



# Stemming the Spiral of Foreclosures

As the mortgage crisis deepens, legal assistance attorneys and Law School clinics fight to change big bank policy and Connecticut law

by Kaitlin Thomas

**In a brick building on** New Haven's State Street, a small group of lawyers with a continually shrinking budget and staff have been working overtime, going head-to-head with banking giants in an attempt to keep New Haven county residents in homes that have been foreclosed on. It reads like a modern day David vs. Goliath story. An underfunded but feisty group of attorneys, students, and tenants have taken on some of the biggest names in banking. And they're beginning to win.

The story began last year when the staff at New Haven Legal Assistance Association (NHLAA) — among them staff attorneys Amy Marx '00 and Amy Eppler-Epstein '86 — started seeing an increased number of renters facing eviction from foreclosed properties. In Connecticut, more than 2,000 families were evicted from foreclosed properties in the last two years.

Hundreds of those houses were in New Haven, and many of the foreclosures have resulted in the eviction of tenants. Marx and Eppler-Epstein started

meeting family after family faced with eviction: A single mother who just wanted to keep her kids in the same school for a few more months; an elderly couple who had lived in the same apartment for thirty years, treating it as their own home; a man with muscular dystrophy whose family had spent thousands of dollars retrofitting his apartment with ramps and handles and special devices that allow him to live independently.

"These people had paid their rent on time, they were good tenants, and now they were getting eviction notices — many without ever having known that the property had been foreclosed upon," Eppler-Epstein explains. Many times the tenants were told they needed to move out of their apartments within fifteen days. Sometimes they were offered small sums — \$500 or \$1,000 — in cash-for-keys offers they were told would expire within twenty-four hours.

In her office, Eppler-Epstein points to a poster showing "before" and "after" photos of a four-family New Haven home foreclosed on in August 2007. Prior to foreclosure, the property was appraised at \$160,000 for a 90–120 day sale. Within days of the property being foreclosed and the tenants evicted, it was vandalized and everything of value — from the copper piping to the aluminum siding — was stripped. The house eventually sold, seventeen months later, for \$16,000.

With eviction come vacant properties, Eppler-Epstein explains, which often results in vandalism, which leads to plummeting property values in surrounding neighborhoods, which leads to more foreclosure — a spiraling effect of neighborhood depreciation and home foreclosures.

*(Opposite) Amy Eppler-Epstein '86 and Amy Marx '00 visit a New Haven house that was vandalized after the bank foreclosed on the property's owner and evicted its tenants. Originally listed for \$160,000, the property eventually sold for \$16,000 after being stripped of siding and piping and sustaining other damage.*



*Suneela Jain '10 testified on behalf of the CED clinic at a hearing of the Connecticut Senate's Housing Committee. Looking on is Law School lecturer Sameera Fazili '06.*

The question for NHLAA became what to do to enable renters to remain in their residences. “The great thing about legal assistance is that we can see this problem and its effects on individuals and try to help them,” Marx says, “but we can also stand back and do the bigger picture advocacy work.” Fannie Mae, Freddie Mac, and other privately held banks had policies of automatic and immediate eviction for any foreclosed property. Eppler-Epstein and Marx tried to intervene on behalf of their clients, pleading their stories without success.

The turning point came with the federal bailout legislation passed in October 2008. At the time, dozens of Fannie Mae and Freddie Mac evictions were pending in court, and legal aid attorneys were having a hard time finding a foothold to keep their clients in their apartments. Then an attorney at Greater Hartford Legal Aid found a sentence buried in the Economic Stabilization Act’s 400 pages, requiring that Fannie Mae and Freddie Mac “permit bona fide tenants who are current on their rent to remain in their homes under the terms of their lease.”

Marx wrote a letter to Fannie Mae, pointing out that the government-sponsored enterprise was in violation of the condi-

tions of the bailout—and threatened to take legal action. Fannie Mae’s legal department quickly responded, halting all eviction proceedings in Connecticut and across the country.

“We found that they might not have been interested in the human stories,” Marx says, “but they were interested in the legal ramifications and the financial implications of what they were doing.”

Next NHLAA went after Freddie Mac—again, successfully.

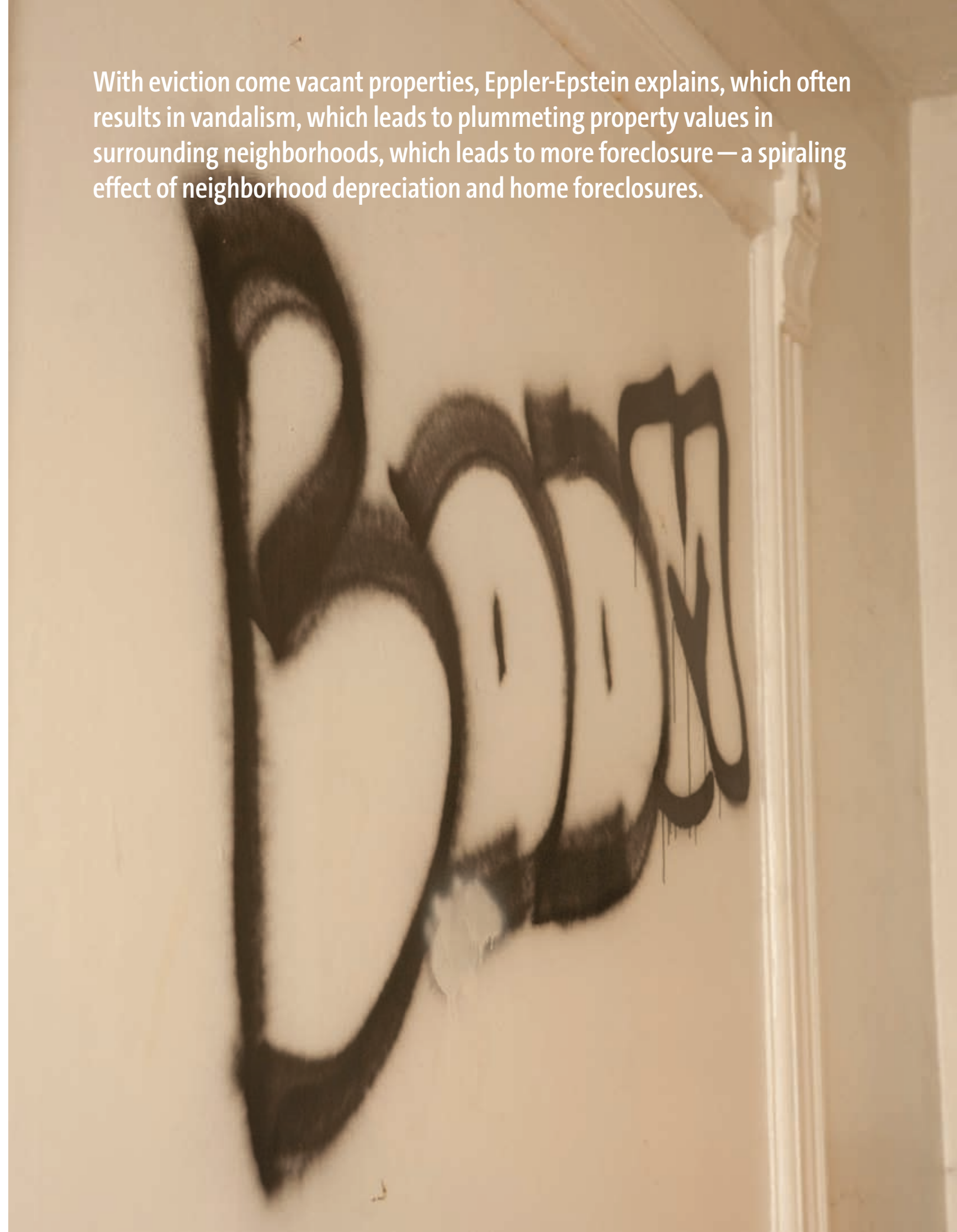
While getting two of the mortgage giants to stop automatic eviction proceedings was a huge success, NHLAA wanted to do more. Of the 2.5 million homes in foreclosure nationwide this past spring, ten percent of those homes were backed by Fannie Mae or Freddie Mac mortgages, with the remaining ninety percent being held by private banks. That’s exactly where NHLAA set their sights next.

About the same time as NHLAA was beginning to recognize the extent of the impact of the mortgage foreclosure crisis on renters, students in the Law School’s Community and Economic Development Clinic (CED), under faculty supervision, helped launch the ROOF (Real Options, Overcoming Foreclosure) Project in New Haven. This response to the mortgage foreclosure crisis was planned and implemented by a collaborative group including the City of New Haven, the Greater New Haven Community Loan Fund, Neighborhood Housing Services, and the

CED Clinic. ROOF’s focus for the first year was on helping homeowners avoid foreclosure through counseling and court-ordered mediation and, when

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*Photograph above by Amy Marx, and opposite by Harold Shapiro*

foreclosure could not be prevented, planning for how to stabilize neighborhoods with high foreclosure rates.

After hearing about the enormous success that NHLAA had in getting Fannie and Freddie to change their eviction policies, a sub-group of CED students, together with other students in the Landlord-Tenant Clinic, saw an opportunity to collaborate with NHLAA to address the plight of renters.

Without the legal leverage of the bailout agreement, negotiations with the private banks—including Bank of America, Bank of New York, Citigroup, Deutsche Bank, HSBC, JP Morgan Chase, US Bank, and Wells Fargo—have taken a bit more persuasion. The clinic students and faculty helped with research and co-wrote and co-signed (in collaboration with NHLAA) a demand letter to private banks.

They are getting results: Deutsche Bank helped set up an April meeting for all of their loan servicers with NHLAA, the Yale Law School clinics, and the Mayor of New Haven to address the treatment of tenants after foreclosure as well as a host of other related issues. The meeting made progress in getting other servicers to adopt similar policies to those being used by Fannie Mae, and the advocates hope to work with the servicers to negotiate solutions that can be a model for other areas of the country.

The clinic students and faculty also worked collaboratively with NHLAA to craft proposed legislation. In February, several Law School students, along with YLS Clinical Lecturers Robin Golden '98 and Sameera Fazili '06, joined Eppler-Epstein and Marx at the state Capitol to testify on behalf of a bill that would prohibit banks from evicting tenants after foreclosure without

“good cause,” or without a sales contract requiring the building to be vacant as a condition of sale.

Clinic student director Suneela Jain '10 was among the students who testified on behalf of the bill, stressing to lawmakers that the bill does nothing to empower bad tenants.

“Part of what we’re trying to do in the clinic is develop a coherent framework for working through what’s best for New Haven,” Jain explains. “We operate as a clearinghouse to hear different points of view and try to help determine what’s best for the community as a whole.”

Clinic students have been approaching the crisis from different angles. Ben Rogers '09 brought his experience working directly with tenants facing eviction, Sai Mohan '11 contacted property managers and researched legislation in other jurisdictions, and Rogers and Matt Barabella '10 have been looking at pooling and servicing agreements and the legal and economic constraints involved in the proposed bill.

Jain has been inspired by the commitment and determination of the community and is grateful to have had hands-on experience working in New Haven and with the legislative process. “My interests have always tended toward a focus on other places; what is needed to support a better quality of life at an international level. This project has been great because I’ve been able to work with people who are dedicated to improving their own spaces. It has made me think more about how I can pursue my goals by supporting the development of a community that I am proud of,” she explains.

“I didn’t want to come to New Haven and not spend any time having worked in the community in some way,” adds Mohan.

*YLS Clinical Lecturers Robin Golden '98 and Sameera Fazili '06 along with YLS students Matt Barabella '10, Ben Gross '10, Suneela Jain '10, and Ben Rogers '09 attended the press conference at the state Capitol with Senator Christopher Dodd on the day of the Housing Committee's hearing on the bill supporting renters in buildings facing foreclosure.*



Photograph by Tim Wolf, Connecticut Senate Democrats

“Working in the clinic has shown me parts of New Haven that I might not have experienced otherwise.”

In April, Golden and her students accompanied Marx and Eppler-Epstein to Hartford to advocate once again for the bill. The group met in the House Caucus room with the co-chair of the Housing Committee and the co-chair of the Banking Committee to work toward a shared understanding of the importance of the bill and how, if necessary, they could compromise with the banking industry.

“It was an experiential lesson for the students in how government works,” Golden said.

Meanwhile, as NHLAA has been fighting to keep clients in their homes, it is also fighting its own battle to stay afloat. In the past year, the organization (which draws much of its funding from the interest earned on IOLTA accounts) has lost more than a quarter of its budget and thirteen employees. The remaining staff members have taken a twenty-percent pay cut.

“Our project is full steam ahead, and our staffing is less than half of what it should be,” Marx says. “At this point, we’re just trying to keep our doors open.” **Y**

*As the Law Report was going to press, an amendment was added to federal law, providing some important new protections for renters whose landlords have been foreclosed upon. “It is heartening to see that our advocacy, combined with the work of many other housing advocates around the country, has helped to get this issue of what happens to tenants after foreclosure onto the national political agenda,” Eppler-Epstein said.*

*This foreclosure work is just one example of how NHLAA and the law school have successfully joined forces to provide essential legal services to the New Haven community. Whether by YLS students interning in the office as part of Frank Dineen’s Legal Assistance Clinic or TRO Project students volunteering daily at the local courthouse, NHLAA’s program has been energized by the students’ presence while its ability to address the legal needs of local clients has been expanded. These collaborative efforts are also part of a much larger picture. Other YLS graduates are having an impact on legal services throughout Connecticut. For example, Mildred Doody '85 is heading up NHLAA’s new Children and Youth Advocacy Project and Steve Eppler-Epstein '83 is the Executive Director of Connecticut Legal Services; Rafie Podolsky '72 of the Legal Assistance Resource Center of Connecticut, Inc. (LARCC) lobbies for the interests of low income state residents—including the tenants impacted by the very legislation described above.*

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Suneela Jain '10

## LSO Today: Practicing Law — Clinical Education at YLS

IN THE EARLY PART of the nineteenth century, the future Yale Law School began to take shape in the library of Seth Staples, a New Haven practitioner who trained apprentices in his law office.

That early incarnation of the Law School was built on an apprentice-lawyer model, with students learning through the lawyers whose offices they studied in.

Today a similar relationship exists in the clinical offerings of the Law School as eighty percent of YLS students take advantage of clinical offerings at some point during their time at Yale, working beside faculty members and supervising attorneys on real cases. YLS now has a robust clinical program, with students working in more than twenty distinct clinics that marry theory with practice.

Many of the clinical courses at Yale Law School fall under the umbrella of The Jerome N. Frank Legal Services Organization (LSO). With more than fifteen separate clinics, LSO offers students a range of clinical experience while providing legal representation to individuals and organizations unable to afford private attorneys. Unlike many other law schools, Yale Law School students can engage in clinic activities after the first term.

Today, LSO students benefit from dedicated offices and meeting rooms and have new software to help aid their work. Thanks to the The Oscar M. Ruebhausen Fund at Yale Law School, LSO recently started using case management software that allows students and faculty to access a client database and clinic documents via the Internet using a web browser. Now faculty and students can collaborate on cases even when they’re away from the LSO offices.

For an update on the recent activities of the LSO clinics—from the old (Prison Legal Services) to the new (Health Law Partnership for Families), visit [ylr.law.yale.edu](http://ylr.law.yale.edu).

*(Above) Yale Law School clinics and the Legal Aid Association have partnered on projects since the inception of the Law School’s clinical program in the 1970s.*

