NEW YORK STATE FORECLOSURE DEFENSE BAR

WHITE PAPER ON THE ISSUES CONCERNING THE ONGOING FORECLOSURE CRISIS, GENTRIFICATION AND THE RESULTING HIGH RATES OF EVICTION IN COMMUNITIES OF COLOR

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A report for press and 2016 Presidential and Local Candidates' discussion. NYSFDB: $10 billion in property value will be taken from communities of color within the next three to five years

Foreclosure and Gentrification Disrupt the Economy, Displace Tens of Thousands in Communities of Color in New York City, Across New York State and the Country

America is in the midst of one of the largest periods of loss and transference of middle class wealth in the history of this country. The implications are far reaching for America, and in particular African-American families and communities in Brooklyn, New York. For families and individuals of color nationwide, including Latino-Americans and immigrant communities, the loss of wealth is devastating. These communities are left holding the bag, getting the blame, and living with the shame resulting from Wall Street's bad mortgage practices.

Neighborhoods of color, once redlined and labeled undesirable for white people, are now sought after. The fervor to gentrify has pushed the cost of homes and apartments out of reach for those who have long lived in neighborhoods targeted for gentrification. Residents in communities of color historically and continuously experience predatory lending, job loss, and racial prejudice from the financial industry as part of everyday life.

Today, these residents are being preyed upon, on a daily basis, by influential developers, hedge fund partners and cash-rich private investors with unsolicited calls to sign over their deeds, becoming victims of foreclosure rescue scams and eviction schemes. African-American and Latino-American families from Brooklyn communities are experiencing some of the highest eviction and homelessness rates in New York City since the Great Depression.

The issue is directly tied into the issues surrounding affordable housing, since in some cases, grabbing the land allows for the building of luxury condos or other expensive housing. Current government policy discussions in affordable housing do not address the problem created by the land grab for median-income families in communities like East New York, Brooklyn. Prior owners of two- to four-family homes, who do not charge the high rents that developers and large property owners do, are losing their properties to foreclosure, and their tenants are losing affordable rental apartments.

The profile of the average homeowner victimized in today's foreclosure crisis is not a deadbeat, irresponsible and uneducated individual, or someone who cannot afford a mortgage. **Instead, the faces of foreclosure are in reality hard-working, middle-class individuals and families, who were deceived by all players in the mortgage marketplace, starting with the local mortgage lending partners of Wall Street that promoted and sold the predatory mortgage products created by the Wall Street investment banks**. This is coupled with the fact that homeowners were unable to make mortgage payments and avoid foreclosures once unemployment rose from 2008, and refinancing opportunities disappeared as the financial and credit markets collapsed.

The years leading up to the Great Recession of 2008 were disastrous for middle class Americans. Since then, a dubious transference of homeownership and wealth from families of color to hedge funds and other cash rich investors began and continues at an astoundingly rapid pace, while Goldman Sachs, JPMorgan Chase, Bank of America and

other big banks are afforded slap-on-the risk settlements that represent a minuscule in value to what has been taken from communities of color.
The leading driver of this transference of wealth is the entity that the federal government in fact funded to bailout Wall Street firms in late 2008. With billions of billions of dollars of TARP funds handed over by the United States Treasury Department to Fannie Mae to bailout the Wall Street investment banks that structured and sold subprime residential mortgage-backed securities (RMBS), Fannie Mae became the primary owner and decision-maker on the individual home loans of millions of families. From that vantage point, Fannie Mae has been involved in what can be called a theft of the hope, investment and equity of families of color in Brooklyn, New York, if not across America. For these families, instead of approving principal write downs and loan modifications under the federal government's loan modification program, Fannie Mae has been foreclosing on their mortgage loans and building what it proudly describes in its 2012 annual report as a "*Strong New Book of Business*" of single-family homes acquired since 2009.

Coming in second place are laws in many states that allow for the taking of property with ease or for minor defaults. In states like New York – judicial foreclosure states – court administrators appear to be influenced by Fannie Mae and Freddie Mac, and are denying homeowners their rights to due process and preservation of homeownership. An analysis by the New York State Foreclosure Defense Bar ("NYSFDB"), a group of attorneys working with homeowners, has predicted that approximately $10 billion in property value will be taken from communities of color within the next three to five years, with state courts as the main arena for transfer. Homeowners are experiencing the massive transfer as they fight in the courts to save the homes.

In many courtrooms, homeowners experience an environment that has become partial to the financial community. As told by NYSFDB clients, many of the homes being taken are ones purchased with the hard earned savings of their parents or extended family; the homeowners were solicited to refinance during the subprime era; they were supplied closing attorneys by the financial institutions. Many first time borrowers were enticed by the notion of having the American dream come true, trusting or inexperienced at closing tables when signing documents with teaser rates, balloon payments and other dubious caveats or terms, eager to become active, long term participants in the economy.

The Washington Post reported that more black homeowners are underwater compared to other Americans, and offered the following perspective – that there has been a long history inequality:

> *The economic deck has been stacked against African Americans from the start. The vast majority of blacks emerged from slavery with no money. New Deal worker protections, from the Fair Labor Standards Act, which set a minimum wage, to Social Security, initially excluded the many African Americans who then labored as domestic workers and tenant farmers. The Federal Housing Administration's loan policies excluded many of them from the homeownership deals that allowed many whites to move to the suburbs, helping them create wealth. Similarly, most African Americans were excluded from the GI Bill benefits that followed World War II. * * * Even as the nation made astounding social progress that led to significant African American educational gains and the*

> *election of thousands of African American political leaders in offices up to the White House, economic progress has mostly lagged. * * * African Americans were able to build some wealth as they moved to suburbs in large numbers beginning in the 1980s. * * * Home equity — it's worth minus home loans — can play an outsized role in the wealth of African Americans because they tend to have fewer other assets*. (The Shattered Foundation", Washington Post, January 24, 2015)

The recent movie, **The Big Short,** highlighted that during the lending period that resulted in the worst recessionary period since the Great Depression, Wall Street bankers and their mortgage lenders began to rely heavily on local brokers to market Wall Street's high risk subprime mortgage products, with neighborhoods and families of color being the prime target. The mortgage market environment allowed for fast and loose financial practices, with little or no oversight for shoddy underwriting practices, the sale of mortgage loans that were based on the volume of transaction, and deceptive loan terms such as low teaser rates that unknowingly adjusted to higher, unaffordable mortgage payments after a short period, all of which resulted in families defaulting and facing loss of their homes once the credit, housing, unemployment and financial crisis–the Great Recession--began in 2008.

The Center for Responsible Lending found and reported…

> *Not only were borrowers of color more likely to receive subprime loans than white borrowers, but within the subprime market, borrowers of color were more likely to receive the most expensive loans and were more likely to receive subprime terms associated with increased default risk, such as prepayment penalties. Previous research has shown that African-American and Latino borrowers were about 30% more likely to receive the highest-cost subprime loans relative to white subprime borrowers with similar risk profiles and that subprime loans in communities of color were more likely to carry prepayment penalties than subprime loans in majority communities.* (June 18, 2010 report on Foreclosure by Race & Ethnicity):

In highlighting the issue as it pertains to race and ethnicity the Center goes on to say:

> *The foreclosure crisis has disproportionately affected African-*American *and Latino borrowers, who are 76% and 71% more likely, respectively, to have lost their home to foreclosure than non-Hispanic white borrowers. Even if foreclosures represented nothing more than a one-time cost only to the families involved, these findings would be troubling. But the costs are extensive, multifaceted and long-term, extending far beyond individual families to their neighbors, communities, cities and states. As the foreclosure crisis threatens the financial stability and mobility of families across the country, it will be particularly devastating to African-American and Latino families, who already lag their white counterparts in terms of income, wealth and educational attainment.*

Today, surprisingly, federal agencies (HUD and FHFA), that are supposed to encourage homeownership and have the interest of homeowners in mind have actually acted in conjunction with hedge funds, private equity firms and cash-rich investors to divest families of color of homeownership and place in their communities.

The Center for Popular Democracy disclosed disturbing results from its investigation:

> *Major government and government-backed entities are fueling Wall* Street's *increased control or ownership of single-family homes. Both the Department of Housing and Urban Development (HUD) and the Federal Housing Finance Agency (FHFA), which oversees Fannie Mae and Freddie Mac, are auctioning off, often at a discount, tens of thousands of Non-Performing Loans that they want to get off their books. The vast majority of these loans have gone to hedge funds and private equity firms, and in many cases the properties then end up in their hands.* ***Although Fannie Mae and Freddie Mac have been unwilling to offer principal reduction to struggling homeowners, they often offer steep discounts when they sell these mortgages to Wall Street speculators***. (June 2015 report entitled "Do Hedge Funds Make Good Neighbors – How Fannie Mae, Freddie Mac & HUD are Selling Off our Neighborhoods to Wall Street.)

By auctioning off home loans in large volumes and at discounted prices to Wall Street private-equity or other hedge fund investors, HUD, Fannie, and Freddie have become the driving force in not only setting back and depriving African American families of their homes and wealth, but transferring communities and homeownership from working families of color. The Center for Popular Democracy's report goes on to sound an alarm for local communities, under "The Government Fire Sale of Delinquent Mortgages to Wall Street Speculators and its Impact on Homeowners:

> *Now, major bidders from HUD's program are also showing up in the Fannie Mae/Freddie Mac purchaser lists. Since introducing similar programs in the past year, Fannie Mae and Freddie Mac have moved much more quickly than HUD. In May, Fannie Mae announced the sale of 3,200 loans with $786 million in unpaid principal balance (UPB), all of which were awarded to One William Street Capital, a hedge funded started by former Lehman Brothers mortgage securities executives. Freddie Mac sold off over 7,000 delinquent mortgages worth over $1 billion through three sales, beginning in the summer of 2014. The first sale was an undisclosed number of loans with $659 million in UPB, which went to investment firm Oak Hill Advisers. The second sale, for nearly 2,000 loans with $392 million UPB went to Pretium Mortgage Credit Partners and Bayview Acquisition, which is affiliated with the Blackstone Group. The third and largest sale so far, for nearly 5,400 loans, went to an affiliate of private equity firm Angelo Gordon. In contrast, HUD's first year of single family loan sales covered only 410 home loans, with $98 million worth of UPB.*

The foreclosure crisis destabilized the American economy. It has helped increase the wealth of the 1 percent and foreign investors. Now the private loan sales by Fannie Mae, Freddie Mac and HUD are on target to destabilize local communities of color especially.

The HAMP program enacted in 2009 to assist homeowners in refinancing and coming to agreements to save their property with the lenders has been abysmal with less than 30% of homeowners, nationwide, receiving modifications. Housing counselors, working for organizations with a history of helping homeowners, report thousands of cases where lenders claimed not to receive applications and supporting documents sent numerous times.

To save the fabric of American life and to preserve the dreams and hopes of Americans, including citizens of color, NYSFDB is calling for a moratorium on foreclosures; for an investigation by the New York State Attorney General into Fannie Mae & Freddie Mac's meetings with New York court administrators state wide; and for legislation that further ensures that New York State courts apply the due process protections and laws in place to prevent equity theft and loss of homeownership; laws enacted by the New York State Legislature from 2007 to 2009 as a direct result of the high volume of subprime lending that occurred in New York State prior to 2007.

An analysis of the way out that keeps homeowners and working families in their homes is in the interests of all who care about the economy. As Yolande Nicholson, Esq., president of the New York State Foreclosure Defense Bar has stated, "Financial players in the foreclosure market, especially Fannie and Freddie, must be mandated by federal law to review modification applications in good faith and approve modifications to eligible borrowers in a timely manner. In this way, the spirit of state laws enacted across the country can be fairly applied to save homeownership."

Presidential and local candidates interested in addressing the economic issues confronted by the middle class, working families and people of color, and identifying a path to true economic recovery should be discussing solutions to the ongoing foreclosure crisis, and the related crisis facing communities of color: that is, loss of black wealth as a direct result of the practices and policies of Fannie Mae, Freddie Mac, and their new Wall Street partners.

For more information please contact – Celeste Morris at 212.563.5555 or the New York State Foreclosure Defense Bar at info@nysfdb.org

NYSFDB aims to ensure that New York State property owners are afforded the protections provided by the intent, letter and spirit of federal law, the Constitution, statutes and common law of New York State