

The Perfect Storm: An Eyewitness Report from Ground Zero in Cleveland's Neighborhoods

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A series of manmade forces—loose credit, Wall Street greed and outright fraud—collided with our employment woes and chronic poverty to form the economic equivalent of the perfect storm.¹

This is an eyewitness report from an attorney working with Cleveland neighborhood development corporations, including one in the Slavic Village neighborhood, a place sometimes identified as ground zero in the mortgage disaster. The Urban Development Law Clinic at Cleveland State University, where I am a clinical professor, is legal counsel to the Slavic Village Development Corporation and other Cleveland nonprofit development corporations. We see firsthand at the ground level the devastation of property, lives, and neighborhoods that is being inflicted by a mortgage finance system run amok in inner-city neighborhoods. Observers have compared the man-made devastation in Cleveland neighborhoods to conditions in New Orleans after Katrina.² We are starting to call it “Hurricane Wall Street,” and it has not finished wreaking havoc in our neighborhoods.

Cleveland’s inner-city neighborhoods were built up mostly during and after World War I. Much of the housing stock was built for working-class families who earned their livelihood in mills and factories and by working blue-collar jobs connected with the industrial engine that made the city one of the nation’s largest by midcentury. After the city’s population peaked in the 1950s,

suburbanization began to siphon away the most prosperous families. Then, the relocation and loss of much of the city's manufacturing employment in the 1980s and 1990s further depopulated and weakened the housing market in these neighborhoods. Currently, Cleveland's population is half of the 1950 high of 914,818. It is now less than it was 100 years ago—and is still dropping.³

The movement of population and manufacturing from the city to outer-ring suburbs or out of state over the past several decades has become the critical problem facing most Cleveland neighborhoods and the region.⁴ Cleveland's oldest neighborhoods are now comprised mostly of obsolete houses that are costly to maintain. Rehabilitation of these houses has been a central feature of Cleveland's community development strategy. The successes of that strategy are now being threatened by a decade of reckless mortgage lending, rising foreclosure numbers, and abandonment.

This report describes in the first section the impact of mortgage failures in Cleveland neighborhoods. The second section reports on the responses by nonprofit development corporations and local government. The third section identifies some of the programs and public policies being developed or considered to improve the responses and prepare for rebuilding neighborhoods.

I. Mortgage Failure Problem⁵

When subprime mortgage lending pushed by mortgage sales agents began replacing conventional lending by neighborhood banks and thrift institutions, the easy credit enabled thousands of improper and fraudulent financing transactions to occur.⁶ Unscrupulous mortgage originators targeted the vulnerable inner-city neighborhoods, flooding such areas with high-risk loans, many of which were predatory and fraudulent. By 1999, responsible nonprofit community developers were feeling the hurt when flippers, who applied cheap cosmetic repairs to distressed

houses, marketed their so-called rehabs for the same price as houses completely rehabbed with quality workmanship and materials. The blight resulting from unscrupulous flipping and financing by get-rich-quick schemers began to drive away the stable tenants and homeowners in neighborhoods being revitalized by nonprofit community developers.⁷

By 2000, Cleveland neighborhood community developers, their funding sources, and some city officials were becoming aware that predatory and fraudulent home financing was undermining their neighborhood revitalization programs. The lack of transparency and accountability in the documentation and reporting of real estate transactions obscured the full extent of the damage being inflicted on the local housing market. Neighborhood development and community civic groups made pleas for help with the disaster unfolding in Cleveland's racially diverse neighborhoods. Their pleas were not taken seriously by most public officials and were resolutely rejected by the organized banking and lending industry and its lobbyists.

The wake-up call from inner-city neighborhoods was not widely heard until 2005 when the rising volume of foreclosures choked the court of common pleas, a situation that finally attracted the attention of suburban politicians and the national press.⁸ The dramatic increase in foreclosures from 2003 brought attention to the destructive effect that subprime lending was having in urban neighborhoods, not only in Cleveland, but also in other cities and suburbs.⁹

The scrutiny of the foreclosure phenomenon is revealing more about the nature and extent of predatory and fraudulent mortgaging in weak-market neighborhoods. Initially, attention focused on the plight of homeowners in trouble because of personal misfortune such as illness, job loss, and divorce—situations that have historically accounted for many foreclosures. Now we see homeowners and inexperienced investors overwhelmed with debt because they were swindled by predatory loans or ill-informed about home financing. Stories are circulating at the neighborhood level of homeowners who refinanced for as much or more than the value of their home, used the

proceeds to buy a better house in the suburbs, and then defaulted on the mortgage on the older house in the city. The foreclosure docket at the common pleas court reveals instances of a single owner or entity listed as the primary defendant in multiple foreclosures in the same year. Closer examination suggests that hundreds of these foreclosure defendants took out subprime loans within a year or two for as much or more than the sale price of the house then in default. Our clinic's involvement with several hundred properties in seven inner-city neighborhoods over the past four years reveals a widespread pattern of greed-driven speculation and naive investment in substandard, even condemned, housing for prices above value by borrowers who made no or few payments.

It may take three or four years after a foreclosure action is filed before the property is sold, by which time the cost of rehabilitating the now-dilapidated house exceeds the price it would bring in a legitimate sale.¹⁰ We notice that lenders are more frequently the purchasers of foreclosed properties at sheriff's sales and that their inventory of dilapidated houses for sale is astoundingly high. The least marketable houses in their inventory are sold in bulk to what might be described as realty scrap dealers, which sell at live auctions or on eBay or other Internet auctions.¹¹ We notice also that lien holders are walking away from their foreclosure cases before a sale when the property is not valuable. Sometimes the lien holders do not even initiate foreclosure on worthless property, especially if the house has been demolished.

Abandonment of mortgage liens results in a title that is toxic, meaning that the title is not marketable except by litigation and a judicial sale at public expense. Further, the expense of cleaning titles can exceed the actual value of a property in blighted condition.

In Ohio, these toxic titles remain in the names of owners who sometimes believe their ownership was terminated in bankruptcy or foreclosure. These owners are, however, still owners of record and legally responsible for the condition of the property. They are subject to criminal

sanctions for failing to comply with housing codes and nuisance abatement orders. They often attempt to give the property away; but, of course, anyone receiving the property is responsible not only for abating the violations but also for the mortgage lien. Subprime lenders and debt collectors holding thousands of worthless liens are rarely willing and often unable to deal in short sales of individual liens to clear these toxic titles. These properties are truly orphaned. Owners and lien holders are unable or unwilling to spend what it takes to make the property marketable and usable. The public collector of property taxes is the last resort for clearing the title. Tax foreclosure results either in a sheriff's sale for taxes, which may exceed the land value, or in forfeiture to the state for sale to the highest bidder.¹²

In Cleveland, then, this perfect storm wreaking destruction on the city and inner-ring suburbs consists of a surge of unscrupulous and sometimes illegal mortgage lending in an already weakened housing and real estate market. The effect of this financing disaster is not only the loss of dwellings irresponsibly financed but also the loss of the use and value of neighboring property. The destructive impact on houses subjected to flipping and pernicious financing is not specifically measurable at the present time, nor is the more devastating secondary loss in the value, both financial and civic, of the affected neighborhoods. But it is a multibillion dollar injury in metropolitan Cleveland, and it will take more than a single generation to recover from it.

II. Responses

A. Community Development Corporations (CDCs)

It is widely recognized in the community development field that Cleveland is distinguished from other cities by the number and the accomplishments of high-performing neighborhood-based

nonprofit CDCs. These CDCs have been the leading edge of housing rehabilitation and community development in the city for three decades. By the mid 1990s, some of them were engaged in multimillion dollar housing and multiuse developments with the support and partnership of an array of public and private funders. Like canaries in the mines, they began to experience the poisonous effects of predatory and subprime home financing in the late 1990s. (It was not understood then the way it is now, but their antennae on the streets of their neighborhoods were picking up signs of suspicious activity: speculative purchases and sales of blighted houses that were not fully rehabbed, fly-by-night repair or rehab work, increases in absentee and neglectful ownership, inaction on code violation citations, and transfers of title to people associated with each other in business for increased prices without any improvements made.)

In 1999, the Urban Development Law Clinic represented the Slavic Village Development Corporation in a civil nuisance abatement suit against a bankrupt flipper who bought distressed properties, sucked out the equity with mortgages higher than sale prices, and then abandoned the dwellings.¹³ Under oath in court, this owner testified that TV infomercials motivated him to make money fast in real estate, that he was persuaded by real estate agents and his mortgage broker to buy and finance properties relying only on their recommendations, that he took cash away from each closing, and that he did not know how to manage the property he purchased. The experience of this litigation and the concurrent foreclosures brought by lien purchasers over the next three years was an education for the clinic and its CDC clients. This case, along with a few similar cases filed at that time, demonstrated that something very rotten was going on in the housing market and that it was threatening the housing and community development investments of CDCs in Cleveland.

B. *Cleveland at the Crossroads*

In 2004, Neighborhood Progress, Inc. (NPI) was investing substantial resources in its Strategic Investment Initiative.¹⁴ This program invests special technical and financial assistance in six of NPI's most capable affiliates, each of which was engaged in an anchor development project designed to have market appeal beyond the immediate neighborhood. This strategy recognizes the reality that neighborhood recovery is not possible in all needy neighborhoods at the same time or in the same way and that the limited resources available need to be deployed strategically with attention to what the market for housing and community amenities was ready to absorb.

Part of the Strategic Investment Initiative program is an effort not only to acquire land needed for the anchor projects but also to deal with blighted vacant and abandoned property immediately surrounding the anchor projects in order to protect the marketability of the multimillion dollar investments in those major developments. Frank Ford, an NPI vice president, was assigned to lead what is called the Land Assembly Project, and he engaged the Urban Development Law Clinic at Cleveland State University to provide legal assistance to the project.¹⁵

At that same time, the National Vacant Properties Campaign was emerging as the lead national organization in focusing both attention and constructive information on the vacant property problem around the country. NPI was the first client to commission the Campaign to perform a local assessment of the vacant property problem and suggest what could be done to deal with it. The Cleveland assessment began in 2004 and was released in June 2005 under the title *Cleveland at the Crossroads: Turning Abandonment into Opportunity* (Crossroads report).¹⁶

The Crossroads report noted that although the increase in vacancy and abandonment of houses was observable in most neighborhoods, the data that would reveal with precision what was happening—as well as how and where—was not available. The assessment reported a lack of

connection among the various data systems in city departments and county agencies that keep public records. It further reported that the fragmentation of functions and efforts in the array of public agencies and private entities dealing with various aspects of the abandonment problem resulted in unnecessary competition and confusion of efforts. On the other hand, the assessment pointed to existing capabilities and programs that were effective and needed to be expanded.

Along with NPI, the City of Cleveland and some county agencies embraced the assessment and committed to immediate action.

C. Tax Foreclosure Reform

Property tax collection for all property taxes is done in Ohio by county treasurers. Property tax foreclosures have been a critical tool for putting abandoned tax-dead property (i.e., property on which tax liens are not collectible) back into productive use, but tax foreclosure is not designed for that purpose; rather, property tax foreclosure is intended to produce tax revenue from property owners. The statutory procedures for tax foreclosure are very deliberate. Property tax collection starts slowly after more than a year of nonpayment, another year of delinquency, multiple notices, opportunities for repayment plans, and other delays. Foreclosure does not start until the tax delinquency is published and certified. Unless halted by payment of the tax delinquency, the process often takes years to complete.¹⁷

In 2006, the Ohio legislature adopted a tax foreclosure reform championed by Cuyahoga County Treasurer Jim Rokakis, which provides for a summary proceeding when the tax-delinquent property is not occupied and no one responds to the foreclosure summons and complaint.¹⁸ The default hearing essentially confirms that the property is tax-dead, that all parties who should receive notice did in fact receive notice, and that no one will redeem the property. The property can then

be sold at a sheriff's sale for the amount of taxes owed. If the property is worth less than the taxes owed, it can be deeded by decree without a sheriff's sale to a city willing to take it. In its first full year of implementation, this new procedure significantly increased the flow of orphaned tax-dead vacant lots to municipal control. No single procedure is currently more useful than tax foreclosure to put abandoned properties under municipal control and clear toxic titles.

D. Suburban Demand for Mortgage Foreclosure Reform

Just as the National Vacant Properties Campaign assessment was being completed and released in the spring of 2005, suburban mayors were discovering the sudden increase in foreclosures in their neighborhoods and the amount of time that houses in foreclosure remained empty. The volume of foreclosure cases in the Cuyahoga County Court had quadrupled between 1995 and 2005, resulting in a logjam at the courthouse. Normal cases took more than two years to complete, and a significant number were pending for four or five years. With the encouragement of attorneys who represent plaintiffs in foreclosure litigation, the suburban mayors descended on the county commissioners with a very public demand for reform to speed up foreclosure proceedings. Although county commissioners have no direct involvement or responsibility for foreclosures, they are perceived as the leading elected officials in the county; they oversee the budgets of all other county officials; and, very conveniently, they hold weekly public meetings. Pressure from their political allies in the suburbs drew immediate action.

Advocates for victims of predatory lending and homeowners in foreclosure also took part in the public demand for foreclosure reform. Their petition, however, was for slower foreclosure proceedings to give homeowners an opportunity to redeem their mortgages or to assert defenses to the foreclosure claims by lenders. Foreclosure prevention advocates formed a coalition and pressed

their demand for fairer foreclosure proceedings along with a new foreclosure prevention program under local government auspices to ensure its legitimacy and distinguish it from the scourge of fraudulent foreclosure rescue scams on the scene.

Faced with demands for both faster and fairer foreclosure proceedings, the county commissioners persuaded all the elected county officials who played a role in the foreclosure and judicial sales process to undertake a major assessment of their ability and need for reform and to report back three months before the completion of the annual budget for 2006.¹⁹ There were results. With unparalleled cooperation, the various county offices produced a set of procedural and policy improvements—along with budget increases, of course—to reduce the time between the filing of a foreclosure case and issuance of a sheriff’s deed to a new owner. Simultaneously, the county treasurer took the lead in establishing a major mortgage foreclosure prevention program based in his office and led by his staff.

Three years later, the number of foreclosure cases filed is still increasing, but the number of cases completed each year has also increased. Procedures for managing cases involving vacant houses have been streamlined, and those cases can be put on a fast track for default hearings if a municipality informs the court that the property is vacant and blighted. Suburban officials are still frustrated with the increased volume of homes in foreclosure and the increased number for sale by distant financial institutions that often cannot be held accountable for the condition of their blighted property. Homeowner advocates and foreclosure opponents are still pressing for more reform and more protection for those who are in disputes with mortgage servicers and are threatened with the loss of their homes.

E. City of Cleveland's response

By the summer of 2000, it was apparent to neighborhood leaders and city officials in Cleveland that abusive sales and financing schemes were resulting in the loss of dwellings and were interfering with the community development efforts of the city and its nonprofit development partners. In response, the mayor appointed a task force of officials and housing experts to assess the problem of flipping and to propose remedies.²⁰ The Flipping Task Force, headed by Linda Warren, Cleveland's director of community development at the time, found it could not get sufficient data out of the disparate depositories of public records to prosecute what appeared to be fraudulent practices. The task force also learned that the array of county public offices that dealt with titles, transfers, taxes, lien records, foreclosures, and sheriff's sales did not connect with each other in a systematic way, nor did they connect with the city's Building and Housing Department, Community Development Department, and Housing Court. Moreover, policies and procedures in the county's agencies are tightly controlled by state statutes, and even minor changes required state legislation. In addition, the task force discovered, the city lacked the staff and funds to vigorously enforce its own housing and building codes.

After two years of work, the task force proposed and the city council adopted a Certificate of Disclosure policy, which required disclosure of any open code violations between the buyer and the seller of most residential property. It also provided for disclosure of the identity of all parties participating in the sale.²¹

Housing code enforcement and the operation of the city departments responsible for it were critically scrutinized in the Crossroads report. Deficiencies were cited, and recommendations for improvement were made. Mayor Jane Campbell, then running for reelection, initially embraced the criticism and immediately pledged to improve inspections and enforcement procedures and hired a

former member of the city council to carry out that pledge. After election of a new mayor in November 2005, priority and momentum on this key issue dropped at City Hall while a new administration was installed. In the past two years, however, city officials and neighborhood organizations have collaborated with increasing effectiveness on the inspection and citation of dilapidated abandoned properties.

In 2007, the city's demolition budget was tripled, and the number of demolitions came close to 800, quadruple the number for any prior year. But code enforcement in Cleveland, as in most older cities, remains a very challenging problem. As a system, housing code enforcement is generally more effective in regulating new development and new construction than in preventing or abating nuisance conditions in older housing stock. However, the municipal system for protecting neighborhoods from nuisance conditions is the first line of defense against the spread of blight in a weak housing market. Without effective code enforcement, especially in low-income neighborhoods with older structures, blight will surely overtake rehabilitation and restoration.

The strongest single institution in the Cleveland code enforcement system is the Housing Court.²² As one of three statutory housing or environmental courts in the state of Ohio, the Cleveland Housing Court has a history of demonstrating how a special purpose court with full jurisdiction over housing, building, and zoning matters can simultaneously protect the public health, safety, and welfare on the one hand and extract compliance from responsible parties on the other.

The current Housing Court judge, Raymond L. Pianka, has been on the bench since 1996. Before becoming the Housing Court judge, he initiated and directed one of the city's strongest neighborhood development corporations and served on the Cleveland City Council for twelve years. Telltale signs of abuses in home sales and financing appeared in his courtroom soon after his tenure began. He was among the very first to express alarm about the damage being inflicted by

those practices. He has initiated a number of case management and sentencing procedures designed to help homeowners whose personal residence is a problem and to hold those using real estate to make money responsible for allowing their investment to harm others. His treatment of financial institutions that hold blighted property and that refuse to comply with laws protecting public health, safety, and welfare have made national headlines.²³

Although a court can act only on what is brought to it, the Cleveland Housing Court demonstrates that a special purpose court with sufficient jurisdiction, judicial powers, and leadership is one of the most effective tools against housing abuse and abandonment.

F. Coordination of Initiatives

The Crossroads report made observations about fragmentation of efforts and poor communication among institutions and organizations whose functions were critical in preventing or mitigating the harm of abandoned property. This report resulted in an array of responses.

For example, NPI convened a coordinating council of major governmental and nonprofit stakeholders that operated programs and projects dealing with blighted and orphaned housing. Individuals from Cleveland City Council, the city administration and its key departments, the Housing Court, the First Suburbs Consortium, and the trade association of neighborhood development corporations, as well as two county officials, answered the call from NPI to coordinate the actions, programs, and funding of the array of initiatives aimed at abandoned property.²⁴ Although its profile remains low, the Vacant Abandoned Property Action Council, as it decided to call itself, has facilitated a higher degree of cooperation and coordination of efforts by public and private entities that are responsible for most of the programs dealing with vacant and abandoned properties.

On a statewide level, a new initiative emerged as a result of the Crossroads report, which noted that state legislation would be critical in dealing more effectively with vacant and abandoned property in Cleveland. In the fall of 2005, a statewide forum on vacant and abandoned property was convened in Columbus, and an astounding turnout from all parts of Ohio prompted the conveners to form a statewide coalition called ReBuild Ohio. It coordinates the exchange of information about the abandoned property issue generally, commissions studies, identifies public policy objectives, and champions legislation and other public actions to support the effort to rebuild those places (urban, suburban, and rural) destroyed by population dislocation, economic loss, and mortgage disasters.

In February 2008, ReBuild Ohio issued a study describing the costs that abandoned property inflicts on municipalities.²⁵ The study demonstrates from sampling six towns and small cities, along with six big-city neighborhoods, that the direct and indirect costs borne by Ohio taxpayers is shockingly high, although arriving at an exact final figure is probably impossible. It also shows that all types and sizes of communities are seriously affected. ReBuild Ohio's role now is to inform about and advocate for public policies that help local governments and nonprofit developers, as well as others, to cope more effectively with the results of the mortgage disaster in the state.

G. Strategic Blight Clearance and Land Assembly

Long before the Crossroads report was released, NPI initiated its Land Assembly Project to bolster the six neighborhood Strategic Investment Initiatives described above. The NPI team expanded its activities to include workshops to explain sources and techniques for researching and tracking properties in distress. Especially important is the public-access NEO CANDO, the parcel-based data source assembled and available on the Internet by the Center on Urban Poverty and

Community Development at Case Western Reserve University.²⁶ The development of this database of records from various public sources is a major benefit for research, investigation, and reporting of real property information. Used for identifying where and how to deploy program resources for a variety of public and private agencies, the database is also issuing its own studies that illuminate housing, demographic, and economic matters with data and maps. It is an indispensable tool and will be more indispensable as it acquires more of the available data.

The Land Assembly Project investigates specific vacant abandoned properties and at-risk streets in neighborhoods with development initiatives of strategic importance beyond the immediate neighborhood. It also assists CDCs in dealing with problem properties as soon and as effectively as possible. It acquires and focuses financial resources for blight removal and acquisition in a disciplined way and provides legal resources when litigation of nuisance property is necessary.²⁷ Its work at the ground level gives clarity and specific suggestions for government policies and nonprofit programs. The expertise of the NPI Land Assembly Project team is increasingly in demand by other organizations, both nonprofit and governmental.

III. Policies and Programs Needed for Rebuilding

The experience of the Urban Development Law Clinic over the past ten years, working primarily with Cleveland CDCs but also with city and county agencies, has provided students and supervising attorneys with a unique opportunity to consider what needs to be done and what legal tools are needed to rebuild neighborhoods. It would be a mistake to assume that such experience is sufficient to provide all the answers or meet the needs of other urban neighborhoods in other states.²⁸ However, our experience using law and public policy to help our clients highlights critical needs for the immediate future.

A. Improved Public Land Record Systems

There is a critical need for unified and uniform real-time parcel-based digital public records systems. The arcane and fragmented methods now generally employed for making, keeping, and accessing public records related to real property are a confusing and costly hodgepodge that enables an array of abuses and schemes. This fragmentation and lack of design impedes the protection of the public and imperils the property rights of responsible owners.

Gathering complete data on the current condition and legal status of real property is a major challenge. Public records about real property—current and prior ownership, value, taxes owed, liens of record, pending litigation affecting the title, code violations, and occupancy—are kept by a variety of public offices, each with its own data system. The individual elected officials, municipal or county, who control those offices are rarely willing to cooperate with each other or to make public records about real property easily accessible. Not all use computerized systems, and some systems are not Internet-accessible. Exclusive control of public information is generally used for political purposes by the individual officeholder whose job it is to provide it.

The fragmentation, incompatibility, and inaccuracy of data sources make the task of accounting for the condition, ownership, legal status, and legal problems of abandoned or distressed properties time-consuming and costly. Local governments spend huge amounts of time and money to locate and serve notices of code violations, search warrants, demolition notices, nuisance abatement assessments, or legal actions. Matters are made worse when mortgagees hold their liens in the names of nominees and fail to record assignments or transfers of lien ownership, or when those who take title in order to flip the property delay recording deeds until they have secured a buyer with a new mortgage. Securitization of mortgages has made tracking lien holders through the maze of assignees, servicers, trusts, bankruptcy proceedings, debt collectors, and defunct business

entities an expensive nightmare. Considering the vast numbers of abandoned houses and lots where the liens have less value than the cost of the legal process to clear them, this record-keeping chaos is an unconscionable cost to the taxpayers who foot the bill in the end.

It may be necessary for state legislatures to take a look at land record keeping and the costs, both direct and indirect, of the procedures and systems currently being used by local agencies, i.e., deed recorders, tax assessors and collectors, courts, municipal code enforcers, and safety forces, to name the most obvious ones. Looking ahead to the decades of recovery and land reutilization work needed in most Rust Belt states, Ohio and its neighbors will need to provide better access to public land records. Without good information readily accessible, all the work to recover and rebuild will be more difficult, more time-consuming, and more expensive.

B. Code Enforcement

Municipal governments faced with a rising tide of distressed housing and commercial buildings in residential neighborhoods have discovered that their code enforcement system is overwhelmed. In most large cities, existing housing inspection and code enforcement systems are no match for the effects of the mortgage crisis. System redesign, introduction of new technology, and increased resources are needed in virtually every city and inner-ring suburb. Code enforcement systems established in the 1950s and 1960s to manage urban and suburban growth now need to be reconfigured to manage abandonment, neglect, and the reutilization of structures and land. Under such a reconfiguration, municipalities must receive legal authority commensurate with the nature and scope of the housing and land reutilization needs they now face.

Inspection and enforcement, first of all, should be designed to prevent deferring maintenance of structures in use. Some Cleveland suburbs, including Cleveland Heights and Shaker

Heights, are using systematic exterior and point-of-sale interior inspections to protect distressed housing stock from irresponsible marketing. The property rights, use, and value of all owners are protected when code compliance is uniformly and reliably enforced. Compliance can be enhanced when inspection and enforcement are accompanied by assistance programs for owners whose financial capacity or knowledge of home repair is limited. Requiring the repair of defects and problems before they reach an expensive stage produces a higher level of voluntary compliance, while enforcement that only comes after problems are serious and extensive is difficult, expensive, and less successful.

Properties vacant for long periods of time and those abandoned or neglected by owners are bound to become public nuisances. New mechanisms being developed for early identification of such properties will pinpoint those with high-risk mortgages, foreclosure or other court proceedings, absentee ownership, and other indicators of impending distress.²⁹ Some cities are enacting property registration ordinances requiring that owners of chronically vacant property be identified, provide a local contact for service of notices and be accountable for code compliance.

C. Nuisance Abatement

In weak-market neighborhoods where owners and mortgagees are abandoning blighted houses, nuisance abatement falls on the municipal government or nonprofit community developers. Demolition or rehabilitation to protect the health, safety, and welfare of neighborhoods from abandoned houses is a high-cost proposition. Thousands of houses in cities like Cleveland, Buffalo, Detroit, St. Louis, and Pittsburgh, just to name some obvious examples, are costing hundreds of millions of dollars in demolition and other nuisance abatement.³⁰ Recovery of these costs from owners is rare and ordinarily depends on an assessment lien collected along with delinquent

property taxes long after the nuisance abatement expenditure. Because so many of these abandoned properties are also tax-dead, the expense of clearing abandoned houses and their toxic titles is a public cost to taxpayers that is never fully recovered. Legal authority for nuisance abatement by public or public-interest agencies needs to include a mechanism for charging solvent owners with the cost of misuse and neglect of their property. In particular, speculators, irresponsible mortgagees, and foreclosure plaintiffs should bear the cost of their real estate business decisions. Those who engaged in manipulative real estate business practices should not be allowed to pass the external costs of their risky adventures to the public and to the neighbors. This situation will require legislative change and, in some instances, litigation.³¹

D. Land Reutilization Authorities

Interest in the role of land reutilization authorities to recover orphaned and unmarketable land is growing. Professor Frank Alexander of Emory University School of Law recognized at the turn of the century that land banks could be critical to cities struggling with the surge of tax-dead properties. His involvement in the state of Michigan to reform tax foreclosures and develop the Genesee County Land Bank Authority provided a background for his study of key examples of land banks. His very readable *Land Bank Authorities: A Guide for the Creation and Operation of Local Land Banks*³² is an indispensable explanation of land banks and their functions.

Professor Alexander's Guide also introduced the Genesee Land Bank Authority developed and operated by Genesee County Treasurer Dan Kildee.³³ The impressive success of the expansive Genesee Land Bank Authority in Flint, Michigan, is catching the attention of property tax collectors and municipal officials responsible for neighborhood health, safety, and welfare. Its distinctive features—countywide scope, financial self-sufficiency, efficient title-clearing

procedures, protection of owner occupants in tax foreclosure, and land reutilization based on public benefit—potentially make it one of the most important public programs for cleaning up the residue of the mortgage crisis in older urban areas.

In Cuyahoga and other Ohio counties, plans are being made for augmented land banks having authority to work with multiple municipalities to accept tax-delinquent property and acquire other blighted or abandoned property from mortgagees, to assemble and hold substantial numbers of parcels, to prevent abusive speculation in land, to access multiple funding resources for effective operation, and to help municipalities manage redevelopment for the public benefit. Although it remains to be seen if the Genesee model can be refitted to metropolitan regions in other states, at this point the vision of a land reutilization authority able to receive and manage blighted realty and toxic titles is one of the most promising programs in sight.

E. Expedited Tax Foreclosure

As mentioned above, tax foreclosure is the most common procedure presently available for cleaning toxic titles of abandoned property. Most of the land going into land banks comes by way of tax foreclosure proceedings. Although the primary purpose of tax foreclosure is the enforcement of a tax lien, the sale of the property to pay delinquent taxes transfers a clear title to a new owner. Historically, tax foreclosure is a lengthy process of two years or more from the time the taxpayer stops paying until the title is cleared. Moreover, the time can be extended by any one or more legal impediments: pending mortgage foreclosures, probate of the property, bankruptcy, divorce litigation, and missing heirs, just to list the obvious ones. Although tax foreclosure is effective, it is often so slow that tax-dead property sits in a neighborhood for years, lowering the value of

surrounding properties and discouraging the determination of neighboring owners to maintain their properties and pay their taxes.

Property tax foreclosure reform can play a key role in the battle against abandonment and blight. Expedited foreclosure procedures for abandoned properties are proving very useful in both Genesee County, Michigan, and Cuyahoga County, Ohio. The new procedures in both states protect the rights and interests of owners who want to be heard in a more protracted proceeding while handling uncontested cases with a speedier summary process. Further reform of tax foreclosure should look for ways to start the foreclosure process more quickly after tax payment obligations are abandoned by owners.³⁴

An innovative bill pending in the Ohio legislature would authorize certain municipalities to bring a foreclosure action and marshal all liens without the municipality itself holding a lien.³⁵ This procedure would be applicable only where the property was abandoned and in a nuisance condition as defined by the statute. The measure would enable any party with a legal interest to take legal responsibility for the property or to receive any proceeds of the court-ordered sale. It would also provide earlier intervention in the case of abandoned property on which taxes are owed but not yet certified as delinquent.

F. Mortgage Foreclosure

The tsunami of mortgage failures in the past seven years has tested the capacity and effectiveness of mortgage foreclosure litigation in courts all over the country. Nowhere is this more true than in the Cuyahoga County Court of Common Pleas, where the vast majority of Cleveland's foreclosures are adjudicated. Both the bench and the foreclosure bar are stressed and have been publicly scrutinized about a variety of issues. There is, on the one hand, insistence that courts do

more to assist homeowners caught up in a mysterious legal system in which they, being short of cash, are at a great disadvantage. On the other hand, there is a demand that backlogs of cases involving empty dwellings be dealt with much faster and with results that improve rather than exacerbate the problem of abandonment. Particularly in urban areas, court systems handling foreclosures are hampered by insufficient staff; inadequate technology; poor coordination among agencies; and, often, judges who have a low regard for the importance of these cases.³⁶

Reform of mortgage foreclosure litigation is likely to be very difficult and slow. There is weighty inertia vested in the status quo; and, as institutions, the legislature and the courts are not always in agreement on how to govern courts. In addition, the real estate and banking interests have a huge investment in judicial foreclosures and will exert all their power to resist change that does not benefit them more than anyone else.

Although policy reform of the mortgage foreclosure and foreclosure sale process is not widely discussed, recent initiatives in case management are producing some results. Within a limited range of discretion, individual courts may adopt local rules of court and standing orders for management of cases

In Cuyahoga County, for instance, foreclosure filing fees were raised to finance additional staff to process foreclosure cases. Another innovation is a procedure of the Magistrates Department providing that when a municipality informs the court that a property subject to foreclosure is abandoned, the plaintiff mortgagee is allowed to put it on a fast track for early default hearing. The objective is to speed up foreclosures when the property is officially declared a nuisance and owners are in default of an answer. Proposed state legislation in Ohio would also require the prompt filing of sheriff's deeds after confirmation of sales to prevent the mortgagees or other purchasers from hiding their ownership of dilapidated property while they look for a buyer willing to take the liability off of their hands.³⁷

One of the greatest problems of housing code enforcement and protection of property rights of resident taxpayers is the practice of lien-holding debt collectors to purchase distressed property at a sheriff's auction with their lien rights and then fail or refuse to comply with housing, health, and safety codes. We see properties marketed on the Internet attracting buyers from other continents who plan to get rich flipping real estate they have never seen. They have no capacity for or interest in being responsible for the condition of the house. This problem is magnified by the huge volume of unmarketable housing in weak-market neighborhoods like those in the industrial inner cities.

To bridge the disconnection of legal procedures related to the condition of property from those legal procedures for debt collection of liens, evidence of the property's condition should be included in the record of the foreclosure case from the beginning. Therefore, plaintiffs in foreclosure cases should be required to file a verified report of the condition of the property with respect to compliance with local housing, zoning, health, and safety codes, along with evidence of title. This would put all parties and the court on notice of defects severe enough to affect the marketability of the property and would reveal the existence or likelihood of nuisance abatement assessments not yet placed on the tax duplicate. Early recognition of whether or not there is actually loan collateral in mortgage defaults could bring about an earlier and more constructive resolution of the issues.

When a municipal government takes responsibility for the condition of abandoned real property, there should be either a provision for intervention in a foreclosure action by the municipality to assert its claims for nuisance abatement and other expenses peculiar to abandoned property, or injunctions to prevent further harm on account of the misfeasance, malfeasance, or nonfeasance of any party with a legal interest. Such access to the mortgage foreclosure process would require a municipality to include in its code enforcement system a means of identifying

properties that are in distressed condition and of accessing the court's foreclosure docket on a daily basis. Intervention by municipal authorities at the mortgage foreclosure stage may reduce the time that blighted property remains a blighting influence.

Mortgage foreclosure cases are sometimes dismissed without any positive disposition of either the property or the lien.³⁸ This lien abandonment may happen after a year or more of attempts to serve defendants. It may happen after a foreclosure decree but before completion of a judicial sale. It may happen after a stay for bankruptcy.

When a mortgagee decides to abandon the lien and its foreclosure action to "let the property go for taxes" because it will not produce sufficient proceeds at sale, the result is a toxic encumbrance on the title and harm to the neighborhood. As noted earlier, the title to property in that situation remains in the name of an owner who is unable or unwilling to take any responsibility for its condition. In fact, owners frequently think that the bankruptcy or foreclosure proceeding terminates their ownership when, in fact, only a confirmed sale terminates their ownership. When they are hauled into court to answer criminal charges for failing to abate the code violations on the property, they are usually without the means to comply. They were severed from the property by the mortgagee, who then walks away without disposing of the mortgage lien in a responsible manner. To address this problem, a public policy should require mortgagees in foreclosure involving code-deficient property to repair the property as a condition of proceeding with the foreclosure, post a performance bond sufficient to abate code-deficient conditions, or deposit their lien with the municipality or other designated agency before dismissal of the case.

As a matter of public policy, mortgagees who own properties and do not maintain them in material compliance with housing codes should be barred from filing new foreclosure cases. Why should the state assist financial institutions in systematically conducting their business in unlawful disregard of the property rights, health, safety, and welfare of taxpaying property owners? From the

neighborhood perspective, it appears that the present law and the court system are the tools of business interests that escape any consequences for business practices that destroy houses on a scale undermining whole streets and neighborhoods. Something is wrong when banks and other financial institutions make beneficial use of laws and courts to collect debts but ignore laws and courts when it comes to the condition of the residential property they own.

G. Litigation

Crime statistics have shown a rise in mortgage fraud to record-setting levels of white-collar crime in America.³⁹ Investigations and indictments were slow to appear in Ohio, but in the last year the pace has picked up markedly. Brokers, appraisers, and borrowers are on their way to jail; and the word is that there will be more investigations and indictments this year.⁴⁰ In addition to criminal prosecutions, cities and private parties are now filing civil actions.⁴¹ The defendants in the most recent civil cases include financial institutions, i.e., lenders and investment banks. For example, the City of Cleveland, along with two nonprofit housing advocacy organizations, filed suit in January 2008 against twenty-one Wall Street investment banks.⁴²

As local and state governments tally up the billions of dollars carved out of their property tax bases and the huge public cost of nuisance abatement, police and fire protection, and the destruction of civic infrastructure in neighborhoods most affected by mortgage failures, they will be compelled to seek relief. Politicians cannot stand next to the effects of the mortgage disaster in their districts and tell their taxpaying voters that they will do nothing to obtain relief from those who did this for profit.

Criminal litigation is an important deterrent to future abuse, but it does not rebuild neighborhoods. It remains to be seen if legal theories will succeed in persuading courts to remedy

the harm and financial loss sustained by cities, neighborhoods, and homeowners. The historical record suggests that courts of law will not likely squeeze enough out of large international corporations to rebuild much of what is now being lost in urban neighborhoods. However, courtroom battles over this issue combined with the evidence appearing in the court of public opinion are likely to create a difference, at least for a few years, in the way that local and state governments relate to the financial industry. In this changed atmosphere, leaders of local and state governments should restrain Wall Street from using the property people live in for fee-generating transactions that destroy the value of that property.

IV. Conclusion

Many of the experts who study the national economy and the housing sector predict that the housing market is not likely to recover until after 2009, but they do not see what is happening at the neighborhood level. In Cleveland neighborhoods and the suburbs near the city, recovery will not occur nearly that soon. There are thousands of mortgages in our market still in the process of failing. There are owners whose rising mortgage payments leave too little money for repair or improvements to keep homes safe, sound, and marketable. Now we are seeing an increase in foreclosures of borrowers with prime mortgages whose home equity and opportunity to refinance were impaired by the mortgage failures and abandonment around them. In fact, there will be more foreclosures and more abandonment in 2009 than in 2008. Abandonment is spreading farther into suburbs, sucking value out of neighboring properties occupied by owners who maintain them and are paying off their home loans. Recognition of the nature and scope of the mortgage debacle is beginning to motivate elected officials at all levels to look for rescue and recovery policies and programs. Wall Street financial institutions and investors in mortgage-backed securities want to be

rescued; and, with their status in the political economy of the country, they will get relief first.

Some borrowers will benefit from programs to reform or refinance their loans, but most will not be eligible or able to grab a lifeline.

Recovery in those neighborhoods and municipalities that are stuck with the physical and legal mess left behind has barely begun. It is apparent on the ground, at the center of this storm, that the municipal authority and civic assets that guard and support the quality of life where average people live in large numbers have been weakened just when they are most needed. The legal tools that cities and their residents need to deal with this unprecedented disaster have not yet been crafted. The pathfinding efforts described above are untested, and the historical record of land law gives no reason to expect that reform will be quick or easy. It will be decades, if not generations, before the blighted structures and toxic titles are cleaned up and neighborhoods like those in Cleveland's inner city are rebuilt.

Our clinical practice in the aftermath of this mortgage disaster includes a search for new tools in law and public policy to clear blighted conditions and clean toxic titles. Our clients remain committed to neighborhood community development, but they are finding it necessary to redefine what that means and reconsider how to develop neighborhoods in which more people choose to stay than choose to leave. We are looking for legal and public policy innovations to defend development investments and neighborhood residents against abusive lending and the large-scale blight and abandonment that results from it. We are looking for public policy changes from legislative assemblies, city halls, and courthouses to stop or prevent the harm being inflicted by abusive residential property transactions. We are looking for lawyers specializing in housing and community development and municipal law to become more engaged as both scholars and practitioners in the service of rebuilding neighborhoods. We are looking for the intellectual resources and advocacy of those lawyers and institutions leading the legal profession to discover

and employ developments in law and public policy necessary to rebuild what the mortgage disaster has destroyed.

¹ Thomas Ott, *The Foreclosure Crisis: How It All Began*, CLEVELAND PLAIN DEALER, Jan. 20, 2008.

² *Id.*

³ U.S. DEP'T OF COMMERCE, 3 THIRTEENTH CENSUS OF THE UNITED STATES: 1910, at 46 (1910).

⁴ Not all of Cleveland's neighborhoods are in the same condition. Currently, the University Circle area—home to nationally acclaimed cultural, medical, and research institutions—is beginning a multifaceted housing, commercial, and institutional resurgence involving investments totaling billions of dollars. Downtown, along the river and near the lakefront, new construction and reuse of old buildings are producing upscale housing, entertainment, and commercial ventures. Euclid Avenue connects these two points of major development and is being redesigned to move people swiftly between these two places along a corridor of thriving businesses and institutions. This corridor is destined to become the economic backbone of Cleveland and the new economy envisioned by planners and leaders. It is not clear how this surge of new urbanism around the centers of the knowledge economy in Cleveland will affect the older neighborhoods now fighting blight and loss of population.

⁵ Cindy Tyrene Cooper, *A City Foreclosed: Mortgage Default, Residential Abandonment, and Property Code Enforcement in Buffalo* (2006) (doctoral dissertation, State University of New York). This is an excellent study of the relationship among subprime mortgaging, the abandonment by owners and mortgagees that ensues, and the inability of code

enforcement mechanisms to cope with the resulting disaster. *See also* Michael Orey, *Dirty Deeds*, BUS. WK., Jan. 3, 2008.

⁶ Teresa Dixon Murray, *Mortgage Business Made National City a Power Player*, CLEVELAND PLAIN DEALER, Feb. 11, 2008. This article describes how a Cleveland-based bank chased the high profits in subprime mortgage lending, earning \$1 billion in profits for a few years, only to lose billions when the subprime market imploded.

⁷ Bob Paynter, *Quick Resales Heat Housing Market*, CLEVELAND PLAIN DEALER, Aug. 27, 2000. Paynter's article exposed the dealing of a local flipper who was convicted on multiple counts of fraud. The article also pointed to the injury that flipping and fraudulent financing was inflicting on neighborhood housing rehabilitation and development programs in the city's neighborhoods. *See also* Ada Focer, *Mortgage Fraud and Property "Flipping" Skew Low-Income Housing Markets*, SHELTERFORCE, Sept./Oct., 2000, at 10 (description of flipping in Baltimore).

⁸ Those who point to a foreclosure crisis as the central problem may be missing the main point. It is fundamentally a mortgage crisis. Debt collection by foreclosure proceedings unveils dramatic symptoms of bad lending and financing of houses, often overpriced, to families and investors who fail to pay off the loans. As a consequence of massive loan failures, the price of good housing stock drops, sucking equity from owners who invest in maintaining their property and who pay their mortgages. This only fuels more abandonment, more abusive market practices, and more loss. Debt collection by foreclosure is designed to work where there is value in the collateral supported by value in surrounding properties. Massive increases and concentrations of foreclosure, along with cumbersome procedures, clearly damage neighboring properties. But the heart of the current crisis is massive and concentrated mortgage failures.

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See, e.g., Zack Schiller & Jeremy Iskin, Foreclosure Growth in Ohio, POLICY

MATTERS OHIO, 2005. The Federal Reserve Bank of Cleveland and the Neighborhood Reinvestment Corporation brought together key industry stakeholders and neighborhood advocates on February 3, 2005, in Columbus, Ohio, to discuss causes and potential cures for rising foreclosures in Ohio.

¹⁰

Two frequent problems are perfecting service for all parties who must get notice of the foreclosure and delay of the foreclosure due to the filing of bankruptcy by the property owner.

¹¹

In the criminal code enforcement case *City of Cleveland v. Destiny Ventures, LLC*, Case No. 2007 CRB 42411 (Cleveland Mun. Ct., Hous. Div., year), Destiny Ventures failed to comply with or even respond to code violation notices or a summons to Housing Court when it was charged with criminal violations. It was tried in absentia, found guilty of failure to correct violations, and fined \$140,000. In a motion to vacate the judgment, Destiny Ventures argued that because it was an out-of-state bulk buyer and reseller of foreclosed properties in Cleveland, it should be excused from compliance with Cleveland's housing code or should be given lenient treatment. Judge Pianka denied the motion; upheld the fine; and found that the flipping of dilapidated houses for quick profit was not lawful under Cleveland's Housing Code, that this activity was helping to destroy Cleveland neighborhoods, and that it aggravated rather than mitigated Destiny Ventures' liability. An appeal is pending.

¹²

In 2006, the Ohio General Assembly enacted legislation, Substitute H.B. 294, to expedite tax foreclosure proceedings for abandoned tax-delinquent property. The law further provides that where the fair market value is less than the public impositions on the property, title may pass directly without a judicial sale to the city in which it is located if that city wants to take it.

¹³ Slavic Vill. Dev. Corp. v. Bernard Mamich, Case No. 99 CV 24022 (Cleveland Mun. Ct., Hous. Div., 1999) (unpublished).

¹⁴ NPI is an intermediary organization that directs major foundation and corporate support in combination with technical support to enhance and stabilize the work of neighborhood-based community development organizations in Cleveland's inner city.

¹⁵ The other major component of technical assistance comes from the Center on Urban Poverty and Community Development at Case Western University. It is developing a parcel-based data system that obtains public records from as many sources as possible and facilitates the application of the data with a computerized assembly for property investigation and research. *See* <http://povertycenter.case.edu/>.

¹⁶ *See* www.vacantproperties.org/latestreports/ClevelandattheCrossroads.pdf (last viewed Feb. 22, 2008).

¹⁷ Frank Alexander, *Tax Liens, Tax Sales and Due Process*, 75 IND. L.J., 2000, at 747. This is an essential work for understanding property tax collection generally and particularly the development of impediments to efficient administration of the tax collection process.

¹⁸ Substitute H.R. 294, 126th Leg., Gen. Assem. (Ohio June 28, 2006).

¹⁹ *See* KERMIT J. LIND, CUYAHOGA COUNTY BD. OF COMM'RS, COMMISSIONER'S REPORT AND RECOMMENDATIONS ON FORECLOSURES (AUG. 25, 2005). The author was retained by the county commissioners to compile information from all relevant agencies and draft this report.

²⁰ The author served on this task force.

²¹ CLEVELAND, OHIO, CODIFIED ORDINANCES § 367.12 (1976).

²² Robert Jaquay, *Cleveland's Housing Court: A Grassroots Victory 25 Years Ago Paved the Way for a Reliable, Much Needed Institution*, 141 SHELTERFORCE, 2005. See www.clevelandhousingcourt.org for more information about the Cleveland Housing Court.

²³ See, e.g., Joe Milicia, *Cities Fight Glut of Vacant Houses*, ASSOCIATED PRESS, Feb. 6, 2008, available at www.kiplinger.com/apnews/XmlStoryResult.php?storyid=545134.

²⁴ The author participates in the council as a consultant to NPI.

²⁵ COMMUNITY RESEARCH PARTNERS & REBUILD OHIO, \$60 MILLION AND COUNTING: THE COST OF VACANT AND ABANDONED PROPERTIES TO EIGHT OHIO CITIES (Feb. 19, 2008), available at www.communityresearchpartners.org/uploads/publications//FullReport_Nonembargoed.pdf.

²⁶ See <http://povertycenter.case.edu>; <http://povertycenter.case.edu/neocando.html>.

²⁷ CDCs have engaged the Urban Development Law Clinic to file more than thirty civil nuisance cases in the past two years. The CDCs are appointed receiver in nearly all of those that did not settle quickly.

²⁸ An essential resource is Alan Mallach, *Bringing Buildings Back: From Abandoned Properties to Community Assets* (2006). Other sources can be found at www.vacantproperties.org/; www.nhi.org/; www.lisc.org/section/resources/.

²⁹ NEO CANDO, for instance, is developing techniques for identifying properties with high-risk mortgages so that owners can receive assistance with repair programs early, and timely code enforcement can hold speculators accountable for the public costs of their business practices.

³⁰ Experts in Cleveland estimate the cost of demolishing currently abandoned properties to be about \$72 million. This does not include the environmental cleanup of industrial

land. Cleveland is budgeting \$6 million for demolition of residential property each year for this year and the fiscal year beginning in July 2008.

³¹ A notable case in Cleveland's Housing Court is *City of Cleveland v. Destiny Ventures, LLC*, Case No. 2007 CRB 42411 (Cleveland Mun. Ct., Hous. Div. 2007). *See supra* note 11 for a brief history of the case.

³² Available at www.lisc.org/content/publications/detail/793.

³³ See www.thelandbank.org.

³⁴ In our practice, we have encountered speculators in residential property who delay paying property taxes until a day or two before the sheriff's sale of the property because the law allows them to do that and because the penalties and interest are absorbed as an acceptable business cost.

³⁵ S.B. 277, 127th Leg., Gen. Assem. (Ohio 2007).

³⁶ In Cuyahoga County, the Common Pleas Court sits at the center of a complicated foreclosure system in which a foreclosure case can involve the records or actions of seven independently elected county officials: judges, clerk of court, sheriff, auditor, recorder, treasurer, and prosecutor. While magistrates for judges manage the cases for the most part, there are many points where coordination can break down for many different reasons.

³⁷ Substitute H.B. 138, 127th Leg., Gen. Assem. (2007).

³⁸ This subject is exhaustively examined in Cindy Cooper's excellent doctoral dissertation, *supra* note 5. Although her research focuses on Buffalo, New York, the very same thing is happening in Cleveland.

³⁹ Kirstin Downey, *FBI Vows to Crack Down on Mortgage Fraud*, WASH. POST, Dec. 15, 2005, at D3; John Leland, *Officials Falling Behind on Mortgage Fraud Cases*, NYTIMES.COM, Dec. 26, 2007.

⁴⁰ Thomas Ott, *Dozens Facing Loan Charges*, CLEVELAND PLAIN DEALER, Jan. 4, 2007; Michael O'Malley, *7 Indicted in Cuyahoga Predatory Lending Crackdown*, CLEVELAND PLAIN DEALER, Aug. 8, 2007.

⁴¹ See Creola Johnson, *Fight Blight: How Cities are Dealing with the Rise in Abandoned Properties Caused by Subprime Foreclosures*, 2008 Utah L. Rev. ____ (2008) (publication pending). This article includes an examination of four pending suits with different claims and legal theories.

⁴² Christopher Maag, *Cleveland Sues 21 Lenders over Subprime Mortgages*, N.Y. TIMES, Jan. 12, 2008; Henry Gomez & Thomas Ott, *Cleveland Sues 21 Banks over Subprime Mess*, Jan. 11, 2008, available at http://blog.cleveland.com/metro/2008/01/cleveland_sues_21_investment_b.html.