

4-24-2016

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### Recommended Citation

Chen, Diana (2016) "Extending the Timeline: Addressing Rights of Former Homeowners in a Post-Foreclosure Market," *Seattle Journal for Social Justice*: Vol. 14 : Iss. 1 , Article 13.

Available at: <https://digitalcommons.law.seattleu.edu/sjsj/vol14/iss1/13>

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## Extending the Timeline: Addressing Rights of Former Homeowners in a Post-Foreclosure Market

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Diana R. Chen\*

### I. INTRODUCTION

In 2013, one homeowner in Seattle committed suicide on her front lawn due to the “foreclosure vultures” from the bank, according to her suicide note.<sup>1</sup> Another Seattle homeowner witnessed the demolition of her home while she was arrested for protesting her foreclosure and eviction.<sup>2</sup> Yet another Seattle homeowner ultimately suffered eviction, despite his efforts to deliver a check to his bank to demonstrate that he was gainfully employed and could pay to stay in his home.<sup>3</sup>

The above stories are just a few of the many disturbing foreclosure stories that homeowners have faced since the initial foreclosure crisis in 2007. Foreclosure is the process in which the mortgagee (the bank) takes back possession of a mortgaged property from the mortgagor (the homeowner) due to the mortgagor’s failure to make mortgage payments.<sup>4</sup> The national recession in 2007 caused the housing bubble to burst, resulting

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<sup>1</sup> Ansel Herz, *Why Is the Seattle City Council Still Hanging Foreclosure-Hit Homeowners Out to Dry?*, THE STRANGER (June 27, 2014, 4:16 PM), <http://slog.thestranger.com/slog/archives/2014/06/27/why-is-the-seattle-city-council-still-hanging-foreclosure-hit-homeowners-out-to-dry>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Foreclose*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/foreclose> (last visited July 10, 2015).

in a nationwide onslaught of foreclosures.<sup>5</sup> The collapse of the housing market accelerated throughout 2008, while layoff announcements, negative earnings reports, and evidence of deflation piled up.<sup>6</sup> Foreclosures shot up by 81 percent in 2008, a total increase of 225 percent since 2006.<sup>7</sup> In all, 3.1 million households, or one in every 54 households, filed for foreclosure in 2008.<sup>8</sup> Banks foreclosed upon 861,664 of these homes during the same year.<sup>9</sup>

The worst of the foreclosure crisis passed years ago, but it continues to cast a shadow over homeowners in places like Washington, where many old cases are still winding through the system.<sup>10</sup> Despite Washington officials' promises for strengthened oversight, abusive practices continue to trap underwater<sup>11</sup> homeowners and prolong the pain.<sup>12</sup>

Seattle homeowners are not immune to issues related to foreclosures.<sup>13</sup> In fact, "[t]he real numbers are that 70 houses will be auctioned this month," said Bryce Phillips, a SAFE activist, regarding Seattle foreclosures in June 2014.<sup>14</sup> Additionally, "[o]ne hundred sixty three houses will be auctioned off in the month of July. It's a good thing our city council aren't paramedics

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<sup>5</sup> Lindsey Beckett, *The Right to Rent Post-Foreclosure*, 51 HARV. J. ON LEGIS. 171, 171 (2014).

<sup>6</sup> Tom Eley, *US Home Foreclosures Mount as Recession Deepens*, WORLD SOCIALIST WEBSITE (Jan. 17, 2009), <http://www.wsws.org/en/articles/2009/01/econ-j17.html>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Herz, *supra* note 1.

<sup>11</sup> A home is underwater when the loan-to-value ratio is 125 percent or above, meaning the homeowner owed at least 25 percent more than the estimated market value of the property. Daren Blomquist, *Seriously Underwater Properties Decrease by 2.2 Million in 2014, Down 5.8 Million From Peak Negative Equity in Q2 2012*, REALTYTRAC (Jan. 21, 2015), <http://www.realtytrac.com/news/mortgage-and-finance/year-end-2014-underwater-home-equity-report/>.

<sup>12</sup> Suzy Khimm, *The Foreclosure Nightmare Isn't Over Yet*, MSNBC.COM, <http://www.msnbc.com/msnbc/foreclosure-nightmare-isnt-over-yet> (last updated May 23, 2014).

<sup>13</sup> Herz, *supra* note 1.

<sup>14</sup> *Id.*

or doctors. Because the way they triage is, they wait for everyone to die and they say, ‘Oh good, there are no more sick people.’”<sup>15</sup> Seattle continues to see a rise in foreclosures, but lawmakers have not taken further action to mitigate the damage.<sup>16</sup>

Nationally, banks completed roughly 5.2 million foreclosures since 2007.<sup>17</sup> The vast majority of foreclosures happened in the early years of the recession, with 2014’s foreclosures making up just nine percent of the national total.<sup>18</sup> However, “[m]any states are not completely out of the woods when it comes to cleaning up the wreckage of the housing bust.”<sup>19</sup>

In fact, high foreclosure rates may actually be linked to the state’s attempt to prevent foreclosures.<sup>20</sup> Although Washington passed the Foreclosure Fairness Act (FFA) in 2009—a law requiring mediation between the homeowner and the bank if the homeowner requests it—some foreclosure cases from early in the housing meltdown are only now going through the program.<sup>21</sup> Despite consumer advocates believing that such reforms are an important backdrop against abusive practices that abruptly force people out of their homes, the protracted process has prolonged the uncertainty for some underwater homeowners who may lose their homes anyway.<sup>22</sup> “When we see someone who defaulted in 2010 or 2011, there’s a 99.9% chance we’re not going to be able to help them save their house—they can’t make up the arrears,”<sup>23</sup> said homeowner advocate, Susan

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Khimm, *supra* note 12.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Foreclosure Fairness Act*, WASH. ST. COM., available at <http://www.commerce.wa.gov/Programs/housing/Foreclosure/Pages/default.aspx> (last visited Mar. 14, 2015).

<sup>21</sup> *Id.*

<sup>22</sup> Khimm, *supra* note 12.

<sup>23</sup> “Arrears” means that a person is behind in the discharging of a debt or other obligation. In the context of foreclosure, a homeowner is in arrears when he or she is behind in paying the mortgage. BLACK’S LAW DICTIONARY (10th ed. 2014).

Francis.<sup>24</sup> “Clients live with the foreclosure hanging over their heads, and every day they’re wondering whether it’s going to be the day they’re not going to live in their homes anymore.”<sup>25</sup>

While the problem of continued foreclosures remains, the FFA has been successful in preventing some foreclosures.<sup>26</sup> The FFA provides guidance to homeowners, legal advocates, and banks regarding procedures pre-foreclosure and during foreclosure.<sup>27</sup> The FFA has aided hundreds of homeowners in receiving loan modifications in order to keep their homes from going through foreclosure.<sup>28</sup>

Since the end of the recession, home prices in Seattle—the most populated city in King County—have rebounded dramatically.<sup>29</sup> The median home sales price in Seattle increased more than 9.5 percent from 2012 to 2013, nearly bringing median home prices to the pre-recession heights seen in 2007.<sup>30</sup> As of June 2014, approximately 92.5 percent of Seattle metro area homes were in positive equity positions, putting the Seattle metro area among the top five areas with positive equity in the nation.<sup>31</sup>

While the increase in property values may be good news for many parts of the Seattle home market, a portion of Washington State’s population has not benefitted from the upward market.<sup>32</sup> In fact, some parts of King County continue to experience and feel the effects of foreclosure.<sup>33</sup> Additionally,

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<sup>24</sup> Khimm, *supra* note 12.

<sup>25</sup> *Id.*

<sup>26</sup> *Foreclosure Fairness Act*, *supra* note 20.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> CITY OF SEATTLE, PRINCIPAL REDUCTION/FORECLOSURE PREVENTION IDT DRAFT FINAL REPORT 2 (2014), *available at* [http://clerk.seattle.gov/~public/meetingrecords/2014/housing20140619\\_11b.pdf](http://clerk.seattle.gov/~public/meetingrecords/2014/housing20140619_11b.pdf).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Interview with Lili Sotelo, Senior Attorney, Foreclosure Prevention Unit, Northwest Justice Project, in Seattle, Wash. (Oct. 10, 2014).

<sup>33</sup> *Id.*

the neighboring counties of Pierce and Snohomish have been hit the hardest in the foreclosure crisis due to lower incomes and less economic development.<sup>34</sup> These counties continue to suffer from high foreclosure rates with little relief provided by the existing foreclosure prevention legislation. In fact, the average number of Pierce County homes sold in foreclosure in 2014 is higher than the average for all homes sold nationwide.<sup>35</sup>

Foreclosure displaces a significant number of homeowners.<sup>36</sup> Many foreclosures displaced homeowners from their neighborhoods, communities, schools, and jobs.<sup>37</sup> Some homeowners have even been displaced from their cities and states due to the inability to find affordable housing after foreclosure.<sup>38</sup>

Although there are a number of reasons why retention may not be a viable option for some homeowners, lack of mortgage affordability is the number one reason why homeowners default on their mortgages, indicating a strong relationship between rising property values and foreclosure.<sup>39</sup> While the FFA does not directly affect rising home prices, the policy behind the FFA is foreclosure prevention.<sup>40</sup> Even with the aid from the FFA, however, many homeowners are unable to make up the arrears on their mortgages once they have fallen behind.<sup>41</sup>

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<sup>34</sup> *Id.*

<sup>35</sup> Zillow Real Estate Research, *Data*, ZILLOW, <http://www.zillow.com/research/data/> (under “Other Metrics,” click “Data” in the “Homes foreclosed (out of 10k)” and “County” columns) (last visited Aug. 5, 2015).

<sup>36</sup> Interview with Angeline Thomas, Staff Attorney, Foreclosure Mediation Outreach Project, Seattle University School of Law, in Seattle, Wash. (Dec. 3, 2014).

<sup>37</sup> Interview with Catherine West, Staff Attorney, Foreclosure Consequences Action Team, Northwest Justice Project, in Seattle, Wash. (Oct. 6, 2014).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Foreclosure Fairness Act*, *supra* note 20.

<sup>41</sup> *See, e.g.*, Ariana Eunjung Cha & Brady Dennis, *Lost in the System that Took the House*, THE WASH. POST (Sept. 28, 2010), [http://www.washingtonpost.com/wp-dyn/content/article/2010/09/28/AR2010092806523\\_3.html?sid=ST2010092907787](http://www.washingtonpost.com/wp-dyn/content/article/2010/09/28/AR2010092806523_3.html?sid=ST2010092907787).

In large urban cities such as Seattle, foreclosed homeowners battle to keep up with booming housing prices. After foreclosure, many homeowners home-share with extended family members or move further away from the city in order to find rent or housing prices comparable to their former mortgage payments.<sup>42</sup> Not only does this negatively affect foreclosed homeowners, but it also affects existing homeowners.<sup>43</sup> In some counties, such as Pierce and Snohomish, existing homeowners are experiencing a negative impact on their home values as a result of nearby foreclosures and vacant homes.<sup>44</sup>

Now that the market and property values are rebounding, homeowner advocates are seeing the effects that the lack of guidance from Washington's current legislation has on people who are in the post-foreclosure stage.<sup>45</sup> Specifically, with rising home prices, many homeowner advocates express concern about the lack of affordable housing for homeowners after foreclosure.<sup>46</sup> Additionally, the current legislation is silent on how to address issues faced by homeowners who have lost their homes in foreclosure, such as eviction, relocation, and lack of affordable housing.<sup>47</sup>

Based on the housing conditions and foreclosure statistics in King, Pierce, and Snohomish counties, this article examines how the foreclosure crisis and the legislature's lack of guidance regarding post-foreclosure issues have led to a decrease in affordable housing options in Washington and an increase in gentrification in King County. Part II of this article introduces the foreclosure crisis, examines the rate of foreclosures since 2009, and identifies that homeowners who have been most affected are low-to-moderate income homeowners of color, homeowners with disabilities,

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<sup>42</sup> Interview with Catherine West, *supra* note 37.

<sup>43</sup> *Id.*; Interview with Lili Sotelo, *supra* note 32.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Foreclosure Fairness Act*, *supra* note 20.

and elderly homeowners. Part III examines Washington's current foreclosure laws, the law's benefits and shortcomings in preventing foreclosures, and current resources that are available for post-foreclosure homeowners. Finally, Part IV will propose additions to current foreclosure legislation, advocating for increased affordable housing, better guidance for homeowners and advocates, and greater stability to the Washington housing markets and its residents.

## II. BACKGROUND OF THE FORECLOSURE CRISIS

Due to the national recession in 2007, many homeowners had trouble paying their mortgages resulting in a foreclosure crisis.<sup>48</sup> While many states had existing foreclosure prevention laws, the sudden flood of foreclosures indicated that the existing laws were not designed to accommodate the market conditions.<sup>49</sup> "Clearly the foreclosure prevention programs implemented to date have not had any real success in slowing down this foreclosure tsunami."<sup>50</sup>

The above observation proved true as the foreclosure crisis worsened, bringing housing and foreclosure concerns to the forefront of legislatures in many states.<sup>51</sup> The foreclosure crisis revealed that an increase in subprime lending and predatory mortgage servicing on the part of large banks had occurred nationwide during the late 1990s and early 2000s.<sup>52</sup> On February 9, 2012, Attorney General Eric J. Holder announced that the federal

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<sup>48</sup> Beckett, *supra* note 5.

<sup>49</sup> Eley, *supra* note 6.

<sup>50</sup> *Foreclosure Activity Increases 81 Percent in 2008*, REALTYTRAC (Jan. 15, 2009), <http://www.realtytrac.com/content/press-releases/foreclosure-activity-increases-81-percent-in-2008-4551>.

<sup>51</sup> See *Joint State-Federal National Mortgage Servicing Settlements*, NAT'L MORTGAGE SETTLEMENT, <http://www.nationalmortgagesettlement.com/> (last visited Oct. 24, 2014).

<sup>52</sup> Press Release, Dep't of Just., Federal Government and State Attorneys General Reach \$25 Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses (Feb. 9, 2012), *available at* <http://www.justice.gov/opa/pr/federal-government-and-state-attorneys-general-reach-25-billion-agreement-five-largest> [hereinafter DOJ Press Release 2012].



government and 49 states reached a \$25 billion settlement agreement, the “National Mortgage Settlement” (Settlement), with the nation’s five largest mortgage servicers,<sup>53</sup> to address mortgage servicing, foreclosure, and bankruptcy abuses.<sup>54</sup>

On April 4, 2012, the United States District Court for the District of Columbia entered orders approving the Settlement.<sup>55</sup> The Settlement is the largest consumer financial protection settlement in US history.<sup>56</sup> It settled certain state and federal investigations relating to mortgage servicing abuses, including abuses during the foreclosure and bankruptcy processes.<sup>57</sup> Although this article will not focus on the mortgage servicing abuses aspect of the Settlement, the Settlement was instrumental in implementing dozens of foreclosure prevention programs throughout the country.<sup>58</sup> In all, 49 states received proceeds from the Settlement to serve each state’s specific foreclosure needs, as determined by each state.<sup>59</sup> Because the Settlement was designed to address, correct, and repair the consequences from mortgage servicing abuse, the recipient states have used the funds from the Settlement to implement or improve existing foreclosure prevention laws.<sup>60</sup>

Since the Settlement’s approval, foreclosure statistics indicate that the subsequent state laws have aided homeowners in obtaining loan modifications or prevailing in lawsuits to keep their homes.<sup>61</sup> However, the high number of foreclosures that continue to occur shows that the current

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<sup>53</sup> The nation’s five largest mortgage servicers in the National Mortgage Settlement were Ally (formerly known as GMAC), Bank of America, Citi, JPMorgan Chase, and Wells Fargo. *See id.*

<sup>54</sup> DOJ Press Release 2012, *supra* note 52.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *National Mortgage Settlement*, DEPT. OF JUST., [http://www.justice.gov/ust/eo/public\\_affairs/consumer\\_info/nms/](http://www.justice.gov/ust/eo/public_affairs/consumer_info/nms/) (last visited Oct. 25, 2014).

<sup>58</sup> *Id.*

<sup>59</sup> DOJ Press Release 2012, *supra* note 52.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

legislation may not be enough to combat the totality of the problems caused by foreclosure.<sup>62</sup> Additionally, the current legislation does little to address the disproportionately negative impact that foreclosure has on certain marginalized portions of the population.<sup>63</sup> According to recent surveys of foreclosure rates in Washington, the majority of foreclosure victims are low-income people, often from vulnerable communities, such as people of color, people with disabilities, and elderly people.<sup>64</sup>

The 2013 mortgage data reflects a slowly recovering mortgage market that, troublingly, continues to under serve important market segments.<sup>65</sup> People of color and low- to moderate-income families continue to receive a far lower share of mortgage loans than they have historically and than would be expected based on the composition of the population.<sup>66</sup> A link exists between the number of mortgage loans and the number of foreclosures affecting communities of color and low- to moderate-income communities.<sup>67</sup> Due to racially discriminatory lending practices by big banks, African American and Latino Americans are 30 percent more likely to have subprime mortgages.<sup>68</sup> Furthermore, “[t]he foreclosure crisis will wipe out 15 years of gains in homeownership for people of color.”<sup>69</sup> The lower share of mortgage loans creates a greater likelihood that people in

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<sup>62</sup> Interview with Catherine West, *supra* note 37.

<sup>63</sup> This data was submitted by lenders under the Home Mortgage Disclosure Act (HMDA). *2013 Home Mortgage Disclosure Act: Data Show People of Color Being Left Behind in Slowly Recovering Mortgage Market*, CTR. FOR RESPONSIBLE LENDING 1 (2014), available at <http://www.responsiblelending.org/mortgage-lending/policy-legislation/CRL-2013-HMDA-data-policy-brief.pdf>.

<sup>64</sup> CITY OF SEATTLE, *supra* note 29, at 22–23.

<sup>65</sup> *2013 Home Mortgage Disclosure Act*, *supra* note 63.

<sup>66</sup> *Id.*

<sup>67</sup> *Foreclosure Counseling: Areas of Greatest Need*, CTR. FOR RESPONSIBLE LENDING 1 (2013), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/Areas-of-Greatest-Need-070813.pdf>.

<sup>68</sup> *Together We Can Fight the Banks!*, SAFEINSEATTLE.ORG (Mar. 4, 2015), <http://webcache.googleusercontent.com/search?q=cache:A0ePiInzFYYJ:safeinseattle.org/%3Fp%3D1377+%26cd=8&hl=en&ct=clnk&gl=us>.

<sup>69</sup> *Id.*

these communities will receive subprime mortgages with higher interest rates, further exacerbating the problem of mortgage unaffordability and leading to a greater likelihood of foreclosure.<sup>70</sup>

Further, on June 19, 2014, an Inter-Departmental Team (IDT) of the Seattle City Council issued a report that analyzed principal reduction and the possibility of implementing other foreclosure prevention programs to help low-income homeowners whose home value is significantly underwater and may be at risk of foreclosure.<sup>71</sup> Generally, homes that are significantly underwater and delinquent are at higher risk of foreclosure.<sup>72</sup> The report revealed that the recession and the mortgage industry implosion had disparate negative impacts in zip codes with a higher number of low-income and minority-owned households.<sup>73</sup>

The IDT report also identified five Seattle zip codes that experienced the highest rate of foreclosure activities between 2011 and 2014.<sup>74</sup> These zip codes include 98118 (Southeast Seattle, Genesee, Rainier Beach), 98106 (West Seattle, Delridge), 98108 (South Park, Beacon Hill), 98126 (West Seattle, Highpoint), and 98144 (Beacon Hill, Central District).<sup>75</sup> In recent years, nearly 50 percent of the underwater and seriously delinquent homes are located in these five zip codes.<sup>76</sup> Most of these five zip codes have a higher number of low-income households and homeowners who are persons of color, compared to Seattle as a whole.<sup>77</sup> Notably, the 98108 zip code has a higher population of Asians than any other race.<sup>78</sup> It also has the most uniform spread of income among residents out of the five zip codes, the

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<sup>70</sup> 2013 *Home Mortgage Disclosure Act*, *supra* note 63.

<sup>71</sup> See CITY OF SEATTLE, *supra* note 29, at 1.

<sup>72</sup> *Id.* at 3.

<sup>73</sup> *Id.* at 30–31.

<sup>74</sup> *Id.* at 4.

<sup>75</sup> *Id.* at 5.

<sup>76</sup> *Id.* at 6.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 30.

majority of which are in the low- to moderate-income range.<sup>79</sup> Also, the 98118 zip code, which is home to the largest population of African Americans among the five zip codes, experienced the largest number of Notices of Trustee's Sales<sup>80</sup> issued in Seattle each year since 2008.<sup>81</sup>

Covington is another city located in King County that fell hard when the housing bubble burst. Previously the fastest-growing city in King County, monthly building permit revenues “plunged from a peak of \$6 million in 2007 to \$715,000 in 2009.”<sup>82</sup> Foreclosure sales drove the median home price in Covington down 18 percent in 2010 to \$230,250, “making houses more affordable to new buyers but hammering the value of other homeowners’ investments.”<sup>83</sup> In 2010, a financial institution owned about one in every 48 residential parcels in Covington, giving Covington the highest rate of institution-owned residential parcels in King County, more than three times the average nationwide.<sup>84</sup>

Due to the continuing high rates of foreclosures in King County, one of Washington’s more affluent areas, legislation is important to allow for increased protection to foreclosed homeowners. Such legislation is even more important in Pierce and Snohomish counties, which suffered greater hardship than King County.<sup>85</sup> This discrepancy is due to a larger population of low-income residents in both Pierce and Snohomish counties.<sup>86</sup>

The statistics regarding the number of foreclosed properties in different areas of Washington indicate a number of urgent social harms resulting

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<sup>79</sup> *Id.*

<sup>80</sup> A Notice of Trustee’s Sale is the final of a series of foreclosure notices that a bank is required to provide to a homeowner before foreclosing on a home. *See infra* Part III A.

<sup>81</sup> CITY OF SEATTLE, *supra* note 29, at 7.

<sup>82</sup> Sanjay Bhatt, *Empty, foreclosed houses burden cities, neighborhoods*, THE SEATTLE TIMES, [http://seattletimes.com/html/business/technology/2017486066\\_covington12.html](http://seattletimes.com/html/business/technology/2017486066_covington12.html) (updated Feb. 16, 2012).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Interview with Lili Sotelo, *supra* note 32.

<sup>86</sup> *Id.*

from foreclosure. First, many neighborhoods and cities affected by foreclosure experience a decrease in property value as a result of the market taint that foreclosure imposes on properties and vacancies when purchasers fail to resell or rent the foreclosed property.<sup>87</sup> Despite the fact that Washington is not within the “hardest-hit” areas from the foreclosure crisis,<sup>88</sup> Washington faces a more localized impact, which means neighborhoods with high foreclosure rates are more deeply affected by issues of gentrification and home unaffordability.<sup>89</sup>

Additionally, foreclosure has a negative impact on taxpayers and cities.<sup>90</sup> Taxpayers, directly and indirectly, end up paying the consequences of foreclosures.<sup>91</sup> Municipalities raise tax rates to make up for lower property values.<sup>92</sup> For homes that revert to government-backed mortgage entities such as Freddie Mac, the institution covers the cost of replacing missing appliances and maintaining the residences until they are sold.<sup>93</sup> Foreclosures can also be very costly for cities. “A single mortgage failure, especially one that leaves the home vacant and unsecured, can impose tens of thousands of dollars of costs on cash-strapped public agencies.”<sup>94</sup>

In addition, high foreclosure rates severely impact neighborhoods. In many neighborhoods, foreclosure uproots families and children from their homes and communities, requiring relocation from schools and neighborhoods.<sup>95</sup> Furthermore, gentrification also results from foreclosures, causing further economic and racial disparities in many communities.<sup>96</sup> The

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<sup>87</sup> Beckett, *supra* note 5, at 176.

<sup>88</sup> Nevada, the nation’s hardest-hit state in the housing collapse, has three times King County’s rate of bank-owned homes. Bhatt, *supra* note 82.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Interview with Catherine West, *supra* note 37.

<sup>96</sup> Tiffany Ansley, *Gentrification and Mediation: Where a Single Pronunciation and Differing Perceptions Converge*, 11 CARDOZO J. CONFLICT RESOL. 585, 585 (2010).

Merriam-Webster Online Dictionary defines gentrification as “the process of renewal and rebuilding accompanying the influx of middle-class or affluent people into deteriorating areas that often displaces poorer residents.”<sup>97</sup> Another dictionary defines the process as “the buying and renovation of houses and stores in deteriorated urban neighborhoods by upper- or middle-income families or individuals, thus improving property values but often displacing low-income families and small businesses.”<sup>98</sup> Gentrification is generally seen as a phenomenon by which a community is systematically driven out of a city, town, or neighborhood, by way of the “‘redevelopment’ [of] entire neighborhoods.”<sup>99</sup>

Foreclosure contributes to gentrification for a number of reasons. First, foreclosure causes people—particularly people of color—to be displaced from their homes.<sup>100</sup> Furthermore, gentrification generally causes people of color to be displaced from their neighborhoods.<sup>101</sup> Many people experience foreclosure due to financial hardships; consequently, those who lose their homes in foreclosure also experience the difficulty of obtaining affordable housing post-foreclosure.<sup>102</sup> This difficulty includes losing the ability to find comparable housing in the foreclosed homeowner’s former neighborhood.<sup>103</sup> As a result, many foreclosed homeowners must move out of their neighborhoods and communities, usually to another neighborhood with lower property values.<sup>104</sup> In addition, developers often see foreclosures as an economic opportunity to take advantage of low-cost housing, redevelop the area, and sell the homes for high profits.<sup>105</sup> Higher income people with the ability to afford the redeveloped housing begin to move into

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<sup>97</sup> *Id.* at 586.

<sup>98</sup> *Id.*

<sup>99</sup> Bhatt, *supra* note 82.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> Interview with Catherine West, *supra* note 37.

<sup>103</sup> Ansley, *supra* note 96, at 603.

<sup>104</sup> Interview with Catherine West, *supra* note 37.

<sup>105</sup> Ansley, *supra* note 96, at 587.

the neighborhood, which they consider to be affordable housing.<sup>106</sup> Developers often see gentrification as an unfortunate, yet lucrative consequence of a good business venture.<sup>107</sup>

While it is true that gentrification can sometimes allow people to experience a neighborhood that is racially diverse, the cost of gentrification has a larger negative effect on the existing community.<sup>108</sup> As Tiffany Ansley noted:

Regardless of the definition used, the results of gentrification . . . are the same: the median income of the community increases; the number of racial minorities, who once thrived in the area, decreases; there is a reduction in the household size; and there is an influx of amenities . . . serving higher incomes.<sup>109</sup>

Gentrification is closely tied to foreclosure because foreclosure often uproots communities of color.<sup>110</sup> In contrast, predominately white communities, who possess the privilege and social mobility to voluntarily move neighborhoods, reap the benefits at the cost of communities of color.<sup>111</sup>

Finally, foreclosure has a negative impact on children. As early as 2010, researchers began examining what happens to people after they lose their homes in foreclosure. Specifically, researchers are concerned about the harm to children after foreclosure.<sup>112</sup> The number of children displaced from their homes has climbed steadily in recent years, with nearly 40 percent of US school districts surveyed citing foreclosure as the top reason

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<sup>106</sup> *Id.* at 588.

<sup>107</sup> *Id.* at 587.

<sup>108</sup> *Id.* at 588.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 587.

<sup>111</sup> *Id.* at 588.

<sup>112</sup> Dina ElBoghdady, *Foreclosure Takes Toll on Increasing Number of Children*, THE WASH. POST (Nov. 22, 2010), [http://www.washingtonpost.com/wp-dyn/content/article/2010/11/21/AR2010112104255\\_2.html?sid=ST2010112202887](http://www.washingtonpost.com/wp-dyn/content/article/2010/11/21/AR2010112104255_2.html?sid=ST2010112202887).

for the surge in homeless students.<sup>113</sup> Children forcibly uprooted from their homes and schools tend to suffer emotionally, socially, and academically.<sup>114</sup> As such, research indicates that children who have been dragged through foreclosures tend to experience the same trauma.<sup>115</sup>

“This foreclosure crisis is the largest forced relocation event we’ve had in this country since the Great Depression. In the modern educational environment, we’ve never seen anything come close to this.”<sup>116</sup> A study in May 2008 projected that two million children would lose their homes to foreclosure by 2010.<sup>117</sup> This was a conservative estimate because the study focused only on families that defaulted on subprime loans and did not include conventional loans or children evicted from rental units.<sup>118</sup>

A limited amount of legislation addressing the relationship between foreclosure and education exists. Under federal law, students who lose their homes to foreclosure can remain in their schools until they find permanent housing even if they are moved from their original school districts.<sup>119</sup> If they find a fixed-living arrangement during the academic year, students can stay in their schools until the year ends.<sup>120</sup> Still, with all the issues that the foreclosure crisis raises about the social and emotional development of children and the stability of the schools they are entering and leaving, experts say the issue has not yet attracted the kind of public policy response it deserves.<sup>121</sup>

In the District of Columbia, about one-quarter of homes in foreclosure had a public school student living in them in the 2008 school year.<sup>122</sup> The

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<sup>113</sup> *Id.*  
<sup>114</sup> *Id.*  
<sup>115</sup> *Id.*  
<sup>116</sup> *Id.*  
<sup>117</sup> *Id.*  
<sup>118</sup> *Id.*  
<sup>119</sup> *Id.*  
<sup>120</sup> *Id.*  
<sup>121</sup> *Id.*  
<sup>122</sup> *Id.*



number of public school students affected by foreclosure more than doubled in 2008 from the previous two school years.<sup>123</sup> Comparing statistics in Seattle indicates that the same may be true for Seattle residents.<sup>124</sup> In 2014, Seattle had the fourth highest homeless population out of major cities nationwide.<sup>125</sup> Seattle public schools identified 1,900 students as homeless in 2014.<sup>126</sup> Of these students, 47 percent were African American students.<sup>127</sup> Comparing these statistics with the roughly 9,000 families that have lost their homes in Seattle indicates that Washington's current foreclosure laws do not reach a large portion of the population in need of such relief.<sup>128</sup>

### III. WASHINGTON'S FORECLOSURE LAWS

Washington lawmakers have not taken sufficient action to alleviate the social harms presented by foreclosure. This section examines Washington State's current foreclosure laws and its effect on preventing foreclosures. This section will also examine current resources that are available for post-foreclosure homeowners, as well as the shortcomings in the existing laws and current resources. In Washington, banks can foreclose judicially or non-judicially. If the bank forecloses judicially, it must timely file and serve the homeowner with proper court papers.<sup>129</sup> Alternatively, if the bank forecloses non-judicially, it must send the homeowner a series of required notices before the bank can foreclose on the home.<sup>130</sup>

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<sup>123</sup> *Id.*

<sup>124</sup> *Together We Can Fight the Banks!*, *supra* note 68.

<sup>125</sup> The District of Columbia ranked sixth highest out of all major cities in homeless population. OFFICE OF CMTY. PLANNING AND DEV., U.S. DEP'T OF HOUS. & URBAN DEV., THE 2014 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS 15, *available at* <https://www.hudexchange.info/resources/documents/2014-AHAR-Part1.pdf>.

<sup>126</sup> *Together We Can Fight the Banks!*, *supra* note 68.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> Foreclosure Prevention Action Team, *Washington Foreclosure Prevention Resource Guide*, WASH. LAW HELP 74, *available at* <http://www.washingtonlawhelp.org/files/C9D2EA3F-0350-D9AF-ACAE-BF37E9BC9FFA/attachments/756F0738-6F51-4D0C-94FF-512FE0885B59/6700en.pdf>.

<sup>130</sup> *Id.* at 75.

*A. Non-Judicial Foreclosure: Deed of Trust Act and the FFA*

In 2011, Washington State revised its foreclosure laws to implement the FFA,<sup>131</sup> designed to encourage loan modifications and loan workouts between borrowers and lenders through mediation.<sup>132</sup> A “loan workout” is an amicable solution between the bank and borrower regarding loan payments.<sup>133</sup> One form of a loan workout is a “loan modification,” where a bank modifies the payment terms on a loan to make it more affordable for the borrower.<sup>134</sup> The FFA amended the existing Deed of Trust Act, which governs non-judicial foreclosures in Washington.<sup>135</sup> Before the FFA, no timeline and mediation option for homeowners in non-judicial foreclosures existed.<sup>136</sup> The FFA implemented a mandatory foreclosure timeline, under which a bank is required to send a series of notices to a homeowner before it can non-judicially foreclose on the property.<sup>137</sup> In addition, the FFA provides the opportunity for mediation to all homeowners who request it within a specific time period during the foreclosure process.<sup>138</sup>

The FFA requires banks to send the following three notices before it can foreclose on a home: Notice of Pre-Foreclosure Options, Notice of Default, and Notice of Trustee’s Sale.<sup>139</sup> The purpose of the Notice of Pre-Foreclosure Options is to notify the homeowner that they are at risk of being in default and to encourage the homeowner to cure their past-due balance.<sup>140</sup> Once the servicer sends the homeowner the Notice of Pre-

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<sup>131</sup> David A. Leen, *Wrongful Foreclosures in Washington*, 49 GONZ. L. REV. 331, 340 (2013).

<sup>132</sup> *Id.* at 343. The legislature made specific findings, which were set forth at the end of RCW § 61.24.005 about the need to protect homeowners from the increase in foreclosures. 2011 Wash. Leg. Serv. Ch. 58 (S.S.H.B. 1362) Sec. 1(1)(a)-(2)(c)(2013).

<sup>133</sup> Foreclosure Prevention Action Team, *supra* note 129, at 7.

<sup>134</sup> *Id.* at 74.

<sup>135</sup> Leen, *supra* note 131, at 340.

<sup>136</sup> Interview with Angeline Thomas, *supra* note 36.

<sup>137</sup> WASH. REV. CODE § 61.24.031 (2013).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

Foreclosure Options, the homeowner has 30 days to respond and request a “meet and confer” with the servicer.<sup>141</sup> The “meet and confer” allows a homeowner to have a face-to-face meeting with the loan servicer to try to work out a payment plan.<sup>142</sup>

After 30 days, if the homeowner does not respond to the Notice of Pre-Foreclosure Options and fails to cure the mortgage’s past due balance, the servicer will then send the Notice of Default, which alerts the borrower that he or she is in default on his or her loan.<sup>143</sup> The homeowner has another 30 days to respond to the Notice of Default and request mediation.<sup>144</sup> However, if the homeowner did respond to the Notice of Pre-Foreclosure Options, the homeowner gets an additional 20 days, on top of the initial 30 days, to request mediation with the bank.<sup>145</sup>

The servicer will issue the Notice of Trustee’s Sale 20 days after the Notice of Default.<sup>146</sup> The Notice of Trustee’s Sale notifies the homeowner of the scheduled date of the Sheriff’s Auction, where the home is sold at foreclosure.<sup>147</sup> This notice marks the last step in the foreclosure process before the home is sold at foreclosure.<sup>148</sup> Very few remedies for the homeowner exist after this notice.

Some concern exists among homeowner advocates that the legislation calling for mandatory mediation does little to incentivize banks to come to a workout plan with the borrower.<sup>149</sup> For instance, during mediation, the mediator’s role is to encourage the parties to come to a compromise in order

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Chris Ingalls, *State’s Top Lawyer Says Changes Needed to Catch ‘Bad Faith’ Banks*, KING 5 NEWS (Dec. 19, 2014, 11:14 AM), <http://www.king5.com/story/news/local/investigations/2014/11/18/foreclosure-fairness-act-washington-state-attorney-general/19198113/>.

to reach a workout plan.<sup>150</sup> In the event that one party neglects to fulfill their duties under the statute, the mediator can find that the party acted in “bad faith.”<sup>151</sup> Most often, bad faith consists of delays in a homeowner’s request to modify the terms of their home loans, usually to lower monthly payments.<sup>152</sup> If the mediator finds that the party acted in bad faith, then the other party may use the bad faith finding as a defense during subsequent litigation regarding the foreclosure.<sup>153</sup>

There is also concern that bad faith findings against banks do little to actually incentivize banks to meaningfully participate in mediation.<sup>154</sup> Department of Commerce statistics show that 6,765 homeowners have sought mediation since the law went into effect.<sup>155</sup> Of that number, 1,505 mediations failed to result in an agreement.<sup>156</sup> Mediation documents from the Washington State Department of Commerce show that mediators have ruled in 223 cases that banks acted in bad faith.<sup>157</sup> In 12 percent of the 1,505 failed negotiations, the mediator ruled the bank acted in bad faith, compared with the eight percent of instances where the mediator found the borrower acted in bad faith.<sup>158</sup> Bank of America received 51 bad faith certificates by mediators, the most of any lender.<sup>159</sup> Wells Fargo Home Mortgage is second worse with 40 bad faith certificates.<sup>160</sup>

In the event that a bank acts in bad faith, the homeowner’s only remedy is to sue or defend him or herself in a subsequent litigation.<sup>161</sup> Many homeowners and homeowner advocates believe that the bad faith finding

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<sup>150</sup> *Id.*  
<sup>151</sup> *Id.*  
<sup>152</sup> *Id.*  
<sup>153</sup> *Id.*  
<sup>154</sup> *Id.*  
<sup>155</sup> *Id.*  
<sup>156</sup> *Id.*  
<sup>157</sup> *Id.*  
<sup>158</sup> *Id.*  
<sup>159</sup> *Id.*  
<sup>160</sup> *Id.*  
<sup>161</sup> *Id.*

holds little weight in incentivizing banks to meaningfully participate in mediation, due to the much greater financial resources available to banks and the lack of repercussions for banks who mediate in bad faith.<sup>162</sup> Under the law, a bad faith finding violates the Consumer Protection Act.<sup>163</sup> It is the job of the Attorney General's Office to enforce that act by filing suit against violators.<sup>164</sup> However, the Attorney General's Office has never taken any enforcement actions against banks found to be negotiating in bad faith with a homeowner.<sup>165</sup>

#### *B. Judicial Foreclosure Statute*

In Washington, lenders (beneficiaries) have the option of foreclosing on a property through judicial foreclosure.<sup>166</sup> In a judicial foreclosure, the bank must serve the homeowner with court papers, and a judge decides whether the bank may sell the home at a Sheriff's Auction.<sup>167</sup> A bank may request a deficiency judgment if the home does not sell for the full amount of the debt.<sup>168</sup> A deficiency balance is the amount that a borrower owes the bank after a property is sold at a Sheriff's Auction.<sup>169</sup> This means that a homeowner may owe money to the beneficiary even after losing his or her home in foreclosure. Deficiency judgments are one additional factor that may contribute to a foreclosed homeowner's inability to afford housing after foreclosure.

A homeowner also has a right of redemption in a judicial foreclosure, where the homeowner may remain in the property for a specific amount of

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> WASH. REV. CODE § 61.12.040 (2013).

<sup>167</sup> WASH. REV. CODE § 61.12.060 (2013).

<sup>168</sup> WASH. REV. CODE § 6.23.020 (2013).

<sup>169</sup> Rodrigo Sepulveda, *Short Sale & Deficiency Judgments in Washington State*, SOLID GROUND BLOG (Feb. 12, 2010), available at <https://solidgroundblog.wordpress.com/2010/02/12/short-sale-and-deficiency-judgments-in-washington-state/>.

time following the foreclosure sale.<sup>170</sup> If there is no deficiency judgment, then the homeowner may remain on the property for eight months following the foreclosure.<sup>171</sup> If the bank received a deficiency judgment, then the borrower may remain on the property for one year following the foreclosure.<sup>172</sup>

Additionally, during the redemption period, the homeowner may “redeem” the property by paying the sum of the amount of the bid, the amount of any assessment or taxes that the auction purchaser has paid after purchase, any sum paid by the purchaser on a prior lien or obligation, and interest on the above-mentioned items.<sup>173</sup> If the homeowner redeems the property within the time period, then the property transfers back to the homeowner.<sup>174</sup> It is highly unlikely that a homeowner will redeem the property within an eight month or one year period, given the fact that insufficiency of funds caused the majority of foreclosures.<sup>175</sup>

Washington’s current laws contain a variety of shortcomings that prevent them from effectively addressing foreclosure issues. First, Washington law makes foreclosure prevention its main priority, ignoring the need for post-foreclosure aid to homeowners who have lost their homes in foreclosure. In December 2014, scheduled foreclosure auctions increased from the previous year in 30 states, including in Washington, where foreclosure auctions increased seven percent.<sup>176</sup> “[T]he reason we’ve seen foreclosure activity go up in Seattle over the past year is because banks are simply better prepared

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<sup>170</sup> WASH. REV. CODE § 6.23.020 (2013).

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> Right of redemption is not applicable to homeowners in non-judicial foreclosures. *See id.*

<sup>175</sup> WASH. REV. CODE § 6.23.020 (2013).

<sup>176</sup> *U.S. Foreclosure Activity Decreases 9 Percent in November Despite First Annual Increase in Foreclosure Starts Since July 2012*, REALTYTRAC (Dec. 11, 2014), <http://www.realtytrac.com/news/foreclosure-trends/u-s-foreclosure-activity-decreases-9-percent-in-november-despite-first-annual-increase-in-foreclosure-starts-since-july-2012/>.

for defaults. As a result, they're able to get a higher volume of foreclosures processed much more quickly."<sup>177</sup> Thus, post-foreclosure aid remains a place of need in Washington State.

Second, some of the existing laws, such as the right of redemption, only apply to judicial foreclosure. In a state such as Washington, where the majority of foreclosures are non-judicial, the right of redemption laws only reach a small number of foreclosed homeowners.<sup>178</sup> Thus, banks, who have the choice to foreclose judicially or non-judicially, may be incentivized to foreclose non-judicially, given the fact that non-judicial foreclosures tend to be faster and cheaper than conducting a judicial foreclosure through the courts.<sup>179</sup>

### *C. Current Washington State Resources for Foreclosed Homeowners*

The Foreclosure Prevention Unit (FPU) was one of several Washington projects funded by the Settlement, designed to provide free legal representation to low- to moderate-income homeowners at risk of or in foreclosure.<sup>180</sup> The FPU is a unit within the Northwest Justice Project (NJP), a statewide legal aid organization, which represents homeowners in foreclosure mediations under the FFA.<sup>181</sup> Foreclosure mediation is a process where a neutral third party mediator helps a homeowner and their lender reach a fair, voluntary, and negotiated agreement to avoid foreclosure.<sup>182</sup> An example of such an agreement is a loan modification that changes the terms of the mortgage and makes payment more affordable for the homeowner.<sup>183</sup> The FPU also helps with other legal issues that a person going through

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<sup>177</sup> *Id.*

<sup>178</sup> WASH. REV. CODE § 6.23.020 (2013).

<sup>179</sup> *Id.*

<sup>180</sup> Interview with Lili Sotelo, *supra* note 32.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

foreclosure may face, such as probate administration, family law and property tax issues, and rescue loan obtainment.<sup>184</sup>

The Foreclosure Consequences Action Team (FCAT), another unit at the NJP, addresses post-foreclosure issues.<sup>185</sup> These issues include scams in connection with alleged mortgage rescues; lockouts, in which a lender, servicer, property preservation company, or foreclosure-sale purchaser has entered the home, changed locks, and taken or discarded the client's belongings without having obtained the right to possession of the house; utility shutoff issues; transition to new housing for vulnerable persons; non-mortgage foreclosures; education issues; zombie foreclosures, in which the homeowner vacates the home prior to a completed foreclosure; loan origination issues; and systemic post-foreclosure community impacts.<sup>186</sup> Of the resources that the FCAT provides, most deal with assisting tenants occupying foreclosed properties.<sup>187</sup>

The FCAT believes that one viable option for assisting foreclosed homeowners is allowing them to stay in their homes through entities that purchase homes or loans and then sells or lends the home back to the original owner.<sup>188</sup> Additionally, promoting the sale and rental of Real Estate

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<sup>184</sup> *Id.*

<sup>185</sup> Interview with Catherine West, *supra* note 37.

<sup>186</sup> E-mail from Catherine West, Staff Attorney, Foreclosure Consequences Action Team, Northwest Justice Project (Oct. 3, 2014, 12:40 PM PST) (on file with author).

<sup>187</sup> The most useful issues that the FCAT assists with are transition to new housing for vulnerable persons, which provides assistance to homeowners and tenants who need time and assistance with the transition to new housing following a foreclosure; education issues, which assists students facing the denial of education, issues with transportation to school, or other educational problems related to a foreclosure; loan origination, which assists homeowners with new loans and home purchases involving predatory or illegal terms, real estate contracts and rent-to-own agreements, and issues of access to credit in connection with home purchases; and systemic post-foreclosure community impacts, which involves working with community partners to develop programs that will keep people in their homes, promote the sale and rental of REO properties, prevent blight, and assist community economic development. See e-mail from Catherine West, *supra* note 186.

<sup>188</sup> *Id.*



Owned (REO) properties would prevent vacant homes and help maintain consistent property values.<sup>189</sup> These solutions are too high of a demand for the FCAT and other advocacy groups to meet at this time.<sup>190</sup> Furthermore, current laws do not provide for loan buybacks by either private investors or the state.<sup>191</sup>

Solid Ground was another organization that assisted homeowners post-foreclosure.<sup>192</sup> In particular, Solid Ground provided assistance with post-foreclosure relocation and assistance with obtaining housing.<sup>193</sup> However, Solid Ground only received limited funding from the Settlement to address foreclosure issues, and it closed its doors to homeowners in need of foreclosure assistance at the end of 2014.<sup>194</sup>

Housing counselors are another resource available to homeowners facing foreclosure issues.<sup>195</sup> Housing counselors are able to assist homeowners with a variety of issues, including mediation and loan modifications.<sup>196</sup> However, because housing counselors are not able to provide legal advice, many housing counselors end up referring their clients to foreclosure attorneys in the event that the client's case involves a legal issue.<sup>197</sup>

Finally, the Seattle City Council's IDT is working to address foreclosure issues in Seattle.<sup>198</sup> One option that the IDT proposed is a "Seattle Homeowner Stabilization Program," in which Seattle would allocate \$150,000 to an intensive program that would provide information,

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<sup>189</sup> Ingalls, *supra* note 149.

<sup>190</sup> Interview with Catherine West, *supra* note 37.

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Stabilization Services*, SOLID GROUND, available at <http://www.solid-ground.org/programs/housing/counseling/pages/default.aspx> (last visited Aug. 2, 2015).

<sup>194</sup> *Lifelong Housing Safety Net*, SOLID GROUND, available at <http://www.solid-ground.org/PROGRAMS/HOUSING/SAFETYNET/Pages/default.aspx> (last visited Aug. 2, 2015).

<sup>195</sup> Interview with Lili Sotelo, *supra* note 32.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> CITY OF SEATTLE, *supra* note 29, at 26–28.

education, and referral services to connect homeowners at risk of foreclosure with free housing counseling and legal services, among other resources.<sup>199</sup> The proposed program would target areas with a high percentage of low-income households owned by people of color and areas more heavily impacted by foreclosures.<sup>200</sup>

#### *D. Shortcomings in Current Resources for Foreclosed Homeowners*

Despite the variety of resources available to foreclosed homeowners and homeowners at risk of foreclosure, advocates face a number of barriers in assisting homeowners in foreclosure. First, former homeowners and homeowner advocates are experiencing the effect that the current legislation's lack of guidance and legal remedies has on people who are in the post-foreclosure stage.<sup>201</sup> Homeowners have no remedies after foreclosure unless the servicer performed mortgage-servicing abuses, foreclosed unlawfully, or committed other illegal activities related to the foreclosure.<sup>202</sup> Successful unlawful conduct claims are a fairly rare occurrence, as the standard for bringing a claim under the existing consumer protection laws requires the homeowner to show unfair or deceptive conduct by the loan servicer, which is a high standard.<sup>203</sup> Thus, advocates lose the ability to assist many homeowners post-foreclosure because of the lack of rights afforded to foreclosed homeowners.<sup>204</sup>

Second, IDT's proposed plans for foreclosure aid will only reach Seattle residents.<sup>205</sup> In the greater scheme of foreclosure, having only a citywide

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<sup>199</sup> *Id.* at 27.

<sup>200</sup> *Id.* at 27–28.

<sup>201</sup> Interview with Lili Sotelo, *supra* note 32; Interview with Catherine West, *supra* note 37.

<sup>202</sup> Interview with Lili Sotelo, *supra* note 32.

<sup>203</sup> WASH. REV. CODE § 19.86.020 (2013).

<sup>204</sup> Interview with Lili Sotelo, *supra* note 32; Interview with Catherine West, *supra* note 37.

<sup>205</sup> Interview with Angeline Thomas, *supra* note 36; *see* SEATTLE CITY COUNCIL, *supra* note 29.

initiative will do little to improve the outlook of foreclosure issues for the state.<sup>206</sup> In fact, the initiative's placement within Seattle alone will probably do even less, given the fact that Seattle is not one of the "hardest-hit" cities in Washington from the foreclosure crisis.<sup>207</sup> The initiative will not extend to other cities, even within King County, that were more negatively affected than Seattle.<sup>208</sup> Furthermore, the IDT plan cannot go forward until the city finds a funding source, which will most likely have to be a private source.<sup>209</sup> Although the IDT proposes relevant goals and useful solutions, the initiative would be better placed in an area within Pierce County or other more negatively affected counties or cities. Although some may argue that the IDT initiative can serve as a model for other programs throughout the state, urgent measures need to be taken in Pierce, Snohomish, and other negatively affected counties.

Community and private organizations, such as Solid Ground, have already been successful in providing aid to foreclosed homeowners; however, Solid Ground ran out of funding and closed its doors at the end of 2014.<sup>210</sup> Foreclosed homeowners are now without yet another resource, while the steady foreclosure rates show a constant need for assistance. Furthermore, the Settlement only provided funding for a certain number of years, leaving other organizations, such as the FPU and the FCAT with uncertainty as to whether their services can continue after the expiration of the Settlement funds.

While housing counselors may be a useful resource for homeowners pre-foreclosure, they do not meet the legal needs of homeowners who require legal assistance.<sup>211</sup> To the extent that a homeowner requires legal assistance, housing counselors must refer the homeowner to an attorney who can assist

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<sup>206</sup> *Id.*

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

<sup>210</sup> *Lifelong Housing Safety Net*, *supra* note 194.

<sup>211</sup> Interview with Lili Sotelo, *supra* note 32.

with the legal issues.<sup>212</sup> Although post-foreclosure rights currently do not exist for foreclosed homeowners, in the event that such legislation passes, it is important that homeowners be properly informed of their rights and options in foreclosure. This is especially important because people of low- to moderate-income, people of color, people with disabilities, and elderly people face issues of literacy, language barriers, and ability, which further necessitates proper counseling by an attorney to avoid scams and disastrous misunderstandings.<sup>213</sup>

Despite NJP's efforts to reach out to marginalized communities, the number of homeowners served is not adequately representative of the number of foreclosures in respective communities.<sup>214</sup> While NJP tries to assist all low- to moderate-income clients, due to its funding conditions by the federal government, NJP faces barriers in the kinds of clients that it is able to serve.<sup>215</sup>

In fact, attorneys at NJP, among other organizations, have voiced concern over the shortcomings of the current foreclosure laws.<sup>216</sup> The above facts give insight into the gravity of the issues that legal advocates face in preventing foreclosures. The IDT aims to address some of these issues, but Washington needs additional legislation to increase the chances for underrepresented and underserved communities to receive legal aid and relief after foreclosure.

#### IV. PROPOSALS FOR CHANGE NEEDED TO PROVIDE AID TO FORECLOSED HOMEOWNERS

This section proposes policy changes and legislative amendments that will afford greater rights to homeowners who have lost their homes in foreclosure. It will also suggest state legislation to fill the federal

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<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

legislation's shortcomings. Specifically, state legislation should increase protections for foreclosed homeowners, which will stabilize neighborhoods and communities, as well as provide affordable housing solutions for foreclosed homeowners. Finally, this article will propose other relief avenues, such as private investing and reducing negative credit impact.

The following solutions can be implemented separately or together, according to the state's available resources. Additionally, it may be beneficial for Washington State to implement these solutions on a trial basis, similar that of the Settlement. Under this structure, homeowner aid would be available on an "as needed" basis for a period of two to eight years in anticipation of the economy (and by extension, foreclosure rates) rebounding after that period of time.<sup>217</sup>

#### *A. Affordable Housing*

One of the largest issues foreclosed homeowners face is obtaining affordable housing post-foreclosure.<sup>218</sup> Many homeowners who have lost their home in foreclosure resort to living with other families or extended family members to save costs of re-renting, but those who do not have that option are forced to look elsewhere for housing.<sup>219</sup> Particularly in Seattle and surrounding areas where construction and population is rapidly increasing, the city's density has forced housing prices to skyrocket once again.<sup>220</sup> While this is good news for current residents, those who are looking for affordable housing options have few options from which to choose.<sup>221</sup> As a result, foreclosed homeowners must move outward from the city's urban areas, often as far as the surrounding counties, in order to find

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<sup>217</sup> *National Mortgage Settlement*, *supra* note 57.

<sup>218</sup> Interview with Lili Sotelo, *supra* note 32; Interview with Catherine West, *supra* note 37.

<sup>219</sup> Interview with Catherine West, *supra* note 37.

<sup>220</sup> CITY OF SEATTLE, *supra* note 29, at 2.

<sup>221</sup> Interview with Catherine West, *supra* note 37.

housing with affordable and comparable prices.<sup>222</sup> This moves people farther away from their communities, schools, and jobs. In addition, it likely has the effect of gentrification, given that the majority of populations subject to foreclosure are people of color and low-income people.

Looking at another jurisdiction that has addressed post-foreclosure issues, the most effective option for increasing access to affordable housing is the “Right to Rent” approach. Right to Rent provides foreclosed homeowners with the option to remain on their property after foreclosure by renting it at market value, until another buyer who intends to occupy the property comes along.<sup>223</sup>

In an article entitled, *The Right to Rent Post-Foreclosure*, a Harvard Law student proposed that the Right to Rent model be implemented on a state-by-state basis.<sup>224</sup> For instance, Massachusetts has commissioned a study to evaluate whether implementing this model would be feasible in that state.<sup>225</sup> The current Massachusetts law, the Act to Stabilize Neighborhoods, would be amended to provide that “[a] foreclosing owner shall not evict a tenant except for just cause or unless a binding purchase and sale agreement has been executed for a bona fide third party to purchase the housing accommodation from a foreclosing owner.”<sup>226</sup> Massachusetts has not yet come to a consensus on whether this model would work in its state; however, the article proposes that it would not only be feasible for Massachusetts, but for all other states as well, given the structure of the

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<sup>222</sup> *Id.*

<sup>223</sup> Beckett, *supra* note 5, at 175–76.

<sup>224</sup> *See generally id.*

<sup>225</sup> *Id.* at 175.

<sup>226</sup> An Act Relative to Mortgage Foreclosures, Mass. Acts 1102 (2010); *see also* Elaine McArdle, *Massachusetts Enacts Landmark Foreclosure Protections Drafted by Harvard Law School Students*, HARVARD LAW SCH. (Aug. 10, 2008), <http://www.law.harvard.edu/news/2010/08/10foreclosure.law.html>, archived at <https://perma.cc/0kQMj4R4VL4?type=source>.

model and the strong policy interests that state legislatures have in community stability.<sup>227</sup>

While the Beckett article proposes viable reasons and solutions for post-foreclosure issues, the article does not focus on the issues of rising property values and gentrification, as is occurring in Seattle.<sup>228</sup> Instead, the article focuses on decreasing property values, which may be the case in Pierce and Snohomish counties, but is not the entire story.<sup>229</sup> The reality is that the overall demographics of the state, such as income, race, and ability, need to be considered when implementing foreclosure legislation. In considering the demographics and economic climate in Washington State, there are even more compelling reasons why a Right to Rent model would work. The impacts of foreclosure are more localized, so communities that are most affected by foreclosure are uprooted in large numbers.<sup>230</sup> Therefore, Washington should go even further to address the problems of gentrification and rising property value. A Right to Rent model would assist in stabilizing communities and preserving property values, while allowing banks to obtain a profit from the additional rent.

Additionally, this legislation has been introduced at the federal level, but has yet to be passed by Congress.<sup>231</sup> The Right to Rent Act (Act) was originally introduced in 112th Congress, and then it was reintroduced in the 113th Congress.<sup>232</sup> While not enacted in the 113th Congress, the Act should be reintroduced during future Congressional sessions.<sup>233</sup>

This Act proposes that a foreclosed homeowner should have the right to remain on and rent its foreclosed property, at market value, until another

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<sup>227</sup> See Beckett, *supra* note 5.

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> Bhatt, *supra* note 82.

<sup>231</sup> Right to Rent Act of 2013, H.R. 2580 (Introduced June 28, 2013); *see also* Text of the Right to Rent Act of 2013, GOVTRACK.US, <https://www.govtrack.us/congress/bills/113/hr2580/text> (last visited Aug. 2, 2015).

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*

purchaser comes along who intends to occupy the property.<sup>234</sup> The Right to Rent approach should be implemented on a federal level because it would not only apply to Washington State's foreclosure laws, but to all states. Additionally, this legislation would be most effective if implemented as a trial period, instead of spending money to conduct preliminary research on its effectiveness.

The proposed solutions would need to include proper notice to homeowners before a new purchaser requires the foreclosed homeowner to leave the home. If the Act fails to address such an issue, then it would be in danger of merely delaying the displacement process. Given the tight housing market, the legislation should provide for at least 45 days notice before a foreclosed homeowner must leave the newly purchased home. This will give the foreclosed homeowner an acceptable amount of time to search for alternative housing, as well as arrange for moving his or her personal belongings.

Even if the Act is not passed at the federal level, Washington State should still enact this legislation at the state level. This statute is good for Washington because it will reach the entire state, unlike the proposed IDT program, which will only reach Seattle residents. It is necessary that Washington implements the program statewide, rather than within a single city, because other counties have been hit harder than the King County area.

The state should prioritize post-foreclosure aid because strong policy and economic interests are at stake. Various cities in Washington have stated that addressing foreclosure issues is a priority, and a number of organizations have set out to find and implement solutions.<sup>235</sup> However, such fractionated efforts are often ineffective as a whole, and they are also inefficient. The state should consider creating a trust or fund specifically for foreclosure aid, so that funding will be available to begin such initiatives.

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<sup>234</sup> *Id.*

<sup>235</sup> CITY OF SEATTLE, *supra* note 29, at 26–28.



For example, the state could impose a tax on foreclosure transactions that would go towards the foreclosure aid fund. Imposing such a tax would incentivize banks to work with homeowners at risk of foreclosure, perhaps helping to avoid foreclosure altogether. It also allows for a common place for funding to increase efficiency and minimize management costs for the state. While such a tax would cost the banks more money if they chose to foreclose, the banks would still have the choice between two very reasonable options, both of which would be profitable for banks. Although the funds for the Settlement will dry up by 2017, if Washington plans ahead by implementing a fund for foreclosure aid, the state will be able to continue providing assistance and resources for homeowners who need them.<sup>236</sup>

#### *B. Home Buyback Programs*

Another alternative to affordable housing comes in the form of home buyback programs.<sup>237</sup> After a home's foreclosure, a buyback program would repurchase the home at market value and resell it to the former homeowner who was foreclosed upon.<sup>238</sup> A home buyback program would allow a foreclosed homeowner to buy back the foreclosed property at or below market value.<sup>239</sup> However, home buybacks require an investor (such as a bank) to purchase the property and allow the homeowner to participate in a home buyback.<sup>240</sup>

Boston Community Capital (BCC) is a Massachusetts program that allows foreclosed homeowners to buy back their homes.<sup>241</sup> Under the BCC

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<sup>236</sup> *National Mortgage Settlement*, *supra* note 57.

<sup>237</sup> See, e.g., BOS. CMTY. CAPITAL, <http://www.bostoncommunitycapital.org/about-us> (last visited Aug. 2, 2015); *About Oregon Housing and Community Services*, OREGON.GOV, <http://www.oregon.gov/ohcs/Pages/about-us.aspx> (last visited Aug. 2, 2015) [hereinafter *Community Services*].

<sup>238</sup> McArdle, *supra* note 226.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> BOS. CMTY. CAPITAL, *supra* note 237.

model, foundations and private investors invest in purchasing foreclosed properties, and in turn enter into buyback agreements with the foreclosed owner of the property, allowing the homeowner to buy back their home while remaining in it.<sup>242</sup> The program sells foreclosed homes back to their former owners on more affordable loan terms than the previous mortgage.<sup>243</sup> This has provided more than \$62 million in mortgage financing and saved about 425 families from eviction.<sup>244</sup>

As mentioned above, private organizations traditionally establish and fully fund home buyback programs.<sup>245</sup> However, Oregon has a home buyback program partially funded by the state, with private investors funding the remaining percentage.<sup>246</sup> Additionally, the Federal Housing Finance Agency announced in November 2014 that it would allow Fannie Mae and Freddie Mac to sell foreclosed properties back to their owners at fair market values.<sup>247</sup> A similar home buyback program would be good for Washington State because it would allow more foreclosed homeowners to remain in their homes after foreclosure. One issue that legislators face is deciding the correct amount of funds to dedicate to the program. Given the fact that Washington has a lower rate of foreclosure than Oregon, the budget for the program should be proportionate to Washington's foreclosure

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<sup>242</sup> McArdle, *supra* note 226.

<sup>243</sup> Eileen Ambrose, *Massachusetts Nonprofit Brings Foreclosure Relief Program to Maryland*, THE BALTIMORE SUN (Sept. 27, 2013), [http://articles.baltimoresun.com/2013-09-27/business/bs-bz-boston-capital-20130927\\_1\\_foreclosure-relief-program-elyse-cherry-mortgage-payments](http://articles.baltimoresun.com/2013-09-27/business/bs-bz-boston-capital-20130927_1_foreclosure-relief-program-elyse-cherry-mortgage-payments).

<sup>244</sup> *Id.*

<sup>245</sup> See, e.g., BOS. CMTY. CAPITAL, *supra* note 237.

<sup>246</sup> *Community Services*, *supra* note 237.

<sup>247</sup> FHFA Directs Fannie Mae and Freddie Mac to Change Requirement Relating to Sales of Existing REO, FED. HOUS. FIN. AGENCY (Nov. 25, 2014), <http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Directs-Fannie-Mae-and-Freddie-Mac-to-Change-Requirements-Relating-to-Sales-of-Existing-REO.aspx>; see also FHFA Will Allow Foreclosed Homeowners to Repurchase Their Homes Through Programs Like BCC's SUN Initiative, BOSTON CMTY. CAPITAL (Dec. 5, 2014), <http://www.bostoncommunitycapital.org/fhfa-will-allow-foreclosed-homeowners-repurchase-their-homes-through-programs-bccs-sun-initiative>.

rates. If the budget permits, Washington should fund the same relative percentage that Oregon does for its program.

BCC and Oregon Housing and Community Services have brought relief to a number of foreclosed homeowners.<sup>248</sup> While private investors fully fund the BCC project, Washington homeowners require more assistance from the state because the issue is widespread. Particularly for a rapidly growing state such as Washington, the state has an interest in providing stability to current residents by assisting in foreclosure aid. Additionally, the state has an economic interest in providing foreclosure assistance because it will allow for a more stable economy and will help improve the outlook in areas significantly affected by the foreclosure crisis such as Pierce County.

Furthermore, banks and investors will have an incentive to participate in home buyback programs.<sup>249</sup> Although some people think little incentive exists for banks and investors because the possibility of obtaining a higher profit by selling the property to a new buyer, the Right to Rent model would allow banks to gain more income from foreclosed homeowners (now tenants) than the bank would be able to receive if it sold the home for a low bid.<sup>250</sup> While foreclosure can be very profitable to banks when homes can be sold for a profit at the foreclosure auction, the bank will receive valuable profit from allowing renters to continue living in the property as a renter that it would otherwise not receive if the property stayed vacant while the bank searched for a new buyer.<sup>251</sup>

### *C. Principal Reduction*

Banks are not offering equitable refinancing or modifications to most homeowners in need.<sup>252</sup> Banks are also not reducing principal on home

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<sup>248</sup> Interview with Angeline Thomas, *supra* note 36.

<sup>249</sup> Beckett, *supra* note 5, at 176, 183.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Together We Can Fight the Banks!*, *supra* note 68.

loans.<sup>253</sup> Equitable refinancing and principal reduction are two critical steps in stabilizing the housing market and helping families targeted with subprime loans.<sup>254</sup> Washington should pursue policies to reset underwater mortgages to fair market value with equitable and sustainable loans.

One economist recommends that Seattle use its “eminent domain” authority<sup>255</sup> to issue a “principal reduction” by writing down the principal owed by Seattle homeowners who are underwater on their mortgage.<sup>256</sup> The city can use its eminent domain to force principle reduction on mortgages from banks unwilling to negotiate with hardworking families.<sup>257</sup> This solution would offer people of color and low- to moderate-income families in Seattle an opportunity to reclaim their mortgages.<sup>258</sup>

Richmond, California, and Irvington, New Jersey, are already pursuing this exact strategy, successfully preventing foreclosure for a number of homeowners.<sup>259</sup> Despite the implication in many reports that the foreclosure crisis is resolving itself, the housing market’s upswing will not solve the foreclosure crisis for all areas of Washington.<sup>260</sup> In Seattle, roughly 20,000 households are still underwater on their mortgage.<sup>261</sup> While several displeased banks shut down the initial principal reduction program proposal, this would be a useful resource, especially for existing homeowners living in the harder-hit areas of Pierce and Snohomish counties.<sup>262</sup>

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<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> “Eminent Domain” is the inherent power of a governmental entity to take privately owned property and convert it to public use. BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>256</sup> Herz, *supra* note 1.

<sup>257</sup> *Together We Can Fight the Banks!*, *supra* note 68.

<sup>258</sup> *Id.*

<sup>259</sup> Herz, *supra* note 1.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

*D. Extended Timeline for Foreclosed Homeowners*

One option for extending the timeline for foreclosed homeowners is to amend the language of the FFA to provide more protections and options for homeowners who have lost their homes in foreclosure. However, because the FFA only governs non-judicial foreclosures, amending the FFA would not provide relief to homeowners who have gone through judicial foreclosure.<sup>263</sup> One statute, the Unlawful Detainer Statute,<sup>264</sup> is another solution that Washington should adopt to aid foreclosed homeowners, because it applies to both judicial and non-judicial foreclosures.

The Unlawful Detainer Statute requires that, before a purchaser may evict a tenant in a foreclosed property, the purchaser must serve the tenant with appropriate court papers to adjudicate the matter in court.<sup>265</sup> The court must approve and direct the termination of tenancy before the purchaser may direct the sheriff to evict the tenant.<sup>266</sup> Additionally, two other statutes, the Foreclosure of Tenant-Occupied Property<sup>267</sup> and Protecting Tenants at Foreclosure Act of 2009,<sup>268</sup> provide additional rights for tenants renting foreclosed property, while affording no post-foreclosure rights for foreclosed homeowners.

Washington tenants have significantly more rights than Washington homeowners under the Unlawful Detainer Statute. The Unlawful Detainer Statute provides tenants living in foreclosed properties rights to protect them from foreclosure ramifications.<sup>269</sup> If a homeowner remains on the property past the redemption period, the purchaser may evict the homeowner by alerting the sheriff of the holdover.<sup>270</sup> Tenants living in

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<sup>263</sup> *Foreclosure Fairness Act*, *supra* note 20.

<sup>264</sup> *See* WASH. REV. CODE § 59.18.365 (2013).

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> Protecting Tenants at Foreclosure Act of 2009, PUB. L. NO. 111-22, § 701-704 (2009) (This law sunset on December 31, 2014).

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

foreclosed properties, on the other hand, are afforded greater protection than foreclosed homeowners.<sup>271</sup>

The law should provide for greater protection to foreclosed homeowners in the same way that it provides for protection of tenants. Although the policy for protecting tenants is rooted in the idea that tenants are blameless in foreclosure,<sup>272</sup> the state has a vested interest in mitigating the harmful effects of foreclosure. This includes providing homeowners who have lost their home in foreclosure with greater protections before a purchaser may foreclose on the home. Implementing an extended timeline would help address the issue of gentrification because it will help stabilize neighborhoods and allow foreclosed homeowners more time to save money before moving residences. Similar to the structuring of the programs arising from the Settlement, Washington could implement the extended timeline for a trial period of five to 10 years, renewing as necessary.

#### *E. Access to Credit*

Finally, credit bureaus should consider lessening the negative impact that foreclosures have on a foreclosed homeowner's credit score. Instead of a seven-year mark on a borrower's credit score, reducing the impact on credit down to a three- or five-year period would allow foreclosed homeowners to attain more affordable housing in a shorter period of time.<sup>273</sup>

A foreclosure can make a borrower's credit score drop between 85 to 160 points.<sup>274</sup> Additionally, foreclosure affects a homeowner's credit score for seven years.<sup>275</sup> Under the FICO analysis, the higher your original score, the

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<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

<sup>273</sup> Les Christie, *How Foreclosure Impacts Your Credit Score*, CNN MONEY (Apr. 22, 2010), [http://money.cnn.com/2010/04/22/real\\_estate/foreclosure\\_credit\\_score/](http://money.cnn.com/2010/04/22/real_estate/foreclosure_credit_score/).

<sup>274</sup> *Id.*

<sup>275</sup> Michelle Singletary, *What's Worse for Credit Score – Foreclosure Short Sale or Deed in Lieu*, THE WASH. POST (Aug. 30, 2011), [http://www.washingtonpost.com/business/economy/whats-worse-for-credit-score—foreclosure-short-sale-or-deed-in-lieu/2011/08/30/gIQAbnTaqJ\\_story.html](http://www.washingtonpost.com/business/economy/whats-worse-for-credit-score—foreclosure-short-sale-or-deed-in-lieu/2011/08/30/gIQAbnTaqJ_story.html).

greater the drop and the longer it will take for your credit to recover to the same level, assuming all else held constant.<sup>276</sup> For instance, a consumer who started with a 780 score and did a short sale with no deficiency balance could see his score drop to a range of 655 to 675, on a 300 to 850 scale.<sup>277</sup> Regardless of a homeowner's original credit score, if a foreclosed homeowner applies for a loan in the future, the credit scoring system sees the defaults from foreclosure as a significantly negative mark to the credit score.<sup>278</sup> While the negative impact of a foreclosure can be slightly less if the lender does not report a deficiency balance, the impact that foreclosure has on credit scores can severely impair access to future loans by increasing the interest rate and limiting the available amount of a loan.<sup>279</sup>

In turn, foreclosed homeowners are likely less able to repurchase a home during the seven years following a foreclosure, leading to increased instability and high costs associated with renting.<sup>280</sup> The legislature should require credit bureaus to lower the negative impact that foreclosures have on a foreclosed homeowner's credit score. Instead of a seven-year mark on a borrower's credit score,<sup>281</sup> reducing the impact on credit down to a three- or five-year period would allow for foreclosed homeowners to attain more affordable housing in a shorter period of time.

## V. CONCLUSION

We need long-term solutions to the housing crisis. As such, Washington must enact stronger legislation to provide relief to foreclosed homeowners in order to properly address the problem of foreclosure. A reasonable accommodation for foreclosed homeowners saves the homeowner money, stabilizes the community, promotes the justice system, and will be more

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<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

profitable for lenders. The current legislation, on the other hand, displaces homeowners, breaks apart communities, and reduces tax revenues.

Looking forward, a chance also exists that modified loans may re-default. Furthermore, homeowners who obtained a loan modification between 2009 and 2011 are due for an interest rate increase, per the terms of their loan modification agreements.<sup>282</sup> This means that even homeowners who were able to obtain a loan modification during the foreclosure crisis may again be at risk of re-defaulting on their loans, and furthermore, at risk of foreclosure. Given the nature of loan modifications, some of these homeowners may be ineligible to obtain another loan modification with the same or similar favorable terms after defaulting on their modified loans. Therefore, it is likely that many more homeowners will be at greater risk of foreclosure in the coming years. Given this fact, Washington State should be more incentivized than ever to seriously consider implementing post-foreclosure aid legislation to help stabilize the economy, neighborhoods, communities, and the housing market.

The Washington housing market, Washington neighborhoods, foreclosed homeowners, and homeowner advocates would benefit from policy implementation that will provide affordable housing solutions for foreclosed homeowners. These solutions could also provide a model for other cities and counties experiencing the same foreclosure issues as Washington State, thereby more effectively mitigating the housing crisis.

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<sup>282</sup> Interview with Lili Sotelo, *supra* note 32.