority of renter-occupied properties were single-family homes and condominiums. However, almost 30 percent of the renters affected by foreclosure lived in multi-unit buildings, many of which were large apartment complexes.

Type of Properties Foreclosed and Total Renters Affected in 2009

	Rental Units Foreclosed by Property Type	Percentage of Total Rental Units Foreclosed by Property type	Total Renters Directly Affected
Single-Family Home	46,476	60.3%	125,951
Condominium	7,744	10.0%	20,959
Multi Family 2-4 Units	9,779	21.6%	45,058
Multi Family 5+ Units	6,217	8.0%	16,826
Total	**77,145**	**--**	**208,795**

As the below-table shows, the rate of foreclosed multi-unit buildings increased significantly from 2008 to 2009, while the rate of foreclosed single-family homes decreased slightly. This trend is likely to increase as more loan modification programs target owner-occupied properties (which are primarily single-family homes and condominiums), while multi-unit rental properties continue to fall by the wayside and into foreclosure.

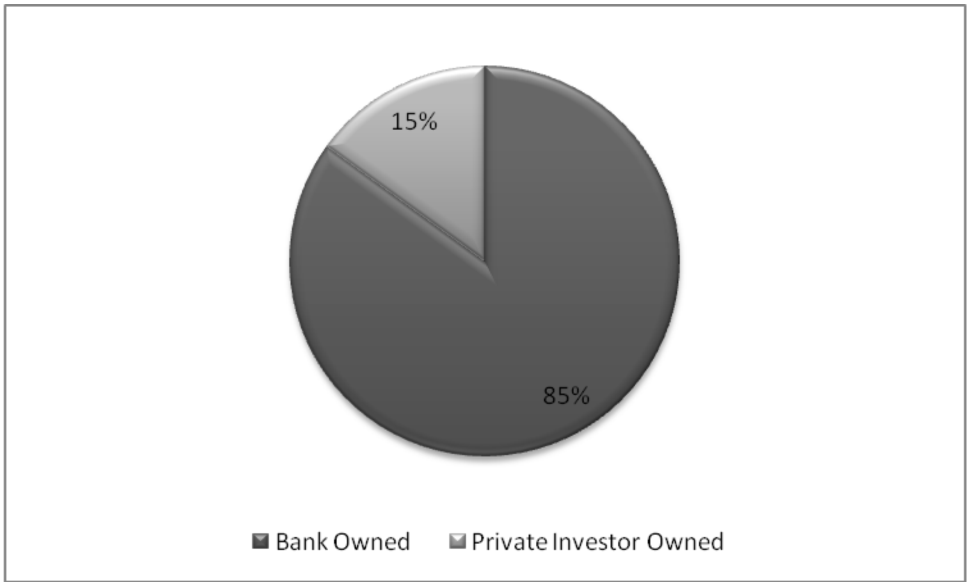
Change in Rate of Foreclosure by Property Type: 2008 to 2009

Type of Property	Change in Rate of Foreclosure
Single-Family Homes	-3.1%
Condominium	+ 12.9%
Multi Family 2-4	+ 14.1%
Multi Family 5+	+ 69.5%

III. Post-Foreclosure Landlords

In 2009, banks acquired 164,801 foreclosed properties, while private investors acquired 29,026 foreclosed properties, resulting in an 85%-15% split.

Type of Post-Foreclosure Landlord



The banks acquiring large numbers of foreclosed properties include Fannie Mae, Freddie Mac, JP Morgan Chase, IndyMac, Aurora Loan Services, Wells Fargo, Bank of America, HSBC, US Bank, and Deutsche Bank. The private investors acquiring large numbers of foreclosed properties include Marbury Park Group, SD Seaport, Community Fund, Starlite Management, and REO Properties.

IV. Tenant Foreclosure by County

Impact of the Foreclosure Crisis on Tenants at the County Level

Tenants in every county across the state have been hit hard by the foreclosure crisis. In 2009, the counties with 5,000 or more foreclosed rental units were: Los Angeles, Riverside, Sacramento, San Bernardino, and San Diego.

Renters Affected by Foreclosure by County*

County	Total Foreclosed Units	Total Foreclosed Rental Units	Percent of Foreclosed Units that are Renter Occupied	Total Renters Affected
ALAMEDA	6,862	2,819	41.1%	7,631
AMADOR	207	60	29.0%	162
BUTTE	913	357	39.1%	967
CALAVERAS	416	126	30.3%	341
COLUSA	146	43	29.8%	118
CONTRA COSTA	8,426	2,810	33.3%	7,604
DEL NORTE	44	14	31.5%	37
EL DORADO	1,117	432	38.6%	1,169
FRESNO	5,726	2,055	35.9%	5,562
GLENN	144	60	41.6%	162
HUMBOLDT	199	97	48.7%	262
IMPERIAL	1,322	424	32.1%	1,147
KERN	7,851	2,847	36.2%	7,705
KINGS	376	116	30.9%	314
LAKE	585	172	29.4%	465
LASSEN	104	35	33.4%	94
LOS ANGELES	38,584	17,141	44.4%	46,372
MADERA	1,394	452	32.4%	1,223
MARIN	472	167	35.4%	452
MARIPOSA	61	22	35.6%	59
MENDOCINO	211	69	32.6%	186
MERCED	3,436	1,098	32.0%	2,971
MONO	47	14	29.0%	37
MONTEREY	2,599	860	33.1%	2,328
NAPA	636	260	40.8%	702
NEVADA	487	160	32.9%	433
ORANGE	8,949	2,934	32.8%	7,940
County	**Total**	**Total**	**Percent of**	**Total**

	Foreclosed Units	Foreclosed Rental Units	Foreclosed Units that are Renter Occupied	Renters Affected
PLACER	2,250	718	31.9%	1,943
PLUMAS	50	15	29.0%	39
RIVERSIDE	25,188	7,807	31.0%	21,131
SACRAMENTO	13,809	5,096	36.9%	13,791
SAN BENITO	468	160	34.1%	432
SAN BERNARDINO	20,982	6,859	32.7%	18,564
SAN DIEGO	16,000	6,395	40.0%	17,309
SAN FRANCISCO	804	359	44.6%	971
SAN JOAQUIN	8,353	3,108	37.2%	8,412
SAN LUIS OBISPO	864	289	33.4%	781
SAN MATEO	1,470	508	34.6%	1,375
SANTA BARBARA	1,277	434	34.0%	1,176
SANTA CLARA	5,178	1,800	34.8%	4,873
SANTA CRUZ	739	278	37.6%	752
SHASTA	792	262	33.0%	708
SISKIYOU	120	37	30.8%	100
SOLANO	4,274	1,377	32.2%	3,728
SONOMA	2,260	825	36.5%	2,232
STANISLAUS	6,353	2,235	35.2%	6,048
SUTTER	673	228	33.8%	616
TEHAMA	314	107	34.1%	290
TULARE	2,343	817	34.9%	2,210
TUOLUMNE	316	115	36.4%	311
VENTURA	3,092	1,035	33.5%	2,801
YOLO	916	293	32.0%	793
YUBA	877	327	37.2%	884

*Counties with less than 30 foreclosed properties were excluded from the above-summary table

RECOMMENDATIONS

In our March 2009 report, *Hidden Impact: California Renters in the Foreclosure Crisis*, we made a number of recommendations to protect and expand the rights of tenants in foreclosure situations. In the year following the release of our first report, many of our recommendations have been adopted: specifically, the increase of the eviction notice period for tenants to 90 days, the provision that existing lease survives foreclosure, the strengthening of laws to protect tenants from utility shut-offs, and the enactment and expansion of local just cause for eviction laws.

Despite these steps in the right direction, there remains a long way to go to assure fairness and justice for California's tenants caught up as innocent victims of the foreclosure crisis. As banks have not voluntarily adopted more responsible policies towards tenants, government action remains necessary. Tenants Together makes the following recommendations to protect tenants from further abuse:

- Protections of the federal Protecting Tenants at Foreclosure Act, which sunset at the end of 2012, should be made permanent
- California cities should enact just cause for eviction laws to provide their residents with long-term protection against foreclosure eviction
- California counties should notify tenants when a notice of default is filed with the County Recorder's Office
- Enforcement agencies must step up their efforts to assure compliance with tenant-protection laws and hold banks and their agents accountable for violating their rights
- Funding for legal services for tenants in foreclosure situations must be increased and tenants should be provided a right to counsel in eviction cases
- California law should be amended to ensure that evictions of innocent tenants do not end up on tenants' credit reports. SB 1149, authored by Senator Ellen Corbett (D-San Leandro), would provide such protections and is pending at the time of this report

CONCLUSION

As our 2009 and 2010 tenant foreclosure reports make clear, the foreclosure crisis continues to affect a huge amount of tenants and their communities. Despite some steps in the right direction, the situation remains unacceptable, with tenants driven from their homes and entire communities suffering because of short-sided conduct of banks and private investors.

There remains a long way to go to assure meaningful protections for tenants in foreclosure situations. Tenants Together will continue work to protect and expand the rights of tenants in foreclosure situations as well as to track developments and quantify the impact of the foreclosure crisis on tenants and their communities.