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October 28, 2010

Edmund G. Brown, Jr.
Attorney General
1300 I St., Ste. 1740
Sacramento, CA 95814

Re: Investigation of violation of rights of tenants in review of mortgage foreclosure processes.

The National Housing Law Project (NHLP) is a charitable nonprofit national housing law and advocacy center. NHLP provides legal assistance, advice and housing expertise to attorneys, paralegals and tenant leaders nationwide to advance housing justice for low-income people. NHLP consults and works in coalition with advocacy groups, other intermediaries, and policymakers. Since 1968 NHLP has worked extensively on innumerable issues related to affordable housing programs.

The Housing Justice Network is a nationwide membership organization of over one thousand housing, legal services and civil rights advocates and attorneys from every state, the District of Columbia and Puerto Rico.

Throughout the course of the current housing crisis, the NHLP, the HJN and the substantive working groups within HJN have been intimately involved in pursuing the implementation of law and policy to protect families from abusive and illegal actions of lenders and servicers and in representing renters and home-owners. The NHLP and members of the HJN have, for these past two years, made every effort to call attention to and contest these actions through both advocacy and the representation of families in the courts.

We write to request that the impact of illegal and unethical practices and procedures of lenders, servicers and their agents and attorneys on tenant families in foreclosed properties be made an integral part of the current and ongoing review of mortgagees by your office.

Both state and federal governments have rightfully engaged in repeated and multi-pronged efforts to inject rationality, stability and compassion into the actions of the corporate combine which is ravishing our communities, particularly as these actions affect mortgagors. And many states have taken action to protect mortgagors from unjust practices. Far too often, however, similar attention has not been paid to the impact of these actions on families who are tenants in foreclosed properties.

It has been estimated that fully 40% of all residential units undergoing foreclosure are occupied by tenants.¹ Tenants are almost always the last to know that the lender is foreclosing on their home. Tenants, in most jurisdictions, have virtually no ability to arrest or even slow the foreclosure. In rental markets which are absorbing hundreds of thousands of former mortgagor families, decent, safe and affordable rental units have become frighteningly scarce.

Congress has acknowledged the significance of this reality in enactments requiring protection of tenants by executive departments² and recipients of federal tax dollars³ and the current Congress and federal administration have extended these protections to all tenants through the Protecting Tenants at Foreclosure Act (PTFA) (Title VII of Pub. L. No 111-22, the Helping Families Save Their Homes Act of 2009) and the clarification and extension of that act (§ 1484 of Pub. L. No. 111-203, the Dodd-Frank Act). That law, enforceable in state courts, is intended to protect residential leases and provide innocent tenant families a period of at least 90 days after title is taken from the defaulted mortgagor to find alternative shelter and reestablish safe havens for their loved ones.

Even after the passage of the PTFA, many tenants are still being rapidly pushed out of their homes after foreclosure. Advocates have documented routine violations of the PTFA by financial institutions and their agents, including:

- Misinforming tenants of their rights after foreclosure;
- Commencing eviction actions without giving a 90-day notice under the PTFA;
- Wrongfully commencing evictions against tenants with long-term leases;
- Illegally lock tenants out of their homes after foreclosure.

These and other practices have resulted in the displacement of thousands of tenants from their homes, resulting in neighborhood vacancy, blight, and diminution of property values.

The illicit and unethical actions and practices of voracious financiers that have recently come under scrutiny have rightfully roused indignation in and drawn condemnation from government, the media and other concerned and responsible parties. Tenants most likely constitute forty percent of all families forced out of their homes by these opprobrious actions now under investigation by fully twelve federal entities, your office, and the attorneys general of every other state. Fraud on the courts and the mortgagors, perpetrated by robo-signers and a host of related behaviors, disregard for chain of title, violations of the PTFA, refusal to modify mortgages under HAMP, failure and refusal to certify compliance with federal and state laws in NSP related transactions, the engagement by lenders and their agents of one law firm to conduct foreclosures and another to conduct evictions so that each can

¹ NLIHC, RENTERS IN FORECLOSURE: DEFINING THE PROBLEM, IDENTIFYING SOLUTIONS (2009), <https://www2398.ssldomain.com/nlihc/doc/renters-in-foreclosure.pdf>

² Pub. L. No 110-343, §109 (b), 122 Stat. 3765,3774 (Oct. 3, 2008) (Emergency Economic Stabilization Act of 2008), directed the Secretary of the Treasury, with respect to residential properties subject to any mortgage or mortgage backed securities or pool of securities held, owned, or controlled by or on behalf of federal government entities, to coordinate efforts to permit, where permissible, bona fide tenants who are current on their rent to remain in their homes under the terms of the lease.

³ Pub. L. No 111-5, 123 Stat.115, 218-219 (Feb. 17, 2009) (ARRA), requires generally that in the case of acquisition of any dwelling acquired with NSP funding (Pub. L. 110-289, div. B, tit. III, the Housing and Economic Recovery Act of 2008) the tenant's leases must be honored and 90 days notice to vacate must be given

'credibly' deny knowledge of the illegal and unethical actions of the other, and quite possibly behaviors which have yet to come to light, all work to divest the tenants as well as owner occupant families of their homes.

Every day NHLP and HJN members are beseeched by desperate families for help to combat these injustices. The current coordinated, multi-state, multi-agency and multi-departmental investigations present an unprecedented opportunity for your office to address these ongoing wrongs. The scrutiny of lender practices with regard to foreclosures must include attention, in every file review and in every practice and procedure critique, of not only whether injustice was done to the mortgagors, but also whether injustice was done to the tenants. The scrutiny must attend to the systematic and intentional nature of these violations of legal rights and abuse of professional obligations. And structural and regulatory changes and recompense required of lenders and their agents, including their attorneys, must acknowledge tenants as innocent and aggrieved. This is especially important because many courts have denied the existence of a private cause of action for tenants under PTFA and in many states the only venue for redress is eviction court.

We are available to contribute to your consideration of this question. We believe that the NHLP's more than 40 years of experience in housing justice and the HJN's members who daily address these issues in the communities and courts can be a significant resource for such discussions.

We share your belief that when business as usual is unjust, then that business must change. Thank you for your consideration of this request and offer.

Very truly yours,

A handwritten signature in black ink that reads "Marcia Rosen". The script is fluid and cursive, with the first name "Marcia" and last name "Rosen" clearly distinguishable.

Marcia Rosen
Executive Director