

# Clearinghouse REVIEW

November–December 2011  
Volume 45, Numbers 7–8

Journal of  
Poverty Law  
and Policy



## Should SNAP Participants Be Subject to New Identification Requirements?

Home- and Community-Based Services and the Affordable Care Act

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Sargent Shriver National Center on Poverty Law

keep such records, common in low-wage work, was a barrier to workers' ability to prove their claims. Adoption of the *Mt. Clemens* standard ensures that low-road employers' failure to maintain accurate time and pay records will make claimant employees' meeting their burden of proof during adjudicative hearings easier rather than harder (ILL. ADMIN. CODE tit. 56, § 300.630).

## Aftermath

A common question that Just Pay for All coalition members face from advocates elsewhere, following this campaign, is, What has changed? In meetings between the coalition and the labor department in 2011, the department stated that the new small-claims adjudication was effective and was already rendering default judgments against employers who ignored the department's notice of claims. The department also reported a higher rate of mediation success between workers and employers. Indeed, workers' rights advocates have themselves found a greater willingness by employers, upon receiving letters highlighting the new civil and criminal penalties, to pay workers' owed wages.

The amendments are a significant achievement in the fight against wage theft in Illinois and for Just Pay for All's coalition work, and the small-claims adjudication established through S.B. 3568 has the potential to render millions of dollars worth of judgments. However, obtaining a judgment is only half the battle. Workers still have to collect on those judgments. The coalition's work in other forums such as small claims, state circuit, and federal courts will also continue to render significant judgments; collecting on those judgments could be a challenge. And workers are not alone in having a vested interest in collecting; those judgments represent unpaid payroll and income taxes at a time of severe fiscal crisis. As these judgments start to accumulate, workers and their advocates will face the next question: what challenges will low-wage workers face in trying to collect their wages, and how can collection of owed wages be made easier? The answers to these questions will define the next stage in the fight against wage theft in Illinois.

**Alvar Ayala**  
Acting Director

Working Hands Legal Clinic  
77 W. Washington St. Suite 1402  
Chicago, IL 60622  
312.795.9115  
aayala@workers-law.org

## Left High and Dry: Water Utility Shutoffs and Tenants in Foreclosed Properties

It's Monday morning, and Marlene's apartment is bustling with children getting ready for school. There is a line outside the bathroom, the cereal box is being passed around the table, and Marlene is pushing her kids to get ready faster so they won't be late. When Marlene closes and locks the door behind them as the children start their walk to school, she says a quick prayer that her home would not get robbed again while

she is at work as a security guard protecting other people's valuables.

Marlene's two-bedroom apartment, carved out of a dilapidated single-family home in Miami's Liberty City, is a foreclosed property. Marlene was duped into renting the apartment from a landlord who failed to disclose that the apartment was in foreclosure. Marlene discovered this only after having moved in a few months when her landlord stopped paying the water utility company and failed to repair the home.

Things deteriorated further when ownership of the home was transferred to the foreclosing bank. Marlene and her six kids were subjected to twenty-three days without water service as the bank scrambled to hire a realtor and pay the local water company. Marlene and her children had to carry buckets of water from a neighbor's house in order to bathe, brush their teeth, and flush the toilet. Marlene complained numerous times about other repairs needed, but the bank refused to attend to them. Instead the bank attempted to obtain a writ of possession to throw Marlene out of her apartment. With windows and doors that do not close, a ceiling that leaks from water damage, a kitchen infested with roaches, and a fear of rats biting her children while they sleep, Marlene and her children are paying for the foreclosure crisis with their lives.

Knocking on the doors of thousands of renters in foreclosed properties across Miami, law students interning with the Community Justice Project of Florida Legal Services met Marlene in 2009. Their clinic, the Community Lawyering Clinic at the University of Miami School of Law, started a community outreach and education project entitled Project No One Leaves Miami modeled after an innovative project of the same name at Harvard Law School. Little did the students know that in two short years the work of their small clinic would culminate in the passage of county legislation ending water utility shutoffs in foreclosed apartment buildings. What started as a small tenant education program blossomed into a transformative advocacy project that created policy change, shifted public discourse, and planted the seeds of a tenants' rights movement in Miami.

This is the story of a two-year campaign from the perspective of Community Justice Project attorneys, who created the Community Lawyering Clinic to train the next generation of socially conscious legal advocates committed to building the power of low-income communities. We decided to share our story because it offers lessons for many different types of advocates—attorneys, clinical professors, law students, and organizers—not just because of what we won but also (and perhaps more important) how we won and who helped win it.

## The Protecting Tenants at Foreclosure Act

Our story begins in 2008, at the height of the subprime market crash, while the foreclosure crisis wreaked havoc across America. When the foreclosure crisis reached epidemic proportions, housing advocates across the country were the canaries in the coal mine. Our experiences with other crises had taught us that when disasters strike (either man-made or natural) they disproportionately affect the most vulnerable. But none of us could have imagined how bad it would be: the estimate is that by the end of 2012 the foreclosure crisis will have drained over \$193 billion in wealth from the African American community

and another \$180 billion from the Latino community, the largest loss of minority wealth in our country's history (Jonathan Berr, *Foreclosure Hits Minorities Hard*, *DAILYFINANCE* (June 18, 2010), <http://aol.it/p5sYEep>).

The foreclosure crisis has destabilized poor communities across America. Neighborhoods, once vibrant, are empty, boarded-up, overgrown shells. Homeless shelters swelled to capacity, and more and more homes became deserted. Through the haze of political scapegoating, for-sale signs, and robo-signed court papers, the sordid truth emerged about our nation's casino economy. The American dream of homeownership crumbled before our eyes.

Across the country, legal services programs rallied to abate the crisis and deployed hundreds of attorneys to represent low-income homeowners in foreclosure proceedings. The government funneled billions to banks, homeowners, and developers through the Troubled Asset Relief Program, the Neighborhood Stabilization Program, the Making Homes Affordable Program, and the Home Affordable Modification Program.

Yet, almost three years later, after the pundits have parsed blame among irresponsible homeowners, inept government regulatory agencies, and greedy financial institutions, the foreclosure crisis is still devastating low-income communities of color. Foreclosures are not only harming homeowners but also causing low-income renters to lose their homes through no fault of their own.

**The Hidden Victims.** National statistics show that 20 percent of properties facing foreclosure nationally are actually rental properties. Because rental properties often house multiple families, renters make up a whopping 40 percent of families facing eviction due to foreclosure (Danilo Pelletiere, National Low Income Housing Coalition, *Renters in Foreclosure: Defining the Problem, Identifying Solutions* 4 (Jan. 2009), <http://bit.ly/qYepd5>). Since most rental housing is in low-income communities of color, these communities are estimated to bear the brunt of renter displacement from foreclosures disproportionately (*id.*). These high rates of displacement are even more serious in a place such as Miami-Dade County where 65 percent of renters are cost-burdened by their rent and are therefore less likely to be able to afford a move to a new home (U.S. Census Bureau, Miami-Dade County, Florida: Population and Housing Narrative Profile: 2006–2008 (n.d.), <http://1.usa.gov/pMFew1>).

To attempt to stabilize neighborhoods and solve the problem of tenants in foreclosure, Congress passed the Protecting Tenants at Foreclosure Act, part of the Helping Families Save their Homes Act (Pub. L. No. 111–22, div. A, tit. VII, §§ 701–704, 123 Stat. 1632, 1660–62 (2009), amended by Pub. L. No. 111–203, tit. XIV, § 1494, 124 Stat. 1376, 2204 (2010)). Effective when President Obama signed it on May 20, 2009, the Act applies to all pending and future residential foreclosures, whether or not the tenant has a written lease. The main protection created by the Act is that it requires a new owner acquiring property at a foreclosure sale to honor all terms and conditions of existing leases. If there was no lease agreement between the tenant and the former landlord, then the tenant must still be given a minimum of ninety days' notice before the tenancy may be terminated (Samantha M. Tuttle & Kent

Qian, *Protecting Tenants at Foreclosure Act: An Overview of the New Federal Law and Its Application*, 44 *CLEARINGHOUSE REVIEW* 418 (Jan.–Feb. 2011)). This law significantly shifted the terrain for tenants in Florida, where tenants had limited rights before the federal legislation.

### Spreading the Word: Project No One Leaves Miami

Florida Legal Services' Community Justice Project started working with low-income tenants in 2008. In the beginning we supported Miami local community organizations' campaigns to build tenant unions to protest high rents and horrible conditions. We litigated affirmative cases about hazardous conditions and defended tenant leaders for retaliatory evictions.

In the fall of 2009, at the height of the foreclosure crisis, we began fielding requests for assistance from tenants living in foreclosed homes. When the cases kept rolling in, we started reaching out to tenants in their homes and educating them about their rights under the Protecting Tenants at Foreclosure Act. Our thought was that if we could just spread the word, tenants would invoke their rights under the Act, preventing hundreds of premature and illegal evictions in low-income neighborhoods.

In early 2010 we launched Project No One Leaves Miami, a joint initiative between the Community Justice Project and the Community Lawyering Clinic at the University of Miami School of Law, launching a massive countywide education campaign for tenants in foreclosed properties (University of Miami School of Law, Law Student Advocates Fight Foreclosure in Blighted Communities by Knocking on One Door at a Time (March 30, 2011), <http://bit.ly/qcf1s1>). Modeled after a similar initiative at the Harvard Legal Aid Bureau of Harvard Law School, the project utilized energetic law students to conduct door-to-door outreach to thousands of families living in foreclosed properties (Elaine McArdle, *Staunching the Foreclosure Crisis: "Project No One Leaves" Keeps People in Their Homes*, *HARVARD LAW BULLETIN* (Winter 2010), <http://hvrld.me/uBlmXR>).

We used public databases to track multifamily properties in foreclosure and utilized mapping technology to identify properties in low-income neighborhoods. Twice a week, law students went door-to-door canvassing low-income tenants living in foreclosed rentals. Over time, and with the help of law student volunteers from neighboring law schools, we developed a database of tenants replete with such information as occupancy, family size, unit conditions, and demographics.

When canvassing tenants, we aimed to educate them about their rights and invited them to a monthly community education workshop. We held workshops in churches and community centers and in collaboration with local community organizations such as the Miami Workers Center, Fanm Ayisyen Miyami/Haitian Women of Miami, and the Power U Center for Social Change. At the workshops, facilitators informed tenants about their rights and encouraged them to work together to advocate for themselves. After the workshops, our clinic students conducted intake for tenants in immediate need of legal defense. Interns assisted tenants in need by drafting letters to landlords and banks, contacting government agencies, and completing *pro se* pleadings. If extensive advice or legal representation was required, tenants were referred to Legal

Services of Greater Miami, the primary legal services provider in Miami and a close partner of the Community Justice Project. When appropriate, Community Justice Project attorneys initiated litigation on behalf of organized groups of tenants or cocounseled with Legal Services of Greater Miami attorneys on particularly egregious conditions or eviction cases.

In our first year, Project No One Leaves Miami canvassed over a thousand rental units in foreclosure and educated hundreds of tenants along the way. At our monthly workshops we discussed the common challenges that tenants faced when trying to find and maintain safe and healthy housing. These meetings were inspiring. Black and brown, Haitian and Cuban, young and old—tenants were coming together.

However, as we talked to tenants more about their living in foreclosed properties, we discovered a more dangerous side to the foreclosure crisis. Tenants in foreclosed properties were living with a host of serious conditions ranging from rats, leaks, caving-in ceilings, sewage, mold, and, worst of all, no running water.

### Tenants Left High and Dry: Water Utility Shutoffs

Landlords facing foreclosure have no impetus to maintain their properties. Many landlords in low-income neighborhoods continue to collect rent despite refusing to pay for repairs and utilities (or the mortgage) and thereby letting the buildings, with people in them, fall into disrepair.

During outreach and at our community workshops we met families forced to live without running water for ten, thirty, even seventy-five days. Elderly seniors on dialysis, single mothers with small children, disabled people—all were being forced to live without water to bathe, take medicine, cook, drink, or sanitize. While we were focused on educating residents about their new rights under the Protecting Tenants at Foreclosure Act, these tenants were identifying a life-threatening problem that the Act fails to resolve.

Investigating the shutoffs, we discovered that they were concentrated in older, master-metered multifamily buildings, or where one water meter serviced the entire building. At these properties, tenants' water was being shut off as landlords and banks lapsed on payments during and after the foreclosures. Tenants explained to us that Miami-Dade County Water and Sewer Department policies prohibited them from either collectively opening a new water account or paying their landlords' accounts. Only property owners were allowed to purchase water services from the company. For most tenants, this meant that they were forced to live without water for substantial periods, even though they were willing to pay for it.

Our first instinct was to do what lawyers know how to do: sue everyone. We represented groups of tenants in affirmative litigation against landlords and banks for illegally terminating water utility service under the prohibited practice statute of Florida's Residential Landlord-Tenant Act (FLA. STAT. § 83.67 (2011) (prohibiting landlords from directly or indirectly terminating utilities)). While our lawsuits were successful, they were costly and time-consuming. We found that judges quickly tired of a monthly ritual of ordering a recalcitrant (and often bank-

rupt) landlord to pay the previous month's water bill. With the numbers of utility shutoffs in the hundreds, the scale of the problem was too large and our resources too limited. We were winning small battles but losing the war.

### Legislative Fight

Struggling to find a broader solution, we shifted gears. We adjusted our community workshops to spend more time discussing conditions. We used popular education methods to embolden and empower tenants to discuss common challenges and find collective solutions. Time and time again, tenants spoke of the need to talk to their elected officials. Natural leaders stepped forward to tell their stories and demand change.

After holding the community workshops, we mapped our tenants again; this time we paid attention to the political geography of the county. We built a pool of tenants—grassroots lobbyists—to encourage their elected officials to draw up policies that would alleviate this crisis rocking low-income communities. The students worked with the tenants to build their confidence in public speaking, media advocacy, and lobbying.

We arranged meetings for the tenants with elected officials and the media as we met with county commissioners and department heads to work toward a solution. Within months, every major paper in Miami wrote a story about the utility shutoffs (Toluse Olorunnipa, *Collateral Damage: Tenants of Foreclosed Properties*, MIAMI HERALD, April 23, 2011). Law students compiled examples of how other municipal water companies across the country were creating policies to avoid shutoffs in foreclosed properties; the students presented those policies to the Miami-Dade County staff.

As an initial result of that advocacy, the Miami-Dade County Commission passed a resolution ordering the Miami-Dade County Water and Sewer Department to study the shutoffs and create a solution. We spent months advocating with the commissioners who sponsored the ordinance. Students again worked with tenants to build their confidence in telling their stories and speaking in front of the full board of county commissioners.

After a year of consistent advocacy, the Miami-Dade Board of County Commissioners passed County Ordinance 10-88 in May 2011. The legislation creates a new program to allow tenants living in multifamily, master-metered apartments to open up bridge accounts when the landlord's account becomes delinquent and a shutoff is imminent. These are the program's main aspects:

- Tenants living in multifamily, master-metered properties with three or more units are eligible to open a bridge account when their landlord's account becomes delinquent.
- Past-due amounts become a lien against the property, and tenants are responsible only for water charges going forward.
- Tenants must choose a tenant representative whose name will be on the account and who will receive correspondence from the Miami-Dade County Water and Sewer Department.

- Tenants must pay a deposit equal to 2.5 times the average monthly bill to open the account.

This legislation is a good step forward, but certainly far from ideal. The hefty deposits, the time-limited nature of the accounts, the exclusion of duplexes, and tenants having to split the bill themselves are all problematic. But this is what was possible in light of considerable resistance from the Miami-Dade County Water and Sewer Department, a steep learning curve from our county commissioners, and the desperate need for a solution.

However, the advocacy we did on this issue had started to shift the debate at the county level on the need for stronger tenant protections. Four commissioners ended up cosponsoring the ordinance, and in the end it was passed unanimously. A commissioner who was an original opponent of the ordinance came around to calling for stronger penalties for landlords who illegally turn off water to their tenants. The *Miami Herald's* editorial board praised our efforts and supported the passage of this innovative legislation (Editorial, *Let it Flow*, MIAMI HERALD, May 9, 2011, <http://bit.ly/o1vzJj>).

The community education and strategic communications aspects of this project effectively shifted the debate and built a new common sense around the need for increased government regulation and action to protect tenants' rights.

### Gaps in the Protecting Tenants at Foreclosure Act

Getting out into the community showed us that while the Protecting Tenants at Foreclosure Act was a step forward in meeting the needs of tenants in foreclosure, it fails to deal with most of the problems plaguing low-income tenants in foreclosed properties. Rental buildings in foreclosure deteriorate rapidly as financially strapped landlords stop spending time, money, and attention on properties that they are about to lose. Some landlords abandon their properties wholesale; others simply stop paying bills such as master-metered utilities, causing those utilities to be shut off and leaving tenants without water or electricity.

In the declining real estate market, often the foreclosure plaintiff ends up purchasing the property at the foreclosure sale. This means that financial institutions such as banks or securitized trusts or both are becoming the new owners of foreclosed properties. Many of these institutions are large and based out of state, making tenant communication with the new landlord virtually impossible, especially when there are repairs needed or the tenant needs the security deposit back. Although the plaintiff may eventually hire a real estate agent to handle the property, it may take months before anyone contacts the tenant. During that time, utility services may be interrupted and conditions may continue to deteriorate. As such, low-income tenants must frequently choose either living in deplorable conditions or moving out and becoming homeless.

We are exploring, along with the bridge accounts, a range of innovative solutions to the problem of deteriorating conditions in foreclosed properties. Some of these solutions are not-for-profit receiverships, increased civil and criminal penalties for code violations, a repair-and-deduct statute, lien and fix authority for the local building department, and job programs

that put unemployed individuals back to work rehabbing foreclosed properties.

### Lessons and Conclusions

Going door-to-door with Project No One Leaves Miami taught us many valuable lessons about effective advocacy.

**Get Out of the Office.** Getting out of the office and meeting tenants in their homes allowed us to have candid conversations with tenants and develop a nuanced understanding of their problems. Meeting clients halfway, before they arrived at our offices, helped us better diagnose issues, trace their interconnectedness, and identify strategic opportunities for solutions.

**Do Not Reinvent the Wheel.** Our project was based on an innovative model developed by Harvard Legal Aid Bureau in collaboration with City Life/Vida Urbana and Greater Boston Legal Services (John Leland, *Finding in Foreclosure a Beginning, Not an End*, NEW YORK TIMES, March 22, 2010, at A12, <http://nyti.ms/qQuvLL>). Although we modified the original model to adjust to Florida's vastly different legal system, political climate, and organizing infrastructure, the work of those three organizations was immensely helpful in building our project. Their willingness to spend hours with us to share their methods and strategies is building a national movement against foreclosures. Our successful replication of Harvard Legal Aid Bureau's model demonstrates the potential for increased coordination and collaboration among law school clinics across the country.

**Community Lawyering Builds Power.** The traditional legal services model forces lawyers to assist in an atomized and reactive fashion, often treating symptoms rather than the root causes of inequity. The community lawyering model espoused by the Community Justice Project and utilized by Project No One Leaves avoids these pitfalls by building the power of community organizations and affected individuals to advocate for themselves. Using legal education and policy or media training, lawyers and law students increased tenants' capacity and confidence to assert their rights and engage in advocacy. Rather than having lawyers speak for clients, the community lawyering approach builds the leadership of clients and shifts power back to those most affected.

**Lawyers Are Not Organizers.** Project No One Leaves Miami originally began as a partnership with a community organization in Miami. Shortly after the project commenced, our partner went through funding and staff transitions that significantly limited its capacity. Due to the scale and the scope of the foreclosure crisis, we decided to move forward with the project without an organizing partner and worked directly with tenants to build their skills, capacity, and leadership. Despite our victories, we remain acutely aware of the power dynamics between low-income tenants and privileged lawyers and law students. Although lawyers and law students can help transfer skills to clients, there are limits to the power we can build without an effective organizing partner. We continue to believe that the most successful community lawyering initiatives must involve collaboration with a sophisticated organizing partner. We continue to search for a permanent organizing partner for Project No One Leaves.

**Community-Based Advocacy Can Transform Law Students.** The hidden lesson in this project has been the power of community-based advocacy to transform law students. Many of the students involved in this effort come from privileged backgrounds, with career aspirations that are not necessarily public-interest based. We spend an enormous amount of time orienting law students before we send them out into the community. Each semester begins with a “community listening tour,” where students meet and engage with organizers and residents in affected communities. Throughout the semester, while students are doing fieldwork, we invite community leaders and community organizers to be guest lecturers, both to share their insights and have students learn to listen to the wisdom already within low-income communities. Each year students are transformed as they witness how poverty forces people to live in terrible conditions and how a group of people working together can transform their own community. In this

way the Community Lawyering Clinic at the University of Miami School of Law is training the next generation of socially conscious lawyers through a combination of theory and practice. While our students will go on to varied careers in the public and private sectors, they will never forget the tenants they met and the truths they learned about inequality in America. That, in itself, contributes to movements for social change.

**Purvi Shah**  
*Attorney*  
*Codirector, Community Lawyering Clinic,*  
*University of Miami School of Law*

Community Justice Project  
Florida Legal Services  
3000 Biscayne Blvd. #102  
Miami, FL 33137  
305.573.0092  
purvi@floridalegal.org



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