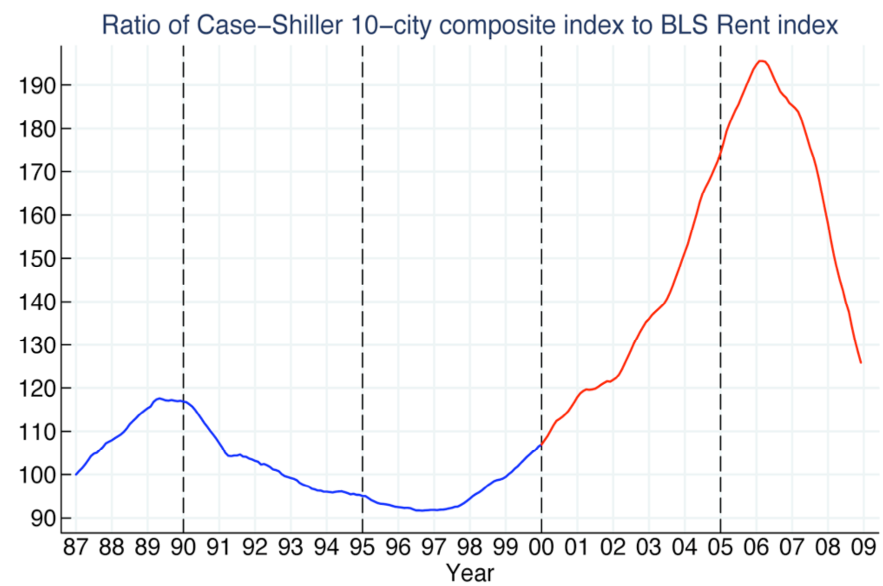
Massachusetts Foreclosure Impact Update: 2011

Foreclosures:
Denying Massachusetts an Economic Recovery

Housing Price Bubble Pops: US housing prices soar to unprecedented levels & plummet since 2002



Graphic comparison of the increase in house values versus rental costs and historically anomalous departure of housing values starting in 2001/2002

By Grace Ross &
Massachusetts Alliance Against Predatory Lending

October 13, 2011

Front page graph[1]

The cover graphic compares the increase in property values in major US cities with rents. It shows the extraordinary and historically anomalous departure of property values – the huge housing bubble that has now burst and the continuing tumble in housing wealth which resulted. Provided by the Boston Federal Reserve, this graphs the historic and consistent ratio over time between rents and property values that the Federal Reserve tracks regularly. Property values and rents have maintained close to a standard ratio for the decades since they started measuring them. Author Grace Ross first saw this graph as part of a presentation where a Boston Federal Reserve researcher reported they had noticed an anomalous and historic departure of property values from rents in the early 2000s. Although the historic departure from the ratio because of the increase in property values was noted, he reported that they had not paid much attention to it.

The Mass Alliance Against Predatory Lending (MAAPL) is a coalition of over 65 member and supporting organizations – community organizations, housing counseling agencies, legal services groups, labor and others – founded to arrest the impacts of the foreclosure crisis in Massachusetts through grassroots organizing, homeowner/tenant education, legal strategies and policy initiatives.

MAAPL member/supporting organizations

Action for Boston Community Development, Inc., Action for Regional Equity, Alliance of Providers of Legal Services to Individuals Facing Foreclosure, ARISE for Social Justice, Arlington Community Trabajando, Boston Tenants Coalition, Brazilian Women's Group, Brockton Interfaith Community, Carpenters Local 40, Carpenters Local 107, Charles Hamilton Houston Institute For Race & Justice, Chelsea Collaborative, Chinese Progressive Association, City Life/Vida Urbana, Coalition for Social Justice, Community Economic Development Ctr of S.E. MA, Community Labor United, Democratic Socialists of America, Dorchester People for Peace, Era Key Realty Services, ESAC, Fair Housing Center of Greater Boston, Greater Boston Legal Services, Greater Four Corners Action Coalition, Green-Rainbow Party of MA, Harvard Legal Aid Bureau, Homeowner Options for MA Elders, Jewish Alliance for Law and Social Action, Lawrence Community Works, Lawyers' Committee for Civil Rights Under Law, Lynn United for Change, Legal Assistance Corporation of Central Mass, Mass Advocates for Children, Mass AFL-CIO, Mass Coalition for the Homeless, Mass Community Action Network, Massachusetts Fair Housing Center, Mass Jobs With Justice, Mass Law Reform Institute, Mass Welfare Rights Union, Merrimack Valley Labor Council, NAACP N.E. Area Council, National Community Reinvestment Coalition, National Consumer Law Center, National Lawyers Guild, Neighbor-to-Neighbor, Neighborhood Legal Services, New England United for Justice, No One Leaves – Springfield, North Shore Labor Council, ¿Oiste?, Organization for a New Equality, Painters District Council 35, Pleasant St. Neighborhood Network Center, Southbridge Community Connections, Springfield No One Leaves Coalition, Survivors Inc., Tri-City Community Action Program, UE Northeast Region, Union of Minority Neighborhoods, United Auto Workers Mass CAP, United Food & Commercial Workers 1445, United For a Fair Economy, United Steel Workers Local 5696, Volunteer Lawyers Project, Worcester Anti-Foreclosure Team.

[1] © Copyright 2010, Federal Reserve Bank of Boston in Grace C Ross, *Main St. $marts: Who got us into this economic mess and how we get through it…* (October 2010)

Executive Summary

This Report, *Foreclosures: Denying Massachusetts an Economic Recovery,* summarizes studies detailing what happened when the housing bubble burst. As of November, 2010, the percentage loss in national home values from the height of the market was greater than that of the Great Depression[2]. How widespread are these economic losses and harms? Who is paying for the losses in Massachusetts? What did studies predict and what has been the reality? What might this mean for our economic future – if state policy-makers take more decisive actions or they do not?

Drawing on and updating many credible studies, MAAPL's report shows Massachusetts' foreclosure crisis continues to worsen. It has reached every corner of the state, impacted every type of community and not only significantly hurt those whose homes get foreclosed but has had far reaching and damaging impacts throughout our communities and economy.

• While initially predicted, 2007 – 2009 property value losses at a projected 7.88% loss for Massachusetts then seemed dramatic to researchers, ***the Commonwealth has experienced a roughly 20% loss in property value*** from the height of the bubble through what now, in 2011, appears to have been just the first trough in 2010.

• One 2008 Congressional report predicting loss in household wealth and spending estimated close to $2 billion loss per month in our Commonwealth's overall economy – a figure so large Massachusetts policy-makers found it hard to conceive. Inserting actual property value loss in our state ***for the period from 2007 – 2009: the Massachusetts state economy actually lost over $4 billion per month.***

• Municipalities are one of the hardest hit sectors, especially once foreclosed properties are vacated. Even examining just three types of impact, if every one of the 821 foreclosure deeds filed in 2010 led to a vacancy, the Boston economy would have lost $844,695,702. This is equivalent to roughly one third of the City's operating budget[3].

Projecting forward, leading experts and various economic indicators show the foreclosure crisis in Massachusetts will continue to worsen in 2011. *RealtyTrac*states, "2011 is going to be the peak"[4]. Direct indicators, such as loss in property values, have already entered another downturn.

Foreclosures: Denying Massachusetts an Economic Recovery is primarily a review, compilation and summary of recent studies and research as pertains to the Massachusetts foreclosure crisis and its impacts. However, this report does include a new *case study* on municipal costs to Boston. *Vacant Spaces: the External Costs of Foreclosure-Related Vacancies in Boston* which provides an exemplar for communities throughout the state.

"The foreclosure crisis is the biggest threat to U.S. economic growth," according to Mark Zandi, Moody's chief economist[5]. Insufficiently addressed, the Commonwealth's foreclosure crisis will continue to deny the state an economic recovery as well.

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[2] Katie Curnutte, *Home Value Declines Surpass Those of Great Depression*, Zillow Blog (January 1, 2011)
[3] Sam Simon, *Vacant Spaces: the External Costs of Foreclosure-Related Vacancies in Boston* (June, 2011)
[4] Dan Levy and Prashant Gopal, *Foreclosure Filings in U.S. May Jump 20% From Record 2010 as Crisis Peaks*, Bloomberg News (Jan 13, 2011 11:04).
[5] Levy and Gopal, *Foreclosure Filings*

Foreclosures: Denying Massachusetts an Economic Recovery

Foreclosure Report:

Addenda:

Sources

Foreclosures: Denying Massachusetts an Economic Recovery

Introduction

Today, in 2011, the impacts of the foreclosure crisis are an all too familiar sight throughout communities in our Commonwealth. When the foreclosure crisis first became visible, it seemed centered in our state's gateway cities and some of our largest towns. Now, it has become a feature of almost every community in our state, including rural and wealthy suburban areas.

While foreclosures seemed to stall at the end of 2010, the multiplying effects of the crisis continue to grow and spread. Several indicators point to the temporary nature of the recent slowdown in the crisis itself.

A study comparing the relative impact of repeated foreclosures shows that the first foreclosure (and concomitant vacancy of a property) has the largest harmful foreclosure consequences in a neighborhood. That first vacated foreclosed property has the biggest impact on property values[6]. With each additional foreclosure, value losses increase but by a smaller amount. Thus, for those Massachusetts communities that are only now being hit by the foreclosure crisis, avoiding the foreclosure and vacating of the first property in a neighborhood may yield the largest savings to that community.

On the other end of the foreclosure impact spectrum, one of the most recent studies has also shown that – once the number of vacant foreclosed properties has multiplied beyond a certain level – the interactive impact of those foreclosures in a community may begin to have a cascade effect[7]. In his 2010 Sacramento study, *The Recent Pervasive External Effects of Residential Home Foreclosure*, Robert Wassmer showed the much more dire, reinforcing impacts of so many, densely-packed foreclosures in a city with a high percentage of foreclosures. The tendency of foreclosures to produce more foreclosures may make reclaiming our hardest hit neighborhoods very lengthy and resource intensive indeed. We cannot afford to lose neighborhoods or communities economically and socially for the foreseeable future.

Foreclosures: Denying Massachusetts an Economic Recovery addresses what has happened since the historically anomalous ramp up in housing values crashed in 2006. How widespread are these economic harms? And who is paying for the losses in Massachusetts? What have studies predicted and what has been the reality? What might this mean for our economic future – if state policy-makers take more decisive actions or they do not?

Foreclosures: Denying Massachusetts surveys statistical impacts for the increasing number of foreclosures specific to Massachusetts: from losses in housing values and concomitant loss in

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[6] In a 2008 New York City study, researchers found: "the size of the price impact generally increases with the number of nearby foreclosure starts, although the marginal impact of each additional foreclosure decreases once there is a concentration of foreclosures in a neighborhood." This result replicates other results such as Wheaton's 1990 study. Vicki Been, *External Effects of Concentrated Mortgage Foreclosures: Evidence from New York City*, Testimony, Committee on Oversight and Government Reform Subcommittee on Domestic Policy (May 21, 2008).

[7] In the only study during the height of the crisis in a heavily impacted community, Wassmer found: "the selling price of non-real estate owned homes, due to the foreclosure of neighboring homes, on average fell by $48,827… or 31.9 percent". Robert W. Wassmer, *The Recent Pervasive External Effects of Residential Home Foreclosure* (July 19, 2010).

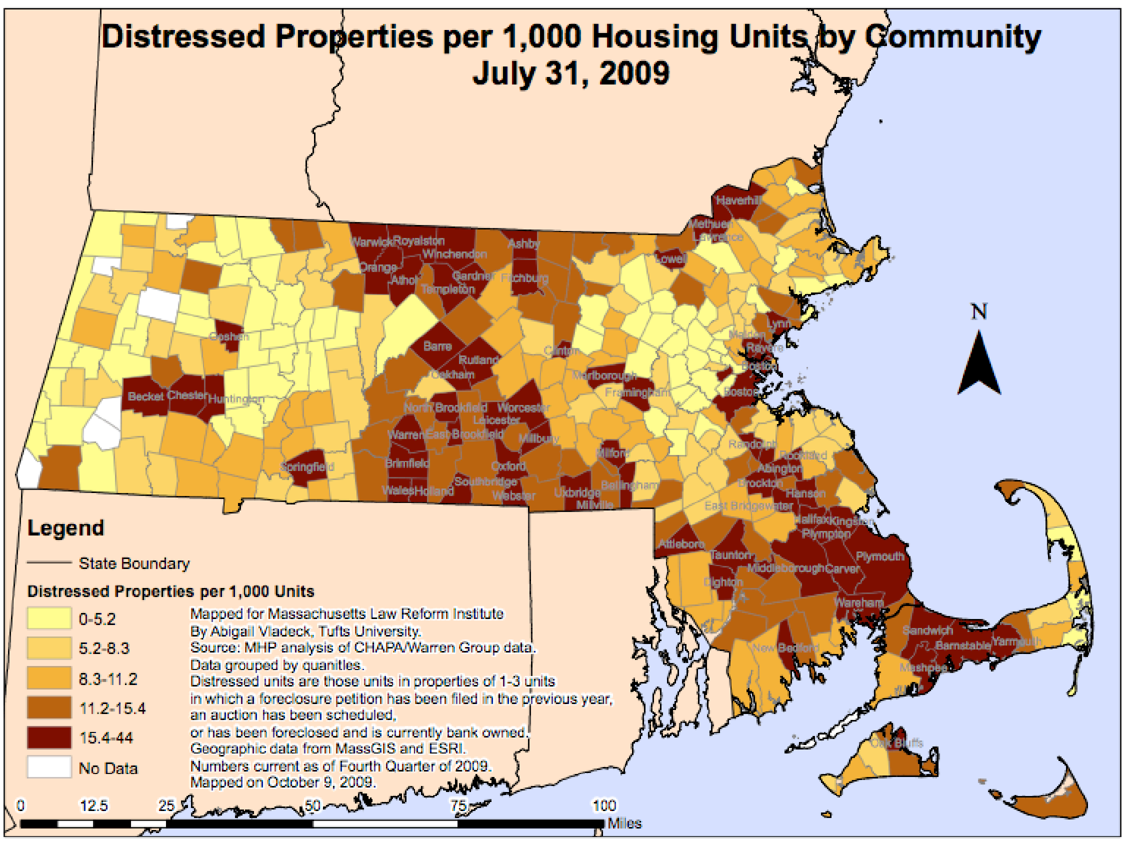
housing wealth and spending power to increasing homelessness and rents, from a wide range of harms on our municipalities to the quality of our lives as residents of our Commonwealth.

This report lays out some context for these updated figures: a description of the steps in our non-judicial foreclosure process, possible weaknesses in existing research to-date, the differential impact of foreclosures and vacancies and the results of some policy attempts at intervention. This report updates measures of the breadth of the harmful effects of recent years' foreclosures' breadth; it clarifies, based on the most recent studies, the understanding of: what still drives the crisis; the vast quality and quantity of its impact; and the aspects that point to policy solutions our state can implement and so unblock our economic recovery.

The four addenda address research on recurring questions: what contributed to the creation of the crisis, the relationship between foreclosures and unemployment, the now frequently reported illegalities in lenders' paperwork and new research measuring three costly aspects of the crisis to the City of Boston as a municipal example.

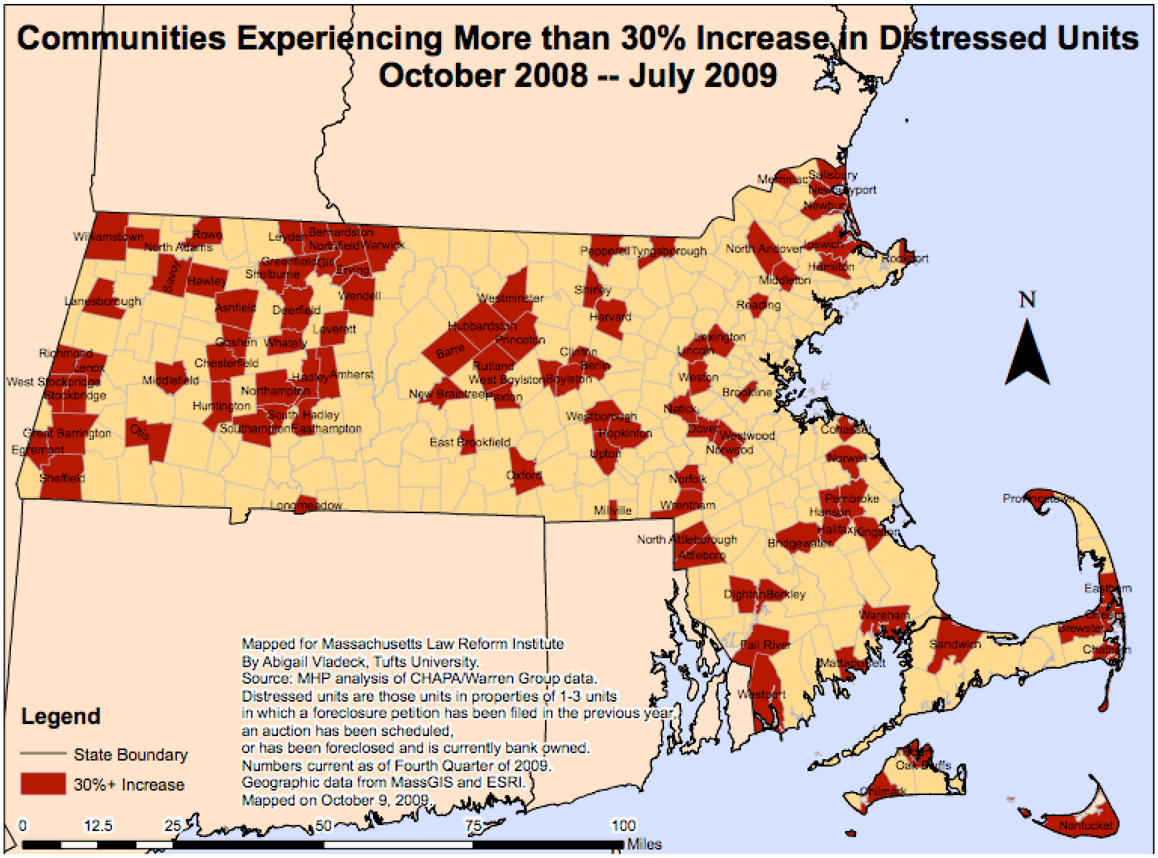
Context

Breadth of Crisis Impacts



While the Commonwealth's foreclosures initially seemed limited to predatory mortgages and to communities of color or inner-city communities, our early predictions that delinquencies and foreclosures would impact all constituencies throughout our whole state were accurate.

Inserted here are recent maps[8] of two different measures of foreclosures by municipality. The first map above shows the density of distressed properties per 1,000 housing units in each municipality as of mid-2009; the second shows those municipalities where the crisis increased the most from fall of 2008 to summer of 2009.



The first and continuing focus for many is necessarily the impacts on those Massachusetts residents most directly affected – borrowers and others whose homes are impacted by foreclosures. These include the obvious impacts of loss of housing, increasing homelessness, loss of credit; as well as less measured impacts on children in these households, health of family members, household stresses leading to increased domestic violence and divorce.

The other direct partners to this situation are the major lenders – the vast majority of whom are headquartered far from Massachusetts. The report, therefore, mostly does not focus on the big lenders since their losses occur out of state. The key fact remains, however, that lenders lose the most financially when they foreclose on mortgages (even in comparison to loan modifications that include principal reduction) and lose the most value post foreclosure when properties are left

[8] Source: Mass Housing Partnership analysis of CHAPA/Warren Group data. Data grouped by quantities. Distressed units are those 1-3 unit properties on which a foreclosure petition was filed the previous year, an auction scheduled, or the unit foreclosed and is currently bank owned. Geographic data from MassGIS and ESRI. Numbers current as of Fourth Quarter of 2009, Mapped on October 9, 2009.

vacant for long periods before re-sale. Although experiencing some loss through increased foreclosures, our local banks lose the most financially as lenders when their business loans and neighboring mortgage loans suffer as the economy of their local communities takes a beating.

The foreclosure crisis' impacts are multiple and reach far beyond the lives of those who lose a home. They are not limited to the number of foreclosures and vacancies themselves and the loss in property value of the foreclosing of those particular properties. The market value of properties nearby plummet partly due to loss of value in the foreclosure sales themselves. This decrease is multiplied by vacant properties' impact in terms of appearance, health issues, increased crime, potential of fire, loss to the fabric of the community by instability, the loss of the families to the fabric of community institutions and schools. The loss in property values then contributes to the negative equity of surrounding homes and people's inability to sell and move from homes now underwater when they need to for economic reasons. Fold in the stress and specter of homelessness and need to move, the initial foreclosure can cost residents their jobs and health[9].

This collateral damage impacts local spending, the local economy, small businesses, and jobs. Additionally, the loss of property values and so primary tax base becomes a body blow to municipal governments and services. Perhaps equally or more importantly, services and finances of municipal governments are taxed as they try to manage foreclosed, usually ignored and frequently vacated, properties. These strain inspectional services and increase negative health consequences, issues of upkeep and appearance of properties and degradation of vacated properties. Vacancies in turn lead not only to property related crimes, but significantly increase violent crime, the dangers of fire and such health hazards as vermin, mold and mildew, and neglected pools that breed mosquito populations[10].

This crisis impacts the entire economy, the revenues and costs to all levels of our governments and ultimately all of us as taxpayers and participants in an economy we need to recover.

Foreclosures Increasing; Drop off Temporary

Amidst short term fluctuations, the increases in petitions to foreclose (first step in the foreclosure process) and foreclosure deeds have demonstrated a clearly increasing trend line since the beginning of the foreclosure crisis in 2006. Even without consistently increasing trends, the cumulative impacts would still grow. Properties once foreclosed continue to stay on the market for lengths outside previous norms. In addition, many properties are not even recorded in a timely fashion or even put on the market when taken back by lenders[11]. 44,100 Massachusetts

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[9] Based on zipcode level trends from Arizona, California, Florida and New Jersey, researchers find that increases in foreclosures correlates with increases in anxiety and suicide attempts, for preventable conditions like hypertension and possibly stress-related complaints like abdominal pain but not cancer deaths or elective procedures. These health issue trends are worst for 20 to 49 year-olds and African-Americans and hispanics. Janet Currie and Erdal Tekin, *Is the Foreclosure Crisis Making Us Sick?* National Bureau of Economic Research, (August, 2011).

[10] This list of impacts includes a recitation of municipal expenses the City of Worcester included in their ground-breaking anti-foreclosure ordinance as billable to lenders. Worcester, Mass., Rev. Ordinances ch. 9, § 14 (2010).

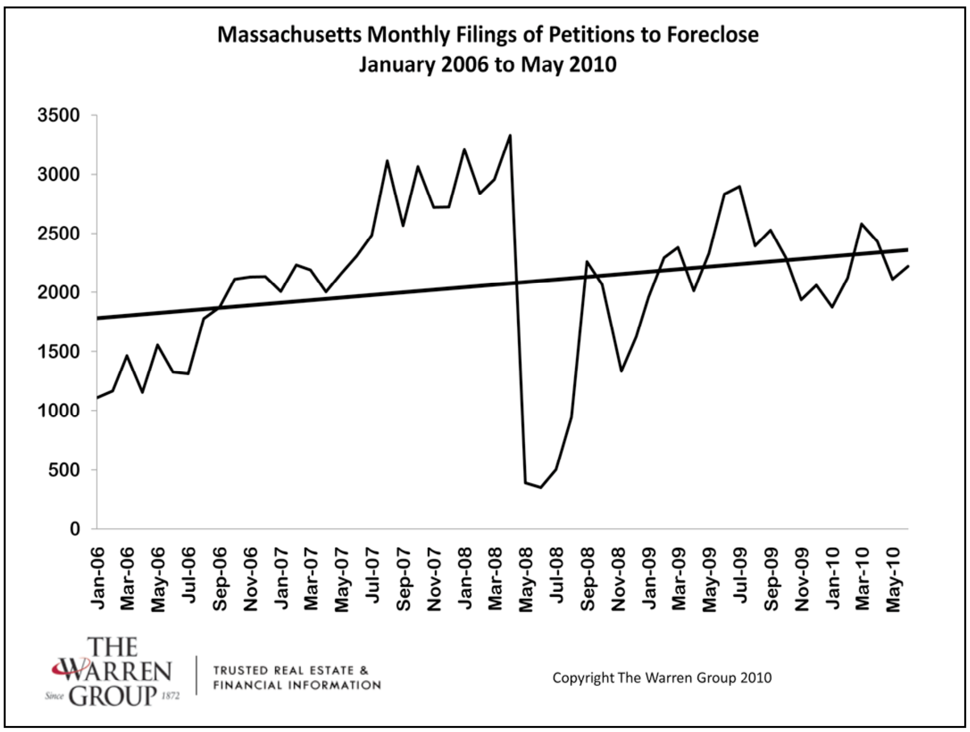
[11] "I do know that banks are holding onto inventory, and what they're doing is they're metering them out at an appropriate level to what the market will bear," said Pat Lashinsky, chief executive of online brokerage site Zipreality in a July 7, 2009 interview on National Public Radio. RealityTrac also reported this phenomenon in 2009. Cleveland Federal Reserve researcher, Daniel Hartley references the Lashinsky quote and then chooses to use

properties have been recorded as foreclosed since 2007[12]. With an almost two household average per foreclosure[13], twice as many households are being directly destabilized by foreclosures.

RealtyTrac states, "2011 is going to be the peak"[14]. Direct indicators such as loss in property values have already entered into another downturn.

News headlines trumpeted a significant drop off in foreclosures in late 2010[15]. The Warren Group observed[16], however, that the decline in Massachusetts was driven by two one-time legal happenings and not a lasting solution to the problems that caused the crisis and continue to produce foreclosures. "Lenders are still taking a cautious approach to foreclosures, and this is keeping foreclosure statistics at low levels for a while longer," Timothy Warren said. "This brief downturn should not sway us from the reality that the foreclosure crisis is not over,.. and we are likely to see increases in coming months."

The first factor driving the decline is the extension of the right to cure period. As we saw previously with the imposition of the three-month right to cure period, a significant downturn in the number of actual foreclosure auctions occurred because of elongation of the amount of time it took for lenders to make it through all the steps of the Massachusetts foreclosure process. However, that turned out merely to be a postponement of the foreclosures – jumping back up after the temporary elongation. Foreclosures already in the pipeline continued, it just took them longer to reach the point of an auction.



a private, non-market source for his foreclosure data in his September 2010 study, *The Effect of Foreclosures on Nearby Housing Prices: Supply or Disamenity*, p.4.

[12] Presentation by Mass Bank Commissioner Anthony, Esq. at Suffolk Law School, October 14, 2011

[13] National Low Income Housing Coalition, *Foreclosure in Massachusetts Properties, Units, and Tenure* (May 9, 2008)

[14] Levy and Gopal, *Foreclosure Filings in U.S. May Jump 20%.*

[15] Michelle Laczkoski, *Mass. Foreclosure Activity Continues Dramatic Decline In March, Foreclosure Petitions, Deeds Drop By Double Digits*, The Warren Group (April 20, 2011); RealtyTrac Staff, *Massachusetts Foreclosures Decline in January*, RealtyTrac (February 28, 2011), Associated Press, *Mass Housing Prices on the Decline*, Boston Globe (May 24, 2011)

[16] *April foreclosure petitions up from previous months*, Boston Globe, May 17, 2011

The other contributor is the impact of the legal exposures by numerous Attorneys General across the country. Often the visibility of bank irregularities was exposed by Attorneys General in states with judicial foreclosure and other means of observing the patterns of legal actions by the banks. These investigations often expose what we have seen anecdotally in Massachusetts: numerous forms of illegal filings and manipulation of mortgage paperwork. The widespread media coverage has led to a number of self-imposed moratoriums by the largest lenders as they seek different legal fixes to their questionable mortgage transactions[17]. Some types of these transactions may not be reparable. In May of 2009 in our Commonwealth, a number of titles to deeds came into question in ruling by a Springfield Housing Court judge[18]. Those cases – now known as the Ibanez decision – have pointed to sometimes legally irreparable problems in some mortgage transfers and foreclosures that occurred in our state.

The above chart[19] shows that, even with the drop off in foreclosure because of the elongation of the process to foreclose when the 90 day Right-to-Cure period was first imposed in May of 2008 and initial Ibanez case in Massachusetts in March of 2009, the trend line of the number of foreclosures actually continued even though the short term drop off seemed significant.

Since the fundamentals of the foreclosure crisis have not changed, we expect that the present dip in foreclosures will again return to the same trend line over time. We have not succeeded in addressing the fundamental losses of the burst of the historically anomalous over-pricing of properties. Nor have we addressed the devastating impacts of vacant foreclosed properties. No new policies address the culpability of the largest lenders, the legal irreparability of a number of the mortgage transfers, incomplete or illegal filings in the Registry of Deeds and questionable handling of loan modifications. We have not begun to address at the policy level the continuing huge property value losses and how the speculative value that was created in our housing stock is being paid for. Nor have we addressed the impact of the significant wealth drawn out of households through mortgages based on those unrealistic values and how that loss of capital assets from a huge swath of our population and how its profound economic impact on the spending ability of hundreds of thousands of households. All of these imply the long-term continuation of problems driving the foreclosure crisis with the lion share of costs of the crisis paid for by the people of Massachusetts, our local economies and our governments' resources.

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[17] Danny King, *JPMorgan Chase to Delay Some Foreclosures to Review Documents*, DailyFinance (September 29, 2010); Danny King, *Bank of America Joins the Foreclosure Delay Brigade*, DailyFinance (October 01, 2010); Dan Burrows, *Goldman Sachs Suspends Evictions and Foreclosures*, DailyFinance (November 9, 2010)

[18] U.S. Bank National Association v. Ibanez, 458 Mass. 637 (2011).

[19] Created by and printed with permission from the Warren Group for Grace C Ross' *Main St. $marts: Who got us into this economic mess and how we get through it…* (October 2010)

Massachusetts' Non-Judicial Foreclosure Process

{If you are very familiar with the state's mortgaging, foreclosure and post-foreclosure legal requirements, skip this section}

The subprime mortgage ramp up and ensuing foreclosure crisis slammed Massachusetts as a non-Judicial foreclosure state. What does it mean to be a non-Judicial foreclosure state? It means that borrowers do not get a day in court in front of a judge before they are foreclosed upon. It means that Massachusetts built its legal process on a ***strict honor code***. Since foreclosing entities are not required to go in front of a judge, our law literally expects them to behave even more scrupulously and honestly than if we did require foreclosures to go in front of a judge[20].

Public policy in this crisis can become challenging to make for a number of reasons. Most fundamentally lenders behaved in ways that were historically anomalous heading into this time period: mortgages went from being primarily written by bankers, direct employees, to being primarily written by brokers who were subcontractors to mortgage companies; mortgage companies were not governed by the same legal requirements in home lending that our standard banks have been[21]. Since the early 1990s, mortgage companies came to be the primary lenders for a brief period of time in the early 2000s; then, the practices and outcomes of this short lending period not only undermined the world economy but also drove mortgage companies out of business.

How then do foreclosures happen in Massachusetts[22]? Lenders allow borrowers to get three months delinquent (behind in monthly payments); then they have to wait thru the "right to cure" period and then begin the formal foreclosure process. The formal non-judicial foreclosure process in Massachusetts starts

<u>Massachusetts Foreclosure Process</u>

Execution of Note & Mortgage

↓

Recording of Mortgage

↓

Breach of Mortgage
(Usually Delinquency – 90 days)

↓

Demand for Payment

↓

150-day Right to Cure
(Could be 90 but by practice 150)

↓

Filing of Complaint to Foreclose
(also referred to as Petition)

↓

Service & Publication of Notice to Foreclose

↓

Entry & Auction

↓

Execution of Sale/Bank takes back

↓

Filing of New Deed

↓

Occupants become Tenants per Law

↓

New Owner is Landlord* per Law
-Must Maintain Habitability
-Evict thru Court

**former tenants have additional specific rights post-foreclosure*

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[20] The recent Ibanez ruling from Massachusetts Supreme Judicial Court lays out in depth legal precedence for strict adherence required by lenders to each step in the mortgaging and foreclosure process in Massachusetts, pp.14-15, And as Justice Cordy states unequivocally in his concurring opinion "such strict compliance is necessary because Massachusetts is both a title theory State and allows for extrajudicial foreclosure", p.27

[21] The regulations of mortgage originations have been refined over decades for charted banks through a series of bank crises, however, with that advent of Mortgage Companies in the early 1990s regulators from a number of federal agencies opted not to apply those same regulations to Mortgage Company transactions leading to the development of fundamentally different mortgages generally referred to as subprime mortgages. Krugman.

[22] Amanda Zuretti, *Residential Foreclosures, 7th Edition*, Massachusetts Mortgage Association/CATIC

with what is called a "petition", "complaint" or an "active military service" notification. The petition process starts with a filing in Land Court requiring various papers and submission of language for advertisement of the property for auction. Out of that filing, an active military service letter is sent to borrowers to verify whether somebody on the mortgage (or in the borrowing household it has been interpreted differently at different times) is in active military service. If so, foreclosures are prohibited. If the borrowers do not access the military service protection, judgment is entered.

After 3 consecutive weeks of notifications in a paper of general circulation, a lender's law firm may hire a licensed auctioneer for the prescribed date, place and time to hold the foreclosure auction; the auctioneer must stand on the actual property itself. In this crisis, lenders frequently end up buying the property back themselves or selling it to another lender rather than to private investors; most banks are unwilling to accept a low private bid. This practice has led to a backlog of unsold properties and sometimes, research has shown, not even formally marketing properties.

As the burgeoning foreclosures first became apparent, there was a hope that lenders would voluntarily choose to do work-outs with borrowers where possible since early evidence showed that avoiding foreclosure not only cost less for families and our communities, but also for lenders. A key component of the first legislation the Massachusetts State House passed was implementing a right to cure period – a time period created in hope that voluntary modification negotiations would happen and be successful. This 90 day right to cure period was inserted after the 90 days of delinquencies and prior to the formal start of the non-judicial foreclosure process (the Land Court filing and the active military service letter). However, like other governmental policy attempts to make it easier or even sweeten the pot for lenders to modify loans, the "right to cure" period yielded a *tiny* percentage of loan modifications. In Massachusetts' 2010 omnibus foreclosure legislation, the right to cure period was extended to 150 days unless lenders actually participated in loan re-negotiations. In practice, the right to cure period is now 150 days long.

Because of previous time periods when foreclosures were more common (nothing like the present crisis, however), people advocated for protection for those who had been the victim of mortgage scams. One of the outcomes of that organizing and legal work was the Dime ruling in Massachusetts[23]. This clarified that all occupants in homes post-foreclosure are tenants of the new foreclosing owner, the new landlord. While not extended the full range of rights of traditional tenants, they did become *tenants-at-sufferance.* Given evidence – some of which is summarized below – we now know much more graphically, how much of the damage from foreclosures is caused by the vacating of the home, both displacement of families and much farther reaching economic impacts of long-term vacancies on our communities and economy.

Massachusetts therefore entered this crisis with one better buffer to negative impacts of foreclosure than other states: post-foreclosure occupants had a right to eviction by court not just informal demands to leave (which are prone to becoming harassment) and landlords had to keep our housing stock habitable while occupied. In May of 2009, federal legislation extended protections for former tenants post foreclosure: it required the step before court eviction, known

[23] From the last predatory lending foreclosure period of the early 1990s rights, Massachusetts law extended tenant status to occupants post-foreclosure such as fundamental tenant rights to habitability and to eviction through court, Attorney General v. Dime Savings Bank, 413 Mass. 284 (1992)

as a "notice to quit" letter, to provide 90 days not just a standard two to four weeks[24]. In 2010, Massachusetts unanimously passed historic protections for only former tenants to stay and pay rent to the lender-landlords post-foreclosure until resale to a non-lender third party[25].

Underestimates in Foreclosure Studies

Most of the research available to look at the impact of the foreclosure crisis was done early in or even before this foreclosure crisis became full-blown. It measured the impact of what we would now consider occasional foreclosures or reached all the way back to the more limited foreclosure crisis of the early 1990s. The figures coming out of those reports were daunting at the time. For instance, the Congressional Joint Economic Committee's chart from 2007, *Coast to Coast, Home Prices Are Down and Families Have Lost Wealth From 2007-2009* (often quoted by members of the Mass Alliance Against Predatory Lending) on loss of housing wealth and the impact on spending patterns had averaged out to almost a $2B loss per month to the overall Massachusetts state economy[26]. Or the commonly quoted 2005 study in Chicago, Apgar and Duda's *Collateral Damage: the Municipal Impact of Today's Mortgage Foreclosure Boom* that showed that every foreclosure cost the municipal government somewhere between $5,600 and $19,200 on average for a vacated, foreclosed property[27]. To the extent to which we have updated statistics, the statistics that most of those reports were based on show a gross underestimate of the real impact of the foreclosure crisis[28].

In addition, the interactive impact of all of these negative financial and social effects was not apparent when the number of foreclosures was smaller. In updating research for our Commonwealth, there is also the potential, even though we are inserting the now actual figures for property loss, for instance, that we are still yielding an underestimate of the actual impacts of the foreclosure crisis; the multipliers before the worst of the crisis may also have been too small.

Now recognized as underestimates, the statistics from those early studies were already so large and predicting such devastation that they were hard for policy makers to swallow[29]. Be prepared, then, that a number of the figures that we lay out in this report may seem even more unbelievable. Yet if we have learned anything from the last few years it is that our tendency to want to make very conservative estimates and shy away from the potential far-reaching impacts of the foreclosure crisis has not helped us. In fact, underestimates may have hurt our ability to act at the policy level in a timely way to even ameliorate the worst harms from this foreclosure crisis.

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[24] Protecting Tenants at Foreclosure Act, Pub. L. 111-22 (2009)
[25] Mass. Gen. Laws ch. 186A (2010)
[26] Joint Economic Committee, *Coast To Coast, Declining Home Prices And Rising Foreclosures Will Cost U.S. Families Over $2.6 Trillion* (Apr 10, 2008).
[27] William C. Apgar and Mark Duda, *Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom,* report for Homeownership Preservation Foundation, Minneapolis, Minnesota (May 11, 2005).
[28] Joint Economic Committee, *Coast To Coast,...* (Apr 10, 2008).
[29] Joint Economic Committee, *Coast To Coast,...* (Apr 10, 2008).

Foreclosure versus Vacancy Impacts

One last caveat regarding the studies available. In many states the legal foreclosure itself leads to direct vacating of the property. However, the impacts of foreclosure and the actual vacancy of a property are different. It appears that the vacating of the property itself may have more devastating long-term impacts on the occupants, the surrounding neighborhoods, and our economy as a whole.

An interesting side-implication of a very good 2005 Chicago foreclosure study showed that while homeownership can increase the investment of the occupants in the upkeep and quality of the home and neighborhood, home-ownership is not the determining factor as pervasively assumed[30]. This very rigorous study avoided some common assumptions and included numerous possible indicators in their very extensive multivariate regression analysis. The overriding contributing factor in emotional investment in and commitment to upkeeping a home, this study showed was *actually the length of occupancy*; what mattered was if a family had lived in their home for five or more years more than whether they owned the property or rented it.

Many of the studies that we reference in this report assume that foreclosure and vacating of the property are a single impact. We know that is not true. It is why the legislation passed in Massachusetts last session was so critical; as we make it possible for people to remain as responsible tenants and pay rent to the banks (while banks own these properties over much longer periods of time than any of us like), people's ability to stay long term as responsible tenants may be ameliorating some of the worst of the foreclosure crisis[31]. If we can extend the option to stay as tenants and pay rent to include former homeowners, we may actually be able take a huge bite out of the devastating social and economic impacts of the foreclosure crisis on our Commonwealth.

Updated Measures of Impacts

Property Value Loss & Loss in Property Taxes

The Congressional Joint Economic Committee and the Congressional Budget Office in 2007 put out two far-reaching reports in an attempt to project forward the impact of the foreclosure crisis; they correctly surmised the upcoming pivotal role of foreclosures in the economic future of the United States at the time[32]. The state-by-state analyses included by the Joint Economic Committee, *The Subprime Lending Crisis: The Economic Impact on Wealth, Property Values and Tax Revenues, and How We Got Here* charted the impact of loss in property value from sub-prime mortgage foreclosures and their cumulative impact on property values of surrounding

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[30] Immergluck & Smith assessed the statistical impact of numerous demographic variables on the relationship between foreclosures and crime. While they tested the statistical impact of renting versus owning your home, that was not found to be statistically significant when length of occupancy was considered. It was whether an occupant had lived in the home for more of less than 5 years that mattered. This relationship may only prove significant in relationship to crime with further research but we suspect it is the stabilizing affect of length of occupancy that is the determining factor. Immergluck & Smith, *The Impact of Single-family Mortgage Foreclosures on Neighborhood Crime* (Received April 2005; revised October 2005), p.10.

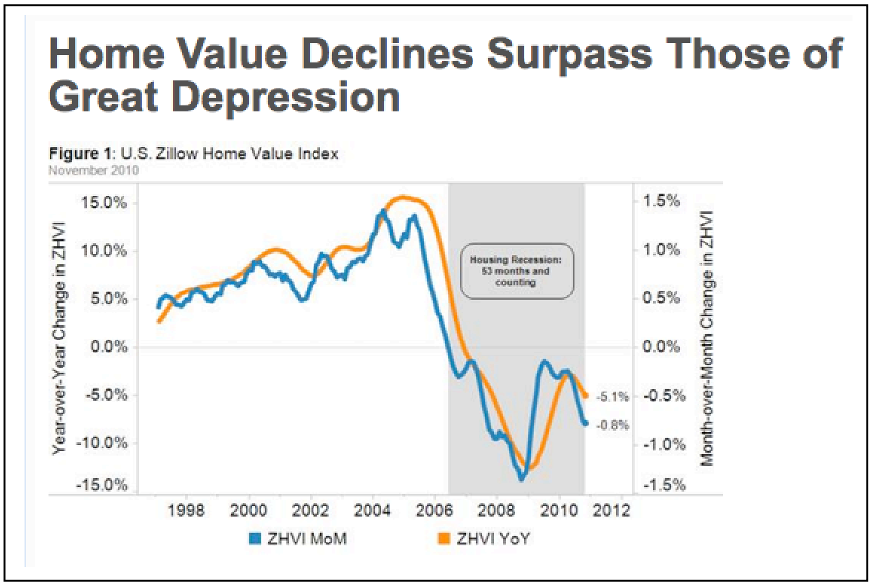
[31] Mass. Gen. Laws ch. 186A (2010)

[32] Joint Economic Committee, *The Subprime Lending Crisis: The Economic Impact on Wealth, Property Values and Tax Revenues, and How We Got Here* (Oct. 2007).

properties and then the impact of that total loss of property value on municipal tax revenues[33].

They based the property value loss report on Moody's projections for loss in property values even though these were significantly below the more liberal projections put forward by the Center for Responsible Lending researchers[34]. Then the property loss projections were applied to properties with sub-prime mortgages and the impact on neighboring properties based on a couple of studies that looked at the foreclosure impact on property value loss for neighboring properties; they multiplied these by the then standard coefficient of .9% for properties within a certain radius[35]. As has become apparent, Moody's and the federal government's conservative projections turned out significantly less than actual property value loss; the property value losses were almost exactly those projected by the Center for Responsible Lending[36].

How bad has the property value loss been so far? As of January 2011, Zillow.com, a key foreclosure statistical source, reported that as of November 2010 their national Home Value Index had fallen 26% since the peak in June 2006; the decline between the height of home values and their trough during the Depression-era between 1928 and 1933 was less at 25.9%.



Additionally, early on we had all assumed that the foreclosures were going to remain overwhelmingly of sub-prime mortgages; this seemed likely because of their weak underwriting criteria and of interest percentage jumps and concomitant payment shock – reflecting the huge jump in interest payments structured into those mortgages[37]. What none of us realized was that the loss in property value was going to be so extraordinary it was going to impact people regardless of the type of mortgage they had gotten or the size of their down payment[38]. The year after the Congressional report, there was an updated study done by the Center for Responsible Lending in 2008, *Soaring Spillover: Accelerating Foreclosures* that projected three years forward on the impact of foreclosures of all

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[33] Joint Economic Committee, *The Subprime Lending Crisis,* p.15.

[34] Joint Economic Committee, *The Subprime Lending Crisis,* p.12. The report chooses to use Moody's conservative national price loss estimate of 6.9% from 2007 – 2009 but references the Center for Responsible Lending estimate of close to 20%.

[35] Dan Immergluck & Geoff Smith, *The External Costs of Foreclosure: the Impact of Single-Family Mortgage Foreclosures on Property Values,* Housing Policy Debate, Vol. 17, Issue 1, 2006.

[36] Joint Economic Committee, *Coast To Coast,...* (Apr 10, 2008).

[37] Joint Economic Committee, *The Subprime Lending Crisis*, pp. 12-13.

[38] See explanation first addendum below Zillow, "Massachusetts Home Prices and Home Values-Local Info," 2 Nov. 2009.

kinds of mortgages on neighboring property values[39]. We include these Massachusetts spill-over projections in our chart below. We added updated figures of the direct impact of foreclosure losses on properties themselves.

Wassmer's *Recent Pervasive External Effects* study looked at the impact on surrounding homes once the number of foreclosures had significantly increased based on the much denser number of foreclosures specifically in the City of Sacramento[40]. The much higher density of foreclosures for this study than the earlier studies yielded a much higher collateral impact on surrounding properties – given local prices, this multiple regression yielded a loss of $48,827 or 31.9% per non-bank owned property as opposed to the $14,891 per such properties for CA using CRL's 2009 multiplier[41]. Thus the .9% multiplier used in the Congressional study is also probably an underestimate; the more recent Center for Responsible Lending 2009 study on neighboring effects (from which we use projections in our chart) used even a slightly smaller multiplier[42].

	Loss of Property Value '08-'09			Loss of Property Taxes '08-'09		0.00862581
Source	Direct	Neighborhood	Total	Direct	Neighborhood	Total
Congress Projections	1,476,377,624	1,369,513,998	2,845,891,622	12,734,953	11,813,167	24,548,120
	2009			2009		
CRL Projections 5/09	10,218,500,000			88,142,835		
	2009-2012			2009-2012		
CRL Projections 5/09	37,801,800,000			326,071,130		

Having now taken these prospective studies from 2007 and 2008 and redone these figures retrospectively we know that the loss in property values was much higher than projected. Without including all the other multiplier effects that may be underestimated, we still come out with the above chart[43].

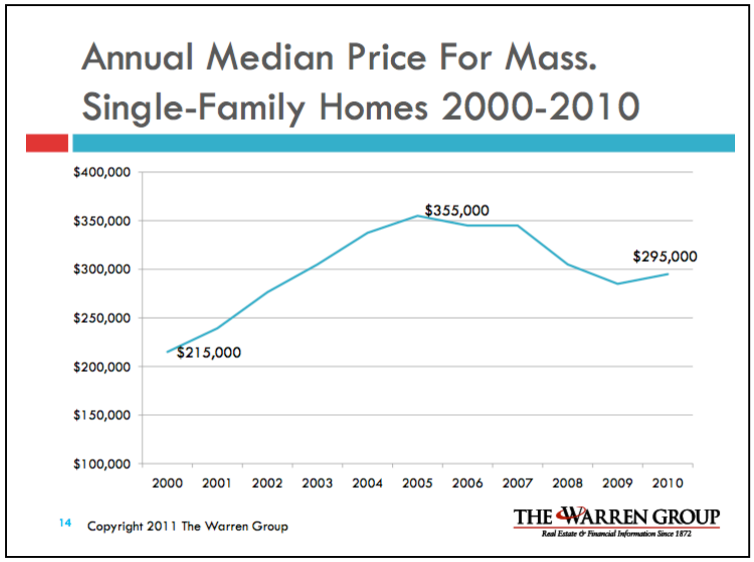
Consumer Spending Loss

The second Congressional report from 2007, *Housing Wealth and Consumer Spending* tried to look beyond the first[44]. It took the impact in property value loss and looked at the impact of changed equity on the spending patterns of households that owned those properties.

Their estimated impact is based on the historical reality that when a household purchases a home the equity in that home creates an economic safety net going forward. This economic safety net allows money that might otherwise have been put aside for long term housing expenses and

[39] Center For Responsible Lending, *Soaring Spillover: Accelerating Foreclosures To Cost Neighbors $502 Billion In 2009 Alone; 69.5 Million Homes Lose $7,200 On Average* (May 2009).
[40] Wassmer
[41] Wassmer, p.23
[42] CRL decided to use a smaller recent figure that was corrected in a statistical way that may have moved closer to a vacancy effect rather than an overall foreclosure impact on surrounding homes of 0.744 percent home value decline for each foreclosure within 1/8 of a mile, based on a study by Harding, Rosenblatt & Yao (2008). Center For Responsible Lending, *Soaring Spillover*, p.3.
[43] Center For Responsible Lending, *Soaring Spillover*, p.4
[44] Congressional Budget Office, Background Paper, Housing Wealth and Consumer Spending (Jan. 2007).

retirement to be realistically lessened; the certainty of home ownership going forward into one's old age translates into less money needing to be saved for those expenses. Therefore, households increase their spending when they have a certainty of equity and home ownership in their future.



Not only did Greenspan and other top economic leaders in our country miss the housing bubble and assume mistakenly that housing values would increase continuously going forward[45], that misperception and the national economic reports based on it impacted the expectations of home-buyers during the early 2000s. Home-owners thus expected very high continued increases in their home equity based on increasing housing values; one study showed an expectation of 20% increase in property values every year for ten years[46].

The Congressional Budget Office (CBO) researchers collated all these economic studies and created a multiplier that we can use to project the opposite direction of the impact on spending when those expectations were brought back down to earth with the bursting of the housing bubble. This multiplier incorporates the loss of expectation in property values as well as the real budgetary impact on households that are now under water[47].

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45 Alan Greenspan, testimony at Hearing of the House Committee on Oversight and Government Reform (Oct. 28, 2008).

46 This CBO report surveys a number studies on the range of public expectations of the increase in property values (compatible with economic pundits) during the first half of the first decade of this century including one from 2004 where 28% of home buyers in Boston, Los Angeles, and San Francisco expected an average 20% or more increase for each of the next 10 years. Congressional Budget Office, Background Paper, *Housing Wealth and Consumer Spending* (Jan. 2007), p.8.

47 The original housing wealth projections were put forward by the Joint Economic Committee in 2007; they did projections from 2007 to 2009 in their report called *Coast to Coast Home Prices are Down and Families Have Lost Wealth from 2007 to 2009*. The methodology of these figures was based on projecting forward median house prices using data for single-family homes. Taking that data and multiplying it by a coefficient based on the Congressional Budget Office's estimates of the amount of spending usually freed up by a household once they have permanent ownership of their home.

The coefficient used as a multiplier was based on comparison of a number of studies both looking at the relationship between increased spending and homeownership in the past as well as the impact on increased spending of expectations about increasing home equity. In their study called *Housing Wealth and Consumer Spending January 2007*, they overview various economists' estimates of the impact of expected increased housing values on spending as well as direct correlation between home ownership, additional equity and increased spending. Having done an analysis of the range of both increased expectations and actual home equity and increased spending patterns, they came up with a very conservative coefficient that they used to multiply projected housing value differences to estimate changes in spending patterns.

Their figures were originally based on projections of the change in median house prices by the Federal Housing Finance Board for single-family homes and then the historic house price indexes from the Office of Federal

The estimate in the CBO Report was that the loss in property values from 2007 to 2009 in Massachusetts would be about 7.88%[48]; however, based on the Warren Group's actual figures of loss in property values from the height of the market to the trough of early 2010, the actual property value loss in Massachusetts was roughly 20%[49]. This means that the estimates of the multiplier impacts on household spending were also deep underestimates in the Congressional Report for the Commonwealth.

The figure from the CBO's report, *Housing Wealth* had come out to a loss of about $2B per month from our state economy. Multiplied by what may yet turn-out to have been a conservative coefficient, our new figures using the actual loss in property values of about 20% puts that figure ***at slightly over $4B per month from our overall state economy.*** That is the loss of spending by regular people whose spending drives 70% of our economy[50].

Coast-to-Coast, Lost Wealth from 2007-2009		
Source	Median House Prices, Percentage change '07-'09	Change in Housing Wealth '07-'09
Congressional Projection	-7.88%	-58,926,193,556
Actual Massachusetts Values	-19.72%	-147,452,402,600

These two studies together show that the devastating impact on our economy is far beyond what gets captured by looking at simple job losses and implies that going forward we should not be overly conservative about the ongoing impact of the foreclosure crisis.

Housing Enterprise Oversight, which draws much of its information from Moody's economic projections. (Moody's not having a reputation as a radical risk-taking projection organization.) Even in their report on housing price analysis, the Joint Economic Committee acknowledged that Moody's projections of the amount of housing value loss were on the low side in comparison to other sources available. They then took these losses, compared them to household numbers for the various states based on the Census Bureau, and multiplied them by the above coefficient from the Congressional Budget Office.

These figures also represent loss in household value for single-family homes representative of the owner-occupied housing where the foreclosure crisis hit hardest initially. With the many multi-family homes in Massachusetts as well as larger multi-unit properties that are now losing a lot of value because of the jumbo loans crashing, we do not have a separate means to estimate that additional impact but it is going to be significant

[48] 7.88% loss from Property value report

[49] Timothy M. Warren Jr., slide presentation for CHAPA Breakfast Forum (March 23, 2011), slide 16.

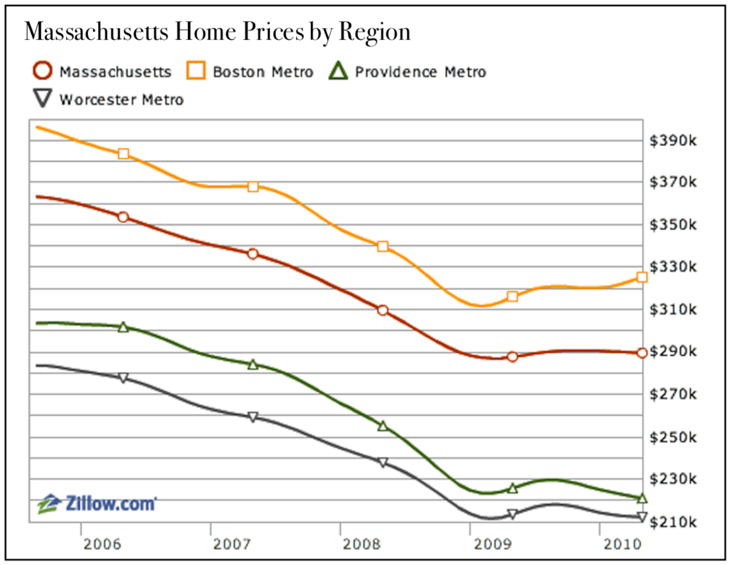
[50] When the US Market crashed in 2008, an economic fact apparently well-known among economists was repeated for the 1st time in the author's hearing by economists across the political spectrum: normally our economy is driven by 70% spending by people, 20% spending by the private sector and 10% by government. Among people, the less income a household has the more every dollar that comes in is spent and spent locally so it is the robust spending of those who mostly spend that drives our economy the most. Martin Crutsinger and Jeannine Aversa, "Weekly Jobless Claims Drop Below 500,000," *Forbes*, 25 Nov. 2009, 30 June 2009.

Negative Equity

Negative equity represents not only another critical measure of the impact of the foreclosure crisis, but another piece of collateral damage to those who may never face foreclosure. "Negative equity" is a term used to describe when a home owner or investor owes more on their mortgages

Property Values and Stimulus

We have included in this report two different graphs showing the loss of property value: the Warren Group graph above on which we based the overall property loss value in our Commonwealth, and the Zillow data graph on property value loss because while we had a peak and a trough before, it shows *property values have once again started to drop*[1]. The new dip was predictable given economic policy choices – stimulus – made at the federal level.



Beyond the national stimulus package for government spending – a central focus of state-level policy makers, there was also a stimulus to home purchasing a couple of years ago[1]: the first time homebuyer's incentive, which gave people a one-time $8,000 tax credit for a new property purchase; a clunkers program that gave a $6,500 tax credit to people who upgraded their housing. That was harder for most people to leverage because of the tightness in the mortgage lending sector, but both of these put the brakes on the continuing property value loss. Even with extensions, these tax incentives ended a year ago. They accomplished exactly what a relatively conservative stimulus initiative would be expected to do: they increased purchasing for a time but the impact was short lived.

than the value of the property itself. This status is also referred to as being "under water".

Why is negative equity such a critical measure? Because it points to the likelihood of default on mortgage obligations. Equally importantly it measures the ability of the owner to sell the property; in this economy that can be especially important to get out from under an unaffordable increase in mortgage payments, be able to proactively move because of job opportunities or a conscious need to down scale the housing cost burden that their household may no longer be able to afford because of loss of job, wages, expressions of family stress such as divorce or in response to the ever increasing numbers of unaffordable medical bills or medical bankruptcies[51].

[51] The number of medical bankruptcy filings in the Massachusetts rose from 7,504 in 2007 to 10,093 in 2009. Himmelstein & Woolhandler, Massachusetts Health Reform Hasn't Stopped Medical Bankruptcies: Harvard Study

While some sources downplay the significance of negative equity, saying that property values will rebound[52], this housing price crash may be different. In the past, the property value loss with the burst of now comparatively small housing bubbles, housing values return to slow growth and regain the previous inflated value; in the 1980s- 1990s, housing values took 12 years to regain the height of the values during the previous housing bubble[53]. Given the anomalous increase in property values between 2002 and 2007, negative equity is likely to be the limiting economic reality for many home owners for two, three or possibly four decades; prices returning to the historically unheard of levels reached at their height in 2007 in less time is unrealistic. Negative equity and its impacts are not only projected to increase in the coming year[54] but are likely to continue impacting the ability of households in Massachusetts to spend at previous rates, move as necessary or simply meet their high debt payments on a hugely overpriced debt in comparison to the value of their home.

Nationally, according to CoreLogics, on average all states were experiencing more negative equity in 2009 than they are now based on figures at the end of 2010[55]. In 2009, Massachusetts as a whole was experiencing a negative equity rate of over 21.7% and a near negative equity rate of 25.8%[56]. (Near negative equity is the term used for properties where the percentage of debt is between 95% and 100% of the stated property value[57]. It represents a circumstance in which the household is close enough to negative equity that sale and repurchase is almost impossible).

Their end of 2010 report shows Massachusetts sitting at a 15.3% negative equity and a 3.5% near negative equity share[58]. 15.3% negative equity is a serious percentage not seen previous to this huge foreclosure crisis for many decades. Because the rise and fall of negative equity is so dependent upon property value loss, the decrease in negative equity in 2010 was an expression of the slowdown in property value losses[59] that protected our property owners from the deep level of 2009's negative equity. As evidenced in the charts above, property values that were plummeting from 2007 to 2009 smoothed out or in some cases increased slightly in 2010.

However, those property values have now returned to decline[60]. The expectation is that our now increasing percentage of negative equity nationally is a reflection of price declines that occurred during the fourth quarter of 2010. CoreLogics' most recent report, from the last quarter of 2010,

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52 Willen and his fellow Boston Federal Reserve researchers posit an economic equation they designed to capture decision-making variables for borrowers in whether to continue to try make foreclosure payments. They make an underlying assumption that property values will rebound in a reasonable number of years so eventually the dollars invested in a home return without addressing the historically anomalous nature of this staggering housing bubble. Paul Willen, *Making Sense of the Subprime Crisis*. Boston, The Research Bureau, (Nov. 13, 2008). Print.

53 Kristopher Gerardi, Andreas Lehnert, Paul Willen & Shane Sherland, *Making Sense of the Subprime Crisis* (Federal Reserve Bank of Boston Public Policy Discussion Papers, No. 09-1, Feb. 22, 2009). P. 68

54 Press Release, CoreLogic, *New CoreLogic Data Shows 23 Percent of Borrowers Underwater with $750 Billion Dollars of Negative Equity Proposed Down Payment Rules Will Impact Already Hard-Hit States* (Mar. 8, 2011), p.2

55 CoreLogic, *Summary of Second Quarter 2009 Negative Equity Data from First American CoreLogic* (August 13, 2009) & Press Release, CoreLogic, *New CoreLogic Data Shows 23 Percent.*

56 CoreLogic, *Summary of Second Quarter 2009*

57 "Near negative equity is when mortgages are within five percent of being in a negative equity position. CoreLogic, *Summary of Second Quarter 2009*, p.1

58 Press Release, CoreLogic, *New CoreLogic Data Shows 23 Percent of Borrowers Underwater*, p.3

59 Zillow, "Massachusetts Home Prices and Home Values-Local Info," 2 Nov. 2009

60 Zillow, "Massachusetts Home Prices and Home Values-Local Info," 2 Nov. 2009

includes the following projection: "home prices will fall another five to ten percent in 2011 meaning that the most that negative equity will rise, all other things being equal, is 10 percentage points[61]." ***Almost ten percentage points would put Massachusetts' negative equity figures above the height of our percentage of negative equity in 2009.***

An additional concern is created by the tightening of credit and the expectation that new guidelines in mortgage lending for loans to be able to be securitized will require a 20% mortgage down payment[62]. Since most property purchases are done by those who already own a home, we have to look at the possibility that anyone who does not have at least 80% equity in their home will be unable to sell and move to a new home; they will not retain sufficient profits from sale of their existing home to move to a comparable home elsewhere. This reality will trap significant percentages of our state population in a home that they know is unaffordable in the future given the present economic circumstances of their households or trap them from being able to move to where they might be able to get comparable or better work than they may now have (or had before recent losses in wages, benefits, or even the job itself).

As of the fourth quarter of 2010, a third of Massachusetts home owners did not have sufficient equity (at least 80% equity in their home) to be able to sell and retain enough profits to move to a comparably priced home at this time[63]. This percentage of those unable to move and afford a comparable repurchase is likely to increase as property value declines accelerate in the next year.

For more detailed distribution of negative equity, see here the figures for negative equity and near negative equity for various Metropolitan Statistical Areas and municipalities in Massachusetts[64].

CoreLogic: Negative Equity Report, 2010 Q1

	Negative Equity		Near Negative Equity	
Region	Percent	Number	Percent	Number
Springfield	11.2	17,294	3.8	5,789
Barnstable	10.5	9,831	2.4	2,259
Boston-Quincy	16.6	65,169	3.7	14,442
Cambridge-Newton-Framingham	11.5	37,925	3.1	10,398
Peabody	19.7	33,653	3.8	6,515
Worcester	23.2	42,669	4.5	8,345
Providence-New Bedford-Fall River	20.4	70,394	3.8	13,063

Expenses to Municipalities

Perhaps some of the entities in our state hardest hit by the foreclosure crisis are our cities and towns. While the statewide figures for loss in household spending were staggering, arguably the place where that and other impacts are felt the most are in the local economies of municipalities and the local governments that are responsible for tending the costs of individual foreclosures to upkeep and services: the loss of tax revenue when property values plummet and the multiple costs to a disintegrating quality of life, fabric of community and local economy.

[61] CoreLogic, *New CoreLogic Data Shows 23 Percent of Borrowers Underwater*, p.2
[62] CoreLogic, *New CoreLogic Data Shows 23 Percent of Borrowers Underwater*, p.2
[63] CoreLogic, *New CoreLogic Data Shows 23 Percent of Borrowers Underwater*, p.2
[64] Press Releases, CoreLogic, Real Estate News and Trends (May 10, 2010): Barnstable; Boston-Quincy; Cambridge-Newton-Framingham; Peabody; Providence-New Bedford-Fall River RI; Springfield; Worcester.

While a number of studies have tried to enumerate the type of costs that drag on municipalities, only a few studies have actually tried to quantify those costs. The most famous of which is the Apgar and Duda Study[65] in Chicago from the early 2000s although its estimates are pre- the full blown impact of this crisis.

In their 2005 study, *Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom*, William Apgar and Mark Duda looked beyond the immediate impacts on home owners and direct participants in the financial industry to look at municipal impacts; municipalities end up paying for a range of expenses. Specific aspects that Apgar and Duda looked at measuring for 26 foreclosures fell into five different scenarios that they costed out for municipalities: from one where a property is vacant but properly secured to a scenario where a property has been vandalized and a fire ensued. These costs ranged from $430 to $34,199[66]. The identified municipal expenses were increased policing and fire suppression, demolition contracts, building inspections, legal fees associated with the municipalities stepping in to deal with foreclosed and/or abandoned buildings and ongoing expenses associated with managing the impact of the foreclosure process. In addition, the crime impacts that they identified on a municipality included everything from quality of life, impacts from empty foreclosed properties, gang activity, drugs, prostitution, arson, rape and even murder. Even after foreclosure there were costs of securing or demolishing a unit, clearing trash and underbrush from the lot. Frequently leading up to foreclosure and certainly after, municipalities lose income from unpaid water, sewer and tax bills. There is also the street affect of becoming unattractive on households and surrounding neighborhoods and businesses, impacting property sales and property tax receipts.

Apgar and Duda's first scenario was where a property was vacated and then properly secured by the next owner. The scenarios of more relevance to us are their 2nd and 4th scenarios[67]. The 2nd scenario was vacant and unsecured properties which they figured cost a municipality $5,358 per such vacancy and included the costs of filings in court, tracking the property itself, doing building inspections, checking on the vacant property registry, noticing the property, boarding it up and liening it and the cost for administrative hearing on the inaction by the new owner. The 3rd and 4th scenario include different roads to demolition. However, the primary circumstances that we're looking at measuring and their impact on the cities and towns of Massachusetts have not primarily been about demolition; however, if we look at the 3rd and 4th scenarios in terms of the costs for a vacant property that's not secured where ongoing work has to be paid for or a property that has been vacant and abandoned before foreclosure is complete. The more expensive of these scenarios without the demolition costs lists all of the expenses in their 2nd scenario that I described but in addition includes the loss of property taxes, utility and water expenses and the ongoing maintenance of the property in terms of lawn upkeep, trash removal, etc. Those expenses costed out in Apgar and Duda's study amount to almost $9,000 per property.

This study was the simplest estimate of the direct costs to the City for its services maintaining these properties. It did not include more than a minimal amount of police having to pay attention to the property; it does not address the increased crime associated with such properties. The multiplying impacts of factors like increased crime have been better documented (for instance, a

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[65] Apgar and Duda, *Collateral Damage*.
[66] Apgar and Duda, *Collateral Damage*, pp. 13-16.
[67] Apgar and Duda, *Collateral Damage*, pp. 12 & 25.

2.33% increase in violent crime per 1% increase in foreclosures[68]) and the Apgar estimate for the assumed impact of increased fires; although in Massachusetts, we were not able to find clear foreclosure related increase in fires in this crisis so far.

The requirements in the Vacant and Foreclosing Properties ordinance passed by the City Council of Worcester is indicative of the kinds of expenses that cities are trying not to incur on behalf of foreclosing lenders; the ordinance was a first of its kind requiring a cash bond from foreclosing lenders for the City to draw down billed expenses from. The ordinance reinforced existing state sanity code as well as specifying requirements particular to foreclosed or vacant properties. They can bill for unpaid water, sewer and taxes but also spelled out upkeep and maintenance of grounds and buildings, proper securing of property including round the clock watches if necessary, floor-plans and hazardous contents in case of fires in larger structures, winterizing, draining of standing water to avoid mosquitoes, proper posting of ownership and contact information on buildings, maintenance of liability insurance, and general upkeep in accordance with sanity codes. The costs associated with any of these will require a study to quantify but the list is suggestive.

But the most damaging impact of the foreclosure in some ways to the financial life of our city government is not the direct loss in property value of the foreclosures themselves, but the spill-over affect in loss of property values in surrounding homes. A few studies have worked to quantify this effect which is significant and detailed in terms of the impact on our state above, but has gone unmeasured in previous crises. Those property value losses not only impact the home values of neighbors and undermine the fabric of neighborhoods but also directly hurt municipal revenues through loss of property taxes. Municipal jobs and services suffer from tax-loss driven cuts but also from increased demand created by foreclosed properties. Local businesses and a neighborhood's overall economic life is hurt from decreased spending and the decrease in municipal government services and investment now needed for foreclosure costs.

We are lucky here to include release of a new study that addressed specifically the costs incurred by the vacating of foreclosed properties and their impact on the residents, direct and indirect victims of the foreclosure crisis and the city of Boston's municipal costs themselves. The author, Sam Simon did analysis that specifically sought to separate the economic impact of vacated foreclosed properties from simply the foreclosures themselves. The state has already taken steps to ensure more occupants can stay in their homes post-foreclosure but could legislatively enable most of the rest of occupants to be able to stay until properties are re-sold; this study shows much of the harm of foreclosures may be from the emptying and neglect of properties post-foreclosure.

In *Vacant Spaces: the external costs of foreclosure-related vacancies in Boston,* Simon[69] quantified three aspects; the cost of securing vacant properties, the spill over affect in loss of property values and tax base, and a new quantification of the widespread costs of crime.

Considering the costs of just these three harms from a vacancy, Simon demonstrates an *average cost to the City of Boston and its residents of between $157,058 and $1,028,862 per vacant foreclosed property*. This figure includes an average of $2,007 of liened costs per vacancy;

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[68] Immergluck and Smith, *The Impact of Single-family Mortgage Foreclosure on Neighborhood Crime*
[69] Sam Simon, *Vacant Spaces: The External Costs of Foreclosure-Related Vacancies in Boston*. June, 2011

however, no liens have been filed in court for more than a year and a half even as vacancies have gone up and may have been vacant longer so average costs may have increased[70]. Total cost of a vacancy includes a conservative average of $30,000 in costs associated with the average increases in crime: composed of roughly $13,000 in direct harm to victims and $16,316 in costs of investigations, trying defendants and incarcerations of those convicted[71].

Finally, the huge impact on neighbors and neighborhoods of loss in property value (spill-over effect just related to vacancies not the total impact of foreclosure), Simon argues plausibly should include impacts on 1-3 family houses (not just single families) and should be based on an average housing value across Boston: totaling $996,744 per vacancy. If we only assume spill-over effect on single family homes (which amount to only a little over 18% of Boston properties[72]) and assume vacancies only in the already hardest hit neighborhoods, the vacancy related spill-over effect is still $125,122 per vacancy. To the tax revenue loss from these property value drops, Simon adds the tax loss from the foreclosure process itself (generally estimated at 22%[73]). These property value losses multiplied by Boston's property tax rate of 1.279 percent[74] yields a tax revenue loss of between $2,400 and $13,730 to the City coffers per vacancy.

Without including some elements Apgar sought to measure or unmeasured impacts like those enumerated in Worcester's ordinance billing foreclosing entities or loss in spending and impacts on small businesses, Simon's somewhat conservative *per vacant foreclosure* totals are:

• Boston taxpayers lose $20,723 to $31,053
• Crime victims lose an additional $12,813
• Neighboring home owners lose $157,058 to $1,028,862
• Foreclosed families displaced uncalculated

Just to get a sense of the magnitude of the problem, *if every one of the 821 foreclosures completed in 2010 led to a vacancy, Boston's economy would have lost $844,695,702 to just these three quantified aspects.*

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[70] Project Pride is Boston's Inspectional Services Department's Community Sanitation Division. Information about costs to Boston for securing vacated properties from Simon's telephone interview with Patty Binda, Inspectional Services Department Legal Division (April 19, 2011)

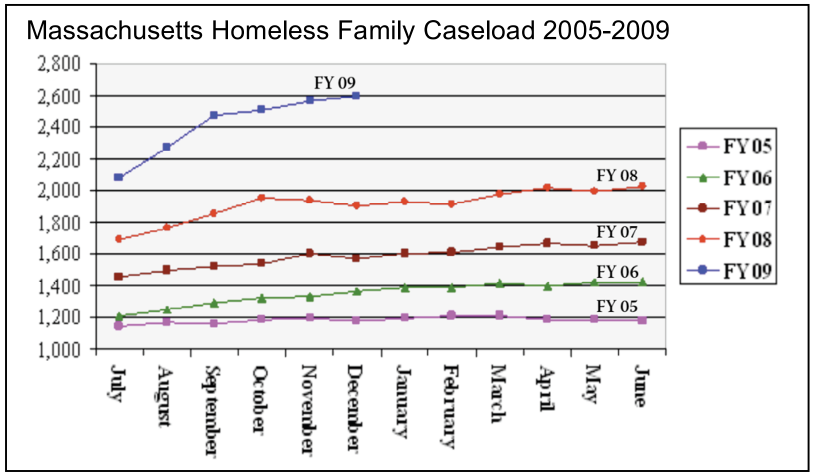
[71] Simon bases total crime expenses for burglary, larceny and aggravated assaults for the percentage of increase of each crime type per foreclosure by multiplying the average costs by the average percentages of people who progress through each step of the prosecution process. Simon, *Vacant Spaces*, (June, 2011) pp.12-17.

[72] U.S. Census Bureau, Table B25024: Units in Structure: Boston City Massachusetts, 2005-2009 American Community Survey

[73] This is a well-documented impact – for one source, A. Pennington-Cross, *The Value of Foreclosed Property*, 28 J. Real Estate Research 193, 197-78 (April-June 2006).

[74] City of Boston, *Property Tax Facts and Figures: Fiscal Year 2011*.

Homelessness



Another impact of the foreclosure crisis that is hard to miss is the increasing homelessness figures. The chart shows increasing family homelessness while tracked and posted publicly by the Department of Transitional Assistance[75]. The end of 2009 saw the official figures for family homelessness both in shelter and in hotels and motels around 3,000[76]. Official homeless figures we know do not measure the full extent of homelessness by any means, but they are figures the state tracks through their own shelters. At this point, these figures show that the homelessness crisis is expanding with 3,290 families total either in hotels and motels or in congregate shelters, scattered site shelters, and non-motel placements for the state[77]. Figures for the real homeless count, of course, are much, much higher, with folks doubled up with friends or even worse staying in their cars.

Given how costly it is to shelter people instead of making sure, for instance, that people could stay in their own home post foreclosure seems obvious. While the direct connection between increasing homelessness figures and the increasing displacement because of the foreclosure crisis is still mostly anecdotal, what is clear from what research has been done is that most folks do not go directly from losing their home in a foreclosure to a homeless shelter or hotel paid for by the state; however, after a couple of steps in between, maybe crashing on a family member's couch for a while and then trying to get a roof over their head patched together by any means, lots of people do end up in the state's homelessness system[78]. Besides the financial costs which we know can run close to $25000 to $30,000 a year[79], the cost long term to families, especially impacts on children, have been well documented elsewhere[80]. These costs should be unacceptable when we have lots of other alternatives like arresting the foreclosure crisis.

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[75] Commonwealth of Massachusetts, Massachusetts Dept of Transitional Assistance, Homeless Family Caseload 2005–2009 (Boston: DTA, 27 Dec. 2009).
[76] Kelly Turley, Massachusetts Coalition for the Homeless, 2009 testimony to Massachusetts Legislature
[77] Communication from Kelly Turley, March 21, 2011 from statistics collected by Massachusetts Coalition for the Homeless from Massachusetts Department of Housing and Community Development reports.
[78] *Foreclosure to Homelessness 2009; the forgotten victims of the subprime crisis,* A joint report from the National Coalition for the Homeless, the National Health Care for the Homeless Council, the National Alliance to End Homelessness, the National Association for the Education of Homeless Children and Youth, the National Law Center on Homelessness & Poverty, the National Low Income Housing Coalition and the National Policy and Advocacy Council on Homelessness (2009).
[79] Dennis P. Culhane and Thomas Byrne, *Reducing Family Homelessness in Massachusetts*, the Paul & Phyllis Fireman Foundation, published 2010
[80] Based on low 2006 projections of 32,976 Massachusetts foreclosures, Lovell & Isaacs estimated 27,200 children would be directly impacted. Given the state's foreclosures in reality impact two households on average and to date we have 44,100 recorded foreclosures, roughly 72,750 children so far are directly impacted. Among harms to children, they quote from 1993 findings of another researcher Rumberger that changes in school and home can reduce by more than 50 prcent a student's chances of graduating – perhaps 36,375 Ma children so far. Phillip Lovell & Julia Isaacs, *First Focus: The Impact of the Mortgage Crisis on Children and Their Education* (Apr. 2008).

The number of adults still officially homeless seems to be around 3,000 at most recent count and there are an additional 2,000 families currently in short term housing, subsidized through the Flex Funds of the Commonwealth's Emergency Assistance funds[81]. The homeless crisis is continuing to increase significantly even though the state put more money aside specifically to try to decrease the number of homeless individual adults[82]. Like many of the other collateral damages from the foreclosure crisis, this is certainly one preventable impact we can neither afford financially nor socially as a state.

In addition, there are also increasing numbers of families seeking and living in domestic violence shelters[83]. Increases in domestic violence calls and other statistical increases started before the actual market crash and economic down turn[84]. The stress impact on families connected to the foreclosure crisis is well documented: increased divorce and probably the increase in domestic violence calls is connected. Housing stress is certainly a contributor to domestic violence but there are no studies yet to show direct causality to foreclosure.

Rents and Rental Vacancy Rates

Where else might these families go? Normally when housing prices drop overall rental costs go down[85] and with the number of displaced families, normally, the rental vacancy rate would be increasing because of turnover if nothing else. In this period of plummeting prices, these usual corollary effects have not happened. Massachusetts is seeing a very low vacancy rate and rents have not dropped. Therefore, these displaced families do not necessarily have other places to go. Especially if you are a former homeowner whose credit has been seriously damaged trying to hold onto an unaffordable mortgage, you are entering the rental market seriously handicapped.

Contrary to historical trends of rents dropping along with property values, rents are increasing. According to the Joint Center for Housing Studies at Harvard University's 2011 report, the percentage of renters spending more than half their income on housing has increased to the highest level in over fifty years – over 26 percent of renters, including 7.5 percent of moderate-income renters[86]. Nationally, rental prices soared 22 percent in 2009 from a decade earlier[87]. The percentage of renters went up 8 percent nationally between 2007 and 2009[88].

According to the Federal Reserve of St. Louis's figures, our state has seen lower rental vacancy rates just before the last couple of economic downturns. Through this downturn, however, our

[81] Turley, statistics collected from Mass DHCD
[82] We applaud the Commonwealth's commitment to the savings in both human suffering and economic costs to Housing First codified in the passage of legislation in 2008. However, increasing homelessness from the foreclosure crisis undermines the success of this commitment. Massachusetts Housing and Shelter Alliance, *Home & Healthy for Good: A Statewide Housing First Program Progress Report*, (Boston, June 2009).
[83] Turley, statistics collected from Mass DHCD
[84] Mary R. Lauby and Sue Else, *Recession Can Be Deadly for Domestic Abuse Victims*, The Boston Globe (December 25, 2008)
[85] Kristopher Gerardi, et al, *Making Sense of the Subprime Crisis* (Federal Reserve Bank of Boston Public Policy Discussion Papers, No. 09-1, Feb. 22, 2009)
[86] Dina ElBoghdady, *Affordable rental housing scarce in U.S., study finds*, The Washington Post, Apr. 26, 2011.
[87] ElBoghdady, *Affordable rental housing*
[88] ElBoghdady, *Affordable rental housing*

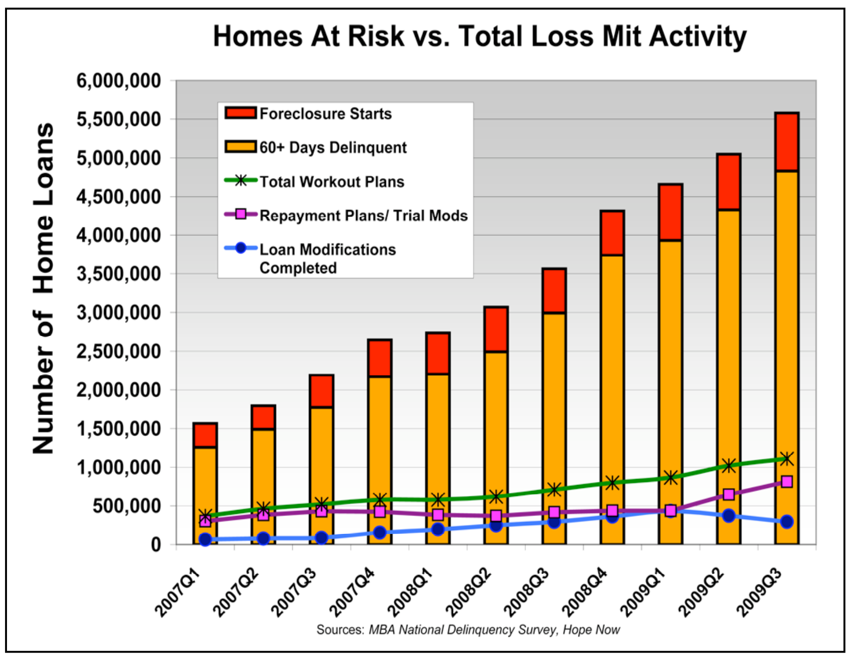
vacancy rate has stayed relatively low and steady; it did not rise to vacancy levels that would be expected in this kind of economic time period[89]. Our vacancy rate has been bouncing between 6.3% – 6.5% the last couple of years but compared to the rest of the country our vacancy rates are very low[90]. As of the third quarter of 2009 U.S. Census Bureau figures, Massachusetts was in the list of five states with the lowest housing vacancy rates across the country at 6.4%[91]. Figures as of July of 2010 placed our home ownership vacancy at below one percent – one of the absolute lowest in the country and our rental vacancy rates well below the median as well across the country at six percent[92].

The low vacancy rate is not terribly surprising because of the numbers of units being emptied by the banks post-foreclosure are not being re-rented. Lenders are allowing those units to degrade over time as opposed to re-renting them; thus, where a downturn in home prices should actually free up rental units and lower rental prices, that is not one of the present outcomes and may not be any time soon. Therefore, families and individuals are getting squeezed as more and more of our housing stock is being taken off the market and sitting vacant and degrading.

Other Factors in Impacts on States

Federal Interventions and Lessons from Elsewhere

Early in the foreclosure crisis, Massachusetts Attorney General Coakley was ahead of the curve in her study of voluntary loan modifications, *Lenders and Servicers' Promises of Loan Modifications in Massachusetts are Not Matched by Meaningful Actions That Promote Sustainable Loans*; she showed minimal modification rates after the initial imposition of a right to cure period in our state[93]. While her results made it clear that voluntary loan modification programs by the lenders were having abysmally small success rates, that lesson has somehow continued to be lost particularly upon federal policy makers.



[89] Federal Reserve Bank of St. Louis, *Rental Vacancy Rates for Massachusetts (MARVAC).*
[90] Selma Lewis, *Second Quarter 2010 Homeownership, Rental and Homeowner Vacancy Rates*, http://www.realtor.org/research/economists_outlook/commentaries/commentary_homeownership_0810
[91] Property-Investing.org, *States with Lowest Rental Housing Vacancy Rates in Q3 2009*, http://www.property-investing.org/housing-vacancy-rates.html.
[92] Lewis, *Second Quarter 2010*
[93] Martha Coakley, *"Lenders and Servicers' Promises of Loan Modifications in Massachusetts are Not Matched by Meaningful Actions That Promote Sustainable Loans."* Testimony, U.S. House Financial Services Committee, (September 17, 2008).

Included here is a 2010 chart from the Center for Responsible Lending showing delinquency rates and foreclosure rates in comparison to attempted and successful loan modifications[94]. The results from our own Attorney General's study early in the crisis are replicated repeatedly with the results of every voluntary loan modification program that has been promulgated federally[95].

While the state government's hands are tied in terms of some policy interventions fundamental to changing the underlying landscape of the foreclosure crisis, there are many things the state can still do. Yes, the federal government is the only entity that has the legal power to regulate and mandate certain kinds of behavior from the lenders, state and city programs have had some significant successes across the country. In terms of waiting for the federal government to intervene and shift the underlying dynamics of the foreclosure crisis, we continue to see non-binding policies with repeatedly very limited results being implemented at the federal level.

Most recently the regulating agencies were projected to introduce policies that would finally begin to limit the most egregious misdeeds by the largest lenders. We have seen numerous headlines underscoring everything from affidavits that were not legally sworn to, loss of paperwork to legitimize transfers of ownership of mortgages, legal irregularities in the filing of deeds and other paperwork, etc[96]. The most recent round of regulatory policies that we expected to be promulgated were extremely limited in scope failing to address these wide-ranging yet fundamental illegal procedures that lenders themselves have admitted to having engaged in[97].

In addition, potentially holding up action on the state and city level have been hopes that were pinned on the negotiations between the Attorneys General and the major lenders[98]. A number of the most forward-looking aspects of those agreements have been challenged on the lenders' side; principal reduction necessary to bring prices in line with real values and often to make loan modifications work for the long run have been publicly opposed by, at least, JP Morgan Chase, Bank of America, Citibank and Wells Fargo[99]. While our Attorney General continues on the front-line of fighting to bring the lenders' actions in line with existing law and protecting our residents' home ownership rights and the interests of Massachusetts residents who invested, the hopes for a cutting edge agreement by the consortium of Attorneys General and the biggest lenders are fading[100]. A number of items in those draft agreements are simply requiring that

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94 Center for Responsible Lending, *Mortgage Repairs Lag Far Behind Foreclosures* (Dec. 4, 2009).

95 As of May of 2010, figures released for the Home Affordable Modification Program "show that roughly 300,000 borrowers have received a permanent modification under the program. Meanwhile, foreclosure filings continue at a rate above 300,000 for the 14th straight month, according to Realty Trac ." Press Release, National Consumer Law Center, *Foreclosure Prevention Gains Little Ground* (May 18, 2010)

96 Marcy Gordon, *Mortgage industry problems broad, Iowa AG says*, Associated Press (November 16, 2010); Abigail Field, *Ohio Judge Demands More Information in Robo-Signed Foreclosure Cases*, DailyFinance (November 8, 2010); Danny King, *Goldman Sachs Fined $650,000 by FINRA for Disclosure Delays*, DailyFinance (November 9, 2010)

97 Press Release, National Consumer Law Center, *OCC Again Chooses Interests of Banks Over Consumers and States* (May 26, 2011).

98 David McLaughlin, *Banks await foreclosure deal's financial terms as states split*, Bloomberg News (April 20, 2011); Moe Bedard, *Issue in Talks: Loan Remedies,* loanworkout.org (March 30, 2011)

99 David McLaughlin, *Banks await foreclosure deal's financial terms as states split*, Bloomberg News (April 20, 2011); Loren, *Banks Fight Mortgage Principal Reduction*, Denver Real Estate Blogger (March 31, 2011)

100 Brady Dennis, Foreclosure settlement divides state attorneys general, Washington Post (June 7, 2011)

lenders begin to adhere to existing legal practices such as only signing affidavits that the signer can swear to[101]. A number include new reporting requirements to create more transparency about the legal transactions by the largest lenders and their legal and contractual compliance. Without the more forward-looking aspects that have been challenged, the agreement with the Attorneys General is not going to aid in quickly reversing the foreclosure situation in our state.

On the other hand, Massachusetts has been in the forefront with some of our legislative policy initiatives across the country, including our extension of tenant protections to former tenants post foreclosure in buildings taken back for ownership by the lenders themselves[102]. In other states' and municipalities' policies around mandatory mediation have been showing significant success. The positive impacts of states that have a judicial foreclosure system are now more clearly documented. Here are lessons Massachusetts can draw on.

These recent reports underscore the lessons that we have to take from the now several years of federal policy choices: we cannot wait for the federal government or regulators to use their more extensive powers to fundamentally change the underlying landscape to remedy recent mortgage lending practices in our country.

Effect of Mandatory Mediation

Given the relative failure of voluntary loan modification programs and the ensuing larger losses from mostly unmitigated foreclosures, are their policies that are leading to fewer foreclosures?

Mandatory mediation where it exists has often had a significant impact. In jurisdictions with mandatory mediation laws, approximately half of homeowners respond to offers to mediate. On average, over 50% of homeowners and lenders who sit down to third-party mediation are able to find an agreement that keeps the homeowner in the home[103]. When Connecticut moved from an opt-in to automatically scheduled mediations, participation by homeowners rose to 75%, with continuing results of 60% staying in their homes[104]. Sixty to seventy percent of Philadelphia's homeowners go to the initial session with more recent results for the lower income segments showing at least 60% remaining in their home long-term[105]. Over 20 cities or states require foreclosure mediation (such as Maine, Maryland, Nevada, Vermont, and Providence, RI)[106]. Additional preferable outcomes to foreclosure such as short sales, when included, further increase the measurable success of mediation programs[107].

Higher success rates have been demonstrably linked to particular aspects of more successful programs. Practices like legal training for mediators, face-to-face sessions, transparency of policy procedures from lenders and in advance provision of financial paperwork from both sides

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[101] Moe Bedard, *Issue in Talks: Loan Remedies,* loanworkout.org (March 30, 2011)
[102] Protecting Tenants at Foreclosure Act, Pub. L. 111-22 (2009).
[103] Alon Cohen and Andrew Jakabovics, *Now We're Talking: A Look at Current State-Based Foreclosure Mediation Programs and How to Bring Them to Scale* (June 2010), p.5
[104] Cohen and Jakabovics, *Now We're Talking*, p.8
[105] Cohen and Jakabovics, *Now We're Talking*, pp. 21-22
[106] Cohen and Jakabovics, *Now We're Talking*, pp. 1-3
[107] Cohen and Jakabovics, *Now We're Talking*, pp. 1-3. 8. 21-22

have been key building blocks of success[108]. The more targeted efforts put into reaching homeowners to inform them of their ability to participate has shown marked increases in participation and success[109]. Finally, although the proven decrease in financial losses to banks that avoid foreclosure (even if loan modifications include principal reduction) might be incentive enough, the existence of judicial foreclosure as the alternative to unsuccessful mediations has been shown to have a significant statistical impact on the success of mandatory mediation programs themselves[110].

Conclusion

Research shows that the foreclosure crisis is now impacting not only every community in our state but every constituency that participates in our economy. The evidence shows farther reaching impacts and deeper concomitant harms of the continuing foreclosure crisis. While most indicators point to a still worsening crisis, some will dispute the causes of the leveling out of the foreclosures or deeds at any one time period. What we must tackle through all of the means available to us as state and municipal governments is the seriousness of losses to the economic activity of our residents; in our worst months, this totals a proven $4.1B per month.

In addition, what will it mean to our economic future if 75% of mortgages and deed filings by the major lenders in our registries are invalid? Can we allow the unmitigated impact of a vacated foreclosed property costing a municipality and its residents many tens of thousands of dollars (for Boston estimated between $150,000 and over $1M) per such vacated foreclosure? Especially, given our prison system's continually rising costs and the impact on our residents' daily lives of crime increases of 10.1 % in burglary, 5.6% increase in larcenies, a 14.6% increase in aggravated assaults per one percent increase in foreclosures[111]?

Clearly our state budget cannot afford the costs of increasing homelessness (regardless of attempts made to limit the state's responsibility in sheltering those who are homeless). Nor can we afford the additional cost of measurable increases in ill-health per 100 additional foreclosures, nor tens of thousands more children not completing high school. These are in addition to the unaffordable impact on the loss of state revenue from continuous undermining of our overall state economy. In contrast, Pennsylvania actually improved their credit rating by mitigating foreclosures[112].

MAAPL's summary of existing research merely serves to underscore the staggering size of the foreclosure crisis' negative impacts, the dangers of its continuing – even if to a lesser extent – and the straightforward need for urgent action; this is not just necessary for those who

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108 Alon Cohen, *Foreclosure Mediation Going Forward States Need to Expand Their Programs if the Federal Government Steps Back* (April 2011), p.2

109 Cohen and Jakabovics, *Now We're Talking*; similarly, contact between borrowers and their lenders increased likelihood of repairing a delinquency in general, Amy Crews Cutts & William A. Merrill, *Interventions in Mortgage Default: Policies and Practices to Prevent Home Loss and Lower Costs* (Freddie Mac Working Paper # 08-01, Mar. 2008).

110 Cohen and Jakabovics, *Now We're Talking*, p. 10

111 Simon, *Vacant Spaces*, MAAPL (June, 2011)

112 Karen Black, *No Place Like Home; Philadelphia's Approach to Foreclosure Prevention,*RHLS (September 2011)

increasingly appear to have been and are being illegally foreclosed upon, but for all their neighbors, their children, the taxpayers and government at all levels in our state trying to use dwindling resources to address a still propagating crisis.

Are there lights in the distance that point the way for state and municipal policy changes to build on some of the ground breaking interventions already taking place elsewhere? Absolutely.

Mandatory Mediation's positive outcomes for all participants have been well documented at this point. They include a clear emphasis on good outreach, third party mediators, clear requirements for documentation and participation. Initiatives that put the onus of responsibility on some of the larger banks that continue to foreclose, vacate and abandon properties in neighborhoods across our state have a place. Judicial foreclosure or some means through the Registrar of Deeds where we begin to address the profound damage created to our property title system, is another valid focus. MAAPL's new study, *Vacant Spaces* clarifies through quantifying only three of many areas of municipal harm that foreclosed properties should not be vacated regardless of the initial status of occupants.

Policy makers must be conscious of the policy choices that address the anomalous housing situation created by the foreclosure crisis where there are few rental vacancies and rents continue to rise even as property values continue to drop. Our state cannot afford continual losses in property values diving below the already 20% in property losses. Interventions that begin to create a floor for the loss in property values – that is interventions that slow and mitigate the number of properties that go through an actual foreclosure that are then abandoned or ignored – must be addressed. Whether it is an argument that investors are dragging their heels on allowing legitimate modifications of loans that include principle reductions down to present day values or some other self-interest of financial institutions protecting the assessed value of assets on their books from the past, we cannot afford to continue to have the residents of Massachusetts pouring out money to pay for overpriced assets into the coffers of financial institutions far away from the neighborhoods and communities of Massachusetts.

Will such overpricing when it is far beyond even historical bubbles by necessity over time be corrected through our economy? Even if such correction happens eventually (30 or 40 years out) the question remains, will the correction be a conscious process where we strive to avoid an over correction? Will the cost of the correction continue to be done primarily at the expense of our residents' and governmental coffers, the life quality of our neighborhoods and the survival of Massachusetts businesses? Or will we increase the steps we are taking now to put in place the policies and protection we need to act as a Commonwealth?

While the addenda to this report address some misconceptions about where the crisis started, they show the most vulnerable were affected first by practices that drove a historically anomalous increase in property values across our state. It is clear: that which impacts the most vulnerable amongst us – if ignored – ultimately reveals the vulnerability of us all as we share in our society and economy.

Addenda:
A. Initial Assumptions: Geography, Subprime Mortgages

When the foreclosure crisis first became large enough to be really visible in our Commonwealth it appeared to be the problem of municipalities and certain large towns in our state. While that made it possible to conceive of foreclosures as primarily an inner city problem, we pointed to the likelihood that the foreclosure crisis would stretch its tendrils out to every community in our state. While it first appeared that the victims of mortgage lenders' "creative mortgage instruments" were people of color, closer analysis showed that the early damage required somewhat more complicated and incisive analysis.

Even in its early stages the foreclosure crisis did not line up perfectly with a simple inner city analysis. The hardest hit communities in our state as a whole have not, for instance, been in primarily in Suffolk County but represented more of the gateway cities, the secondary cities and largest towns throughout the state[113]. That may be because the initial foreclosures were primarily due to sub-prime mortgages that had been marketed through networks centered around different brokers in specific areas of the state. In fact, internal documents by the largest mortgage lenders showed purposive targeting of communities and ethnic networks where marketing for sub-prime mortgages was predicted to be most successful[114]. And the statistics show a racial bias in who was eligible for prime mortgages but were steered into sub-prime mortgages[115]. Similarly, the rate of denial of loan modifications has shown a racial bias[116].

The fact that the initial foreclosures were caused by sub-prime mortgages led to a number of misconceptions in political analysis and distracted initial policy solutions from some of the more devastating impacts which were yet to come. There was an assumption, for instance, that the vast majority of those who got sub-prime mortgages were first time homebuyers who did not know any better; yet most of the sub-prime mortgages were actually taken out as refinances or in other ways by people who already owned property[117]. It was not the borrowers primarily who had changed; it was their mortgages[118].

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[113] Worcester 2010 ranked top in foreclosure petitions with 960 in Warren, CHAPA Breakfast, slide 10. Worcester County has consistently been hardest hit. In 2006, 2007, 2008, Worcester ranked in the top fifteen municipalities for foreclosure activity and remains there June, 2011, Massachusetts Foreclosure Monitor, Third Quarter 2008, Massachusetts Housing Partnership (September, 2008) & *Foreclosure Monitor: Distress continues to ebb in urban areas,* Massachusetts Foreclosure Monitor, Second Quarter 2011, Massachusetts Housing Partnership (June, 2011).

[114] A few major exposes mostly based on interviews with workers inside the mortgage describe these targeted practices. One example from Wells Fargo, for instance, referred to an organizational culture where subprime loans were referred to as ghetto loans and targeted outreach to – their term – "mud-people". Michael Powell, "Bank Accused of Pushing Mortgage Deals on Blacks." NYTimes.com. New York Times, (June 6, 2009).

[115] Jim Campen, *Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Boston, Greater Boston and Massachusetts, 2006*, Changing Patterns XIV, Mauricio Gastón Institute for Latino Community Development and Public Policy, University of Massachusetts/Boston (February 2008), pp. 6-9.

[116] "Loan servicers foreclose on delinquent black or African-American borrowers more quickly than White or Hispanic borrowers. Additionally, White HAMP eligible borrowers are almost 50 percent more likely to receive a modification than African-American or Latino borrowers." *Racial Disparity in HAMP Loan Modifications,* National Consumer Law Center, (March 30, 2010).

[117] Kristopher Gerardi et al, *Making Sense of the Subprime Crisis*, p. 8

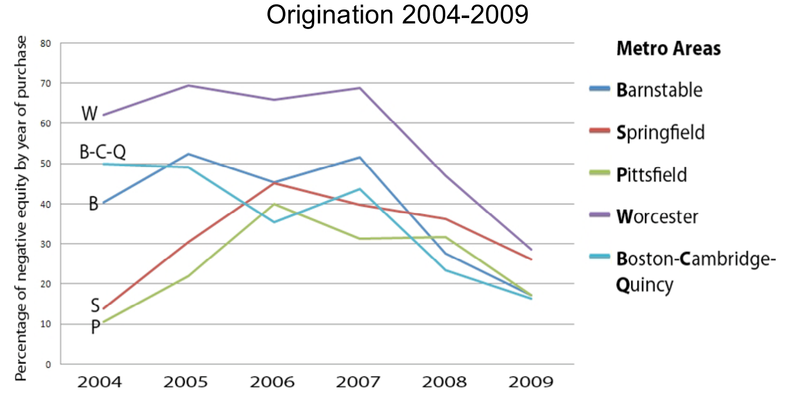
[118] Between 2001 and 2006, the percentage of traditional – prime – mortgages halved while the percentage of subprime mortgages tripled and by 2008 almost completely disappeared; Frank E. Nothaft, *Subprime and Alt-A Volume Quintupled 2001 to 2006, then Fell from 2006 to 2008*, Presentation at Beyond the Crisis, Milken Institute's

Further, because the sub-prime mortgages themselves had been targeted unfairly towards people of color, the focus on sub-prime mortgages in particular created costly mistakes in policy responses. Historically, there has been a tendency in policy circles when a crisis first impacts communities of color to marginalize that impact and assume that it will be primarily limited to those communities which are often not prioritized by policy makers. That marginalization in the foreclosure crisis, as in other crises like the levies in New Orleans, has meant a slow response time to devastating and wide spread phenomenon. The other impact, however, of the targeting of sub-prime mortgages and, therefore, foreclosures at first predominantly in communities of color resulted in an assumption that solutions should focus just on communities with large numbers of people of color; this presumption also hobbled the pace and breadth of the needed policy response.

But the most critical problem with initial analysis of the crisis was the perception that sub-prime mortgages themselves were the problem. In retrospect, their importance was that they became the vehicle for financial speculation and the creation of wildly unrealistic property evaluations. In analyzing the data that we have now, it is crystal clear that what mattered is not the type of mortgage that people got so much as when they financed or refinanced (more frequently refinanced) into a mortgage[119]. Negative equity sufferers in our state are in fact best predicted by the year in which a mortgage was gotten not the type of mortgage that was gotten (see graphic 2009 snapshot of households underwater by year of origination of mortgage)[120].

The primary driver behind the foreclosure rate has ended up being the plummeting of property values once the housing bubble started to burst. While sub-prime mortgages with little or no equity were the first to be likely to fold from negative equity, even those who got prime mortgages and put down 20% found themselves underwater as the property value loss in Massachusetts has averaged out to almost 20% thus far.

Massachusetts Mortgages Underwater in 2009 for Years of Origination 2004-2009



Financial Innovations Lab on Housing (Oct. 7, 2008). And while those who got subprime mortgages were mostly previous mortgage-holders until 2004, these mortgages had a constellation of characteristics that together were likely to trap borrowers *even if they were properly disclosed to borrowers*. For this last reason, Justice Gants ruled them presumptively “unfair” by Massachusetts standards, Commonwealth v. Fremont Investment & Loan and Fremont General Corporation, 452 Mass. 733 (2008).

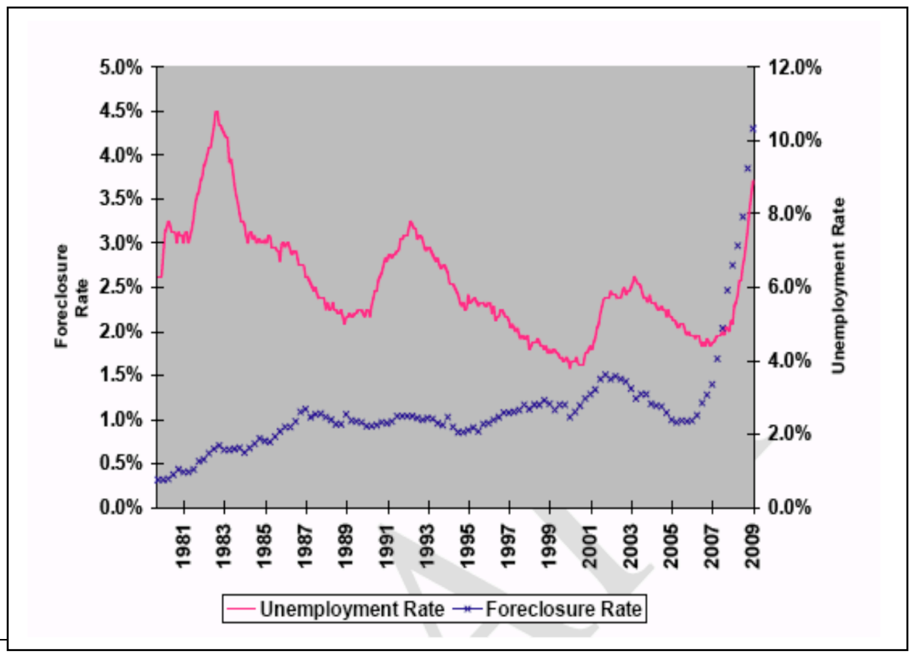
119 The lay-out of the graphic is misleading but it shows the percentage underwater *by year of origination as of 2009*. Clearly the highest percentages of mortgages underwater of *all* types of mortgages are from 2005 to 2007.

120 Zillow, “Massachusetts Home Prices and Home Values-Local Info,” 2 Nov. 2009.

B. Causes: Equity & Unemployment

You can hear fairly frequently these days comments about unemployment driving foreclosures[121]. The problem is that unemployment is not driving the foreclosure crisis, although it is a concomitant problem in the present economic downturn. Historically, if you look at the graph below from October 2009 report by the Congressional Oversight Panel, *an Assessment of Foreclosure Mitigation Efforts after Six Months,* you see we have experienced unemployment in economic downturn after economic downturn without triggering foreclosures[122]. The reason is that traditionally – just as having equity in the home increases the normal spending of a household – having equity in a home creates a long term economic buffer. In the past, equity in a home in a downturn has created a cushion to the impact of life events like unemployment, loss of hours, loss of benefits, and other economic pressures[123].

What made this foreclosure crisis combine with unemployment to aggravate the situation of households in contrast to previous joblessness? First, sub-prime mortgages were written so that households do not in fact develop equity over time in trying to meet their obligations to pay off their mortgage; the historical norm that home ownership is 67% of household wealth was could not materialize for the vast majority of these households[124]. More generally, regardless of the type of mortgage that a household received, if they financed or refinanced from 2002 onward during the housing price ramp up, they did not have a real increase in equity; the apparent property value increase was based on speculative or phantom value during the housing bubble. Any equity invested in those years disappeared once the bubble burst because it was not based on real long-term property value.



[121] The Federal Reserve Report argues that while negative equity is a necessary condition to foreclosure that unemployment and other economic life events are what are driving borrowers opting to give up on their mortgages. Missing in the analyses of those making this argument is a deeper understanding of the lack of an economic cushion; in fact, we live in time period with the largest divide between the vast majority of the population and the very wealthy. We would argue a driving force in the huge number of foreclosures is not single economic events in people's lives but a long term loss of any kind of economic "cushion", that it is the ever deepening economic hole most people find themselves in that is prompting the numerous delinquencies regardless of specific precipitating events. CBSNews Business, *Foreclosure Rates Rise on High Unemployment* (Jan. 27, 2011)

[122] Sources: MBA National Delinquency Survey, Bureau of Labor Statistics. Julia Gordon, Center for Responsible Lending, *HAMP, Servicer Abuse, and Foreclosure Prevention Strategies*, testimony at Hearing of the Troubled Asset Relief Program Congressional Oversight Panel (Oct. 27, 2010), p.9.

[123] Gordon, *HAMP, Servicer Abuse, and Foreclosure Prevention Strategies*, pp.8-9.

[124] Joint Economic Committee, *Coast To Coast,...* (Apr 10, 2008).

Given the huge amount of negative equity in households across our state in this economic downturn, homeownership actually became a liability; that vulnerability is then exacerbated by any other negative economic stress whether it is unemployment, divorce, and other kinds of family stressors or the still increasing amount of medical debt and medical bankruptcy. Therefore, for the first time since these figures were recorded, increasing unemployment has run parallel although slightly behind increasing foreclosures; together, they have combined to exacerbate the negative impact on our economy[125]. The underlying driving force, however, was first the foreclosure crisis and the impact of loss of "equity" that was never actually based in long-term real property values.

C. Mortgage illegalities: Essex County Registry of Deeds & Ibanez

Periodically, we get a glimpse, like a flash of lightning throwing the depth of an aspect of the crisis into stark relief. It has been especially hard to grasp the depth of potential legal irregularities in this crisis given, among other aspects, the lack of judicial foreclosure in Massachusetts. With judicial foreclosure, the vast majority of foreclosure transactions would have been reviewed by a judge who hopefully would have carefully reviewed the chain of custody of mortgage assignments and steps in the foreclosure process.

One snapshot on the integrity of our mortgages and titles was provided by the disturbing disclosures from the Ibanez case first adjudicated in Springfield Land court. A second comes very recently (June, 2011) from the forensic research of filings in the Essex County Registry of Deeds commissioned by the very conscientious Essex Country Register of Deeds.

In her study, *Forensic Examination of Assignments of Mortgages Recorded During 2010 in the Essex Southern District Registry*[126], Marie McDonnell summarized her findings for 2010 filings of mortgages with assignments involving just three of the major lenders – Morgan Chase, Wells Fargo and Bank of America, as follows:

473 unique mortgages were analyzed, covering $129,577,415 in principal. Of these:
• 16% were valid
• 75% in valid
• 8.7% questionable

Specifically: 27% were fraudulent, 35% "robo-signed" and 10% violate the Mass Mortgage Fraud Statue.

Which financial institutions currently own them could only be determined for 287 out of 473 (60%) mortgages reviewed. 683 assignments are missing if the chain of custody of the mortgages had been completed properly - translating into $180,000 in lost recording fees for the mortgages whose current ownership can be traced. A number could not even be traced.

While McDonnell is still in the statistical analysis phase of her work, if her analysis is even predominantly correct and is roughly comparable to other registries across Massachusetts since

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125 Gordon, *HAMP, Servicer Abuse, and Foreclosure Prevention Strategies*, pp.8-9.
126 Marie McDonnell, *Forensic Examination of Assignments of Mortgages Recorded During 2010 in the Essex Southern District Registry* (June 30, 2011), p.6

the frequent reassignment of mortgages, bundling of securities and use of MERS became common in the last decade, for instance, the implications for the integrity of not only foreclosures in recent years but much of our title-ownership system is daunting.

The Ibanez decision[127] is critical because it points out the issues created by the transferring of ownership over and over again between different lenders especially in a state with no judicial review at the point of foreclosure. Specifically, the Ibanez case came about because of title issues in the resale of properties that banks had already foreclosed on. Title issues are one of the two situations where deed paperwork is likely to come in front of an actual judge given Massachusetts' non-judicial foreclosure process. The other one being eviction proceedings in the Housing or District Court.

The titles in question were clouded and the title companies had hoped to go in front of a judge in Springfield Land Court and be given some guidance on how to clean up the titles. However, Judge Long, when he saw the paperwork presented by the lenders who claimed ownership found that paperwork to be so defective that there was no solution to retroactively fix the foreclosures. These two cases went all the way up to the Massachusetts Supreme Judicial Court. The issues, the problems with these foreclosures raise are very wide spread and only include some of a number of types of questionable legal actions that have come to light in the last couple of years.

One of the Ibanez examples underlines the truly egregious nature of the way that ownership of these mortgages was passed off and the questionable way in which the banks have tried to prove continued ownership of the property[128]. In this particular case, the mortgage had been repurchased and repurchased; the last lender in line then took that mortgage and bundled it into one of these investment bundles with many dozens of other properties. They claimed they did file the proof of ownership legal paperwork for the investment bundle itself; however, they had never filed the list of properties that had been bundled into that bundle. When the Judge questioned them about the missing list, they produced a lot of documentation including an internal list of properties that the lender claimed were the basis of that investment bundle. They presented that to the judge; they said that on that list you could see there was a property in the same zip code as the property that they were now claiming ownership of. Although there was no address or name attached to the property on the investment list that was in that zip code, that the amount owed on the property in question matched the monetary amount on the investment bundle list for the property in that zip code. Therefore, with a matching zip code and a matching outstanding debt, that *must* be their property!

What would happen if a regular person showed up with a receipt and said, on a car lot, for instance, "I own that car"? And the owner of that car lot said "what do you mean, how can you say you own that car?" And they produce legal paperwork showing that they had borrowed enough money to purchase a car which had a sticker price of the same amount as on that car's sticker, and, therefore, that must be the car that they had successfully borrowed the money for.

Because we in Massachusetts do not have judicial foreclosure, errors in the chain of mortgage ownership that egregious can happen without any judicial review. For literally thousands of

[127] U.S. Bank National Association v. Ibanez, 458 Mass. 637 (2011).
[128] U.S. Bank National Association v. Ibanez, 458 Mass. 637 (2011).

homeowners or former homeowners in Massachusetts, this raises questions whether any lender can legitimately claim ownership of a particular mortgage attached to their property. This throws into stark relief the level at which we need correction in Massachusetts.

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