

**The Great Recession and Land and Housing Loss in African  
American Communities: Case Studies from Alabama, Florida,  
Louisiana, and Mississippi  
Part 1: Home Foreclosures**

By

Charlotte Otabor, M.A. (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, [professorgn@gmail.com](mailto:professorgn@gmail.com)  
tel: 646-557-4658; fax: 212-237-8099

## The Great Recession and Land and Housing Loss in African American Communities

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)<sup>i</sup>. 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).<sup>ii</sup>

This study 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 home foreclosures and asset stripping. The study is reported in two parts: Part 1 focuses on home foreclosures in the Black community especially in the four states mentioned above; Part 2 focuses on 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.

This paper, Part 1, analyzes 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.

## **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 Realty 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 Realty 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 (Realty 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) noted before this most recent aspect of the crisis 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).

Treuhft et al. (2012) summarize that US families' accumulation of wealth is closely linked to homeownership, and so the foreclosure crisis has stripped trillions of dollars of wealth from American families – estimate of up to \$8 trillion. In addition, subprime lenders disproportionately targeted people of color and communities of color. Borrowers of color who should have qualified for prime loans were

instead steered toward subprime loans. According to a recent Economic Policy Institute study (cited by Treuhaft et al.), African Americans and Latinos were 30 percent more likely to receive high-rate subprime loans compared with white borrowers. Therefore, these losses have been particularly devastating for communities of color. United for a Fair Economy (cited by Treuhaft et al.) first estimated that African Americans and Latinos lost an estimated \$200 billion in assets due to foreclosures between 2006 and 2009. A more recent analysis by the Center for Responsible Lending estimates that between 2009 and 2012 foreclosures will cost African American and Latino families another \$370 billion. This is important because low-income families also have less intergenerational wealth to help them cushion economic setbacks and losses, making their economic situations more precarious.

In sum, these subprime, predatory lending, faulty mortgage and foreclosure practices are draining 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; Dillihunt et. al. 2010, and Treuhaft et al. 2012). 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? [See Appendix B for a sample of the Foreclosure Laws in each of the four states: Alabama, Louisiana, Mississippi and Florida.]

## **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 statute 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.

## **Current Federal Policies to Foster Foreclosure Recovery**

According to Treuhaft et al. (2012), the United States Department of Housing and Urban Development (HUD) has used the Stabilization Program, or NSP, to help neighborhoods heavily impacted by the foreclosure crisis. There are three rounds of the NSP funding. The unprecedented NSP was created quickly to address the foreclosures crisis. The cities, counties, and states that received the initial NSP1 grants had very little experience conducting NSP-type activities and were experiencing a crisis of unknown proportions. One of the challenges of the NSP program has been the scale of the

mismatch between the size of the foreclosure problem and the level of program funding available.

Treuhft et al. summarize the acts:

**NSP1, created by the Housing and Economic Recovery Act (HERA) of 2008**, provided \$3.9 billion in grants to 309 localities based on a formula that considered the extent of the foreclosure problem in the area. As an economic stimulus program and an emergency fund to address the problems associated with foreclosures, NSP1 required funds to be obligated within 18 months on “shovel ready” projects.

**NSP2, authorized under the American Reinvestment and Recovery Act (ARRA) of 2009**, provided an additional \$1.92 billion, as well as \$50 million for an NSP technical assistance program (NSP-TA). Unlike NSP1, which allocated funding based on a needs assessment, NSP2 granted funds to states, local governments, nonprofits, and consortia via competition. The 56 winners included 33 regional consortia and four national consortia.

**NSP3, authorized by the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010**, provided an additional \$1 billion in funding, to be distributed by formula to 270 state and local governments (similar to NSP1).

NSP funds can be used for five types of activities (Treuhft et al. 2012):

- 1) Providing low- and moderate-income homebuyers with financial incentives to purchase and re-develop foreclosed homes.
- 2) Acquiring and rehabilitating foreclosed homes and buildings for sale, rent, or redevelopment.
- 3) Establishing a land bank to assemble, maintain, and dispose of vacant land for the purpose of stabilizing neighborhoods.
- 4) Demolishing foreclosed, blighted properties.
- 5) Redeveloping demolished or vacant properties.

## **Policy Recommendations**

Treuhft et al. (2010) suggest the following policy recommendations for NSP programs:

**Continue to build local capacity to take control of distressed properties through land banks and other acquisition mechanisms**

**Strengthen code enforcement and regulatory approaches to prevent irresponsible investor ownership from leading to neighborhood decline.** Communities need to use their existing tools, including code enforcement, vacant-property regulations, and rental property regulations, ensure that foreclosed properties are well-maintained and do not further destabilize neighborhoods.

**Improve data systems and the capacity of local governments and housing organizations to use data to respond to housing market changes.**

**Ensure fair access to safe credit.** Reforms to the housing finance system need to end the dual credit market that has historically hindered homeownership among communities of color

**Expand sustainable homeownership opportunities** Reducing the racial gap in homeownership will require a base of renters prepared to take on the financial weight of ownership. One proposal is to expand permanently affordable (or shared equity) homeownership as a third form of tenure that is between renting and owning.

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, Huevo, 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, often use 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. Some do not always operate as a democratic cooperative, and some are too small to offer full financial services, however most credit unions do operate democratically and provide many financial services (Gordon Nembhard 2010). 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-fourty 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.<sup>iii</sup> 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. During this recession, many credit unions have remained capitalized and continue to provide stable mortgages (Gordon Nembhard 2010).

The foreclosure crisis requires a variety of strategies to address the problem and stop the proliferation of foreclosures. Solutions all revolve around principles to aid responsible homeowners and to keep home ownership a viable asset building strategy:

- establish a federal moratorium on foreclosures, and revise future foreclosure procedures to make it more difficult for mortgage lenders to foreclose (existing law is not enough here);
- provide stronger financial regulations of banks and mortgage institutions, and make predatory and subprime lending (and usurious interest rates) illegal;
- expand access to safe credit and to affordable housing;
- establish more, and provide more resources for, community-based financial institutions;
- and
- modify bankruptcy laws.

## **Appendix: Foreclosure Laws – Four States**

### **Alabama State Law:**

The Alabama state code that govern the foreclosures law is contained in Alabama Code (1975) Foreclosure sales are covered in Title 35 (Property) Articles 1, 1A, 2, 3 §35-10-1 et. seq. (Powers Contained in Mortgages, Foreclosure by Power of Sale).

#### Section 35-10-1

Power of sale constitutes part of security; by whom executed; effect of conveyance; index of foreclosure deeds.

Where a power to sell lands is given to the grantee in any mortgage, or other conveyance intended to secure the payment of money, the power is part of the security, and may be executed by any person, or the personal representative of any person who, by assignment or otherwise, becomes entitled to the money thus secured; and a conveyance of the lands sold under such power of sale to the purchaser at the sale, executed by the mortgagee, any assignee or other person entitled to the money thus secured, his agent or attorney, or the auctioneer making the sale, vests the legal title thereto in such purchaser. Probate judges shall index foreclosure deeds by the names of the original grantor and grantee in the mortgage, and also by the names of the grantor and grantee in the foreclosure deeds.

(Code 1852, §1319; Code 1967, §1589; Code 1876, §2198; Code 1886, §1844; Code 1896, §1040; Code 1907, §4896; Code 1923, §9010; Code 1940, T. 47, §164.)

### **Louisiana State Law:**

The Louisiana state code that govern the foreclosure laws is contained in Louisiana Revised Statute Chapter 6 §334.

#### Foreclosure of mortgage

In the event of foreclosure by executory process of a mortgage on either movable or immovable property in favor of a supervised financial organization, the certificate of any officer thereof, under the seal of the supervised financial organization, certifying as to the amount due on the mortgage, the interest rate as applicable, and the maturity thereof by reason of the failure of the mortgagor, his assigns, or successors to comply with the obligations imposed on him by the act of the mortgage is authentic evidence of the facts recited in the certificate.

Acts 1984, No. 719, §1, eff. Jan. 1, 1985.

#### §926. Foreclosure of mortgage

In the event of foreclosure by executory process of a mortgage, on either movable or immovable property, in favor of an association, the certificate of any officer of the association, certifying as to the

amount due on the mortgage and the maturity thereof by reason of the failure of the mortgagor, his assigns, or successors, to comply with the obligations imposed by the act of mortgage, the bylaws, or the savings contract is authentic evidence of the facts recited in the certificate.

Acts 1970, No. 234, §1. Acts 1983, No. 675, §1.

### **Florida State Law:**

The Florida state code that governs the foreclosure laws is contained in 2011 Florida Statutes Title XL Real and Personal Property; Chapter 702: Foreclosure of Mortgages and Statutory Liens.

Content:

#### CHAPTER 702

#### FORECLOSURE OF MORTGAGES AND STATUTORY LIENS

702.01 Equity.

702.03 Certain foreclosures validated.

702.035 Legal notice concerning foreclosure proceedings.

702.04 Mortgaged lands in different counties.

702.05 Mortgaged lands sold for taxes.

702.06 Deficiency decree; common-law suit to recover deficiency.

702.065 Final judgment in uncontested proceedings where deficiency judgment waived; attorney's fees when default judgment entered.

702.07 Power of courts and judges to set aside foreclosure decrees at any time before sale.

702.08 Effect of setting aside foreclosure decree.

702.09 Definitions.

702.10 Order to show cause; entry of final judgment of foreclosure; payment during foreclosure.

702.01 Equity.— All mortgages shall be foreclosed in equity. In a mortgage foreclosure action, the court shall sever for separate trial all counterclaims against the foreclosing mortgagee. The foreclosure claim shall, if tried, be tried to the court without a jury.

History.—RS 1987; GS 2501; RGS 3844; CGL 5747; s. 7, ch. 22858, 1945; s. 2, ch. 87-217.

702.03 Certain foreclosures validated.—All mortgage foreclosures heretofore made, or now pending, wherein there has been annexed to the bill of complaint in such cause, an uncertified copy of the mortgage, as provided by chapter 12095, Acts of 1927, entitled: "An act to amend section 3845 RGS relating to complaint in foreclosure of mortgages" are hereby validated and confirmed insofar as they

relate to the copy of the mortgage attached to such complaint, to the same extent and effect as if section 3117, RGS, had been expressly repealed by chapter 12095, 1927, entitled: "An act to amend section 3845 RGS relating to complaint in foreclosure of mortgages."

History.—s. 1, ch. 13642, 1929; CGL 1936 Supp. 5748(1).

### **Mississippi State Law:**

The Mississippi state code that govern the foreclosure laws is contained in Mississippi Code of 1972, Title 89: Real and Personal Property

#### CHAPTER 1: LAND AND CONVEYANCES

##### IN GENERAL

Miss. Code Ann. § 89-1-53 (2012)

§ 89-1-53. Mortgages and deeds of trust on land; to be referred to in deed of conveyance under foreclosure proceedings

If there shall be a foreclosure and sale under any such mortgage or deed of trust on land, the deed of conveyance made to a purchaser pursuant to a sale there under shall recite the names of all parties to and the date of such mortgage or deed of trust, and also the book and page of the record thereof, and if made by a substituted trustee shall also recite the book and page of the record of his substitution and appointment; but the omission of such recitations shall not invalidate the deed of conveyance.

HISTORY: SOURCES: Codes, 1906, § 2811; Hemingway's 1917, § 2312; 1930, § 2162; 1942, § 883.

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## Notes:

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<sup>i</sup> Studies vary in their findings of exact number of acres owned by African Americans in the 20<sup>th</sup> and 21<sup>st</sup> centuries. Gilbert, Wood and Sharp 2002 estimated slightly higher acreage in the early 1900s and slightly more Black-owned land in the early 21<sup>st</sup> 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.

<sup>ii</sup> Also see the source: Civil Rights Action Team (Feb., 1997).

<sup>iii</sup> They produce reports which provide some evidence of this.