

*Renters in Foreclosure:
Defining the Problem,
Identifying Solutions*



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Renters in Foreclosure: Defining the Problem, Identifying Solutions

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National Low Income Housing Coalition
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Executive Summary

Inappropriate lending, a poor economy and falling home prices are leading to increasing numbers of foreclosures across the United States. These trends affect landlords as well as homeowners, and renters lose their homes to foreclosure every day when the owner of the home they are renting goes into foreclosure.

Based on a review of existing sources and its own data collection and analysis, NLIHC has defined the extent of the problems renters face nationwide and drawn six distinct and policy-relevant findings. These findings are presented and discussed in this report.

- 1. More than 20% of the properties facing foreclosure nationwide are rentals.**
- 2. Because rental properties often are home to multiple families, renters make up roughly 40% of the families facing eviction.**
- 3. Very low income families and low income and minority communities are bearing the brunt of rental foreclosures.**
- 4. The foreclosure crisis is exacerbating pre-existing rental market imbalances.**
- 5. Policies to mitigate the difficulties renters face in foreclosure are clear.**
- 6. The federal government has a role to play.**

Despite these findings, renters have largely been left out of the policy debate on how to aid American families and communities hardest hit by the foreclosure crisis. This neglect can no longer be justified.

Introduction

When talking about the foreclosure crisis, it is common to visualize homeowners who cannot make payment on the house they occupy. In many cases, however, a house in foreclosure is occupied by a renter, who often may not have any idea the landlord has fallen behind on mortgage payments.

In fact, renters make up more than a third of U.S. families and, by the most conservative estimate, one in five foreclosed properties is a rental. In poor neighborhoods, where the foreclosure crisis has been concentrated, both numbers are much higher. Moreover, many of these foreclosed properties are multi-unit, and each multi-unit foreclosure is likely to destabilize many renter families. The National Low Income Housing Coalition (NLIHC) estimates that renters represent as many as 40% of the American families who will lose their homes in this crisis.

Since renters have likely had no direct involvement in the financing decisions related to their buildings, there can be little doubt that they are truly victims. Yet as housing prices have fallen and foreclosures have risen in the United States, the impact of these trends on renter families has received scant attention from policymakers. Policymakers from city council members to the President must recognize the problem of renters in foreclosure.

There are fairly straightforward solutions available to policymakers that can greatly enhance the stability of renters' lives and foreclosure-stricken communities. These solutions include:

- Providing adequate notice of a foreclosure and honoring leases as ways to limit evictions;
- Requiring new owners, including banks and other lenders, to maintain properties such that they are suitable for habitation by the tenants as long as they are legally occupying the unit;
- Smoothing the transition with financial assistance when renters must move as a result of a foreclosure; and
- Ensuring that families are assisted in finding the most appropriate housing, whether that housing is rented or owned.

These measures will not only assist the renters affected but also serve to stabilize the communities in which they live, work and go to school.

While policies that aim to get at these solutions may best be enacted by various levels of government, the federal government has a specific role to play. To mitigate the effects of the national foreclosure crisis on renters, the federal government should allocate \$2 billion for relocation and temporary housing assistance for tenants who live in homes that are foreclosed upon, and legislate protections for tenants in properties subject to foreclosure, including the requirement that existing leases be honored and in the absence of a lease, renters be provided with at least 90 days' notice before eviction.

From the perspective of the current crisis and looking beyond it, policymakers must also recognize the central role that rental housing plays in a robust and healthy housing market. As we are once again learning, this is particularly true in times of economic uncertainty. As a nation, we must recommit to affirmatively provide additional, affordable rental housing options within the existing stock and, where necessary, through new construction to meet the needs of those who have suffered foreclosure as well as others without access to a decent, affordable place to rent.

It has been said that among the lessons of history we must apply to the current crisis are first that "when crises occur the least responsible [for the crisis] are usually the worst affected and the least able to cope," and second, "crises can provide the momentum for reform and radical change" (Annan, Camdessus, & Rubin, 2008). In the case of renters in the foreclosure crisis, the first is already true and the second certainly can be.

Defining the Dimensions of the Problem

Beginning in the summer of 2007, NLIHC began receiving phone calls and e-mails about renters being displaced by foreclosure. We were told of renters receiving notice that their homes had been foreclosed upon, sometimes just days or hours before they were asked to vacate their home. With foreclosure, it appeared these tenants had no opportunity to defend their tenancy or delay their eviction. Local tenant hotlines such as the one run by Minnesota's HOME Line reported dramatic upsurges in calls from tenants facing foreclosure. It proved difficult, however, to ascertain how big and how widespread the problem was. There is no effort to collect foreclosure data nationally in the United States. Even at the local level, little data are readily available on evictions (Hartman and Robinson, 2003) or on the owner- or renter-occupancy of a foreclosed home.

To try to overcome this barrier, NLIHC collected and reviewed available evidence from regional, state, and local sources. By studying the results of others and conducting original research, NLIHC has gained an understanding of just how widespread and significant the problem of renters caught up in foreclosure is in the United States.¹ This report summarizes six distinct, policy-relevant findings that have emerged from this research.

Findings

1. More than 20% of the properties facing foreclosure nationwide are rentals.

Current research suggests that, nationwide, at least 20% of the properties facing foreclosure nationwide are rentals.

- The Mortgage Bankers Association reports that one in five of the properties nationwide with a delinquent mortgage is not owner-occupied (Brinkman, 2008).
- According to RealtyTrac, about one-third of the properties with valid mailing addresses in default or foreclosure in May were not owner-occupied and are therefore investment properties likely occupied by renters (Sainz, 2008). At one point, RealtyTrac estimated that roughly half the foreclosures in Nevada, Illinois, and New York involved rental properties (CBS Evening News, 2008).
- Using tax records, Hennepin County, Minnesota estimated that 43% of the county's foreclosed properties were not owner-occupied (Hennepin County Foreclosure Task Force, 2007).

And these are likely conservative estimates.²

¹ NLIHC maintains a "Renters in Foreclosure" webpage that provides summaries of and internet addresses for over 160 media reports and research reports that discuss the eviction and displacement of renters due to foreclosure. Original NLIHC research, conference presentations, and letters to congressional leadership are also available at <http://www.nlihc.org/template/page.cfm?id=159>.

² It is generally recognized that while the loan and tax documents at the heart of these studies distinguish between properties that are owner-occupied and those that are not, this is not a reliable indicator of the properties' occupants' actual status. In particular, the lending and tax benefits that the system bestows on owner-occupied properties, as well as penalties for renting in many communities, mean that the incentive exists for owners to misrepresent a property's rental status in a loan application or to not inform tax authorities about a property being a rental in subsequent years. On the issue of local tax records see also Rothstein (2008).

2. Because rental properties often are home to multiple families, renters make up roughly 40% of the families facing eviction.

Not all homes in multi-unit properties are rentals, as an owner often lives on-site. But because rental properties are more likely to contain more than one unit, counting the individual units facing eviction greatly increases the accuracy of the estimate of foreclosure's impact on renters. Studies using local data and the assumption that multi-unit properties in foreclosure contain at least one rental unit have reinforced the conclusion that the proportion of rentals in foreclosure exceeds 20%, particularly in areas with high proportions of renters.

- NLIHC has estimated that 32% of the properties auctioned or bank-owned in four New England states were multifamily properties (Wardrip & Pelletiere, 2008a).^{3,4} In this study, the number in Rhode Island was 41%.
- A similar study in New York found that 60% of the filings there contained at least two units (Furman Center for Real Estate and Urban Policy, 2008).
- In Chicago, 35% of the one-to-six unit property foreclosures had at least two units (Woodstock Institute, 2008), suggesting that the proportion of multi-unit properties would be even higher if buildings with six or more units were included.

At the same time, many renters live in single-family homes, particularly in more recently developed housing markets in the South and West.⁵ The California Association of Realtors reported that as many as 25% of single-family properties going through foreclosure are occupied by renters (Valenzuela, 2008). As of 2007, the Census Bureau found that nationwide 31% of all renter families lived in single family-homes and that 14% of all single-family homes were rentals (U.S. Census Bureau, 2008a, Table 1A-1).

These two factors suggest that renters make up approximately 40%, if not more, of families facing eviction due to foreclosures. In New York City, the Furman Center (2008) conservatively estimated that if an owner lived on-site in every multi-unit building and none of the single-family residences in foreclosure were rentals, 50% of the nearly 30,000 families affected by foreclosure were renters. In New England, NLIHC assumed that 15% of multi-unit building had an owner on-site and conversely that 15% of single-family homes were renter-occupied to estimate that 45% of the homes facing a foreclosure auction or already owned by the bank were rentals (Wardrip & Pelletiere, 2008a).

³ According to 2006 American Community Survey data, 15% of the occupied single-family attached and detached units in the U.S. are rented. Assuming that the same proportion of the foreclosed single-family units analyzed here were occupied by renters and that the proportion of owners of multi-unit properties that do not live on-site is also 15%, renters would make up 45% of households affected by foreclosure. Even using the extremely conservative assumptions that all single-family homes were owner-occupied and an owner lives in each multi-family unit, 36% of the units affected by these foreclosures were renter-occupied. Conversely if all single family homes were counted as being owner occupied and none of the multi-family building owners lives on-site, an estimated 56% of the homes were renter-occupied.

⁴ Condominium units have their own mortgage and are assessed as single family properties though they may be in multi-unit buildings, and therefore are considered single-family in these studies.

⁵ While some units may be vacant, reducing the number of families directly affected, many of these are for sale or rent, and the loss of vacant units during the foreclosure process reduces the current supply of available units.

3. Very low income families and low income and minority communities are bearing the brunt of rental foreclosures.

Even as the foreclosure crisis spreads to markets across the nation and the globe, it remains firmly rooted in America's lower income neighborhoods. Rental units generally serve lower income households and are concentrated in lower income communities. Even at the peak of the U.S. homeownership rate in 2004, African-American and Hispanic households were more likely to rent (U.S. Census Bureau, 2008c, Table 20). Thus, it is not surprising that rental foreclosures too are concentrated in the same low income and minority communities where subprime and predatory lending were also most prevalent and that are now experiencing the greatest proportion of foreclosures in general.

As Table 1 shows for four states in New England, the foreclosure rate on a per unit basis is more than five times higher in largely non-white, poor neighborhoods than in largely white, low poverty neighborhoods. Note that less-poor neighborhoods with similar racial characteristics, as well as equally poor but predominantly white neighborhoods, have significantly lower rates. Thus the confluence of higher poverty rates and higher proportions of non-white population are clearly linked to higher rates of foreclosure.

More striking perhaps is the proportion of properties in foreclosure in poor, non-white neighborhoods that are multi-unit and likely contain renters. Nearly sixty of every hundred foreclosed properties in high-poverty, non-white neighborhoods are multi-unit, as compared to seven of every one hundred in low poverty, white neighborhoods. Not only are properties in these neighborhoods more likely to be foreclosed upon, but each foreclosure is likely to affect more families. The impact of foreclosure is truly concentrated in these communities.

Table 1: Foreclosures and Multi-unit Foreclosures Concentrated in Poor, Non-white Neighborhoods

Foreclosure in New England* by Housing Type and Census Tract Race and Poverty Characteristics**			
	Foreclosed Units/ Total Households (Multi-unit Properties in Foreclosure/Total Properties in Foreclosure)***		
	White Quartile	Middle Half	Non-White Quartile
Low Poverty	0.21% (7%)	0.24% (8%)	0.52% (8%)
Average Poverty	0.28% (10%)	0.32% (17%)	0.60% (31%)
High Poverty	0.63% (26%)	0.46% (33%)	1.32% (58%)

*Data from CT, MA, NH, RI

**The White Quartile is the bottom quarter of tracts in each state ranked by the proportion non-white population, the Middle Half contains tracts ranking between the 26th & 75th percentiles, and the Non-White Quartile is the top quarter. A tract is categorized as being "low poverty" if its poverty rate ranks in the bottom third within the state, "average" if it ranks in the middle third, or "high" if it ranks in the top third.

*** Foreclosed properties (and units) include those scheduled for auction and those already owned by their lenders as a result of foreclosure (REO)

Source: NLHC tabulations of Warren Group Data

4. The foreclosure crisis is exacerbating pre-existing rental market imbalances.

As of 2007, there were 9 million extremely low income renters in the United States and just 6.2 million units that were affordable to them.⁶ This fundamental shortage of affordable housing for the lowest income Americans can be seen in every community in America. The unsustainable increase in housing prices, the conversion of subsidized and unsubsidized rental units to market rate ownership, and stagnant low wage earnings all exacerbated these problems in the boom years.

Yet there is little evidence that the current steep declines in the sales prices of housing are relieving the pressure on the lowest income renters. If anything, the downturn in the housing market may be increasing the pressure on rental prices, as the resulting recession and uncertainty around homeownership spreads.

Incomes are falling and the number of renters in the country is growing. The U.S. Census Bureau estimates that between 2002⁷ and 2004 the number of occupied rental units in the country declined by 674,000 and the number of owner-occupied homes grew by 2.3 million. In contrast, from 2005, when the homeownership rate in the United States peaked, to 2007, the country added over twice as many renters as owners: the number of renter-occupied homes grew by 1.5 million compared to an increase of just 606,000 million for owner-occupied homes.⁸

Adding to the pain, this increased pressure can lead to further increases in rents. Newspapers in cities as varied as Seattle (Berton, 2008), Boston (Blanton, 2008), and Durham, North Carolina (Wise, 2008) have reported declining vacancies and rising rents. Other reports find that even the growing market of condos and single family homes informally converted to rental, what economists often refer to as the shadow rental market, has been met with strong demand, resulting in stable vacancies and modestly rising rents (Twarowski, 2008). Even in Columbus, OH, where prices did not boom and the rental market was slack, the rental vacancy rate has fallen from 12.6% in 2005 to 7.5% in 2008 (Williams, 2008). In general, and nationwide, it seems that despite the turmoil in housing markets and continuing declines in incomes, rents have continued modest growth and vacancy rates have remained steady.

The standard operating procedure of banks and loan servicers to hold properties vacant after a foreclosure also limits the potential supply and contributes to this trend.

⁶ NLIHC tabulations of 2007 American Community Survey PUMS data.

⁷ In 2002 the total household count was adjusted downward to reflect findings from the 2000 census.

⁸ NLIHC analysis of Housing Vacancy Survey tables produced by the U.S. Census Bureau. These tables are available at <http://www.census.gov/hhes/www/housing/hvs/hvs.html>.

5. Policies at all levels of government could greatly mitigate the difficulties renters face in foreclosure situations.

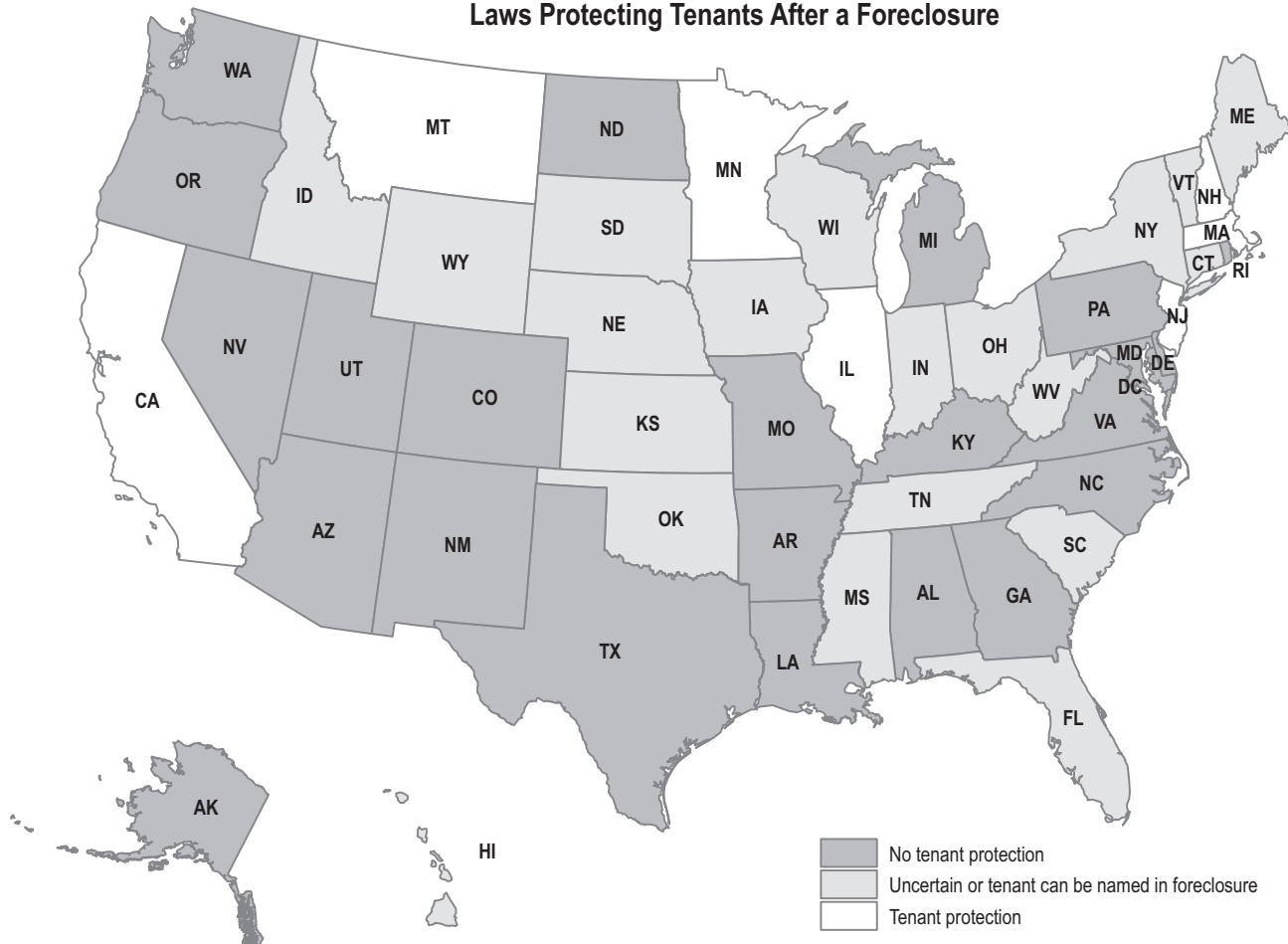
It is clear that renters' experiences in foreclosure differ in a number of ways from owners. Most notably, owners are most often aware they are not paying their mortgage and receive notice of delinquency and imminent foreclosure. Renters, however, are rarely directly a party to the foreclosure, and the only notice a renter often receives is when the sheriff appears at the door to serve an eviction. Without notice and often with lower levels of income and savings, renters displaced by foreclosure are more likely to experience homelessness than are homeowners. For example, it was recently reported that 10% of the homeless in Hennepin County, MN, were displaced by foreclosure and the majority of these had previously been renters (Koch, 2008).

Enactment of the following policies at the appropriate level - local, state, or federal - would greatly mitigate the effects of foreclosure on renters.

1. Policies should provide legal renters with the opportunity to stay in the property under the conditions of their lease for the period of their lease or at least 90 days after a foreclosure is completed. In New Jersey and the District of Columbia, a lease survives foreclosure and formally tenants can only be evicted for cause. Six additional

Map 1:

State by State Look at Laws Protecting Tenants After a Foreclosure



Source: NLIHC (2008) retrieved September 17, 2008 from <http://www.nlihc.org/docs/State-Foreclosure-Chart.pdf>
Information current as of July 25, 2008.

Tenant protection: providing tenants with at least 30 days notice to vacate the premises after foreclosure or requiring the new owner to become the landlord and use the judicial eviction process to displace the tenant.

states appear to provide the tenant with at least 30 days notice to vacate the property subsequent to a foreclosure (Map 1). In many cities such as Los Angeles, rent control laws limit evictions in apartments explicitly covered by the program and provide rent escrow programs when tenants are uncertain about where to send the rent.

Where tenants do not already enjoy such protections, simply requiring notice of the foreclosure and honoring leases will greatly stabilize renter families and rental markets. Related to this, those seeking eviction in a foreclosure case should be required to show that those being evicted are not legal tenants in good standing and that proper notice has been served to such tenants.⁹

2. Policies should ensure that renters receiving federal and local tenant-based assistance, popularly called vouchers, are provided particular protection. The contracts that govern the tenancy of these very low income tenants (Housing Assistance Payment [HAP] contracts in the federal voucher program) can be written to survive foreclosure, and an eviction or other difficulties associated with a foreclosure should not be grounds for removal from the program.

3. Policies should ensure that properties are maintained by the owner such that they are suitable for habitation by the tenants as long as they are legally occupying the unit. Recent reports show that even banks and lenders are capable of maintaining rental properties during the period of a lease or foreclosure (Samuelson, 2008), and that some banks see the benefits of renting foreclosed units – at least in the short-term – rather than selling them in a down market (Green, 2008). Recently Fannie Mae announced that it would be forthcoming with a policy to do just this, and other lenders and servicers should follow suit.¹⁰

4. Where foreclosure evictions are not avoided, financial assistance must be available for the lowest income families. Even with sufficient notice, foreclosures may be unavoidable and evictions are likely to occur. In many cases renters do not receive their security deposit from their former landlord, must come up with a deposit and rent for a new place to live, and must absorb moving and sometimes storage costs making the transition from one home to another. Financial assistance would ensure that more families are able to remain housed following a foreclosure eviction.

5. Where foreclosure evictions are not avoided, policies should ensure that housing counselors assist families in finding the most appropriate housing, whether that housing is rented or owned. During the housing boom, most housing counselors focused on transitioning renters to homeownership. In a survey of housing counselors, NLIHC found that counselors were seeing an increasing demand for rental counseling from clients who needed assistance finding rental housing because foreclosure displaced them from their previous rental unit (Wardrip & Pelletiere, 2008b). The housing counseling system needs to be retooled to help those in trouble due to foreclosure navigate the rental market. Housing counselors and community groups should be able to provide the proper resources and incentives to help both renters and homeowners find the most appropriate decent affordable housing.

⁹ As was suggested by Chicago's sheriff in declaring an eviction moratorium

¹⁰ Statement by Brian Faith, Managing Director Communications on National Tenant Policy (December 15, 2008) <http://www.fanniemae.com/newsreleases/2008/4556.jhtml?p=Media&s=News+Releases>

6. The federal government has a crucial role to play.

In general, real estate law, including foreclosures and evictions, has been seen as a state and local issue. Yet this is a national crisis, and the federal government clearly has a role to play. The federal government has already taken some tentative steps toward implementing protections and assistance for renters caught in foreclosure.

In the \$700 billion “bailout” passed by Congress on October 3 (H.R. 1424 the Emergency Economic Stabilization Act of 2008) language was included requiring the Treasury Secretary to coordinate with other federal entities that hold troubled assets “where permissible, to permit bona fide tenants who are current on their rent to remain in their homes under the terms of the lease.” Despite this provision, there is evidence that renters continue to be displaced from government-held assets, in at least one case resulting in a lawsuit to test this provision (Gosselin, 2008a).¹¹

In addition to potentially protecting tenants residing in foreclosed properties under the control of the federal government, the Secretary must also ensure the continuation of federal, state and local rent subsidies and protections and adequate operating funds during the course of any mortgage modification.

But the federal government can go further. At the federal level, NLIHC is requesting:

- Protections for tenants in properties subject to foreclosure, including the requirement that leases be honored, that renters be provided with a minimum of 90 days’ notice before eviction, and that contracts for Section 8 vouchers between the voucher administering agency and the old landlord be transferred to the new owner.¹²
- \$2 billion for relocation and temporary housing assistance for tenants who are evicted from homes that are foreclosed upon.
- \$10 billion to be provided to the National Housing Trust Fund immediately to provided needed housing. There remains an absolute shortage of housing that is affordable, available and appropriate for the lowest income renters. There is little to suggest this unmet demand for housing will be satisfied in the course of current crisis without federal intervention and incentives. The National Housing Trust Fund is the only production and rehabilitation program targeted at where housing production is needed today.

Enacting these policies and funding levels at the federal level would complement actions taken at other levels of government to benefit renters affected by the foreclosure crisis.

¹¹ This case likely contributed to the recent decision of Fannie Mae to halt rental evictions as discussed above (Gosselin, 2008b).

¹² see S. 3034 and H.R. 5963.

Conclusion

The evidence is now unavoidable: the current wave of foreclosures is affecting renters, who have done nothing to contribute to the problem. Little differentiates rental units vacant from foreclosure from those previously owner-occupied. Both destabilize local communities, schools, and tax rolls. Furthermore, in many communities where homeownership demand has all but dried up in the wake of falling prices and a faltering economy, expanding rental housing options is a necessary approach to maintaining occupancy and community stability. Indeed, in most communities that fought to keep rentals out, an unregulated shadow rental market of what were formally owner-occupied homes is growing quickly. This unregulated, unrecognized, and therefore unstable rental market is contributing to the uncertainty and fragility of the overall market in these communities. Finally, rental foreclosures are clearly contributing to homelessness as people with few resources are tossed out of their homes with little time and no assistance to find a new home.

Despite the strong evidence of both the need and the advantages of addressing the rental market in the current foreclosure crisis, as communities and the federal government have pursued assistance and regulatory reform, renters have taken a backseat to financial institutions and homeowners. It is time to address their problems both to mitigate the suffering of these families and to stabilize America's housing markets for the long term. It is time for a balanced housing policy that is not motivated by an ideology that disparages renters and low income people, but instead seeks to provide all Americans with a wide range of affordable, decent, housing options fitting their families' needs.

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National Low Income Housing Coalition

New Membership/Renewal Application

1. Choose one: I am Joining NLIHC Renewing My Membership

2. Provide your member information (please print)

Name _____

Primary Contact: (if organization) _____

Title _____

Address _____

City _____ State _____ ZIP _____

Telephone _____

Email _____

NLIHC's weekly newsletter, Memo to Members, is delivered by email each week. Organizations may list names, titles, and email addresses of up to 10 additional contact people who will receive Memo. Use separate sheet if necessary.

3. Choose a membership type:

Category	Amount (suggested)
Low income individual/Student	\$3
Individual	\$100
Low income resident association	\$10
Organization <\$250,000 (operating budget)	\$200
Organization \$250K-499,999	\$350
Organization \$500K-999,999	\$500
Organization \$1-2million	\$1000
Organization >\$2 million	\$2000

4. Choose a payment type: Check Enclosed Visa Mastercard

Credit Card Number _____ Exp Date _____

Cardholder Signature _____

5. Help us increase our impact: NLIHC is as strong as our membership base.

Can you suggest an organization that might be interested in our work?

Organization Name/Website: _____

Contact Person: _____

May we use your name in reaching out to this group? yes no

Benefits of Membership

Memo to Members

Members receive this much admired weekly newsletter by e-mail or fax.

Calls To Action

Members are notified through e-mail or fax notification of significant policy developments requiring constituent calls to Congress.

Shelterforce Subscription

Discounted Conference Fees

NLIHC hosts an annual policy conference and leadership reception in Washington, DC. The conference draws advocates, researchers, academics, low income individuals and government experts together to provide expertise and updates to attendees on current federal housing policy initiatives.

Free or Discounted Publications

NLIHC produces a number of publications, including the *Advocates' Guide* and *Out of Reach*. All NLIHC publications are available for free or at a reduced rate to our members.

Telephone resource referrals with linkage to state and regional networks

Participation in policy-setting decisions of the Coalition

Dues and gifts are tax-exempt under Section 501c3 of the IRS code, except \$15 for production costs.

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