The Great Recession and Land and Housing Loss in African American Communities: Case Studies from Alabama, Florida, Louisiana, and Mississippi

By

Charlotte Otabor (Center on Race and Wealth, Department of Economics, Howard University)

And

Jessica Gordon Nembhard, Ph.D. (John Jay College, CUNY; and Center on Race and Wealth, HU)

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Contact: Jessica Gordon Nembhard, jgordonnembhard@gmail.com
Phone: 646-557-4658; fax: 212-237-8099

James Madison once stated on property that: “Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government, which impartially secures to every man, whatever is his own” (Chandler, 2005). This has not applied to people of color in the U.S, however, many of whom are on the verge of losing all of their property. A property is a social contract that designates an object’s owner. A property can be valuable depending on how well defined is the social contract. A well defined social contact that organizes and identifies assets in a property system allows for an increase in value (Chandler, 2005). The most common forms of property ownership in the United States that will be discussed in this paper are land and home ownership. Land ownership and land value have become even more controversial for African American families in recent times than ever before. The main reason for this controversy is that most African American land owners and farmers lack record title to their land and so are unable to enjoy the full benefits of their ownership.

A picture of the magnitude of the issue of land ownership and record titles is that in 1910, African American land ownership in the United States reached its peak of 15 million acres with nearly all of it in Mississippi, Alabama and the Carolinas, but by 1997 the numbers had declined drastically to about 2.3 million acres (according to Thomas, Pennick and Gray, 2004 based on data from the U.S. Department of Agriculture)[i]. The rate of decline of African-American land holdings far exceeds the loss among other ethnic groups. Comparing the rate of African-American farmland loss to other groups in 1997, Blacks lost fifty-three percent (53%) compared to 28.8% for other ethnic groups, while Whites experienced steady growth (Civil Rights Action Team, quoted by Gilbert and Sharp, 2002).[ii] The Emergency Land Fund in 1984 was commissioned by the United States Senate to conduct an extensive study of African-American land loss entitled “The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States” (Federation of Southern Cooperatives, 2003; and Emergency Land Fund, 1984). The study identifies partition sale and voluntary sale as the primary causes

of African American land loss both of which stem from ownership of intestate property, or heir property (Federation of Southern Cooperatives, 2003). Some of these families, even though they have lived on the land for generations and pay the taxes, still risk losing their property to developers who can afford to buy them out at court-ordered auctions (Chandler, 2005). This paper explores a form of real property ownership, tenancy in common also known as "heir property" which emerges as a result of intestate succession, as well as farm land ownership and land loss.

In addition, we analyze home foreclosures. As a result of the recent housing crisis and the ongoing "Great Recession," many Black families have lost their homes to foreclosures, often because home values have fallen so low that the mortgage is more than what the home is worth, and as a result of predatory lending, especially through subprime loans. This alarming trend, particularly coming on the heels of the devastation to the Gulf Coast from Hurricanes Katrina and Rita in 2005 and 2006, threatens more and more African American landowners and home owners in the Southeast region of the United States.

This paper addresses asset stripping through recent land losses and home foreclosures specifically in Alabama, Florida, Louisiana, and Mississippi; and its effects on wealth accumulation in African American communities. We also analyze a variety of current policies and policy options that help to mitigate these losses or reduce the effects of policies that have exacerbated land loss, home foreclosures and asset stripping.

Heir Property

The issue of heir property is significant as intergenerational transfers of wealth are important determinants of wealth accumulation and economic development (Deaton, Baxter, and Bratt, 2009). Specifically, Kotlikoff and Summers (1981) argued that intergenerational transfers account for the major portion of wealth accumulation in the United States. It is the significance of intergenerational transfers of wealth in the form of heir property that has been the subject of major controversy in the African

American community. Heir property is both a constraint to economic development in predominantly Black communities of the rural South and an important cause of land loss among African Americans (Dyer and Bailey, 2008). It has been estimated that ‘‘one-third of black-owned land from North Carolina to Mississippi” is in heir property while others have used higher estimates. Gilbert and Sharp (2002) argue that the number could be as high as 40 percent, while Rivers (2006) contends that more than fifty percent of all Black owned property in the rural South is communally owned as heir property (Dyer and Bailey, 2008). Heir property is a result of a lack of legal will left by a land owner when he/she dies. In such cases the state effectively supplies an heir by default through the laws of intestate succession. These laws of intestate succession often lead to a transfer of real property (and generally whatever is erected or growing upon or affixed to the land) creating a tenancy in common (Deaton, Baxter, and Bratt, 2009). The legal definition of a tenancy in common is a specific type of concurrent, or simultaneous, ownership of real property by two or more parties. All tenants in common hold an individual, undivided ownership interest in the property that allows each party the right to alienate, or transfer the ownership of, his/her ownership interest (West’s Encyclopedia of American Law, 2008). There are a variety of issues with the transfer of land via tenancy in common especially within the African American community. There are some that assume that heir property provides more flexibility, however, holding land without a clear title, in fact, exacerbates vulnerability.

Family members without clear title to their land:

- are at risk of losing their property through abusive practices like those outlined above;
- cannot secure a mortgage on the land;
- may not be eligible for federal funding for housing or repairs from FEMA and HUD;
- may not be eligible for other programs that require a clear title, such as Small Business loans and various agriculture programs;
- experience difficulty getting property annexed into a city;
- experience great difficulty in communicating with other family member-owners about managing or disposing of the land because each generation that dies without a will results in an increased number of heirs; and
- hold a reduced interest in the property as the number of heirs increase (Appleseed, no date).

An example is the story of Johnny Rivers, a patriarch of a family of twenty seven children, grand children and great grand children. Johnny Rivers was born on a seventeen acre tract on Clouter Creek near the Cainhoy Peninsula of Charleston, South Carolina. The land was inherited from his father Hector Rivers, son of a former slave, via heir property who acquired the land in 1888. It had been in the family until 2001 when twenty five family members were evicted by the Berkeley County Sheriff's Department. This happened because Johnny Rivers shared the title of the land with more than thirty family members scattered around the country and when some of his relatives decided to sell the property, there were no legal recourse for Johnny. The court ordered the Rivers family to receive only $910,000 for a land worth 10 times more than the amount paid by the investor. The land was sold via court order because it is unreasonable and practically impossible to divide the land physically among the heirs. The court usually orders a partition of sale mainly via auction performed privately so that the land is sold to the highest bidder and mostly below market value. For this reason, corporations and investors use the opportunity provided by problematic titles due to heir property by purchasing an interest in the land, and then using the legal system to force families off their land (Chandler, 2005).

There are several disadvantages to partition sales. It is often difficult for joint owners to outbid land speculators, investors and developers who may bid at such a sale. The real property often is sold at a partition sale for far less than it is worth. Though the property is appraised, the value is used for purposes of the non-petitioning heirs to "buy out" the applicant who filed the partition action. There are however no regulations in place to establish a minimum bid when property is subject to partition sale. According to the Federation of Southern Cooperatives/Land Assistance Fund (2003), there are two ways in which a request for a petition takes place:

- An heir may file a petition for partition; or
- An heir, or several heirs, may sell his/her/their fractional interest(s) to someone other than another heir (i.e. land speculator, land developer). The purchaser of the heir's interest will then petition the court for the partition of the property.

Even with this issue, there are several reasons why people especially in the Black community still refuse to write a will: one, a distrust of the government and legal system; two, superstition; three, lack of education; and finally, reluctance to do something that may cause friction between family members (Dyer, 2007). In 2006, the Associated Press presented a series on "land taken from blacks through trickery, violence and murder." Lewan and Barclay's (2006) summary of the series reviews how real property was stolen from African Americans in the past. The press did an 18-month investigation which included interviews of more than 1000 people and the examinations of public records in county courthouses and state and federal archives. The reporters also reviewed deeds, mortgages, tax records, estate papers, court proceedings, surveyor maps, oil and gas leases, marriage records, census listings, birth records, death certificates, FBI files and Farmers Home Administration records, which were obtained through the Freedom of Information Act. The Associated Press found 107 cases of land takings in 13 southern and Border States in which 406 black landowners lost more than 24,000 acres of farm and timber land and 85 smaller properties like stores and city lots (Lewan and Barclay, 2006). According to Lewan and Barclay, reporters in some cases found that government officials approved the land takings from Blacks and in other instances, took part in them. Here are some examples from the cases found by the Associated Press:

> In the 1950s and 1960s, a Chevrolet dealer in Holmes County, Mississippi, acquired hundreds of acres from Black farmers by foreclosing on small loans for farm equipment and pickup trucks. Norman Weathersby, then the only dealer in the area, required the farmers to put up their land as security for the loans, county residents who dealt with him said. And the equipment he sold them, they said, often broke down shortly thereafter. Weathersby's friend, William E. Strider, ran the local Farmers Home Administration - the credit lifeline for many Southern farmers. Area residents, including Erma Russell, 81, said Strider who is now dead, was often slow in releasing farm operating loans to Blacks. When cash-poor farmers missed payments owed to Weathersby, he took their land. The AP documented eight cases in which Weathersby acquired Black-owned farms this way. When he died in 1973, he left more than 700 acres of this land to his family, according to estate papers, deeds and court records (Lewan and Barclay, 2006).

> In 1964, the state of Alabama sued Lemon Williams and Lawrence Hudson, claiming the cousins had no right to two 40-acre farms their family had worked in Sweet Water, Alabama, for nearly a century. The land, officials contended, belonged to the state. Circuit Judge Emmett F. Hildreth

> urged the state to drop its suit, declaring it would result in ''a severe injustice.'' But when the state refused, saying it wanted income from timber on the land, the judge ruled against the family. Today, the land lies empty; the state recently opened some of it to logging. The state's internal memos and letters on the case include multiple references to the family's race. In the same courthouse where the case was heard, the AP located deeds and tax records documenting that the family had owned the land since an ancestor bought the property on Jan. 3, 1874. Surviving records also show the family paid property taxes on the farms from the mid-1950s until the land was taken (Lewan and Barclay, 2006).

> In 1942, Reverend Isaac Simmons' 141-acre farm in Amite County, Mississippi, was sold for nonpayment of taxes, according to property records. The farm, for which his father had paid $302 in 1887, was bought by a white man for $180. Only a partial, tattered tax record for the period exists today in the county courthouse; but that is enough to show that tax payments on at least part of the property were current when the land was taken. Simmons hired a lawyer in February 1944 and filed suit to get his land back. On March 26, a group of whites paid Simmons a visit. The minister's daughter, Laura Lee Houston, now 74, recently recalled her terror as she stood with her month-old baby in her arms and watched the men drag Simmons away. ''I screamed and hollered so loud,'' she said. ''They came toward me and I ran down in the woods.'' The whites then grabbed Simmons' son, Eldridge, from his house and drove the two men to a lonely road. ''Two of them kept beating me,'' Eldridge Simmons later told the National Association for the Advancement of Colored People. ''They kept telling me that my father and I were 'smart niggers' for going to see a lawyer. 'Simmons, who has since died, said his captors gave him 10 days to leave town and told his father to start running. Later that day, the minister's body turned up with three gunshot wounds in the back, The McComb Enterprise newspaper reported at the time (Lewan and Barclay, 2006).

The Reverend Simmons' murder was not the first or the last of its kind. Ida B. Wells Barnet, and W.E.B. Du Bois and others in the early 20th century documented lynchings against Black land owners and businessmen as a strategy to gain control of their land and/or undermine their businesses. They demonstrated that lynchings for financial reasons (asset stripping) were more prevalent than for alleged sexual crimes, and were an effective way to reduce Black land and business ownership (Hine, Hine, and Harrold, 2010). In addition, there are well publicized incidents of land swindles and Black bank failures. It is understandable, therefore, given the many negative experiences, that African Americans are often skeptical about entrusting their real property to the legal system. However, lack of a recorded deed and will are what make intestate succession and the impact of tenancies in common devastating to African Americans - and explain the extent of fractional ownership interests in heir property.

Many African American families have owned property since the late 19th and early 20th centuries, and therefore could have hundreds of co-owners sharing a miniscule interest in the land; this is known as fractional heir property. Fractional heir property is an issue because it creates obstacles to proper management of real property that can result in land loss. It also leads to the unlocatable/ unknown heir syndrome when there are so many descendants of the original owner of the subject properties that are dispersed across the country who may not know or communicate with each other. This makes collective management of heir property difficult, if not impossible.

Heir property issues have become more significant after Hurricane Katrina. New Orleans and the Gulf Coast had relatively high percentages of Black home ownership (over 40% in 1995 (Bureau of the Census, 1995, pp. 2 & 3), for example), but significant homes and property have been lost since the Hurricane in 2005. According to Appleseed (no date), after the devastation left by the hurricane, heir property owners in Alabama, Louisiana, Mississippi and Texas whose homes were damaged or destroyed by the storms could not qualify for various Federal Emergency Management Administration (FEMA) and the Housing and Urban Development (HUD) rebuilding grants unless and until they could provide a clear title to their land.[iii] In urban New Orleans, of the approximately 180,000 families applying for Road Home rebuilding grants, some 25,000 families lived on heir property (Appleseed, no date). The federal government and the state of Louisiana funded the Road Home Program with the main goal of helping compensate property owners for their losses (Meyer, 2008). The task of title searching and checking was assigned to First American Title Insurance Company of Louisiana (FATIC-L) by the Road Home Program. The FATIC-L discovered that approximately 15 percent of the property titles did not have record owners who corresponded to the named claimants. Through the works of Appleseed and other community organizations, the Road Home program ultimately waived requirements for people with title issues (Appleseed, no date). The criteria used by the Road Home Program for home repairs are severely different from the requirements for loans stipulated by

commercial banks. The funds provided by FEMA and state agencies are grants that are assigned specifically for natural disasters and can therefore afford to waive the issues created by heir property. Commercial banks on the other hand cannot afford such liberties because of the high risk an unclear title ownership represents.

Heir property remains a serious issue and continues to contribute to asset stripping in African American communities, particularly in the southeast.

Farm Land Ownership and Land Loss

In 1998, a lawsuit was filed against the US Department of Agriculture on behalf of Black farmers in regards to been denied loans and other assistance that had been routinely extended to white farmers (Johnson, 2009). The period covered by the law suit was from 1981 to 1999 and exposed how USDA personnel were hostile to Black farmers. There were about 925,000 African American farmers (owners, tenants, croppers) in the 1920s, but by 1997 the number of Black farmers had dropped to 18,451 (Johnson, 2009). Much of the problem resulted because Black farmers were not represented on local USDA committees, and both federal and private lending agencies were unresponsive to the needs of Black farmers (Gilbert and Sharp, 2002). A report conducted in 1997 by the Civil Rights Action Team (CRAT) of the U.S. Department of Agriculture included listening forums for minority farmers to share their experiences of treatment by the USDA. According to Gilbert and Sharp (2002), CRAT discovered discriminatory behaviors by the USDA, "including loans arriving long after planting season, arbitrary reductions in loan amounts, and a much higher rejection rate than white applicants received" (Gilbert and Sharp, 2002). The USDA was also accused

> of ignoring research that would help small-scale and limited-resource farmers and of failing to include minority populations in outreach efforts to raise awareness of federal programs. Finally, minority farmers said that official complaints of discrimination were processed slowly, if at all; and that the USDA often continued with foreclosure proceedings even when a relevant discrimination complaint had been filed. Overall, the

> CRAT Report found little accountability within the USDA: Employees and county committees that discriminate against minority farmers are not punished for their illegal behavior (Gilbert and Sharp, 2002).

According to Cower and Feder (2011), "other findings showed that (1) the largest USDA loans (top 1%) went to corporations (65%) and white male farmers (25%); (2) loans to black males averaged $4,000 (or 25%) less than those given to white males; and (3) 97% of disaster payments went to white farmers, while less than 1% went to black farmers." In settlement of the lawsuit, called the Pigford Case, the USDA offered each certified claimant two options; one, a settlement of $50,000 plus possible forgiveness of debt owed to the USDA. Secondly, the claimants could also choose arbitration, in which the settlement is equal to actual cash damages. Because this option requires more proof of damages, the majority of claimants have chosen the first option (Gilbert and Sharp, 2002). After the settlement proceeding, there were many complaints about the structure of the agreement causing a lot of applicants to file a late claim. Almost a decade later, the 2008 farm bill "included a provision that permitted any claimant who had submitted a late-filing request under Pigford and who had not previously obtained a determination on the merits of his or her claim to petition in federal court to obtain such a determination" (Cowan and Feder, 2011). The bill provided a maximum of $100 million in mandatory spending for payment of the claims; the multiple claims that were subsequently filed were consolidated into a single case, In "re Black Farmers Discrimination Litigation" and are commonly referred to as Pigford II (Cowan and Feder, 2011). Then again, on February 2010, Attorney General Holder and Secretary of Agriculture Vilsack announced a $1.25 billion settlement for the Pigford II claims but since only $100 million was made available in the 2008 farm bill, the settlement was contingent upon congressional approval of an additional $1.15 billion in funding. The Senate passed the Claims Resolution Act of 2010 (H.R. 4783) that provided the $1.15 billion appropriation by unanimous consent on November 19, 2010; the bill was then passed by the House on November 30 and signed by the President on December 8, 2010 (P.L. 111-291) (Cower and Feder, 2011). Even after the settlement of the

Pigford case, the USDA's policies are still the same. There is little research available as to whether or not the USDA has made the necessary adjustments to prevent further discrimination of minority farmers.

For some black farm owners, the settlement from the USDA would not compensate for the loss of their land. These farmers lost more than their lands; they may have been stripped of their family history and legacy through the sale of the land. There is also the issue that discrimination by the employers of the Department of Agriculture started before 1981. Some of these farmers or land owners have left their land abandoned or rented it out. With better policies and incentives, black land owners and farmers can be lured back to a better management of their property.

Home Foreclosures

Housing foreclosures, periodic stock market declines, financial distress, and high (often still rising) unemployment in what is now a "jobless recovery" accelerate housing loss. Housing foreclosures are often the result of rampant predatory lending and sub-prime mortgage loans sold to and forced on borrowers in the 1990s and early 2000s. In 2006 subprime loans as a percentage of all mortgages had grown from 10% in 1998 to 23%; and from $35 billion in 1994 to a volume of $665 billion in 2005 (Rivera, et. al, 2008). In 2009 the foreclosure rate increased by another 21% from 2008 and 120% from 2007 - to 2.8 million properties (Adler 2010:1). According to RealtyTrac (2009), there were 342,038 foreclosure filings — default notices, auction sale notices and bank repossessions — on U.S. properties in April 2009, a 32 percent jump from April 2008 and the highest monthly foreclosure rate since it began issuing its report in 2005. Florida had the second highest levels of foreclosure in any state. Levels would have been even higher nationwide without the new federal foreclosure prevention programs and loan processing delays (Adler; and Iley 2009). According to Dillihunt et al (2010, p. vi), in 2009, a disproportionate share of the families impacted by the 3.4 million homes in foreclosure were people of color. They were "systematically targeted by the financial industry for predatory, subprime loans. In fact,

over half of the mortgages to African-Americans in recent years were high-cost subprime loans, mostly to people who would have qualified for regular loans." High levels of foreclosures continued in 2010. According to Reality Trac Staff (2011) there were 3,825,637 foreclosure filings reported on a record 2,871,891 U.S. properties in 2010. This was an increase from 2009 of almost 2 percent, and an increase of 23 percent from 2008. One in 45 (or 2.23%) of all U.S. housing units experienced at least one foreclosure filing during 2010. This was a major increase (2.21%) from 2009, and higher than in 2008, 2007 and 2006. Florida had the third highest level of foreclosures of all the states in 2010. In 2011, things started to improve nationwide. According to Reality Trac Staff :

> a total of 2,698,967 foreclosure filings — default notices, scheduled auctions and bank repossessions – were reported on 1,887,777 U.S. properties in 2011, a decrease of 34 percent in total properties from 2010. Foreclosure activity in 2011 was 33 percent below the 2009 total and 19 percent below the 2008 total. The report also shows that 1.45 percent of U.S. housing units (one in 69) had at least one foreclosure filing during the year, down from 2.23 percent in 2010, 2.21 percent in 2009, and 1.84 percent in 2008. Total U.S. foreclosure activity and the U.S. foreclosure rate in 2011 were both at their lowest annual level since 2007 (Reality Trac Staff, 2012).

Florida dropped down to the sixth highest foreclosure rate in the country. Despite the reduced foreclosures nationwide, because unemployment levels remain high, banks are not helping working people to refinance, and new federal policies have not done enough (see Adler 2010 and Iley 2009).

Scheessele (2002) notes that as the foreclosure crisis continues, the costs to homeowners, the property tax base, and local governments would add up from $650 billion to as much as $1 trillion. Before the financial crisis, subprime mortgage lending was an important component of the overall mortgage market. According to Scheessele (2002) from the Office of Policy Development and Research, subprime mortgage lending increased from $90 billion in 1996 to over $173 billion in 2001 and accounted for 8.3 percent of the overall mortgage market in 2001. Subprime mortgage lending by banks provide loans to borrowers who do not meet the credit standards for loans in the prime market. It allows borrowers to access credit that they could not obtain in the prime credit market. These

borrowers in subprime lending usually have blemishes in their credit record, insufficient credit history, and/or non-traditional credit sources (Scheessele, 2002). Subprime lending has been disproportionately concentrated in low-income and minority neighborhoods, particularly Black neighborhoods that are also more vulnerable to a subset of subprime lenders who engage in abusive lending practices, stripping borrowers' home equity, and placing them at increased risk of foreclosure (see for example Dillahunt, et. al., 2010). Subprime lending activities were the highest in Nevada, Arizona, California and Florida, whose situations were two to three times the national average in metropolitan areas of 3.6 subprime loans per 100 housing units (Miller, Raukertaus and Sklarz, 2008; also Reality Trac Staff, 2009). According to Miller, Raukertaus and Sklarz, "foreclosures decrease neighborhood property values by as much as 10% overall and nearly 1% per foreclosed property." Dillihunt, et. al. (2010) combine findings from previous years and report that "people of color were more than three times more likely to have subprime loans than whites"; that lenders tended to give "people of color loans with less advantageous payment rates, even when they qualified for better ones"; that lenders did not give applicants for a home loan information about the "strenuous" repayment schedule; and that lenders charged costly fines for people who wanted to get out of their expensive subprime loans (p. 11).

These practices drained the wealth of working-class families and particularly communities of color. In addition, many people, particularly people of color, women, and workers who are now unemployed, are losing what few assets they had, particularly homes, because of sub-prime mortgages and other predatory lending practices that targeted women and people of color (see Rivera, et.al. 2008; and Dillihunt et. al. 2010). These assets such as home equity, and even small business equity, are assets finally gained over the past decade or so by people who had often been left out of mortgage and credit markets.

What laws can states put in place to curb home foreclosures and help families especially those mostly affected by subprime lending activities?

Case Studies:

Florida is one of the many states that allow the home foreclosure process to go through the court system. In Florida, "all mortgages are foreclosed in equity. In a mortgage foreclosure action, the court severs, for separate trial, all counterclaims against the foreclosing lender. The foreclosure claim shall, if tried, be tried to the court without a jury. The court order of foreclosure will specify how the foreclosure must take place, and the foreclosure must take place on those terms" (United States Foreclosure Laws, no date (ForeclosureLaw.org)). What role therefore can the court and legislature play in helping minority families- who mostly have their homes as a major percentage of their wealth-hold on to their homes? Due to the overwhelming amount of homes in foreclosure, the courts in Florida had to create a "rocket docket" system to expedite the process and reduce the burden it places on the victims, local community and the courts by minimizing legal arguments. The idea of expediting the legal process was a result of the legislature pressuring the courts because of the fear that the economy was headed to a second recession caused by the backlogs in home foreclosure. According to Luhby (2011), "the courts were supposed to clear 62% of the 462,000 backlogged cases with the special funding. As of March 30 2011, they had disposed of 151,500 cases or 33%." The reasoning behind rocket docket is that the quicker houses in the foreclosure process are closed, the sooner the empty homes will be in the open market ready for sale. Once the homes are back in the market, it can be resold and help the local government rebuild its economy. Some problems have however risen from the rocket docket process. There have been issues of missing files, lack of communication and false affidavits. An example is a story in Florida reported by Allen (2010).

> After Nicole DePuy was forced to take a pay cut in her job with the Lee County schools, she began having trouble making her mortgage payment. So she began negotiating with her lender, Bank of America. In January, after more than a year of talks, the bank finally agreed to modify her loan to a monthly payment she could afford, DePuy says. She began sending in her payments and was thrilled until she came home from work one day. "I had a note stuck on my door from a gentleman that had bought my home at auction the day before," DePuy says. "So, Bank of America [had] never contacted the courts to let them know we were in a modification and not to sell my house." DePuy

> immediately hired a lawyer and went back to the rocket docket with a motion seeking to overturn the foreclosure. The judge ruled against her — and said it was a justified sale. "The judge actually admitted she had not read my affidavit or any of the information because she had too many cases to listen to that day," DePuy says. "So, I think that's a big part of the problem right there.

However, for Charlie Green, Lee County's clerk of courts in Florida, regardless of the issues, there is only one pertinent question: "Did you make your payments in a timely manner and have you been a good mortgagor? If you haven't made your payments, you're in default by definition" (Allen quoting Green, 2010). Florida state lawmakers earlier in the year opted not to renew a $6 million fund for the court system, although some counties were grateful for the fund available to rehire retired judges and lessen the case load of the court, the extent to which rocket docket system achieved its goal is still unknown.

Louisiana, like Florida, uses the judicial system as the venue for mortgage foreclosures. There are two types of judicial foreclosure proceedings: the executory and ordinary process:

> The executory process takes place when the lender uses a mortgage that includes an "authentic act that imparts a confession of judgment", as provided in the Louisiana statutes. Essentially, this means the borrower signed and acknowledged the obligations of the mortgage in the presence of a notary public and two witnesses. This type of mortgage makes the foreclosure process easier for the lender because once the suit has been filed and the original note and a certified copy of the mortgage has been provided, the court will issue an order for the process to begin. Once ordered, the borrower must then be served with a demand for the delinquent payments. The borrower has three (3) days to provide the delinquent payments or the court will order a writ of seizure and sale and the property will be sold after proper notice has been advertised for thirty (30) days. Lenders may also sue to obtain a deficiency judgment, but buyers have no rights of redemption (United States Foreclosure Laws, no date (ForeclosureLaw.org)).

Mississippi has a foreclosure moratorium statue that would provide homeowners with protection from foreclosure after a disaster (Overby, 2007). In Louisiana, on the other hand, there are no laws that would be in effect after a disaster. So for many Louisiana mortgage debtors, the legal system placed them into a more financial bind and higher risk of foreclosure after the storm since its process offered borrowers few protections anyway. In New Orleans, 73% of the population lived in areas that had damage which ranged from moderate to catastrophic. Nearly 228,000 occupied housing

units, 45% of the city's total, and 41% of the city's businesses were in flooded areas and of the flooded housing units, 120,000 (53%) were owner occupied while 108,000 were renter occupied (Overby, 2007). Hurricane Katrina definitely delivered a significant blow to homeowners especially African Americans which represented a majority of the city of New Orleans. It is obvious that after Katrina, a lot of residents lost their livelihood which added financial issues for many residents in addition to their property loss. The hurricane left most mortgage owners with destroyed homes and mortgage debts that still required payments. This led to a high probability of defaults. According to Overby, once a mortgage is in default, a lender has the ability to foreclose upon the property to satisfy the defaulted debt, but in the year following Katrina the number of foreclosure actions filed by lenders actually declined. The reasons for the decline are the non-legal, secondary market interventions that acted to help reduce the foreclosure rate. There were the moratoria as in the case of Fannie Mae and Freddie Mac loans that were extended through 2006 that reduced foreclosure actions. For borrowers with FHA and VA mortgages, partial relief was gained through HUD initiatives. There was also a three month deferral on mortgage payments to temporarily help borrowers, who were impacted by the storm, with short term cash flow (Overby, 2007). These secondary market interventions were done as a coordinated effort between investors, insurers, loan servicers, lenders and debtors and offered a fair coherent plan that benefited the parties involved.

The recent financial crisis has led to an increase in foreclosure rates in Louisiana. The impact of secondary market interventions in helping debtors are very hard to predict since the decisions to provide such help was in the best interest of the mortgage industry. There is little research on what policies can be provided to help debtors and lenders come to an agreement that excludes foreclosure. Some have suggested mediation and modifications of loans to aid borrowers but little research is available as to whether or not such actions would be effective.

Mississippi is one of the states that have both judiciary and non judiciary foreclosure process. The judicial process of foreclosure, which involves filing a lawsuit to obtain a court order to foreclose, is used when no power of sale is present in the mortgage or deed of trust. Generally, after the court declares a foreclosure, the home will be auctioned off to the highest bidder. The non-judicial process of foreclosure is used when a power of sale clause exists in a mortgage or deed of trust. A "power of sale" clause is the clause in a deed of trust or mortgage, in which the borrower pre-authorizes the sale of property to pay off the balance on a loan in the event of their default. In deeds of trust or mortgages where a power of sale exists, the power given to the lender to sell the property may be executed by the lender or their representative, typically referred to as the trustee. Regulations for this type of foreclosure process are outlined below in the "Power of Sale Foreclosure Guidelines" (United States Foreclosure Laws, no date (ForeclosureLaw.org)). If the deed of trust or mortgage contains a power of sale clause and specifies the time, place and terms of sale, then the specified procedure must be followed. Otherwise, the non-judicial power of sale foreclosure is carried out as follows:

1. The trustee must record a notice of sale containing, at minimum, the borrowers name and the date, time and place of the sale in the county where the property is located. This notice must also be posted at the courthouse door in the county where the property is located and published in a newspaper of general circulation in said county for a period of three (3) consecutive weeks before the schedule date of the sale.
2. The borrower may cure the default and stop the foreclosure process at any time before the foreclosure sale by paying the delinquent payments, plus costs and fees.
3. The sale must be made at public auction for cash to the highest bidder. The sale may be held in the county where the property is located, or, if different, in the county where the borrower resides. In either case, the sale must be conducted at the normal location for sheriff's sales within the given county. Borrowers who lose their property as the result of a non-judicial foreclosure have no rights of redemption in Mississippi (United States Foreclosure Laws, no date (ForeclosureLaw.org)).

According to Evans and Sival (2008) at the Mississippi Economic Policy Center, Mississippi has the highest rate of subprime lending in the country. In 2006, 36.9% of all first mortgages originated for owner-occupied single-family homes in the state were subprime. Therefore, the impacts of the state’s high rate of subprime lending and Hurricane Katrina are contributing to an elevated rate of mortgage

delinquency and causing homeowners across the state to lose their homes to foreclosure (Evans and Sival, 2008). Since the aftermath of Hurricane Katrina, delinquency rates rose drastically for mortgage borrowers and were 10.6% in 2007-the highest percentage of delinquent loans in the country (Evans and Sival, 2008). Just like Louisiana, Hurricane Katrina had a major impact on Mississippi's foreclosures rates. Following the hurricane, delinquency rates rose for all borrowers, with subprime delinquency rates reaching as high as 30%, although the foreclosure rates declined. Like Louisiana also, "Many lenders allowed borrowers to temporarily postpone foreclosure given the devastation experienced by much of the state. In addition, the State of Mississippi announced foreclosure relief, available for all property that sustained hurricane damage, which allowed borrowers to petition to postpone foreclosure until October of 2007" (Evans and Sival, 2008). Also,

> as allowed by statute, after Hurricane Katrina, the State of Mississippi instituted relief from "inequitable mortgage foreclosures" and made it available to all homeowners who sustained at least 15% damage to their property. In order to take advantage of foreclosure relief, the homeowner had to file a petition in Chancery Court to receive an injunction prohibiting foreclosure until October 4, 2007. This provision allowed property owners to postpone foreclosure if the property had experienced at least a 15% loss in fair market value due to Hurricane Katrina, the owner was unable to make mortgage payments, and the owner had attempted unsuccessfully to refinance the mortgage. The court could require the owner to pay a monthly carrying cost to cover insurance, interest, and property taxes. Because homeowners were required to file a petition in order to postpone foreclosure, homeowners without information or resources were less likely to take advantage of the injunction process (Evans and Sival, 2008).

The latest data from the Atlanta Federal Reserve shows the foreclosure rate in Mississippi to be about 17 percent.

Lenders in Alabama also may choose to foreclose on mortgages either via judicial process – the Alabama Code Sec. 35-10 - or non-judicial process. This process is similar to the process outlined under Mississippi.

> Judicial process of foreclosure, involves filing a lawsuit to obtain a court order to foreclose, and is used when no power of sale is present in the mortgage or deed of trust. However, when no power of sale is present, lenders may, at their option, choose to forego a lawsuit and foreclose by selling the property, as outlined below in the "No Power of Sale Foreclosure Guidelines". The non-judicial process of foreclosure is used when a power of sale clause exists in a mortgage or

> deed of trust. A "power of sale" clause is the clause in a deed of trust or mortgage, in which the borrower pre-authorizes the sale of property to pay off the balance on a loan in the event of their default. In deeds of trust or mortgages where a power of sale exists, the power given to the lender to sell the property may be executed by the lender or their representative. Regulations for this type of foreclosure process are outlined below in the "Power of Sale Foreclosure Guidelines". If the deed of trust or mortgage contains a power of sale clause and specifies the time, place and terms of sale, then the specified procedure must be followed. However, if the deed of trust or mortgage contains a power of sale clause, but does not specify the time, place and terms of sale, then a foreclosure sale may take place at the front or main door of the courthouse of the county where the property located, after default of the deed of trust or mortgage, for cash to the highest bidder. The sale may not take place until thirty (30) days after the last notice of sale is published. Said notice of sale must be given by publication once a week for four (4) successive weeks in a newspaper published in the county or counties in which the property is located. If the property is under mortgage in more than one county, the publication is to be made in all counties where it is located. The notice of sale must give the time, place and terms of said sale, together with a description of the property. If no newspaper is published in the county where the lands are located, the notice shall be placed in a newspaper published in an adjoining county for four (4) successive weeks. If no power of sale is contained in a mortgage or deed of trust, the lender, or any assignee thereof, may, after default of the mortgage or deed of trust, either file a lawsuit to foreclose or foreclose by selling the property to the highest bidder for cash at the courthouse door of the county where the property is situated. Said sale may not take place until after notice of the time, place, terms and purpose of the sale has been published for four (4) consecutive weeks in a newspaper published in the county wherein said lands, or a portion thereof are situated (United States Foreclosure Laws, no date (ForeclosureLaw.org)).

After the foreclosure crisis begun, the Legal Services Alabama (LSA), through a grant received from NeighborWorks America, Alabama Civil Justice Foundation and the Alabama Access to Justice Commission, provided assistance to consumers faced with foreclosure. The LSA produced a brochure that addresses commonly asked questions about foreclosure and also provides pro bono representation in court for homeowners that have a claim to be litigated (Methvin, 2008). According to the latest data from Federal Reserve of Atlanta, Alabama's mortgage foreclosure rate is lower than the national average.

Policy Recommendations

There are some policy recommendations made by the Mississippi Economic Policy center and although its suggestions were primarily for the state of Mississippi, they can apply to all the regions.

First, enact strong state predatory lending laws that will protect homebuyers from predatory practices which lead to foreclosure with the following minimum protections.

- Require lenders to evaluate the borrower's ability to pay the fully amortizing payments, with the borrower's maximum total debt-to income ratio, including amounts owed under the loan, capped at 50% of the borrower's monthly gross income;
- Prohibit lenders from refinancing an existing home loan when there is no reasonable, tangible net benefit to a borrower;
- Prohibit pre-payment penalties and negative amortization loans
- Require counseling for all first-time subprime borrowers;
- Require escrow of taxes and insurance on all subprime loans; and
- Require all lenders to offer loss mitigation options to homeowners in default (Evans and Sival, 2008).

Second, support comprehensive counseling services, including pre-purchase and post-purchase homeownership counseling. Third: to create a default loan program which provides funds paired with counseling to assist homeowners facing foreclosure (Evans and Sival, 2008).

Dillahunt, Miller, Prokosch, Huezo, and Muhammad (2010) suggest the following:

- An immediate moratorium on foreclosures.
- Keep families in their homes through federal loan modification programs, and modification of bankruptcy laws.
- Strengthen financial regulation to end predatory practices.

There has been some legislation passed to address the foreclosure crisis, however much of it is not strong because it has been stripped by "powerful finance industry lobbyists, and hamstrung by lack of cooperation from big banks" (Dillahunt, et. al., 2010). These policies, thus, lack provisions such as "a moratorium on foreclosures, modification of bankruptcy rules, and strong financial regulation" that would seriously address the foreclosure problem (Dillahunt, et. al., 2010).

Another solution is to support and promote more credit unions and community development financial institutions. These community-based banks (and community-owned in terms of credit unions) do not issue subprime or predatory loans, have local criteria for making affordable and fair loans to

members, as well as provide high quality affordable financial services in general (Gordon Nembhard, 2010). Credit unions (CUs), like all cooperatives, address market failure, market insufficiency, and asymmetric information. Credit unions are democratically-owned, community-based, not-for-profit financial institutions whose purpose is to provide affordable high quality financial services to their members. Many are able to offer all the same financial services that commercial banks offer – often at lower prices. Community Development Credit Unions (CDCUs) are credit unions whose purpose is to serve underserved low-income communities, and are part of a larger group of community development financial institutions (CDFIs) with a similar purpose.

CUs, with a hundred year history, and CDCUs, with a thirty-forty year history of serving the underserved, have only recently begun to be recognized by some of the media and the progressive community as "safe havens" and fair lenders.[iv] In addition, financial analysts have begun to suggest that banks need to return to their roots, become more locally focused and based. Morris (2010) notes that "a growing number of financial analysts believe that at the heart of the breakdown in global finance and the resulting breakdown in national economies was the growing distance between depositor, borrower and lender, and the end of relationship banking" (p. 2). Morris contends that "This growing chorus of high-level, expert dissent demonstrates that there is now an opening to advance a conversation and an agenda around fundamentally restructuring our financial system to be more community-rooted and responsive to local needs" (pp. 2-3). Credit unions are those community-rooted, responsive financial institutions; and are an important if not essential part of the solution to the mortgage and credit crisis.

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[i] Studies vary in their findings of exact number of acres owned by African Americans in the 20th and 21st centuries. Gilbert, Wood and Sharp 2002 estimated slightly higher acreage in the early 1900s and slightly more Black-owned land in the early 21st century. Thomas, Pennick and Gray (2004) report data from several Department of Agriculture surveys. Also in 1999, African American rural land ownership was estimated at 7.7 million - an increase from the 1997 amount, but still only one percent (1%) of all privately owned rural land in the U.S.

(Thomas, et. al, 2004, based on the National Agricultural Statistics Service's 1999 "Agricultural Economics and Land Ownership" Survey (Department of Agriculture). The significant fact is that African Americans own less than 1% of land in the US.

[ii] Also see the source: Civil Rights Action Team (Feb., 1997).

[iii] In addition, most of the households applying for the funds and grants were low-income families. . In Mobile County, Alabama, for example, the average income for a family of four applying for the rebuilding fund is $19,000 and most are property owners of color (Appleseed, no date).

[iv] They produce reports which provide some evidence of this.