Restoration Remedies for Remaining Residents

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ABSTRACT

The foreclosure crisis left its mark on neighborhoods in countless ways. Remaining residents, those who continue to live in neighborhoods with many foreclosures, suffer unique harms because of adjacent foreclosed homes: depressed property values, higher crime, safety hazards, and reduced city services. In the current aftermath, attention has focused on preventing additional foreclosures and assisting those displaced after losing their homes. Taking a different approach, this Comment highlights the challenges facing remaining residents. It assesses the landscape of legal remedies available to remaining residents and proposes a model approach designed to address the most common challenges facing municipalities across the country. At its core, this Comment advocates for a strong and comprehensive local government response to support the recovery of communities affected by foreclosures.

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INTRODUCTION

> In a nation with millions of foreclosed homes, the one next door proved the most dangerous for 2-year-old Isaac Dieudonne.
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> On Oct. 11, 2009, Margarrette and Woulby Dieudonne were moving into their new home in Miramar, Fla., when their son Isaac strolled unnoticed out the . . . family's open front door. Minutes later, the toddler was found floating facedown in the algae-ridden backyard pool of a neighboring foreclosed home.
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> A neighbor administered CPR as the foul water spewed from Isaac's mouth. Thirteen minutes after arriving at the hospital, he was pronounced dead.[1]

Foreclosed properties do more than displace families. As the Dieudonne family knows all too well, bank-owned homes quickly deteriorate into conditions that threaten the lives of remaining residents.[2] Former inhabitants, however, receive most of the attention. When a bank forecloses on a property, the previous owners face significant consequences.[3] With as many as thir-

1. Tony Pugh, *Child's Death Mired in Nation's Foreclosure Crisis*, MCCLATCHY DC (Oct. 29, 2010), http://www.mcclatchydc.com/2010/10/29/102866/childs-death-mired-in-nations.html.
2. In addition to deaths from neglected backyard pools, foreclosed and vacant homes lead directly to elevated rates of violent crime, arson, hazardous structural conditions, and other risks that threaten the lives of the neighbors who remain. *See, e.g.*, Shannon Buggs, *Crime Makes Foreclosures Everybody's Problem*, CHRON (June 2, 2008), http://www.chron.com/business/article/Crime-makes-foreclosures-everybody-s-problem-1774339.php (reporting how "foreclosures in your neighborhood make you less safe"); Mike Celizic, *Foreclosed Homes' Pools Can Be Death Traps*, TODAY (July 8, 2009, 9:26 AM), http://today.msnbc.msn.com/id/31795988/ns/today-money/t/foreclosed-homes-pools-can-be-death-traps (reporting the recent drowning of a five-year-old in the neighboring pool of an abandoned and foreclosed home, the sexual assault of a neighborhood girl in a foreclosed home, and the death of a squatter when an abandoned home caught fire); Kathleen M. Howley, *Arson Surges for Foreclosed Homes Lost to Subprime*, BLOOMBERG (July 3, 2008, 10:46 AM), http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aelStm0.FmYo (describing increases in arson following foreclosures in Nevada and Ohio); Yana Kunichoff, *Vacant Properties Around Schools Threaten the Safety of Students*, CHI. MUCKRAKERS (Mar. 1, 2012, 11:32 AM), http://www.chicagonow.com/chicago-muckrakers/2012/03/vacant-properties-around-schools-threaten-the-safety-of-students (reporting on sexual assaults and crime in foreclosed homes near public schools); Pugh, *supra* note 1.
3. This Comment focuses on the effects of foreclosures on remaining residents—the covictims of the foreclosure crisis. For a survey of the social impacts of foreclosures on residents forced to relocate, see G. THOMAS KINGSLEY ET AL., THE IMPACTS OF FORECLOSURES ON FAMILIES AND COMMUNITIES (2009), *available at* http://www.urban.org/UploadedPDF/411909_impact_of_forclosures.pdf, Craig Evan Pollack & Julia Lynch, *Health Status of People Undergoing Foreclosure in the Philadelphia Region*, 99 AM. J. PUB. HEALTH 1833 (2009), and Anne J. Martin, *After Foreclosure: The Displacement Crisis and the Social and*

teen million foreclosures expected before the crisis subsides, countless families are familiar with the financial challenges and social chaos that accompany an unexpected relocation.[4] Impacting racial minorities at disproportionately elevated rates, this foreclosure crisis knows few geographical limits.[5] In fact, the most segregated and disenfranchised communities are at the epicenter of the crisis.[6] But the associated losses in resources, equity, life, and opportunity are not limited to individuals whose properties are now bank owned. Foreclosed properties drain resources and livelihood from the communities of residents like the Dieudonne family who remain in neighboring homes and apartments.[7]

Most of the negative impacts on surrounding neighbors stem from the prolonged vacancy of foreclosed properties. Following a foreclosure, the property title transfers to the bank (or sometimes to multiple banks, whose investment interests are represented by a single trust).[8] During a market of appreciating home values, the financial incentive of a quick sale encourages

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Spatial Reproduction of Inequality (Inst. for the Study of Soc. Change, Working Paper No. 2009-2010.48, 2010), *available at* http://escholarship.org/uc/item/3551q7sd.

4. FIN. CRISIS INQUIRY COMM'N, THE FINANCIAL CRISIS INQUIRY REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON THE CAUSES OF THE FINANCIAL AND ECONOMIC CRISIS IN THE UNITED STATES 402 (2011), http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf [hereinafter INQUIRY COMM'N]. Following foreclosures, families were forced to relocate. Some found themselves homeless, but hidden from public view, as they stayed with relatives and friends. *See* Ross Colvin, *Family Homelessness Rising in the United States*, REUTERS (Nov. 12, 2008, 1:07 AM), http://www.reuters.com/article/newsOne/idUSTRE4AB18I20081112.

5. *See* DEBBIE GRUENSTEIN BOCIAN ET AL., FORECLOSURES BY RACE AND ETHNICITY: THE DEMOGRAPHICS OF A CRISIS (2010), *available at* http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf; JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., THE STATE OF THE NATION'S HOUSING 29 (2011), http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2011.pdf [hereinafter JOINT CTR.].

6. *See* Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 AM. SOC. REV. 629, 644 (2010) (finding that "the greater the degree of Hispanic and especially black segregation a metropolitan area exhibits, the higher the number and rate of foreclosures it experiences").

7. This Comment focuses on all residents who remain in neighborhoods with foreclosures, including homeowners and tenants of both single-family and multifamily units. For a more detailed discussion on the spillover effects for renters, see Vicki Been & Allegra Glashausser, *Tenants: Innocent Victims of the Nation's Foreclosure Crisis*, 2 ALB. GOV'T L. REV. 1 (2009).

8. *See* SARAH TREUHAFT ET AL., EQUITABLE DEVELOPMENT TOOLKIT: RECLAIMING FORECLOSED PROPERTIES FOR COMMUNITY BENEFIT 7 (2009), *available at* http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/EDTK_FORECLOSED%20PROPERTIES_FINAL_8.26.09.PDF ("Most REO properties are owned not by banks, but by trusts operating for the benefit of investors.").

banks to adequately maintain their properties.[9] In neighborhoods of declining property values, however, or in situations in which there is an overall collapse in home values, such as during the foreclosure crisis, these incentives vanish. Instead, many lenders settle on the least expensive method of property maintenance: neglect.[10] With bank owners largely absent, physical and social deterioration quickly spread throughout the surrounding neighborhood. In the worst cases, remaining neighbors' lives are threatened.[11] And in nearly all neighborhoods with foreclosed homes, remaining residents suffer a slowly deteriorating quality of life.

As a result of long-term vacancies, the conditions of foreclosed properties decline.[12] Scavengers in Cleveland stripped copper wiring from vacant properties.[13] Some even removed the concrete steps leading to the front porches of homes, closing them off from occupancy.[14] Boarded up or broken windows, mold, overgrown landscaping, algae-infested pools, debris, and graffiti are unwelcome additions to many low-income and high-minority communities suffering from foreclosures.[15] For neighbors who stay in their homes and apartments, these conditions trigger an assortment of spillover effects—all of which present significant economic and social challenges.

9. *See* KINGSLEY ET AL., *supra* note 3.
10. *Id.*; Mary Ellen Podmolik, *More Banks Walking Away From Homes, Adding to Housing Crisis*, CHI. TRIB., Jan. 13, 2011, http://articles.chicagotribune.com/2011-01-13/news/ct-biz-0113-walkaway--20110113_1_foreclosure-process-foreclosure-filing-servicers.
11. *See supra* note 2.
12. *See, e.g.*, William Harless, *In Richmond, Foreclosed Homes Breed a New Kind of Problem*, N.Y. TIMES, Nov. 12, 2011, http://www.nytimes.com/2011/11/13/us/in-richmond-foreclosed-homes-breed-a-new-kind-of-problem.html; David Streitfeld, *Blight Moves in After Foreclosures*, L.A. TIMES, Aug. 28, 2007, http://articles.latimes.com/2007/aug/28/business/fi-vacant28.
13. *60 Minutes: There Goes the Neighborhood* (CBS television broadcast Dec. 18, 2011), *available at* http://www.cbsnews.com/video/watch/?id=7392090n.
14. Alex Kotlowitz, *All Boarded up*, N.Y. TIMES MAG., Mar. 4, 2009, http://www.nytimes.com/2009/03/08/magazine/08Foreclosure-t.html ("In December, Gardner's neighbor watched a man strain to push a cart filled with thin slabs of concrete down the street. It explained why so many of the abandoned homes in the city are without front steps, as if their legs had been knocked out from under them."); *see also* Angela Caputo, *Despair Over Disrepair*, CHI. REP., May 1, 2011, http://www.chicagoreporter.com/despair-over-disrepair (describing how scavengers "stripped anything from [nearby vacant] . . . buildings that might fetch a dollar," including pipes, radiators, yard fences, and bathtubs).
15. *See, e.g.*, Nicholas Casey, *Banker: 'What'd I Do Wrong, Officer?' Cop: 'You've Got Algae in the Pool, Sir,'* WALL ST. J., May 1, 2009, http://online.wsj.com/article/SB124112509277274533.html; John R. Emshwiller, *L.A. Blames Bank for Foreclosure Blight*, WALL ST. J., May 5, 2011, http://online.wsj.com/article/SB10001424052748704322804576303320892386698.html; Streitfeld, *supra* note 12.

Whether they like it or not, remaining residents are forced to internalize these effects. Also known as negative externalities, they include increased crime, depressed property values, reduced city services, vermin, and countless other challenges.[16] In response, local governments are suing banks and enacting new ordinances to restore their neighborhoods.[17] To buttress these local efforts, the recent National Mortgage Settlement includes provisions that address the concerns of remaining residents.[18] But if banks, private citizens, and the government are not careful in how they respond to the crisis, their efforts run the risk of doing little to truly improve the conditions of remaining residents.[19] And in the worst-case scenario, government interventions may displace even more residents.[20]

This Comment employs a comprehensive approach to analyze the impacts of vacant foreclosed homes in the era following the National Mortgage Settlement. It examines the spillover effects on remaining residents and assesses the most recent existing remedies. Finally, it advocates for a strong and comprehensive local government response to support the recovery of communities affected by foreclosures.[21] While failing banks capture the head-

16. *See infra* Part I. Negative externalities are commonly known as the social costs of a private action to third parties, such as environmental pollution, overfishing, and antibiotic resistance. In the foreclosure context, the negative externalities are the costs of the borrower's foreclosure (and the bank's subsequent neglect of the property) on surrounding third parties.
17. *See infra* Part II.
18. *See* Press Release, U.S. Dep't of Justice, 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/2012/February/12-ag-186.html (announcing the national settlement with five major lenders: Ally Financial, Bank of America, Citigroup, JPMorgan Chase, and Wells Fargo).
19. For example, banks are demolishing blighted homes and donating properties to charities as part of the National Mortgage Settlement's blight provisions to help stem the spillover effects of foreclosures. It remains to be seen whether these efforts will address the concerns of remaining residents or merely eradicate aesthetic blight. *See* Shaila Dewan & Jessica Silver-Greenberg, *Foreclosure Deal Credits Banks for Routine Efforts*, N.Y. TIMES, Mar. 27, 2012, http://www.nytimes.com/2012/03/28/business/foreclosure-deal-gives-banks-credit-for-routine-activities.html.
20. Throughout history, local governments have used blight ordinances to displace residents—typically those who are low-income and racial minorities. *See, e.g.*, Kelo v. City of New London, 545 U.S. 469, 522 (2005) (Thomas, J., dissenting); Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URB. L.J. 305 (2004); Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1 (2003); Harry W. Reynolds, Jr., *Population Displacement in Urban Renewal*, 22 AM. J. ECON. & SOC. 113 (1963). Overreliance on enforcing blight ordinances in today's crisis may result in a similarly undesirable effect.
21. Existing scholarship examines local responses to foreclosure externalities but not from a comprehensive perspective—and not considering the National Mortgage Settlement. *See,*

lines, blocks of foreclosed homes present an equally potent (although less widely visible) challenge to cities and residents alike.[22] If municipalities hope to successfully address the variety of challenges facing their neighborhoods, cities must ensure that banks comply with their expanded blight and foreclosure registration ordinances. Remaining residents must exercise their power to ensure that banks adhere to local codes and keep neighboring homes out of the hands of speculative private developers.[23] Only by containing the negative

e.g., Gordon, *supra* note 20 (discussing blight and nuisance ordinances as a tool for redevelopment); Creola Johnson, *Fight Blight: Cities Sue to Hold Lenders Responsible for the Rise in Foreclosures and Abandoned Properties*, 2008 UTAH L. REV. 1169 (analyzing nuisance lawsuits before the *Cleveland* and *Baltimore* cases discussed *infra* note 72 and 149); David T. Kraut, *Hanging out the No Vacancy Sign: Eliminating the Blight of Vacant Buildings From Urban Areas*, 74 N.Y.U. L. REV. 1139 (1999) (analyzing solutions to urban blight before the current foreclosure crisis); Kermit J. Lind, *Can Public Nuisance Law Protect Your Neighborhood From Big Banks?*, 44 SUFFOLK U. L. REV. 89 (2011) [hereinafter Lind, *Can Public Nuisance Law Protect Your Neighborhood From Big Banks*] (examining the potential of nuisance laws alone to control the spillover effects); Kermit J. Lind, *The Perfect Storm: An Eyewitness Report From Ground Zero in Cleveland's Neighborhoods*, 17 J. AFFORDABLE HOUSING 237 (2008) [hereinafter Lind, *The Perfect Storm*] (describing the spillover effects in Cleveland before the litigation analyzed in this Comment); Joseph Schilling, *Code Enforcement and Community Stabilization: The Forgotten First Responders to Vacant and Foreclosed Homes*, 2 ALB. GOV'T L. REV. 101 (2009) (examining code enforcement's inability to control foreclosure externalities); Robert G. Schwemm & Jeffrey L. Taren, *Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act*, 45 HARV. C.R.-C.L. L. REV. 375 (2010) (analyzing the discriminatory nature of subprime lending); Justin P. Steil, *Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity*, 1 COLUM. J. RACE & L. 63 (2011) (advocating for an expanded Neighborhood Stabilization Program for bulk purchases of foreclosed homes); Andrew Lichtenstein, Note, *United We Stand, Disparate We Fall: Putting Individual Victims of Reverse Redlining in Touch With Their Class*, 43 LOY. L.A. L. REV. 1339 (2010) (discussing reverse redlining claims under the Fair Housing Act); Benton C. Martin, Note, *Vacant Property Registration Ordinances*, 39 REAL EST. L.J. 6 (2010) (focusing on vacant property registration ordinances); Matthew Saunig, Note, *Rebranding Public Nuisance:* City of Cleveland v. Ameriquest Mortgage Securities, Inc. *as a Failed Response to Economic Crisis*, 59 CATH. U. L. REV. 911 (2010) (examining the *Cleveland* suit's failure to remedy nuisance code noncompliance).

22. *See infra* Part I.

23. *See, e.g.*, *supra* note 20. "Some investors contribute to the health of the neighborhood by providing well-maintained affordable rental and sales housing in neighborhoods with good schools, parks and other key amenities. Others, however, will rent out the property with major code violations and minimal investment just to ensure some cash flow until they can sell." SARAH TREUHAFT ET AL., WHEN INVESTORS BUY UP THE NEIGHBORHOOD: PREVENTING INVESTOR OWNERSHIP FROM CAUSING NEIGHBORHOOD DECLINE 6 (2010), *available at* http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/wheninvestorsbuyuptheneighborhood.pdf. In December 2011, investors purchased 57 percent of "[d]amaged REO [Real Estate Owned]" properties nationally. Fed. Reserve Bank of S.F., Housing and Labor Market Trends: California 11 (May 2011) (Powerpoint Presentation), *available at* http://www.frbsf.org/community-development/files/california_0511.pdf.

externalities of vacant and foreclosed homes will communities move toward true restoration.

This Comment proceeds in three Parts. The first explores the lesser-known consequences of the foreclosure crisis that force remaining neighbors to absorb the costs of vacant properties. Unlike traditional accounts of the crisis, this Comment's analysis of foreclosure victims focuses not on the direct victims of predatory lending but rather on the remaining neighbors and city governments—often in marginalized areas—that suffer significant financial and social costs. Part II establishes the power and standing of municipalities to address the lingering consequences of foreclosures. Then it evaluates the effectiveness of local ordinances and litigation efforts in restoring neighborhoods. Four case studies—in Baltimore, Cleveland, Los Angeles, and Oakland—illustrate the variety of methods that local governments employ to address the costs of foreclosures within their jurisdictions. Further, Part II examines the viability of bulk purchases of vacant properties and the components of the National Mortgage Settlement that are designed to help remaining residents. This examination reveals that a stronger approach to addressing the concerns of remaining residents is necessary. In response, Part III proposes tactics that involve multiple levels of government to protect remaining residents, minimize displacement, and provide cities with the financial backing to support the restoration of their neighborhoods.[24] By first containing the spillover effects of vacant foreclosed properties, and then moving neighborhoods toward reoccupation, branches of government at all levels can guide remaining residents toward realizing the restoration of their communities.

I. THE SPILLOVER EFFECTS OF FORECLOSURES FOR REMAINING RESIDENTS

When banks foreclosed on millions of homes across the country they upended the lives of borrowers.[25] Unfortunately, policymakers, government

24. While limited government intervention contributed to the cause of the crisis, expanded government action holds the solution. For a discussion of the lack of mortgage lending regulations that precipitated the crisis, see INQUIRY COMM'N, *supra* note 4, at 27–80.
25. The foreclosure-related issues that capture most of the headlines, including bank foreclosure abuse and the robo-signing phenomenon that resulted in a $25 billion settlement, are beyond the scope of this Comment, which focuses on the aftermath of such events that caused the crisis in the first place. *See* Nick Timiraos, *Judge Signs off on Foreclosure Settlement*, WALL ST. J., Apr. 5, 2012, http://online.wsj.com/article/SB100014240527023033025045773262639 89736528.html. Nevertheless, evidence uncovered before the settlement remains relevant to showing a pattern of bank misconduct that supports litigation and enforcement efforts that

officials, and the wider public overlook the consequences experienced by the neighbors that remain.[26] It should come as no surprise that foreclosures and their spillover effects are concentrated in areas with high incidences of predatory lending, which are also neighborhoods of low-income and minority residents.[27] Government agencies and courts have long neglected the concerns of marginalized, low-income, and minority residents.[28] For these covictims of the foreclosure crisis, the immediate impacts of vacant properties have set off a chain reaction that is further draining their communities of resources, life, and opportunity.

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depend on demonstrating bank recklessness and negligence described *infra*. *See, e.g.*, OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOUS. & URBAN DEV., MEMORANDUM NO. 2012-FW-1802, BANK OF AMERICA CORPORATION FORECLOSURE AND CLAIMS PROCESS REVIEW, CHARLOTTE, NC, at 13 (2012), http://www.hudoig.gov/sites/default/files/Audit_Reports/2012-FW-1802.pdf (determining that Bank of America "did not establish an effective control environment to ensure the integrity of its foreclosure process"); OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOUS. & URBAN DEV., MEMORANDUM NO. 2012-KC-1801, CITIMORTGAGE, INC. FORECLOSURE AND CLAIMS PROCESS REVIEW, O'FALLON, MO (2012), http://www.hudoig.gov/sites/default/files/Audit_Reports/2012-KC-1801.pdf (describing the improper foreclosure practices of CitiMortgage, including finalizing documents without notary approval, representing information without personal knowledge of facts, and improperly preparing foreclosure documents); OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HOUS. & URBAN DEV., MEMORANDUM NO. 2012-CH-1801, JP MORGAN CHASE BANK N.A. FORECLOSURE AND CLAIMS PROCESS REVIEW, COLUMBUS, OH, at 4 (2012), http://www.hudoig.gov/sites/default/files/Audit_Reports/2012-CH-1801.pdf (finding that Chase operations supervisors "signed foreclosure documents without reviewing the supporting or source documentation referenced in them"). See *infra* Part II.C for a discussion of the National Mortgage Settlement's implications for remaining residents.

26. "In 2009, 7.2 million households reported at least one abandoned or vandalized home within 300 feet of their residences—an increase of 1.5 million households from 2007 and 2.0 million from 2005." JOINT CTR., *supra* note 5, at 30.

27. *See* Richard Williams et al., *The Changing Face of Inequality in Home Mortgage Lending*, 52 SOC. PROBS. 181 (2005) (finding a "new inequality" in mortgage lending that extends the unfair and predatory terms of subprime loans primarily to low-income and high-minority communities). "[H]igh-risk lending patterns, with their spatially concentrated nature, transform themselves into small-area concentrations of foreclosed properties that can have destabilizing impacts on local communities." Daniel Immergluck, *Neighborhoods in the Wake of the Debacle: Intrametropolitan Patterns of Foreclosed Properties*, 46 URB. AFF. REV. 3, 30 (2010); *see also* Manuel Aalbers, *Geographies of the Financial Crisis*, 41 AREA 34, 41 (2009) ("Subprime and predatory lending have affected low-income and minority communities more than others and we therefore not only see a concentration of foreclosures in certain cities but also in certain neighbourhoods, often those places inhabited by low-income and minority groups that have been excluded by earlier rounds of exclusion and exploitation.").

28. *See* Gregory D. Squires, *Community Reinvestment: An Emerging Social Movement*, *in* FROM REDLINING TO REINVESTMENT: COMMUNITY RESPONSES TO URBAN DISINVESTMENT 1, 1–7 (Gregory D. Squires ed., 1992) (describing neighborhood deterioration and declining public services in inner-city and high-minority communities targeted through redlining, the practice of restricting the availability of goods by geographic area).

Foreclosures affect more than just the residents who are forced to move. Additional secondary effects create negative externalities that may ultimately exceed the cost of the primary effects imposed on borrowers and lenders.[29] When banks assume ownership of foreclosed homes and fail to adequately maintain them, neighboring residents and city governments are forced to absorb the consequences of vacant properties. In marginalized communities of racial minorities and low-income residents, these additional costs aggravate existing challenges that have afflicted neighborhoods for decades.[30] Because of a confluence of many factors, economic recessions impact residents of marginalized communities much more strongly than the population at large.[31] For example, if a community already lacks access to quality healthcare, blighted properties that present public health risks increase the threat to the wellbeing of neighboring residents. Increased crime, life-threatening property conditions, fire danger, and other effects all contribute to a decline in neighboring property values.[32] And in multifamily dwellings, renters face a reduction in basic services, including utility shut-offs, when defaulting landlords lose possession of their properties.[33] Before banks obtain title to foreclosed multifamily properties, utility bills and other costs that are normally the re-

29. ALAN MALLACH, STABILIZING COMMUNITIES: A FEDERAL RESPONSE TO THE SECONDARY IMPACTS OF THE FORECLOSURE CRISIS 17 (2009) (on file with author).

30. *See* Stephan Whitaker & Thomas J. Fitzpatrick IV, *The Impact of Vacant, Tax-Delinquent, and Foreclosed Property on Sales Prices of Neighboring Homes* 7 (Fed. Reserve Bank of Cleveland, Working Paper No. 11-23R, 2012) ("While foreclosure may lower surrounding home values, vacancy and abandonment have long been recognized by practitioners as more important roadblocks to revitalizing distressed neighborhoods. Interest in vacancy and abandonment dates to well before the current crisis."). Before the current foreclosure crisis, many low-income and minority communities already confronted high crime, low-performing schools, barriers to physical and mental health, and many other challenges. *See* DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 138 (1993) (describing higher rates of crime and social disorder in segregated neighborhoods); Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, *in* WHITHER OPPORTUNITY? RISING INEQUALITY, SCHOOLS, AND CHILDREN'S LIFE CHANCES 91 (Greg J. Duncan & Richard J. Murnane eds., 2011) (describing the "achievement gap" between students from high-income and low-income families, with students from lower-income families scoring lower on standardized tests); *Ethnic and Racial Minorities & Socioeconomic Status*, AM. PSYCHOL. ASS'N, http://www.apa.org/pi/ses/resources/publications/factsheet-erm.aspx (last visited Dec. 31, 2013) (outlining recent research indicating how low socioeconomic status is associated with poor health).

31. *See* MASSEY & DENTON, *supra* note 30, at 151.

32. *See infra* Part I.A.

33. TENANTS TOGETHER, HIDDEN IMPACT: CALIFORNIA RENTERS IN THE FORECLOSURE CRISIS 11 (2009), http://www.tenantstogether.org/downloads/ForeclosureReport.pdf.

sponsibility of landlords remain unpaid, and tenants experience the negative results.[34]

Declining property values and increasing blight are primarily the result of three phenomena. First, owners have little incentive to invest in the basic maintenance of recently foreclosed properties in a distressed market.[35] When housing prices are on the decline and the likelihood of a quick sale is slim, adequate property maintenance falls by the wayside. Second, each foreclosed property adds an additional unit of supply to the market, which places downward pressure on surrounding prices.[36] Finally, the distressed state of foreclosed properties depresses their values, which impacts the appraisal values of surrounding homes.[37] These symptoms, combined with concentrations of foreclosures in low- and moderate-income areas, pose a significant threat to neighborhood stability.[38] The addition of neglected properties further upsets communities battling disinvestment and other preexisting challenges.[39] While an economic recovery will ultimately reverse these harmful trends, a recent study estimates that the current crisis is not even halfway complete.[40] Waiting for a recovery does little to help residents who must endure these spillover effects on a daily basis while also tackling the daily challenges present in their communities before the current crisis.[41]

This Part establishes the urgency of a focused effort to address the continuing impacts of vacant properties on local governments and residents, with an emphasis on the unique conditions of marginalized communities. Abandoned properties present challenges to municipalities in both urban centers and suburban neighborhoods, with the largest concentration of problems in communities that have suffered from disinvestment for decades.[42] A close look at the negative effects of the foreclosure crisis on neighborhoods of low-

34. *Id.*
35. *See* KINGSLEY ET AL., *supra* note 3; Whitaker & Fitzpatrick, *supra* note 30, at 3–4.
36. Whitaker & Fitzpatrick, *supra* note 30, at 3–4.
37. *Id.*
38. *See* DAN IMMERGLUCK, FORECLOSED: HIGH-RISK LENDING, DEREGULATION, AND THE UNDERMINING OF AMERICA'S MORTGAGE MARKET 149–52 (2009).
39. *See id.*
40. *See* DEBBIE GRUENSTEIN BOCIAN ET AL., CTR. FOR RESPONSIBLE LENDING, LOST GROUND, 2011: DISPARITIES IN MORTGAGE LENDING AND FORECLOSURES 4 (2011), http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf ("Among homeowners who received loans between 2004 and 2008, 2.7 million households, or 6.4 percent, had already lost their homes to foreclosure as of February 2011. Strikingly, an additional 8.3 percent—3.6 million households—were still at immediate, serious risk of losing their homes." (footnote omitted)).
41. *See generally* MASSEY & DENTON, *supra* note 30, at 138.
42. *See* Immergluck, *supra* note 27.

income and minority residents, and on local governments, reveals a need for a comprehensive approach to community restoration.

A. Costs to Residents and Neighborhoods

In the wake of foreclosures, remaining neighbors often avoid the attention of the media and government officials. Observers neglect to acknowledge them as covictims of the foreclosure crisis. Yet because they are forced to handle the cleanup, they suffer significant social and financial costs.[43] The presence of abandoned and deteriorating properties contributes to the aggravation of existing neighborhood challenges, such as high crime, underemployment, low-performing schools, and other impacts of residential segregation.[44] In addition, a community with foreclosed homes requires remaining residents to internalize negative externalities via a reduction in their own home equity, an escalation of neighborhood challenges, municipal service cutbacks, and an overall depression of local economies.

The aggravation of existing neighborhood challenges, as well as the creation of new ones, impacts the health and safety of residents remaining in the neighborhood. Crime follows the physical and social disorder that accompanies concentrated foreclosures in distressed neighborhoods.[45] Fewer inhabitants are present to observe undesirable behavior, so public safety conditions quickly head downhill.[46] In fact, deaths and violent crimes occur inside abandoned and foreclosed homes.[47] One study found that higher levels of foreclosures lead directly to increased rates of property crime in surrounding neighborhoods.[48] A ten-year resident of East Oakland described how the foreclosure crisis has caused a decline in her neighborhood:

43. Johnson, *supra* note 21, at 1253 (describing how the "true victims . . . have been the neighbors, cities, and taxpayers forced to deal with the aftermath").
44. *See* MALLACH, *supra* note 29, at 26–27.
45. *See* Brent Teasdale et al., *Subprime Lending Foreclosures, Crime, and Neighborhood Disorganization: Beyond Internal Dynamics*, 37 AM. J. CRIM. JUST. 163 (2012) (stating that a typical census track in Ohio experiences approximately 40 percent more crime than it would absent subprime loan foreclosures).
46. *See* Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, 17 HOUSING POL'Y DEBATE 57, 59 (2006).
47. *See, e.g.*, Celizic, *supra* note 2 (reporting the recent drowning of a five-year-old in the neighboring pool of an abandoned and foreclosed home, as well as the sexual assault of a neighborhood girl in a foreclosed home and the death of a squatter when an abandoned foreclosed home caught fire).
48. Dan Immergluck & Geoff Smith, *The Impact of Single-Family Mortgage Foreclosures on Neighborhood Crime*, 21 HOUSING STUD. 851, 863 (2006), *available at* http://www.prism.gatech.edu/~di17/HousingStudies.pdf.

> People are scared to be in our neighborhood because they see the deterioration. . . . The problem has gotten worse over the last 3 years. The neighborhood is looking like a slum—a dump with more drugs being brought in and sold.[49]

In addition, disruption that accompanies family displacement, even for those who do not move, can negatively impact mental and physical health.[50] If cities are forced to cut back on services—including emergency responders—because of the other costs of foreclosures, such as a smaller budget as a result of a decreasing tax base, then residents encounter challenges both to their safety and general wellbeing.[51] In fact, if remaining residents seek to access basic services from their local governments, demand often exceeds the supply of available community resources.[52] Given that spillover effects linger after home foreclosures, these impacts on municipalities and residents have set off a chain reaction that is likely to persist until the homes are reoccupied or adequate interim remedies are provided.

Additional social costs to remaining residents are also serious. Researchers have closely examined the impact of family relocation on school performance for decades, but they are just now beginning to examine how concentrated foreclosures impact the lives of children.[53] For example, children living in communities with a high prevalence of foreclosures may be more exposed to crime and instability, which may affect their educational performance—even if their own housing is not disrupted.[54] And foreclosures that require children to change schools cause exactly the kinds of high levels of mobility that can disrupt the learning process for students remaining in the neighborhood.[55] In this way, the effects of foreclosures spill over into the classroom and impact the opportunities of students.

The effects on remaining residents are not limited to public safety and social factors. Economic harm occurs when the values of neighboring homes depreciate so that loan balances exceed the assessed value of properties. Impacting an es-

49. CAUSA JUSTA, REBUILDING NEIGHBORHOODS, RESTORING HEALTH: A REPORT ON THE IMPACT OF FORECLOSURES ON PUBLIC HEALTH 35 (2010) (quoting Maria Ramirez, member of Causa Justa::Just Cause) (internal quotation marks omitted).
50. *Id.* at 25–30.
51. *See* AMAAD RIVERA ET AL., UNITED FOR A FAIR ECON., FORECLOSED: STATE OF THE DREAM 2008, at 21 (2008).
52. *See* INQUIRY COMM'N, *supra* note 4, at 409.
53. *See, e.g.*, VICKI BEEN ET AL., FURMAN CTR. FOR REAL ESTATE & URBAN POLICY, KIDS AND FORECLOSURES: NEW YORK CITY (2010), http://furmancenter.org/files/Foreclosures_and_Kids_Policy_Brief_Sept_2010.pdf.
54. *Id.* at 5.
55. *Id.*

timated fifteen percent of homeowners nationally, these so-called underwater conditions are often concentrated in communities of color.[56] At the height of the foreclosure crisis, the median value of minority-owned homes decreased by 20 percent, while whites saw their homes depreciate by only 13 percent.[57] As a result, minority homeowners are much more likely to find that their mortgage is underwater—especially given that minority borrowers are more likely to sign loans on bad terms in the first place.[58] Adding to the downward pressure on the values of neighboring homes, high concentrations of foreclosures over a short period of time create an oversupply of units in the marketplace.[59] This lowers property values, leads to foreclosure sales at depressed prices, and upsets neighborhood stability.[60] The result is a decline in overall home ownership by local residents, which drains already marginalized communities of opportunities to accumulate wealth.[61] Accordingly, since the start of the crisis, almost $11 trillion in household wealth have disappeared, much of it in low-income and high-minority communities.[62] Finally, increased crime and concentrated foreclosures limit the willingness of customers to shop at neighborhood establishments, which further depresses both the job market and the general neighborhood economy.[63] It is clear that while borrowers forced to relocate because of foreclosures receive most of the attention, remaining residents also suffer significant social and financial consequences that warrant effective remedies.

B. Costs to Municipalities

Foreclosed properties impact local governments primarily through declines in property tax revenue and an increased need for city services. During a time when residents are likely to depend on their local government for support, the effects of foreclosures on municipalities quickly trickle down to residents, who al-

56. JOINT CTR., *supra* note 5, at 16.
57. *Id.* Senior citizens, too, are represented among underwater homeowners at disproportionate rates. *See A First Look at Older Americans and the Mortgage Crisis*, INSIGHT ON THE ISSUES (AARP Pub. Policy Inst., Washington, D.C.), Sept. 2008.
58. *See* JOINT CTR., *supra* note 5, at 16.
59. *See* IMMERGLUCK, *supra* note 38, at 150.
60. *See id.* Neighborhood stability is disturbed when boarded-up, abandoned, or vacant properties appear, causing surrounding neighbors to absorb the unpredictable consequences.
61. *See* JOINT CTR., *supra* note 5, at 19 (finding that "declines for black (3.8 percentage points) and Hispanic households (2.1 percentage points) have outpaced those for white households (1.5 percentage points), erasing most of the improvement in the white-minority gap made over the last two decades").
62. INQUIRY COMM'N, *supra* note 4, at xv.
63. *See* WILLIAM C. APGAR ET AL., HOME OWNERSHIP PRES. FOUND., THE MUNICIPAL COST OF FORECLOSURES: A CHICAGO CASE STUDY 28 (2005).

ready must cope with the more proximate challenges of neighboring abandoned properties.[64] When localities assess vacant and distressed properties at lower values, they depress the values of neighboring homes.[65] On top of the general decline from the depressed national housing market, nearby vacant and foreclosed property values diminish the value of remaining homes from anywhere between 0.9 and 9.6 percent, depending on the city, the distance from neighboring foreclosed properties, and the condition of the foreclosed property.[66] As a result, cities see their tax collections decline.[67] If local governments also provide utility services, unpaid bills can further erode city revenue.[68] During an economic reces-

64. *See supra* Part I.A.

65. KINGSLEY ET AL., *supra* note 3, at 17; W. Scott Frame, *Estimating the Effect of Mortgage Foreclosures on Nearby Property Values: A Critical Review of the Literature*, FED. RES. BANK OF ATLANTA ECON. REV., Nov. 3, 2010, at 1, 6–7. "Tens of millions of households where the owners have paid their mortgages on time every month are suffering a decrease in their property values that amounts to hundreds of billions of dollars in lost wealth just because they are located near a property in foreclosure." *Foreclosures Continue: What Needs to Change in the Administration's Response: Hearing Before the Subcomm. on Domestic Policy of the H. Comm. on Oversight & Gov't Reform*, 111th Cong. 191 (2010) (prepared statement of Julia Gordon, Ctr. for Responsible Lending).

66. A 1999 study of foreclosed properties in Chicago found a 0.9–1.8 percent drop in value depending on distance from foreclosed property. Immergluck & Smith, *supra* note 46, at 69, 72. A more recent study in Chicago found value declines of 5–8.7 percent. *See* Zhenguo Lin et al., *Spillover Effects of Foreclosures on Neighborhood Property Values*, 38 J. REAL EST. FIN. & ECON. 387, 389 (2009). A study that drew data from a variety of cities estimates the "contagion effect" of foreclosed properties on neighboring home values to be between 0.6 and 1.3 percent. John P. Harding et al., *The Contagion Effect of Foreclosed Properties*, 66 J. URB. ECON. 164 (2009). Where homes are recently foreclosed, tax delinquent, and vacant, the contagion effect is likely to be large—between 0.7 and 9.6 percent. Whitaker & Fitzpatrick, *supra* note 30, at 30. In New York City, the impact on surrounding properties is estimated to be between 1.8 and 3.7 percent. Jenny Schuetz et al., *Neighborhood Effects of Concentrated Mortgage Foreclosures*, 17 J. HOUSING ECON. 306 (2008); *see also External Effects of Concentrated Mortgage Foreclosures: Evidence From New York City: Hearing Before the Subcomm. on Domestic Policy of the H. Comm. on Oversight & Gov't Reform*, 110th Cong. 5 (2008) (statement of Vicki Been, Dir., Furman Ctr. for Real Estate & Urban Policy). Each of these studies is somewhat limited in estimating the precise decline in neighboring properties, however, since they neglect to consider whether foreclosed properties are immediately occupied and other important variables such as the physical conditions and the presence of nuisances.

67. Property taxes are calculated, in part, based on the most recent assessed value of the property. In California, property values are assessed upon each sale of the property—so the depressed value at foreclosure is immediately incorporated into the city's tax revenue. In Ohio, on the other hand, property values are assessed every six years, so the decline in revenue is delayed. *See* Thomas J. Fitzpatrick IV & Mary Zenker, *Municipal Finance in the Face of Falling Property Values*, FED. RES. BANK CLEVELAND (Dec. 6, 2011), http://www.clevelandfed.org/research/commentary/2011/2011-25.cfm.

68. Foreclosures often involve an interruption in the chain of accountability for properties. It is not uncommon for utility bills to fall through the cracks when a family moves out and a bank takes possession. APGAR ET AL., *supra* note 63, at 22. If municipalities raise utility rates for

sion in which cities face revenue declines on other fronts, the downturn in property tax collections places enormous pressure on local budgets.[69]

In addition to a drop in revenue, cities simultaneously face an increased demand for their services. With many residents leaving the community after their homes are foreclosed, some cities might expect a reprieve. But abandoned properties and remaining residents require a significant municipal commitment of resources and services. Vacant properties demand increased maintenance, including code enforcement and emergency services—expenses that local governments are forced to absorb.[70] A Chicago study found twenty-six individual expenses created by a single foreclosed home, which can cost a city up to $34,000 for each vacant property.[71] In Baltimore, the local government's complaint against Wells Fargo describes the far-reaching costs to the city:

> Among other things, the City has had to inspect the vacant properties; board the vacant properties that are open to casual entry; collect garbage at the vacant properties; cut high grass and weeds at the vacant

remaining residents in order to offset the overall decline in revenue, neighbors again must bear a significant financial burden that further worsens their situation. *See generally* Brady Dennis, *Falling Home Values Mean Budget Crunches for Cities*, WASH. POST, Dec. 25, 2011, http://www.washingtonpost.com/business/economy/falling-home-values-mean-budget-crunches-for-cities/2011/12/14/gIQAwWmtHP_print.html (reporting on cities that are charging "higher user fees for garbage pickup, recreation centers and other services").

69. Declines in property tax revenues aggravate other revenue shortfalls, forcing cuts to education and to other services. *See* Conor Dougherty & Michael Corkery, *Local Governments Hit as Tax Revenue Falters*, WALL ST. J., May 21, 2011, http://online.wsj.com/article/SB10001424052748704083904576333353924781930.html; Ian Urbina, *Foreclosures Prompt Cities to Make Plea for Aid*, N.Y. TIMES, Jan. 24, 2008, http://www.nytimes.com/2008/01/24/us/24mayors.html (describing how cities are forced to cut discretionary spending because of revenue shortfalls attributed to the foreclosure crisis). Local governments most often rely heavily on property taxes, while state governments collect revenue through income and sales taxes. *See* Dennis, *supra* note 68.

70. *See* IMMERGLUCK, *supra* note 38, at 152 (finding the secondary effects on cities to include: "[i]ncreased policing due to vandalism and other crime[;] [i]ncreased burden on fire departments due to arson[;] [d]emolition costs[;] [c]osts of removing trash, mowing lawns, and so forth, for abandoned properties or for properties that mortgage holders do not take care of[;] [l]egal expenses[;] [m]anaging foreclosure process, including record keeping[;] [l]ost tax revenue when borrower or owner stops paying taxes[;] [d]irect lost revenue due to demolished buildings[;] [p]roperty tax losses due to declining values to building and nearby properties[;] [and] [l]ost economic development benefits due to decreased desirability of community for commercial/industrial development"). "[Vacant properties] produce no or little property tax income, but they require plenty of time, attention, and money." NAT'L VACANT PROPS. CAMPAIGN, VACANT PROPERTIES: THE TRUE COSTS TO COMMUNITIES 1 (2005); *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-12-34, VACANT PROPERTIES: GROWING NUMBER INCREASES COMMUNITIES' COSTS AND CHALLENGES 37–48 (2011), http://www.gao.gov/assets/590/586089.pdf (discussing the consequences of vacant and foreclosed properties on city governments).

71. APGAR ET AL., *supra* note 63.

> properties; take legal action to prosecute the housing code violations at the vacant properties; condemn the vacant properties that are not structurally sound and that threaten public safety; and make structural repairs to stabilize vacant properties that threaten public safety.[72]

In some areas, basic yard maintenance, garbage removal, and other services are so costly that demolition of vacant foreclosed homes is the cheapest remedy, no matter the consequences of the resulting vacant lots.[73] And in a discouraging turn of events, cities that enact strict ordinances to contain foreclosure spillover effects may be rendered financially unable to enforce the very laws designed to move neighborhoods toward restoration.[74] For cities already forced to reduce their services because of decreased property tax revenue, it is not difficult to imagine a city unable to fund the property inspections needed for effective nuisance abatement.[75]

The combination of declining property values, deteriorating homes, social disorder, and demand for local services forces municipalities to absorb these negative externalities.[76] Although some jurisdictions may cover the increased costs from their reserves, many cities find that the internalization of negative externalities requires additional service cutbacks in unrelated areas important to resident wellbeing.[77] As remaining residents face enormous challenges, the pressures on municipalities make it difficult for local agencies to adequately address the crisis on their own. Unable to keep up with the demand for code inspections and services in a climate of budget cutbacks, cities are inadequately equipped to contain the negative externalities of foreclosed homes. Thus, the situation facing remain-

72. Second Amended Complaint for Declaratory and Injunctive Relief and Damages at 41, Mayor of Balt. v. Wells Fargo Bank, 677 F. Supp. 2d 847 (D. Md. 2010) (No. 08-CV-00062-JFM), 2010 WL 1459070. Additional sections describe services required of the city's fire department, the police force, and the staff to handle burst pipes and vermin infestations. *Id.*

73. *See* Brady Dennis, *Banks Turn to Demolition of Foreclosed Properties to Ease Housing-Market Pressures*, WASH. POST, Oct. 12, 2011, http://www.washingtonpost.com/business/economy/banks-turn-to-demolition-of-foreclosed-properties-to-ease-housing-market-pressures/2011/10/06/gIQAWigIgL_print.html.

74. *See generally supra* note 69. See *infra* Part II for a discussion of local ordinances enacted specifically to address the problem of vacant foreclosed homes.

75. *See supra* note 69.

76. KINGSLEY ET AL., *supra* note 3, at 17–20.

77. *See id.* at 16. Gaps in revenues are forcing cities to cut back on parks maintenance, transportation, and other areas that significantly impact wellbeing. *See* ASS'N OF CMTY. ORGS. FOR REFORM NOW, FORECLOSURE EXPOSURE 2: THE COST TO OUR CITIES AND NEIGHBORHOODS, REPORT FOR OAKLAND-FREMONT-HAYWARD 3 (2007), *available at* http://www.urbanstrategies.org/foreclosure/Reports/CA_OaklandAlameda_Contra Costa_Foreclosure2.pdf. Cities could simply charge higher rates for their services, but raising property taxes and local service fees are likely to negatively impact already overburdened remaining residents. *See generally supra* note 68.

ing residents requires a comprehensive plan for community restoration. Part II examines the variety of existing approaches that jurisdictions currently employ in attempts to contain the spillover mess, in order to assess how a proposed model remedy can more effectively tackle the crisis.

II. EVALUATING EXISTING REMEDIES TO ADDRESS FORECLOSURE SPILLOVER

In response to pressure from distressed residents and decreased city revenues, local governments address challenges in high-foreclosure communities through three main avenues: local ordinances, litigation, and direct property management. By enacting expanded nuisance ordinances and foreclosure registration statutes, local governments require property owners to take affirmative steps to prevent and mitigate spillover effects.[78] Through litigation to enforce fair housing laws and local ordinances, cities compel owners to improve the management of vacant properties and to collect damages if banks are unable to fulfill their statutory obligations.[79] By working with nonprofit organizations, some jurisdictions directly manage properties through bulk purchases from banks.[80] Finally, the National Mortgage Settlement includes language that may benefit remaining residents.[81]

Despite these efforts, real improvement in the conditions of remaining residents is far from certain. Heightened local ordinances await effective enforcement. Cities have encountered barriers to successful litigation. Direct property management requires funding when money is scarce. And the National Mortgage Settlement's provisions for remaining residents are not binding. This Part provides an overview of the variety of approaches available to tackle the crisis and evaluates their effectiveness in order to illustrate the need for a stronger, more comprehensive solution to adequately support the restoration of distressed communities.

78. *See* IMMERGLUCK, *supra* note 38; Lind, *The Perfect Storm*, *supra* note 21.
79. *See, e.g.*, Mayor of Balt. v. Wells Fargo Bank, 631 F. Supp. 2d 702, 703–04 (D. Md. 2009); Plaintiffs' Motion for a Protective Order and Memorandum in Support, City of Memphis v. Wells Fargo Bank, No. 2:09-CV-02857-STA (W.D. Tenn. May 4, 2011), 2011 WL 5439372.
80. *See* JOSIAH MADAR ET AL., FURMAN CTR. FOR REAL ESTATE & URBAN POLICY, TRANSFORMING FORECLOSED PROPERTIES INTO COMMUNITY ASSETS (2009), http://furmancenter.org/files/publications/furman.ford_.whitepaper_.pdf.
81. *See infra* Part II.C.

A. Holding Bank Owners Accountable

When banks obtain title to foreclosed properties, they become responsible for their upkeep. As a result, holding bank owners accountable for the vacancy and deterioration of foreclosed homes presents an appealing way to remedy the spillover effects. After all, under public nuisance law, many jurisdictions provide a cause of action for individuals to sue property owners when they interfere with a common public right.[82] These general public rights traditionally prohibit threats to public health, safety, morals, convenience, peace, and comfort.[83] Public nuisance protections have the potential to encourage compliance with regulations that preserve favorable neighborhood conditions. And the fluid nature of nuisance law enables distressed local governments to respond to a variety of damages caused by foreclosed properties, including any conditions that threaten public health and detract from the value of surrounding properties.[84]

Nevertheless, the current foreclosure crisis presents unconventional challenges for conventional nuisance law. Determining the owner of a vacant property is not always easy. Because of the way in which mortgages were issued, repackaged, and sold on the market, oftentimes the properties have multiple owners. Moreover, the current owner of the property is rarely the same as the institution that issued the original loan.[85] One code enforcement manager described mortgages as "bought, sold and traded like baseball cards," which makes it difficult for cities and remaining residents to determine the parties who maintain an interest in the properties.[86] In response, cities are currently strengthening local

82. *See* RESTATEMENT (SECOND) OF TORTS § 821B(1) (1979) (defining a public nuisance as "an unreasonable interference with a right common to the general public").
83. *See id.* § 821B cmt. b ("[P]ublic nuisances included interference with the public health, as in the case of keeping diseased animals or the maintenance of a pond breeding malarial mosquitoes; with the public safety, as in the case of the storage of explosives in the midst of a city or the shooting of fireworks in the public streets; with the public morals, as in the case of houses of prostitution or indecent exhibitions; with the public peace, as by loud and disturbing noises; with the public comfort, as in the case of widely disseminated bad odors, dust and smoke; with the public convenience, as by the obstruction of a public highway or a navigable stream; and with a wide variety of other miscellaneous public rights of a similar kind.").
84. *See* Robert Abrams & Val Washington, *The Misunderstood Law of Public Nuisance: A Comparison With Private Nuisance Twenty Years After* Boomer, 54 ALB. L. REV. 359 (1990).
85. *See* Lind, *The Perfect Storm*, *supra* note 21; *see also* TREUHAFT ET AL., *supra* note 8 (noting that many foreclosed properties are owned by trusts, with multiple banks as trustees).
86. *Neighborhoods: The Blameless Victims of the Subprime Mortgage Crisis: Hearing Before the Subcomm. on Domestic Policy of the H. Comm. on Oversight & Gov't Reform*, 110th Cong. 97 (2008) (statement of Doug Leeper, Code Enforcement Manager, City of Chula Vista) [hereinafter Leeper Testimony], *available at* https://house.resource.org/110/org.c-span.205478-1.pdf ("One of the reasons these are difficult to deal with is the research required to track down the current beneficiary of the mortgage. These notes rarely stay with the party of issu-

ordinances and pursuing fair housing claims to make it easier to track down and enforce fines against the owners of foreclosed properties.[87] Through an examination of the approaches in Baltimore, Cleveland, Los Angeles, and Oakland, this Subpart first reviews how jurisdictions expand local ordinances to enforce their nuisance laws against banks that own vacant properties. It then outlines various litigation strategies that seek to enforce expanded ordinances and fair housing laws in order to collect fees and change the behavior of bank owners. After a close examination of these two tactics, it becomes clear that the restoration of communities requires more than heightened ordinances and aggressive litigation.

1. Expanded Local Ordinances

States and cities amended statutes and ordinances to prevent additional foreclosures, but they did less to contain the secondary spillover effects.[88] Nuisance law provides an appealing mechanism through which to hold property owners accountable for the negative externalities that their deteriorating properties generate.[89] But because any nuisance claim requires identifying the proprietor, the complex ownership sequence of the foreclosure process makes recovery challenging.[90] In response, cities have expanded their ordinances to increase the transparency of vacant property ownership.[91] Considering the threat that vacant properties pose to neighborhood stability, cities need to know about new foreclosed homes and their owners before they harm remaining residents.[92] Foreclosed and vacant property ordinances, which require owners to register with the local

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ance. They are bought, sold and traded like baseball cards. Rarely, if ever, does the new beneficiary, be it a lender, a mortgage company, a trust or a security, record their newfound interest in the property. This leaves the local jurisdictions grasping at straws in an attempt to locate someone, anyone that will admit to holding an interest in the property.").

87. *See infra* Part II.A.

88. *See generally* Frank S. Alexander et al., *Legislative Responses to the Foreclosure Crisis in Nonjudicial States*, 31 REV. BANKING & FIN. L. 341, 364–70 (2011-2012). For an example of responses designed to prevent additional foreclosures, see Geoff Walsh, *The Finger in the Dike: State and Local Laws Combat the Foreclosure Tide*, 44 SUFFOLK U. L. REV. 139, 159 (2011), describing different ways states have attempted to prevent additional foreclosures, including requiring banks to delay foreclosure and to enter into specific judicial proceedings.

89. *See generally* ALAN MALLACH, BRINGING BUILDINGS BACK: FROM ABANDONED PROPERTIES TO COMMUNITY ASSETS (2d ed. 2010).

90. In some cases, owners simply abandon properties without leaving contact information behind. *See* Lind, *The Perfect Storm*, *supra* note 21, at 240. For an account of the complex ownership structure and the difficulties of identifying an accountable party, see, for example, Leeper Testimony, *supra* note 86, at 97.

91. *See* C. Tyler Mulligan, *Toward a Comprehensive Program for Regulating Vacant or Abandoned Dwellings in North Carolina: The General Police Power, Minimum Housing Standards, and Vacant Property Registration*, 32 CAMPBELL L. REV. 1, 40 (2009).

92. *See id.*

government when a home is foreclosed or vacant, help cities to identify property owners.[93] But when the current owners of foreclosed homes are multiple parties or opaque trusts, registration ordinances are less effective. Consequently, modifications to traditional nuisance law are necessary in order for it to effectively support the restoration of impacted communities.[94]

Before examining the new and strengthened ordinances in Los Angeles and Oakland, it is important to identify the source of authority for cities to regulate in this area. Under their general police power, most states enable local jurisdictions to enforce penalties for nuisances, subject to limitations from state constitutions and statutes.[95] A minority of states limits municipalities more explicitly through Dillon's Rule, which affords cities only the powers expressly enumerated in state grants of authority.[96] In response to the current foreclosure crisis, some states are strengthening their enabling statutes to further establish local authority to address the unique challenges of neglected properties. The State of California, for example, specifically authorizes local jurisdictions to enforce $1000 per-day fines against bank-owned properties for local nuisance ordinance violations.[97] With the authority of cities to regulate properties through nuisance law firmly established, municipalities are enacting regulations that should enable them to locate, monitor, and manage foreclosed properties. But given the unique challenges of the current situation facing remaining residents, additional modifications are necessary to adequately contain the spillover effects.

The City of Oakland's heightened ordinances closely mirror the framework enacted in other cities across the country. Instead of waiting for neighbors to report vacant properties, which would allow time for abandoned homes to deteriorate and negatively impact neighbors, the City's vacant building ordinance mandates that owners register vacant properties.[98] By establishing an affirmative obligation for the owners of foreclosed homes to notify the City, the ordinance

93. For a survey of vacant property ordinances, see Schilling, *supra* note 21.

94. *See generally*, Lind, *Can Public Nuisance Law Protect Your Neighborhood From Big Banks*, *supra* note 21.

95. These "home rule" states provide broad discretion for local jurisdictions to regulate nuisances. *See* 6A EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 24:65 (3d ed. 2007) (citing Nw. Fertilizing Co. v. Vill. of Hyde Park, 97 U.S. 659 (1878); Garcia v. Gray, 507 F.2d 539 (10th Cir. 1974); Martin v. King, 417 F.2d 458 (10th Cir. 1969)); Kathleen C. Engel, *Do Cities Have Standing?: Redressing the Externalities of Predatory Lending*, 38 CONN. L. REV. 355, 366 (2006). In most states, enabling statutes grant local municipalities the power to abate nuisances. *See* MALLACH, *supra* note 89, at 150.

96. *See* Engel, *supra* note 95, at 367 (citing 1 JOHN F. DILLON, COMMENTARIES ON THE LAW OF MUNICIPAL CORPORATIONS § 237 (5th ed. 1911)).

97. CAL. CIV. CODE § 2929.3 (West 2012).

98. OAKLAND, CAL., MUN. CODE § 8.54.200 (2012).

informs local authorities of whom to contact for nuisance law violations. Owners are also required to pay a registration fee, which helps offset the costs of code enforcement, and to clearly post contact information on the property itself.[99] The City also buttressed its itemized list of nuisance and blight conditions to allow almost any foreclosed and vacant property to qualify as a nuisance. For example, a property is blighted if it "substantially detracts from the aesthetic and economic values of neighboring properties."[100] If foreclosed properties are known to endanger the livelihood of neighbors and to diminish the value of nearby homes, the registration and heightened nuisance ordinances provide a framework for the City to address the negative externalities of foreclosures in its neighborhoods.

The City of Los Angeles handles foreclosed properties within its jurisdiction using similar tactics. A property registration ordinance seeks to prevent harm from the negative externalities of vacant properties by providing the City with contact information so that it can effectively enforce its nuisance ordinances against property owners.[101] As in Oakland, the Los Angeles ordinance assesses a yearly registration fee to recover enforcement costs.[102] A $100,000 per-property maximum fine encourages owner compliance with the registration ordinance.[103] And just as in Oakland, nuisance statutes in Los Angeles were changed to specifically address the unique circumstances of the current crisis. Under the new Vacant Building Ordinance, owners of abandoned buildings in Los Angeles, including vacant foreclosed homes, must maintain and barricade properties.[104] The ordinance also requires removing visible graffiti and fencing off and draining backyard pools.[105] Although requirements to keep properties free from garbage and to prevent trespassers from accessing them are far from a comprehensive solution, the ordinances mandate actions that minimize the threat to the livelihood of surrounding residents. Should banks refuse to properly maintain vacant homes in compliance with local ordinances, the City may perfect a lien or demolish any structures to minimize the danger to remaining residents.[106] In addition,

99. *Id.* § 8.54.230.
100. *Id.* § 8.24.020(D)(4).
101. "It is the intent of the Los Angeles City Council, through the adoption of this chapter, to establish an abandoned residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties as a result of the foreclosure crisis." L.A., CAL., MUN. CODE § 164.01 (2013).
102. *See id.* § 164.04.
103. *See id.* § 164.08.
104. *Id.* § 91.8904.1.
105. *Id.*
106. *See id.* §§ 98.0707, 98.0711–.0712.

built-in fee provisions allow the City to recover revenue that it may need to provide services to remaining residents.[107]

Registration ordinances and heightened nuisance statutes like those in Los Angeles and Oakland provide cities with a promising framework for addressing the concerns of remaining residents. If cities are adequately staffed to monitor and enforce these ordinances, they should be able to hold banks accountable for distressed properties. Further, with registration statutes, neighbors now able to contact the owners of neighboring vacant properties when conditions deteriorate. In addition to encouraging owners to maintain vacant properties to minimize effects on their neighbors, revamped nuisance and registration ordinances force banks to internalize the costs of abandoned homes by paying fines and spending funds to maintain properties. This forced internalization of costs may not only remedy the current problem of vacant properties but also may discourage future risky lending practices and encourage banks to seek alternatives to adding to the supply of foreclosed and vacant homes.[108] Given decreased tax revenues, however, municipal cutbacks are likely to make enforcement difficult.[109] The spokesman from the Los Angeles Building Department admitted that his department lacks the resources for the daily inspections necessary to enforce fines.[110] In addition, conditions so far indicate that banks often ignore the registration ordinances, which cash-strapped cities are unable to properly enforce. As a result, it appears that expanded nuisance ordinances, on their own, are insufficient to help remaining residents truly restore their neighborhoods.

Although the efforts of Los Angeles, Oakland, and similar cities across the country bring municipalities closer to holding banks accountable for harms their vacant properties cause, early results indicate that banks refuse to comply. A Chicago study found that banks never registered at least 50 percent of their vacant properties, despite a city ordinance mandating their registration.[111] Consequently, the banks owe the city an estimated $2.2 million in fines.[112] In Los Angeles, city agencies fail to enforce the foreclosure ordinance's daily blight fines, allowing

107. *See id.* § 98.0716(a) ("Any Responsible Person in charge of a structure which meets the definition of a Vacant Structure as provided in this division for 30 consecutive calendar days may be liable for an administrative penalty in the amount of $1000 per structure per day, not to exceed $100,000 per property per calendar year unless [one of the exceptions is met].").

108. *See* IMMERGLUCK, *supra* note 38, at 218.

109. *See supra* note 77 and accompanying text.

110. *See* Hector Tobar, *Foreclosures and Resulting Blight Infest Once-Safe Neighborhoods*, L.A. TIMES, May 29, 2012, http://www.latimes.com/news/local/la-me-tobar-20120529,0,2735003.column ("We don't have the level of resources to [make daily inspections of foreclosed properties.]").

111. *See* Caputo, *supra* note 14.

112. *See id.*

banks to neglect vacant properties without compensating the City for the resulting negative externalities.[113] Cities often are unable to collect registration fees and fines without hauling bank owners into court, which is made difficult by the absence of funding to support such enforcement.[114] Moreover, the limited collection of registration fees and fines is unlikely to adequately supplement city revenues, leaving local governments unable to monitor and enforce their heightened regulations. If bank owners fail to affirmatively comply with regulations, cities are left to pursue costly lawsuits to enforce their ordinances.[115]

Further, the conventional nuisance law framework is inherently shortsighted. Nuisance abatement remedies, such as blight ordinances, exist to solve short-term challenges and to ameliorate specific conditions, but with little concern for long-term solutions that are in the best interest of neighborhoods.[116] Municipalities first enacted blight ordinances during the Progressive Era to reform conditions for residents living in dense and substandard tenements.[117] These early statutes fundamentally were about maintaining quality housing. In a series of decisions over the following decades, courts have reinterpreted blight ordinances as tools that enable private development.[118] The statutes have become instruments that corporations use to promote so-called urban renewal.[119]

These limitations of nuisance law indicate that modified ordinances are no silver bullet for successfully restoring communities distressed by the foreclosure crisis.[120] Combined with litigation, however, nuisance ordinances may enable jurisdictions to collect damages from banks that own foreclosed homes—and to

113. *See* Tobar, *supra* note 110 (reporting how the city missed out on collecting $40,000 in fines from just one neglected property).

114. *See* Caputo, *supra* note 14. One local politician proposes increasing the registration fees from $250 per year to $1250 per year, in order to discourage banks from indefinitely holding vacant properties. *See id.*

115. *See, e.g.*, Complaint to Abate Public Nuisances, for Injunctive and Other Equitable Relief and for Civil Penalties, People v. Deutsche Bank Nat'l Trust Co., No. BC460878 (Cal. Super. Ct. filed May 4, 2011), 2011 WL 1663038; *see also, e.g.*, S. Adeline McKinney, Note, *The North Carolina Banking Institute Symposium on the Foreclosure Crisis: Municipalities Fight Effects of Foreclosure With Litigation and Neighborhood Stabilization Program Grants*, 14 N.C. BANKING INST. 257 (2010) (describing how a lack of success in municipal lawsuits against banks for foreclosure blight recovery indicates that the cost of such mass litigation may outweigh the likelihood of any benefits).

116. *See* MALLACH, *supra* note 29, at 156 (arguing that the demolition of foreclosed homes provides a short-term solution to blight and nuisance but may not be in the best interest of neighborhoods); *see also* MASSEY & DENTON, *supra* note 30, at 151 (discussing how the use of blight and nuisance statutes to reform tenements did not always serve the needs of residents).

117. *See* Gordon, *supra* note 20, at 308.

118. *Id.* at 311; *see, e.g.*, Berman v. Parker, 348 U.S. 26 (1954).

119. *See supra* note 20.

120. *See* Lind, *The Perfect* Storm, *supra* note 21, at 248–49.

start their distressed communities down the path toward recovery. Nevertheless, in the face of the current crisis and the limited set of tools available to contain negative spillover effects, it is high time to return blight ordinances to their original purpose: advancing safe housing for local residents.

2. Litigation and Enforcement

Although cities may find that nuisance law restricts their remedies, litigation nevertheless provides an opportunity to recover from banks for their mismanagement of vacant and blighted foreclosed homes.[121] Local governments generally employ two complementary theories in their litigation strategies. Under the Fair Housing Act, they seek to recover damages for predatory lending practices that targeted high-minority and low-income communities for loans on unfair terms.[122] And to enforce local nuisance ordinances, cities seek damages when they are unable to induce owners to comply with nuisance regulations and vacant property registration requirements.[123] Through case studies of litigation efforts in Baltimore and Cleveland, this Subpart outlines the variety of litigation approaches that cities employ in an effort to recover from the foreclosure crisis. It concludes that the dual challenges of standing requirements and pleading rules for both strategies make it unlikely that litigation alone will address the concerns of remaining residents.

One of the most controversial litigation approaches involves a cause of action under the Fair Housing Act for reverse redlining, or extending credit on unfair terms to communities based on their income, race, or ethnicity.[124] In an effort to seek "the highest combination of fees and mortgage interest rates the market will bear" during the years leading up to the current crisis, lenders targeted

121. *See generally* Benjamin Ewing & Douglas A. Kysar, *Prods and Pleas: Limited Government in an Era of Unlimited Harm*, 121 YALE L.J. 350, 418 (2011) (discussing how "[t]he widespread failure of public nuisance claims in the handgun, lead paint, and subprime mortgage industry contexts suggests that courts have means readily available to manage nuisance doctrine from within").

122. *See* 42 U.S.C. § 3605(a) (2006) ("It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.").

123. *See, e.g.*, Complaint to Abate Public Nuisances, for Injunctive and Other Equitable Relief and for Civil Penalties, *supra* note 115.

124. *See* 42 U.S.C. § 3604 (2006). Reverse redlining is also described as "lending practices and loan terms [that are] 'unfair' and 'predatory'" and that are extended to individuals "targeted on the basis of race, or that there is a disparate impact on the basis of race." Hargraves v. Capital City Mortg. Corp., 140 F. Supp. 2d 7, 20 (D.D.C. 2000).

high-minority and low-income communities for subprime loans.[125] These loans differ from prime loans because they include a higher interest rate to compensate for the increased risk of extending loans to borrowers with little credit.[126] While it is unsurprising that subprime loans are concentrated in low-income areas, their increased frequency in high-income black neighborhoods indicates discriminatory practices based on race.[127] In fact, subprime lending practices were concentrated in the very same high-minority neighborhoods that were previously denied homeownership opportunities under the earlier practice of redlining.[128] In response to this challenge, some cities exercise their well-established standing to sue under the Fair Housing Act (FHA).[129]

Since 1979, courts have recognized the standing of municipalities to bring claims under the FHA against banks for discriminatory lending practices. In *Gladstone Realtors v. Village of Bellwood*, the Supreme Court upheld the Village of Bellwood's standing to bring a claim against lenders for a decrease in property values and loss of tax revenue.[130] Under conditions similar to those facing municipalities today, the Court determined that cities could be considered "persons aggrieved" for purposes of the statute and could sue realty firms for steering minori-

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125. INQUIRY COMM'N, *supra* note 4, at 91.

126. *See Subprime Lending*, U.S. DEP'T HOUS. & URB. DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/lending/subprime (last visited Dec. 31, 2013).

127. Banks traditionally view low-income residents as having less reliable credit because of their smaller financial assets. Yet "[o]nly 6 percent of homeowners in upper-income white neighborhoods have subprime loans while 39 percent of homeowners in upper-income black neighborhoods have subprime loans, more than twice the rate for homeowners in low-income white neighborhoods, 18 percent." U.S. DEP'T OF HOUS. & URBAN DEV., UNEQUAL BURDEN: INCOME & RACIAL DISPARITIES IN SUBPRIME LENDING IN AMERICA (2000), http://www.huduser.org/Publications/pdf/unequal_full.pdf.

128. *See* Benjamin Howell, Note, *Exploiting Race and Space: Concentrated Subprime Lending as Housing Discrimination*, 94 CALIF. L. REV. 101, 103 (2006). The Home Owners' Loan Corporation (HOLC), a federal agency, appraised properties based on their location in categorized neighborhoods where "[r]acial homogeneity was explicitly identified as a criterion for evaluating properties." Squires, *supra* note 28, at 4. Simultaneously, the Federal Housing Administration (FHA) "endorsed racially restrictive covenants that prohibited property from being sold to racial minorities." *Id.* at 5. Together, these two racially restrictive practices are considered to be the source of the redlining practices of the 1930s and 1940s.

129.

> The constitutional limits on standing eliminate claims in which the plaintiff has failed to make out a case or controversy between himself and the defendant. In order to satisfy Art. III, the plaintiff must show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant.

Gladstone Realtors v. Vill. of Bellwood, 441 U.S. 91, 99 (1979) (citing Duke Power Co. v. Carolina Envtl. Study Grp., Inc., 438 U.S. 59, 72 (1978)).

130. *Id.* at 103 (finding that the relevant portion of the Fair Housing Act "on its face contains no particular statutory restrictions on potential plaintiffs").

minority homebuyers away from their communities.[131] Lower federal courts have further expanded the standing of municipalities under the FHA by expressly determining cities to be "persons" with the right to sue for discriminatory housing violations.[132] And finally, the Court clearly outlined the lenient standing requirements for plaintiffs in 1982, when it found that "the sole requirement for standing to sue under . . . [the FHA] is the Art. III minima of injury in fact," or the allegation of a distinct and palpable injury because of defendant's actions.[133] Despite this expansive standard, however, Baltimore and Cleveland may still be unable to hold banks accountable for the spillover effects of foreclosed properties because of other barriers to recovery.

If the standing requirements present challenges to municipalities seeking to enforce provisions of the FHA, so do pleading standards. In the first federal ruling to recognize a reverse redlining claim, the court required a showing of an unfair loan and either intentional targeting of, or a disparate impact on, a protected group.[134] Whether a loan is unfair depends on a variety of factors, including its terms and conditions and circumstances surrounding its origination.[135] In order to demonstrate intentional targeting on the basis of race, or a disparate impact on that basis, cities must present in their pleadings evidence of discriminatory marketing tactics and statistics illustrating loan patterns.[136] As case studies from Baltimore and Cleveland indicate, these heightened pleading rules and existing standing requirements together make it difficult for municipalities to seek remedies in the courts.

a. Baltimore

In response to the costs of vacant and foreclosed properties within its borders, the mayor of Baltimore filed an innovative lawsuit against Wells Fargo for its predatory lending practices.[137] The city sought to recover the cost of municipal

131. *See id.* at 102.
132. *See, e.g.*, United States v. City of Parma, 661 F.2d 562, 572 (6th Cir. 1981).
133. *See* Havens Realty Corp. v. Coleman, 455 U.S. 363, 372 (1982). Plaintiffs must demonstrate injury-in-fact under this standing requirement, as well as causation and redressibility in FHA cases. *See infra* Part II.A.2.a.
134. Hargraves v. Capital City Mortg. Corp., 140 F. Supp. 2d 7, 20 (D.D.C. 2000); *see also* Charles L. Nier, III & Maureen R. St. Cyr, *A Racial Financial Crisis: Rethinking the Theory of Reverse Redlining to Combat Predatory Lending Under the Fair Housing Act*, 83 TEMP. L. REV. 941, 943 (2011).
135. *See* Nier & St. Cyr, *supra* note 134, at 953.
136. *See id.* at 958.
137. *See* Mayor of Balt. v. Wells Fargo Bank, 677 F. Supp. 2d 847, 848 (D. Md. 2010) (granting defendant's motion to dismiss but providing plaintiffs with an opportunity to submit a second amended complaint); Mayor of Balt. v. Wells Fargo Bank, 631 F. Supp. 2d 702, 704 (D. Md.

services provided to properties rendered vacant by Wells Fargo's lending practices and the cost of reduced tax revenues from areas in which the bank's properties constitute a disproportionately high concentration of all foreclosures.[138] Consistent with the FHA standing requirements, the federal court applied a strong causation analysis that made it challenging for the City to demonstrate that Wells Fargo caused the current spillover effects.[139] Baltimore must have shown that it suffered a "concrete and particularized, and actual or imminent" harm; that there is a causal connection between the injury and the bank's conduct; and that it is likely that the courts can remedy the consequences.[140] This causation standard was difficult for Baltimore to satisfy in order to recover damages for the spillover effects of the foreclosure crisis.

In a series of motions to dismiss, Wells Fargo alleged that the connection between its actions and the widespread damages that the City claimed was implausible.[141] The court agreed and advised the City to narrow its claim to property-specific damages.[142] After the City reduced the scope of its claim, the court nevertheless held that the causal connection was too indirect between Wells Fargo's alleged wrongdoing of predatory lending and the harm of vacant properties to the City.[143] The court reinforced the standing requirement of causation for FHA claims, requiring the City to show that "that the properties foreclosed upon by Wells Fargo would not have been vacant . . . but for the improper loans made by

2009) (denying defendant's motion to dismiss and granting plaintiffs opportunity to submit an amended complaint that more narrowly satisfies standing requirements). For a parallel case under the same theory, see Plaintiffs' Motion for a Protective Order and Memorandum in Support, City of Memphis v. Wells Fargo Bank, No. 2:09-CV-02857-STA (W.D. Tenn. May 4, 2011), 2011 WL 5439372.

138. *See* Second Amended Complaint for Declaratory and Injunctive Relief and Damages, *Mayor of Balt.*, 677 F. Supp. 2d 847 (No. 08-CV-00062-JFM), 2010 WL 1459070. Alleged spillover effects include "a significant decline in the value of nearby homes, resulting in a decrease in property tax revenue; . . . [a]n increase in the number of abandoned and vacant homes; . . . [a]n increase in criminal and gang activity as abandoned and vacant homes become centers for squatting, drug use, drug distribution, prostitution, and other unlawful activities; . . . [i]ncreased expenditures for police and fire protection; . . . [i]ncreased expenditures to secure abandoned and vacant homes; . . . [a]dditional expenditures to acquire and rehabilitate vacant properties; and . . . [a]dditional expenditures for administrative, legal, and social services." *Mayor of Balt.*, 677 F. Supp. 2d at 849.

139. The court focused on the second of the three standing requirements: "[T]here must be a causal connection between the injury and the conduct complained of." Mayor of Balt. v. Wells Fargo Bank, No. JFM-08-62, 2011 WL 1557759, at *2 (D. Md. Apr. 22, 2011) (internal quotation marks omitted).

140. *See Mayor of Balt.*, 677 F. Supp. 2d at 849 (citing S.C. Wildlife Fed'n v. Limehouse, 549 F.3d 324, 329 (4th Cir. 2008)).

141. *See Mayor of Balt.*, 2011 WL 1557759, at *1.

142. *See id.*

143. *See id.*

Wells Fargo."[144] The City ultimately satisfied this standard by claiming that had the borrowers received loans on fair terms, they would have been able to keep up with the payments, and thus the homes would have remained occupied.[145]

It is important to note, however, that in an effort to demonstrate standing, the City limited its claim to damages for properties formerly held by borrowers who had received refinancing loans. Restricting the allegations to "those situations involving borrowers who were already owning and occupying their homes" allowed the City to satisfy the Article III standing requirements because these residents could have remained in their homes but-for the predatory refinancing loans. But such a restriction excluded a large share of vacant properties: all of those foreclosed on for delinquency on new loans rather than refinancing loans.[146] Since a large proportion of subprime loans were concentrated in areas of new home construction, recognizing only refinancing loans excludes many vacant properties.[147] In this way, the standing requirement for a FHA claim restricts a city's ability to recover the true cost of the damages it suffers because of vacant and neglected properties.

Baltimore's case has successfully reached the discovery phase, but it presents only limited opportunities for remaining residents of distressed neighborhoods to recover from the foreclosure crisis. In the best-case scenario, the court will order Wells Fargo to compensate the city for property-based damages only for those homes made vacant via predatory refinancing loans, excluding the vast majority of loans that were original mortgages. While better than nothing, the limited nature of the potential recovery from this lawsuit suggests that remaining residents will need remedies beyond litigation to fully restore their neighborhoods.

b. Cleveland

The City of Cleveland took a slightly different approach to holding banks accountable for the spillover effects of the countless vacant foreclosed homes

144. *See id.* at *3 (alteration in original) (quoting Order Granting Defendant's Motion to Dismiss the Second Amended Complaint and Granting Plaintiff Leave to File a Third Amended Complaint at 1, No. JFM-08-62 (D. Md. Apr. 22, 2011), ECF No. 174).
145. *See id.* ("[T]he borrowers presumably 'would have continued to make payments on their mortgages and would have remained in possession of the subject premises' absent the alleged discriminatory treatment." (quoting Order Granting Defendant's Motion to Dismiss the Second Amended Complaint and Granting Plaintiff Leave to File a Third Amended Complaint, *supra* note 144, at 1)).
146. *See Mayor of Balt.*, 2011 WL 1557759, at *4.
147. *See* Christopher J. Mayer & Karen Pence, *Subprime Mortgages: What, Where, and to Whom?* 9 (Nat'l Bureau of Econ. Research, Working Paper No. 14083, 2008), *available at* http://www.nber.org/papers/w14083.pdf.

within its jurisdiction. Facing the perfect storm of illegal mortgage lending in an already weakened housing market, the City pursued damages under a public nuisance theory for municipal expenditures related to the foreclosure crisis and for diminished tax revenues.[148] City administrators sought to hold twenty-two financial institutions accountable for the foreclosure spillover effects depressing Cleveland's communities.[149] The City claimed that the banks' "financing, purchasing, and pooling of vast amounts of these loans, to create mortgage-backed securities" contributed to the deterioration of conditions for remaining residents.[150]

Similar to the standing requirements applicable to claims under the FHA, here the court employed a nuisance causation requirement that "requires some direct relation between the injury asserted and the injurious conduct alleged."[151] The court required the city to show that the bank's support of predatory lending caused a broad range of harms to remaining residents. To determine causation, the court considered three factors: the indirectness between the alleged damages and the defendant's conduct, the difficulty of apportioning damages to avoid multiple recoveries, and the availability of other harmed parties (such as the remaining residents themselves) who can more easily seek remedies for the situation.[152] In granting the defendants' motion for summary judgment, the court reasoned that "the cause of the alleged harms is a set of actions (neglect of property, starting fires, looting, and dealing drugs) that is completely distinct from the asserted misconduct (financing subprime loans)."[153] Additional causes of the harm include the loan originators, mortgagees, homeowners, arsonists, and drug dealers.[154] The court rejected the City's claim for these reasons and because "more immediate victims," such as individual remaining residents, were available to sue the defendants for violations of nuisance laws.[155] It reinforced that "other

148. Lind, *The Perfect Storm*, *supra* note 21.
149. *See* Cleveland v. Ameriquest Mortg. Sec., Inc., 615 F.3d 496, 498 (6th Cir. 2010).
150. *Id.* at 499.

> Cleveland puts forward the following factual pattern to support its claim:
>
> (1) Wall Street made cash available to subprime lenders, which (2) used the funds to make subprime loans to consumers, then (3) sold the related mortgages back to the same cadre of Wall Street, which (4) packaged them and sold the income they generated to investors in the form of mortgage-backed securities, and (5) used the proceeds to repeat the process.

Id.

151. *Id.* at 502 (quoting Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 268 (1992)) (internal quotation marks omitted).
152. *Id.* at 503.
153. *Id.* at 504.
154. *Id.* at 505.
155. *Id.* at 506.

home owners who were injured because their neighborhood declined due to foreclosed homes . . . are closer in the alleged chain of causation than [the City of] Cleveland."[156]

This causation analysis misses an important point. The court refused to acknowledge that the allegation is not about who caused the harm but rather who neglected to satisfy the legal duty to abate the harmful condition.[157] A variety of factors, including neglect, arsonists, weather, and time, can create nuisances, but it is the maintenance of those conditions—or the refusal to abate them—that triggers liability under common nuisance ordinances.[158] If bank owners of vacant and foreclosed homes refuse to comply with nuisance ordinances, courts should hold them accountable. Simply put, the Ohio court misunderstood how to apply nuisance law to the situation facing remaining residents. And with the Supreme Court refusing to consider the City's appeal,[159] some municipalities must now contend with causation requirements that do not address remaining residents' needs to hold banks accountable for the spillover effects of vacant properties.

As evidenced in the examples above, it is well settled that litigation, like nuisance ordinances, is no silver bullet for the troubles facing remaining residents. At its best, it provides only sporadic and individualized relief—far from the immediate and powerful outcome that neighbors need to restore safety and stability to their communities.[160] Neighborhoods most seriously impacted by the mortgage crisis cannot truly recover by filing one nuisance abatement case at a time.[161] Despite the unpromising outlook for recovery through litigation, cities may nevertheless pursue lawsuits against bank owners of vacant properties to prevent the next crisis. Class action suits focusing on eliminating malicious lending practices may forestall the next crisis, even if they do little to help remaining residents in the short term.[162] Experts also recommend consolidating claims against common owners as an efficient way to pursue remedies through the courts.[163] But

156. *Id.*
157. *See* Lind, *Can Public Nuisance Law Protect Your Neighborhood From Big Banks*, *supra* note 21, at 126–27.
158. *See id.*
159. City of Cleveland v. Ameriquest Mortg. Sec., Inc., 131 S. Ct. 1685 (2011) (denying petition for certiorari).
160. *See* Schwemm & Taren, *supra* note 21, at 429 (claiming that litigating fair housing discrimination claims as in Baltimore, for example, may impact only a few residents and only when the rare court views the claim favorably).
161. *See* Lind, *Can Public Nuisance Law Protect Your Neighborhood From Big Banks*, *supra* note 21, at 129 ("Blight moves faster than litigation.").
162. *See* Schwemm & Taren, *supra* note 21, at 426–33.
163. *See* Lind, *Can Public Nuisance Law Protect Your Neighborhood From Big Banks*, *supra* note 21, at 129.

with the owners of vacant properties often difficult to identify, consolidation may not be an easy route.[164] Nevertheless, if a city has the resources to pursue negligent bank owners, litigation may prove helpful in recovering penalties for noncompliance. And if a settlement or a court order is sufficiently large, it may buttress municipal expenses and cutbacks, and provide funding for neighborhood revitalization services. But given the challenges in establishing standing under the FHA and in satisfying causation requirements under public nuisance theories, remaining residents and their local governments require a more comprehensive solution to address the negative effects of vacant properties.

B. Bulk Purchases

Apart from nuisance ordinances and litigation, cities also work with nonprofit organizations to directly manage foreclosed properties. Since the majority of the spillover effects result from negligent ownership of vacant properties, replacing the owners with responsible parties provides an opportunity to control negative externalities and to move toward reoccupation of distressed properties. When local governments and nonprofits obtain ownership, they can focus on adequate maintenance in order to minimize the negative effects on remaining residents.[165] Some cities demolish homes and others creatively repurpose the properties to provide housing to displaced residents.[166]

While the potential for direct property management is promising, implementation requires a significant coordination of resources. Cities and nonprofits can obtain title to vacant properties through two main processes: ordinary negotiated purchases and bulk transactions that maximize impact and reduce transaction costs.[167] But banks are reluctant to lower home prices to reflect their true values, which decreases the chance of a bulk discount.[168] One possible solution is

164. *But see, e.g.*, Complaint to Abate Public Nuisances, for Injunctive and Other Equitable Relief and for Civil Penalties, *supra* note 115, at 1 (describing a situation in which Deutsche Bank became one of the city's largest slumlords by virtue of owning hundreds of foreclosed but vacant properties).

165. *See* MADAR ET AL., *supra* note 80.

166. Once properties are acquired, governments and nonprofits can then (1) demolish properties to redevelop sites, (2) rehabilitate properties for market-rate sale or rental, (3) rehabilitate for affordable resale (with deed restrictions or land trust to ensure long-term affordability), or (4) rehabilitate for affordable rental housing or lease-to-own. *Id.* at 17.

167. *Id.* at 14.

168. With Warren Buffet describing foreclosed homes as "probably as an attractive an investment as you can make," banks are particularly unlikely to lower prices for both individual and bulk purchasers. *See* Morgan Brennan, *Investors Flock to Housing, Looking to Buy Thousands of Homes in Bulk*, FORBES, Apr. 3, 2012, http://www.forbes.com/sites/morganbrennan/2012/04/03/investors-flock-to-housing-aspiring-to-own-thousands-of-homes.

to penalize lenders for declining offers to purchase their properties when the asking prices are overestimated.[169] But additional regulations to support transactions favorable for neighborhood restoration may be necessary.

In the meantime, some jurisdictions use funds from the federal Neighborhood Stabilization Program to directly purchase properties, renovate them, and then make them available for purchase.[170] Built-in safeguards require the new homeowners to earn no more than 120 percent of the nearby median income, in an effort to restore neighborhoods and not push remaining residents out.[171] The program also requires that a significant portion of the funds be made available to homebuyers with lower incomes.[172] Although promising in design, the program hinges on the availability of congressional funding.[173] As a result, remaining residents in marginalized communities may not benefit when federal resources are scarce.

Furthermore, the direct purchasing and repurposing of vacant properties does not address the immediate concerns of remaining residents. In isolation, transferring vacant properties to local governments and nonprofit organizations is bound to take too long.[174] Meanwhile, remaining residents are left to weather the storm of negative externalities. Although the solution to the negative impacts currently seen in marginalized neighborhoods is the eventual reoccupation of vacant properties, interim solutions are necessary to control the spillover effects and to prevent further harm. In addition to a long-term recovery like that possible through bulk purchases, remaining residents need current property owners to protect neighboring homes and residents from the negative effects troubling their communities on a daily basis.

169. "Such a law, inspired by public takings (eminent domain) price offer rules, could fine a lender or servicer if it rejects a documented, good faith offer to purchase one of its REO [real-estate owned] properties but later sells the property for a lesser amount within a certain window of time." MADAR ET AL., *supra* note 80, at 14.

170. *See, e.g.*, Dan Whitcomb, *Battered U.S. Cities Buy Foreclosed Homes to Rebuild*, REUTERS (Apr. 24, 2009, 11:36 AM), http://www.reuters.com/article/2009/04/24/us-usa-housing-cities-idUSTRE53N14K20090424.

171. *See* DEP'T OF HOUS. & URBAN DEV., DOCKET NO. FR-5321-N-01, NOTICE OF FUND AVAILABILITY (NOFA) FOR THE NEIGHBORHOOD STABILIZATION PROGRAM 2 UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT (2009), http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/nsp2-nofa.pdf.

172. *See id* at 5.

173. And experts agree that the three authorizations of funding, while better than nothing, fall far short of what is needed to truly contain the spillover effects. *See, e.g.*, Dan Immergluck, *Too Little, Too Late and Too Timid: The Federal Response to the Foreclosure Crisis at the Five-Year Mark*, 23 HOUSING POL'Y DEBATE 199, 222–26 (2013).

174. Foreclosure bulk purchasing negotiations can take between one and three years to finalize. *See* MADAR ET AL., *supra* note 80, at 14.

C. National Mortgage Settlement: Landmark Settlement, Landmark Results?

Primarily in response to the robo-signing scandal that caused many homeowners to enter foreclosure because of fraudulent bank conduct,[175] forty-nine state attorneys general reached an agreement with five major lenders in February 2012.[176] Hailed as "the largest consumer financial protection settlement in U.S. history," the agreement seeks to remedy damages caused by the banks' improper handling of foreclosures between 2008 and 2011.[177] In addition to providing former homeowners with modest cash payments, the settlement implements procedures to assist current borrowers with their mortgage payments.[178] Of particular relevance to remaining residents is a provision that assists underwater borrowers, who are eligible to refinance at lower rates.[179] In addition, the National Mortgage Settlement provides $2.5 billion in direct payments to states and instructs the states to use the funds for purposes related to the foreclosure crisis.[180]

175. The fraudulent banking practice of robo-signing allowed banks to rapidly seize homes for foreclosure—sometimes sidestepping processes to ensure accuracy and proper signatures. *See* Pallavi Gogoi, *Robo-Signing Scandal May Date Back to Late '90s*, NBC NEWS (Sept. 1, 2011, 8:15 PM), http://www.nbcnews.com/id/44365184.

176. *See* Press Release, U.S. Dep't of Justice, *supra* note 18 (announcing the national settlement with five major lenders: Ally Financial, Bank of America, Citigroup, JPMorgan Chase, and Wells Fargo).

177. *See About the Settlement*, NAT'L MORTGAGE SETTLEMENT, http://nationalmortgage settlement.com/about (last visited Dec. 31, 2013); *see also* Press Release, U.S. Dep't of Justice, *supra* note 18 (describing how benefits are targeted to borrowers whose homes entered foreclosure between 2008 and 2011).

178. Benefits of the settlement include: financial incentives to allow underwater borrowers to refinance their mortgages at lower rates, direct payments to individuals who lost their homes because of bank misconduct, payments to participating states to fund housing-related programs, and the implementation of national loan servicing standards to prevent the next crisis. Press Release, U.S. Dep't of Justice, *supra* note 18.

179. *See id.*

180. The text of the settlement agreement directs states to use the funds for a variety of foreclosure-related purposes:

> To the extent practicable, such funds shall be used for purposes intended to avoid preventable foreclosures, *to ameliorate the effects of the foreclosure crisis*, to enhance law enforcement efforts to prevent and prosecute financial fraud, or unfair or deceptive acts or practices and to compensate the States for costs resulting from the alleged unlawful conduct of the Defendants. Such permissible purposes for allocation of the funds include, but are not limited to, supplementing the amounts paid to state homeowners under the Borrower Payment Fund, funding for housing counselors, state and local foreclosure assistance hotlines, state and local foreclosure mediation programs, legal assistance, *housing remediation and anti-blight projects*, funding for training and staffing of financial fraud or consumer protection enforcement efforts, and civil penalties.

This $2.5 billion payment, combined with the measures to help remaining residents afford their mortgage payments, are two positive steps toward addressing the spillover effects of the foreclosure crisis. Nevertheless, early indications of the settlement's effect indicate that these steps alone will not address all of the remaining residents' concerns.

In order for the $2.5 billion payment to most effectively assist remaining residents, states should direct it at the efforts described earlier: first supplementing local government budgets so that municipalities can adequately enforce ordinances to stem the negative effects of vacant properties, and then moving vacant properties toward reoccupation. But because the settlement arises from bank misconduct *during* the foreclosure process—and not from subprime lending or other causes of the current crisis—the use of funds is limited in scope.[181] As a result, many states are using their share of the $2.5 billion for foreclosure prevention programs, such as mediation, counseling, and education related to the foreclosure process and housing preservation.[182] For remaining residents who are secure in their homes but suffering from spillover effects, such programs provide little relief from the preexisting problems presented by vacant neighboring properties. And in the worst situations, some states are using the $2.5 billion to support their general budgets, including shoring up funding for prisons and attracting economic development from outside of the state.[183]

Only a minority of states has directed funds toward foreclosure remediation, despite text of the settlement expressly encouraging the use of funds for "housing

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The Mortgage Settlement and the States, N.Y. TIMES, May 15, 2012, http://www.nytimes.com/interactive/2012/05/16/business/16mortgagesettlement-document.html (emphases added).

181. A summary of the settlement terms reveal its limitations:

> Most of the settlement . . . will be in the form of credits for loan modification and foreclosure prevention activities for homeowners still in their homes. However, $1.5 billion will provide direct payments to borrowers who have been unfairly foreclosed upon, $3 billion will help current homeowners refinance underwater mortgages, and $1 billion will enhance the Federal Housing Administration (FHA) capital reserve fund.

AMANDA SHELDON ROBERTS, ENTERPRISE, $2.5 BILLION: UNDERSTANDING HOW STATES ARE SPENDING THEIR SHARE OF THE NATIONAL MORTGAGE SETTLEMENT 1 (2012), http://www.enterprisecommunity.com/servlet/servlet.FileDownload?file=00P3000000CAEd8EAH.

182. *See id.* at 2–3.

183. Shaila Dewan, *Needy States Use Housing Aid Cash to Plug Budgets*, N.Y. TIMES, May 15, 2012, http://www.nytimes.com/2012/05/16/business/states-diverting-mortgage-settlement-money-to-other-uses.html (describing how some states used part of the funding to supplement prisons, higher education, economic development, low-income utility assistance, and local government budgets). But using these funds to supplement state budgets may indirectly benefit remaining residents by strengthening municipal budgets. *See infra* note 186. For an analysis of how all forty-nine states (Oklahoma abstained) expect to spend their allotment of the settlement, see ROBERTS, *supra* note 181.

remediation and antiblight projects."[184] Virginia channeled its funding to construct housing in low-income neighborhoods, while Ohio used its share to sustain its existing program of demolishing vacant properties.[185] And in California, the funds are expected to fill gaps in the state's budget, which may relieve pressure on city budgets from which the state previously siphoned off local revenue.[186] It remains clear that if funding awards, like the National Mortgage Settlement, are to assist remaining residents with the challenges of vacant foreclosed properties in their communities, states must direct funds at specific programs that will first limit negative externalities and then work toward property reoccupation.

Existing efforts—whether expanded local ordinances, litigation, bulk purchases, or the National Mortgage Settlement—fail to address the urgent concerns of remaining residents in a comprehensive fashion.[187] While inconsistent code enforcement may deter future misconduct, it does little to restore neighborhoods.[188] Further regulatory intervention is necessary.[189] Municipalities must address the concerns of remaining residents at the local level, where on-the-ground people understand local real estate markets, local capacity, and local barriers to development.[190] Consistent with the lack of success in both enforcing local ordinances and litigating related claims, remaining residents may realize appropriate remedies only when local ordinances adequately contain the negative externalities of neighboring foreclosures and when programs move vacant properties toward reoccupation. The next Part outlines recommendations of measures needed to protect and restore the communities of remaining residents.

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184. *Supra* note 180 and accompanying text; *see also* Dewan, *supra* note 183.
185. *See* Dewan, *supra* note 183.
186. *See* Jessica Garrison, *California Cities Race to Shield Funds From State*, L.A. TIMES, Jan 19, 2011, http://articles.latimes.com/2011/jan/19/local/la-me-revolt-20110119 (reporting on the state's seizure of city redevelopment funds to supplement the state budget); Marc Lifsher, *California Legislative Analyst OKs Mortgage Settlement Cash Shift*, L.A. TIMES, May 22, 2012, http://www.latimes.com/business/money/la-fi-mo-california-legislative-analyst-cash-shift-20120522,0,3667354.story (reporting on the Legislative Analyst's Office recommendation "that the $411 million should be used for a variety of general purposes in the current spending year").
187. *See supra* Part II*; see also* Kraut, *supra* note 21, at 1139–43 (describing how even before the current crisis, cities had been unable to find an effective solution for the problem of vacant buildings).
188. *See* Lind, *The Perfect Storm*, *supra* note 21, at 252–53.
189. *See* IMMERGLUCK, *supra* note 38, at 15 (arguing that because of the great costs of predatory lending to communities, and because remaining residents were not party to the malicious loan transaction, remedies are limited and thus regulatory intervention is necessary).
190. *See id.* at 218.

III. MODEL APPROACH FOR RESTORING DIMON HEIGHTS

In proposing a model remedy, this Comment focuses on the challenges facing a fictional city, Dimon Heights, which represents the worst-case foreclosure scenario in any one American city.[191] Like Oakland, Cleveland, and countless other communities, the foreclosure crisis hit Dimon Heights hard. Countless former residents lost their homes to foreclosure and have since relocated. Left behind are their former properties, now owned by a handful of trusts and banks. Vacant single-family homes line Dimon Heights's streets and threaten the health and safety of the covictims in this foreclosure crisis, the neighbors who remain. Like cities in California, Dimon Heights is in a state that reassesses property values whenever a parcel changes possession.[192] As a result, Dimon Heights's local government already experienced a reduction in property tax revenues that strains the municipal budget. Unpaid utility bills are further eroding revenues.[193] The municipal government froze hiring at the start of the crisis and cut back on spending in a variety of areas.[194] Its code compliance and inspection departments—already overworked before the foreclosure crisis—are unable to hire additional inspectors to meet the increased demand.[195]

Like Oakland and Baltimore, Dimon Heights is home to neighborhoods that experienced redlining in the twentieth century.[196] Residents of high-minority neighborhoods, which were previously denied borrowing opportunities and saw their property values decline because of prejudicial lending practices, were subsequently targeted for subprime loans in the early twenty-first century.[197] While some argue that the subprime market existed to expand the opportunity of home ownership to traditionally marginalized consumers,[198] its concentration in

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191. Dimon Heights is named for Jamie Dimon, CEO of JPMorgan Chase, who famously said, "Giving debt relief to people that really need it, that's what foreclosure is." Courtney Comstock, *Everyone Is Slamming Jamie Dimon for This Quote About Foreclosure*, BUS. INSIDER (May 4, 2011, 9:56 PM), http://www.businessinsider.com/jamie-dimon-foreclosure-giving-debt-relief-to-people-who-need-it-2011-5 (internal quotation marks omitted).
192. *See generally supra* note 67.
193. *See generally supra* note 68.
194. Local government cutbacks are common in cities across the country. *See generally* Urbina, *supra* note 69 (describing how cities are forced to cut discretionary spending because of revenue shortfalls attributed to the foreclosure crisis).
195. *Id.*
196. *See supra* note 128 and accompanying text.
197. *See* Squires, *supra* note 28, at 4–5 (describing the effects of redlining between the 1930s and 1950s that reduced property values and denied individuals of color the opportunity to obtain financing).
198. *See* EDWARD M. GRAMLICH, SUBPRIME MORTGAGES: AMERICA'S LATEST BOOM AND BUST 9 (2007) ("The good news [with extending subprime loans to previously ineligible borrowers] is that millions of new homeowners, who formerly would have been denied

high-minority neighborhoods of a variety of incomes indicates a pattern of discrimination. As a result, remaining residents in Dimon Heights's communities of color experience the spillover effects of foreclosures more seriously than others. Crime is up.[199] A number of homes were recently set on fire.[200] And neighbors have noticed an increase in vermin on their blocks.[201] Remaining residents in Dimon Heights are also suffering significant financial consequences. All residents have seen their property values decline because of nearby blighted lots.[202] And in the worst cases, some Dimon Heights residents are finding their mortgages underwater.[203] In the face of these challenges, the remaining residents and the local government seek to minimize the damage and to begin to restore their community.

Learning from the ordinance, litigation, bulk purchasing, and settlement tactics examined earlier, Dimon Heights can most effectively contain the spillover effects of blighted properties by enacting a comprehensive solution. First, Dimon Heights must take steps to slow the negative impacts of vacant properties. By updating nuisance ordinances and by petitioning the Supreme Court to reinterpret Article III standing requirements, Dimon Heights should be able to contain the immediate effects. Once the negative externalities of vacant properties are minimized, Dimon Heights must take measures to restore its neighborhoods, but it cannot do so alone. Only by obtaining adequate funding—in a combined federal and local effort—will the remaining residents of Dimon Heights be able to witness the true restoration of their communities.

A. Minimizing Externalities With Expanded and Updated Ordinances

While the efforts of Los Angeles and Oakland demonstrate innovative approaches for updating local statutes to address the current crisis, Dimon Heights can do better. After all, aside from their lackluster record of containing the current spillover, blight ordinances require updating for another important reason:

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mortgage credit, can now take out mortgage loans, buy homes, live in better neighborhoods, and send their kids to better schools.").

199. *See generally* J.W. Elphinstone, *After Foreclosures, Crime Moves in*, BOS. GLOBE, Nov. 18, 2007, http://www.boston.com/news/nation/articles/2007/11/18/after_foreclosures_crime_moves_in (reporting on prostitution, vagrants, drug activity, and fires in neighborhoods with many foreclosures); Buggs, *supra* note 2.

200. *E.g.*, Elphinstone, *supra* note 199.

201. *See, e.g.*, Complaint to Abate Public Nuisances, for Injunctive and Other Equitable Relief and for Civil Penalties, *supra* note 115 (describing increased pests and vermin in foreclosure properties throughout Los Angeles).

202. *See generally supra* note 66.

203. *See generally* JOINT CTR., *supra* note 5, at 5.

The scope of the current crisis is taxing the limited resources of local government. The volume of vacant foreclosed homes overwhelms existing code enforcement infrastructure.[204] Cities simply cannot keep up with the demand of enforcing their existing statutes.[205] Code enforcement systems designed for occasional violations of nuisance ordinances are unable to withstand the concentrated onslaught of violations from blocks and blocks of vacant and foreclosed homes. Further, when cities face decreased revenues they curtail budgets in ways that impact their ability to enforce blight ordinances.[206] In the face of this heightened crisis, expanded housing code enforcement methods are needed.[207]

Before Dimon Heights can effectively enforce standards that protect the safety of remaining residents, it must be able to identify which homes are foreclosed and vacant. Dimon Heights should start by enacting a vacant property registration ordinance, like those in Los Angeles, Oakland, and countless other cities across the country. But unlike existing registration ordinances, Dimon Heights should do more to ensure that bank owners come forward and identify foreclosed homes within their jurisdiction.[208] By mandating owner compliance with the registration ordinance and enforcing significant fines for noncompliance, Dimon Heights should be able to make it normal bank business practice to comply and register foreclosed and vacant properties.[209] Unlike other cities that have struggled to induce bank participation, Dimon Heights should devote sufficient municipal resources to ensure compliance. It must also adequately staff its enforcement divisions to monitor the registered properties and ensure that banks adhere to local nuisance ordinances. Adequate revenue is essential to support the enforcement of ordinances that can both improve the conditions for remaining residents and collect fines for noncompliance.[210] Consequently, if resources are slim, the city should set and enforce fines for noncompliance in a way that financially sustains the operations of the city departments responsible for enforcement.

But a database of foreclosed and vacant properties alone will not address all the concerns facing remaining residents. Once Dimon Heights identifies the owners of vacant properties, government leaders should ensure that their blight

204. *See* Lind, *The Perfect Storm*, *supra* note 21, at 248.
205. *See* Lind, *Can Public Nuisance Law Protect Your Neighborhood From Big Banks*, *supra* note 21, at 92–93.
206. *See supra* note 68.
207. *See* Lind, *Can Public Nuisance Law Protect Your Neighborhood From Big Banks*, *supra* note 21, at 94.
208. *See* Caputo, *supra* note 14 (reporting on Chicago's struggles to induce compliance with its registration ordinance—an estimated 50 percent of foreclosed properties have not been registered); Martin, *supra* note 21, at 35 (recommending heightened registration ordinances that mandate reporting in a way that induces such behavior).
209. *See* Lind, *Can Public Nuisance Law Protect Your Neighborhood From Big Banks*, *supra* note 21, at 130–31.
210. *See* Martin, *supra* note 21, at 20.

ordinances meet the unique challenges of the widespread foreclosure crisis within its jurisdiction. Given the broad power of local governments to regulate nuisances, cities should consider an expansion of their ordinances to address the variety of ways in which vacant properties negatively impact surrounding residents. The city should enact specific maintenance provisions, such as Los Angeles's requirement to drain and secure pools.[211] As Dimon Heights identifies vacant property conditions that generate negative externalities, it should add similar conditions to the list of prohibitions in its nuisance ordinances.[212] When vacant homes become locations for crime, ordinances should require adequate barricading and lighting to prevent neighborhood violence. And when remaining residents suffer declines in their property values because of unsightly neighboring properties, Dimon Heights should strengthen its ordinances to mandate higher standards of curbside appearance.

After enacting expanded ordinances specifically to address the unique challenges of the foreclosure crisis, Dimon Heights must properly enforce them. But as the situations in other cities indicate, decreased revenues for local governments limit their ability to properly enforce ordinances.[213] To help fund the enforcement of their mandatory registration ordinances and nuisance regulations, Dimon Heights should consider special fees for unoccupied residential structures.[214] Vacant homes cost remaining residents and Dimon Heights significant resources, so the city should hold the owners of such properties responsible for the negative effects of their properties. With increased funding to enforce new foreclosure registration ordinances and specifically tailored nuisance regulations, Dimon Heights will be well positioned to contain the negative externalities generated by vacant foreclosed properties. Once the spillover effects are minimized, Dimon Heights then can obtain additional funding to properly restore its communities through litigation and government partnerships.

B. Imagining Improved Litigation Conditions

For Dimon Heights to recover damages from banks that targeted its residents for predatory subprime mortgage loans, courts will need to recognize the unique proximate cause chain that contributes to the spillover effects impacting

211. *See* L.A., CAL., MUN. CODE § 91.8904.1 (2013).
212. Local jurisdictions will find power to regulate so broadly through the enabling statutes discussed *supra* Part II.
213. *See generally supra* note 69.
214. *See* Martin, *supra* note 21, at 37. These special fees should exist alongside code violations and registration fees and should sustain municipal budgets even if property owners comply with registration ordinances and do not violate nuisance ordinances.

remaining residents. Under the public nuisance cause of action, courts should focus on the defendants causing the spillover effects by their inability to appropriately maintain their vacant properties.[215] And when defendants allege interven-intervening actors (such as arsonists) are to blame, courts should employ a basic but-for proximate cause analysis to find the bank owners accountable for the alleged damages. Further, if appropriate, the court should divide liability instead of dismissing nuisance claims.[216] If Dimon Heights's costs rise for patrolling neighborhoods with vacant properties for crime, courts should consider the bank's role in maintaining havens for delinquency—instead of simply denying claims because of the intervening acts of criminals.[217] Viewing Dimon Heights's claims against bank owners for nuisance law violations in this light, courts should be more likely to consider monetary damages that will help the city to obtain the funding it needs to move beyond simply containing externalities, and toward restoring its neighborhoods.

The challenges of a Fair Housing Act complaint may be more difficult for Dimon Heights to overcome. After all, relaxing Article III standing requirements would require a reinterpretation of the Constitution. While the court in Baltimore required the city to narrow its claim only to refinancing loans, if Dimon Heights courts recognized that the effects of predatory lending—in violation of the Fair Housing Act—extended to original loans as well, relief would be more attainable.[218] Just as the City of Baltimore was able to show that the discriminatory loans were a cause of the negative externalities incurred by the city, Dimon Heights should be able to prove that the specific targeting of subprime loans in communities of color was a cause of the current spillover effects impacting remaining residents.[219] If Dimon Heights is able to recover for damages under the Fair Housing Act, it may be able to apply the financial award to a long-term plan to restore its neighborhoods. Nevertheless, given the history of challenges in litigating to recover from banks for spillover effects, Dimon Heights should also pursue other remediation funding wherever it is available.

215. *See generally* Lind, *Can Public Nuisance Law Protect Your Neighborhood From Big Banks*, *supra* note 21, at 126–27.
216. *See generally* RESTATEMENT (THIRD) OF TORTS § 26 (2000) (outlining comparative fault guidelines).
217. *See generally id.*
218. *See supra* Part II.A.2.
219. *See generally* Mayor of Balt. v. Wells Fargo Bank, No. JFM-08-62, 2011 WL 1557759 (D. Md. Apr. 22, 2011).

C. Funding Reoccupation and Remediation

After Dimon Heights sufficiently curtails the negative externalities of the spillover effects via ordinances and litigation, it must restore its neighborhoods through the reoccupation of currently vacant homes. But given how former residents were unable to afford their mortgage payments, new steps that require significant resources will be necessary to support resettling individuals in the homes. Funding to restore Dimon Heights's neighborhoods may come only through a large-scale financing initiative. While the National Mortgage Settlement's $2.5 billion award to states indicates some promise in addressing the side effects of vacant and foreclosed homes, Dimon Heights needs additional funding to adequately repurpose the homes and to ensure that they are occupied once again.[220] With an additional infusion of funding from the federal government; states, Dimon Heights, and local nonprofit organizations will be able to purchase the neglected properties in bulk and to take steps toward reoccupation.

In the likely absence of an infusion of funding, Dimon Heights should harness both bank and investor energy to make the vacant homes available for short-term rental occupancy. During the 1930s, the government-sponsored Home Owners' Loan Corporation (HOLC) became the owner of many properties through foreclosures.[221] It took steps to rehabilitate the properties and then rented them through a network of agents.[222] Renting bank-owned homes provided two main advantages: It prevented additional units of housing from suppressing the overall housing market via an oversupply, and it allowed the HOLC to maintain ownership of the properties until the market recovered, when it could sell the homes for the highest possible price.[223] In addition to providing income for the property owners, the tactic supplied affordable housing for displaced residents.[224] Today's rising rental prices indicate a need for additional rental units, which this tactic could easily provide.[225] In fact, two government lenders that currently own

220. *See supra* Part II.C.
221. *See* C. LOWELL HARRISS, HISTORY AND POLICIES OF THE HOME OWNERS' LOAN CORPORATION 82 (1951), *available at* http://www.nber.org/books/harr51-1; Raymond H. Brescia et al., *Crisis Management: Principles That Should Guide the Disposition of Federally Owned, Foreclosed Properties*, 45 IND. L. REV. 305, 319 (2012).
222. *See* ELLEN SEIDMAN & ANDREW JAKABOVICS, CTR. FOR AM. PROGRESS, LEARNING FROM THE PAST: THE ASSET DISPOSITION EXPERIENCES OF THE HOME OWNERS LOAN CORPORATION, THE RESOLUTION TRUST CORPORATION AND THE ASSET CONTROL AREA PROGRAM 2–3 (2008).
223. Brescia et al., *supra* note 221, at 320.
224. *See id.*
225. *See* Alejandro Lazo, *Rents Soar as Foreclosure Victims, Young Workers Seek Housing*, L.A. TIMES, May 5, 2012, http://articles.latimes.com/2012/may/05/business/la-fi-renters-nightmare-20120506.

180,000 foreclosed homes offered to sell a portion of them on the condition that the new owners rent the homes to provide much-needed housing opportunities for displaced residents.[226] Dimon Heights should ensure, however, that similar investor deals do not result in benefits only for the new owners.[227] Rents must be affordable, and must result in the reoccupation that finally ends the negative externalities of vacant and foreclosed homes.

D. Empowering Remaining Residents

While Dimon Heights struggles to induce bank compliance with its registration and nuisance ordinances, remaining residents can play a productive role. According to some scholars, reliance on incentives to encourage banks to mitigate the harmful effects of foreclosures (such as through local ordinances) is not enough.[228] In fact, incentives may limit the effectiveness of efforts to induce banks to address the needs of remaining residents.[229] Strict nuisance ordinances, for example, may stretch bank resources so thin that they are unable to accommodate families seeking to delay future foreclosures. Sporadic enforcement of ordinances alone is insufficient to promote outcomes that improve conditions for neighbors. A community-organizing model provides a potential solution. Given that public pressure has been effective in changing internal bank processes, it may similarly induce banks to consider the concerns of remaining residents.[230]

Neighbors of foreclosed and vacant homes can play an important role in ensuring that bank owners comply with local ordinances. In addition to pressuring Dimon Heights to adopt the policy suggestions described above, remaining residents can pressure banks to reduce the number of foreclosures.[231] In Cleveland, for example, local residents organized to demand that banks modify mortgages so that residents could remain in their homes.[232] In California, a local community organization similarly pressured banks to delay foreclosures so that borrowers had an opportunity to participate in loan modification negotiations.[233] Residents in Atlanta also were able to pressure banks to stop foreclosures.[234] If individuals have succeeded in forcing banks to address their concerns before foreclosure, they

226. Brennan, *supra* note 168.
227. TREUHAFT ET AL., *supra* note 23.
228. *See* Alexander et al., *supra* note 88, at 361.
229. *Id.*
230. *Id.*
231. *Id.*
232. *Id.*
233. *Id.* at 361–62.
234. *Id.* at 362.

may be effective in convincing banks to address the spillover effects plaguing their neighborhoods. With vigorous local statutes designed specifically to prevent bank mismanagement of vacant properties during the current crisis, remaining residents can notify Dimon Heights's enforcement agencies of violations and can trust that the agencies will remedy these violations. If owners refuse to address the concerns of remaining residents, neighbors can engage in visibility campaigns similar to those trying to delay foreclosures that pressure banks to appease their concerns.[235] After all, blight ordinances seek to make it too expensive for banks to continue mismanaging properties.[236] Exposing their misconduct may serve as the final straw and encourage banks to properly control the negative externalities of their vacant properties.

CONCLUSION

The foreclosure crisis is far from over. Millions of loans remain in the foreclosure process, suggesting that additional properties will soon turn vacant.[237] For residents who remain in their homes, the challenges they face are likely to worsen before they improve. As a result, the need for effective policy and judicial responses is greater now than ever before. In the face of serious threats to the safety and wellbeing of remaining residents, cities must enforce heightened nuisance ordinances. Bank owners must recognize their obligation to comply and must ensure that they maintain vacant properties in a way that minimizes the potential for negative impacts on surrounding residents. Returning blight ordinances to their original purpose of ensuring quality housing will help. And by taking creative steps to encourage reoccupation of vacant homes, local governments across the country will ensure that the spillover effects of the foreclosure crisis are finally contained. Only then will remaining residents realize the true restoration of their neighborhoods.

235. Occupy protestors, for example, conducted actions to draw attention to banks' foreclosure practices. A similar tactic may be useful in illustrating the negative impacts of bank neglect of foreclosed properties. *See* Carolyn Said, *Occupy Oakland Protesters Focus on Home Foreclosure*, S.F. GATE (Dec. 7, 2011, 4:00 AM), http://www.sfgate.com/bayarea/article/Occupy-Oakland-protesters-focus-on-home-2348152.php.

236. *See* APGAR ET AL., *supra* note 63, at 35–36.

237. JOINT CTR., *supra* note 5, at 29–30.