Renters and Foreclosure

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Committee on Housing and Buildings

Erik Martin Dilan, Chair
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Chairman Dilan and all the members of the Committee, I am honored to share with you some of our research on the impact of the foreclosure crisis on renters, and the state of tenants' rights when their landlords suffer foreclosure in New York City. My name is Vicki Been, and I am the Elihu Root Professor of Law at New York University School of Law and Director of the Furman Center for Real Estate and Urban Policy. The Furman Center is a joint research center of NYU's School of Law and its Robert F. Wagner School of Public Service. Founded in 1995, the Center brings the expertise of our law faculty and our urban economics faculty, along with the talents and energy of phenomenal students from all parts of New York University, to bear on urban problems. We are one of the nation's leading academic research centers devoted to the public policy aspects of land use, real estate development and housing.

Let me start by thanking the committee for tackling this very important issue. Tenants are innocent victims of the nation's foreclosure crisis, and often are overlooked in the public policy debates about responses to the crisis. Thousands of tenants put down

security deposits, secured leases and paid their rent on time for years, believing that they were protected from sudden displacement or upheaval, and considering themselves lucky to have avoided the subprime loans that helped to precipitate the mortgage crisis. Then unfortunately, they find their utilities shut off or an eviction notice or "for sale" sign on their door —often with very little warning—and learn that they are among the countless victims of the foreclosure crisis. While tenants in rent-regulated or Section 8 apartments are statutorily protected from foreclosure related eviction, other tenants in New York City and around the country are not.

To aid the committee as it evaluates the proposed bills today, I will provide an overview of available data on the scope of the tenant foreclosure crisis in New York City, and discuss very briefly the range of solutions adopted or under consideration around the country.

How many tenants are affected by foreclosure?

In 2007, we found that well over half of all foreclosure filings in New York City were on 2-4 family or 5+ dwellings, which affected an estimated 15,000 renter households. In 2008, we saw an increase in the number of foreclosure filings on 5+ buildings, which drove the total number of affected renter households in New York City up to about 16,000. Data for the first quarter of 2009 show an even more dramatic increase in foreclosure filings on 5+ buildings. In all of 2007, nearly 4,000 units impacted by foreclosure were in 5+ buildings; but in just the first quarter of 2009, more than 4,500 units were in 5+ buildings that received a foreclosure filing. This stark

increase in the number of tenant households affected is troubling, and makes the committee's attention to this issue all the more important.

How are these tenants affected?

Foreclosure can have many potential negative consequences for tenants. In New York City, many tenants are protected from foreclosure related eviction by rent regulation laws, which allow eviction only for statutorily defined causes (such as non-payment of rent) that do not include foreclosure. Approximately half of rental apartments in the New York City are rent-regulated. However, for most other renters, foreclosure can and often does result in eviction—with several negative consequences. Before eviction, tenants often have to deal with utility shut-offs and a decline in repairs or maintenance. After eviction, tenants' lives are severely disrupted: they may have difficulty paying moving expenses and finding a new affordable apartment, their children may have to be moved from one school to another in the middle of the year, and they likely will be unable to recover their security deposits. Finally, the eviction goes on the tenants' credit records, which can make it more difficult to rent again.

What policy solutions are being adopted and proposed around the country?

There are a range of policies being tried to mitigate the harmful effects foreclosures can have for tenants:

1. Outreach and information: Some jurisdictions are informing tenants about their rights and relevant assistance programs *before* any foreclosure occurs. Even tenants who are legally protected from eviction are often

intimidated out of their homes because they are unaware of their rights. With better information about their rights and resources available, tenants may be able to protect themselves when they are ensnared in their landlord's foreclosure.

2. Notice: Many states are considering or have adopted legislation requiring that tenants either receive a notice of foreclosure proceedings when their landlord is served with notice, or requiring that tenants receive notice a reasonable number of days before eviction. Although notice does nothing to prevent eventual eviction, it does provide tenants with valuable time to learn about their rights, find new apartments, and prepare to move. A number of states (including Arizona, Nevada and Missouri) are considering legislation requiring tenant notification of foreclosure proceedings, while other states (including California and Minnesota) have already adopted similar legislation.
3. Prevent Utility Shut-offs and Require Maintenance: During the foreclosure process tenants may be left without utilities or repair services. Pending legislation in Rhode Island would require the new owners of the property to continue to provide essential services. To augment that protection, legislation also could require lenders foreclosing on a property to notify utility companies that tenants remain in foreclosed properties and need continued service.
4. Preserve Tenancies by requiring the lenders or new owners of foreclosed properties to honor current leases or execute new leases Three states

(New Jersey, New Hampshire and Washington, D.C.) protect tenants from foreclosure related eviction with "just" or "good" cause laws, which protect tenants in a similar manner to rent regulation laws. Other states, such as Massachusetts, are considering adopting comparable statutes.

5. Assistance for Displaced Tenants: Some local governments, such as Chicago, are providing emergency relocation rental assistance for displaced low-income tenants.

Tenants have recently gained victories nationally. This winter, Fannie Mae and Freddie Mac announced rental policy for their REO properties, which will offer tenants in the properties either new month-to-month leases or financial assistance for moving. The recently passed American Recovery and Reinvestment Act (ARRA) provides some tenants further protection. Tenants in properties that receive funding under the Neighborhood Stabilization Program must now receive 90 days notice before eviction, and if they have leases, may remain for the remainder of the lease term.[1] For tenants in properties not currently covered by the ARRA, H.R. 1247 introduced March 2, if passed, would extend the ARRA protection to all tenants.

Concerns and Questions

The new programs and legislation discussed above have been put in place too recently to be able to study their impacts on renters, or on the larger housing market. Unfortunately, that leaves us without any empirical guidance as to which of these policies are most effective. Some policies may have long term costs – if they increase the cost of

[1] American Recovery and Reinvestment Act, H.R. 1, signed Feb. 17, 2009, at Title 11, available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf.

credit for rental buildings, for example, that could decrease the supply of affordable housing over the long term. The Furman Center hopes to take on these research issues in the future. In the meantime, we commend the Council for working to develop solutions that respond to the plight of the City's renters—the hidden victims of the foreclosure crisis.

Thank you for your time. I'd be happy to answer any questions.