Renting Your Home from Wall Street

This paper intends to negotiate the rapidly changing foreclosure rental market with a limited historical context. First, the concept of the "foreclosure rental" will be analyzed, from idea to reality. The United States financial crisis that began in 2007-2008 generated a need for new ideas in the national housing market. With institutional lenders accumulating massive quantities of single family homes through the foreclosure process, Wall Street began looking for innovative way to relieve the burden of maintaining each property. What resulted was the foreclosure rental market, the source of an important new revenue stream.

Second, this writing will review the acquiescence of governmental agencies to the burgeoning foreclosure rental market. As pseudo-governmental entities like Fannie Mae and Freddie Mac look to reduce their inventory of single family homes, the Federal Reserve formally issued its backing of the foreclosure rental market in mid-2012. With the Federal Reserve's blessing, institutional lenders found the freedom to fully exploit this new source of income.

Lastly, the growth of the foreclosure rental market will be outlined and described, with a focus on the securitization of the revenue streams generated by foreclosure rentals. In the wake of accusations of fraud and misconduct regarding the securitization of home mortgages, Wall Street has determined that the future of real property securitization points to the newly formed rental market. By comparing the similarities and differences between the foreclosure rental market and the home mortgage market, potential pitfalls of the new system will be profiled. Further, by focusing on Florida, a state with one of the nation's highest foreclosure rates, the potential pitfalls will be compared and tested against the legal and financial problems that were experienced during the 2008 financial crisis.

With a firm understanding of the potential difficulties and dangers that a rental securitization system can create, Florida-focused legislative recommendations will be made to combat and protect consumers of the newly securitized product. Areas of Florida remain amongst the highest in the nation for foreclosure rates, even when much of the country is experiencing a rebound in the property market, and it is crucial to avoid a setback. Without proper regulation and consumer protection, Florida remains at risk to repeat another "boom and bust" real estate cycle.

A Growing Need for "Foreclosure Rentals"

Early in 2011, the Obama Administration began analyzing its latest plan to help alleviate a hurting national housing market: renting foreclosed homes back to the very people who were previously living in them.[1] The concept is relatively simple. Falling home values and rising unemployment caused a large number of homeowners to enter foreclosure all across America. For many people living in single family homes, the majority of their net worth was tied up in their home at the time the recession started. With homes prices falling so quickly, many people lost the majority of equity in their home in a matter of months. Minority groups, many of whom were subject to discriminatory lending practices, were most severely impacted. In the United States, African Americans collectively lost fifty three (53) percent of their total wealth.[2] Hispanics saw an even greater loss, losing over sixty six (66) present of the total wealth between 2008 and 2012.[3]

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[1] Nick Timiraos, Government Considers Ways to Rent Foreclosed Homes, The Wall Street Journal (July 22, 2011), http://online.wsj.com/news/articles/SB10001424053111904233404576458300001332210.
[2] Laura Gottesdiener, How Wall Street Has Turned Housing Into a Dangerous Get-Rich-Quick-Scheme—Again, Huffington Post (November 26, 2013, 9:34 am), http://www.huffingtonpost.com/laura-gottesdiener/foreclosed-homes-rental-properties_b_4343234.html.
[3] Gottesdiener, supra note 2.

When foreclosure proceedings began in the wake of falling prices and rising unemployment, people generally found themselves in one of two situations. First, for a major portion of people in foreclosure, they were no longer able to afford their monthly mortgage payments. Whether because of unemployment, lowered credit, or the reduced amount of equity in their home, the money simply wasn't available. For a second group of people whose homes were "underwater," making monthly mortgage payments on a distressed home was no longer financially responsible. As options like the mortgage modification[4] or the short sale[5] became readily available, people sought the advice of experienced attorneys and financial advisors, ultimately leading to down-sizing or a change in the terms of the mortgage.

Regardless of what brought about the foreclosure, major institutional lenders, like Bank of America, Wells Fargo, and Fannie Mae, began accumulating residential properties at an unprecedented rate. At the time the financial crisis began to take full effect, federal regulation required that bank's remove distressed properties from their books as quickly as possible.[6] For most lenders however, this was already the goal. Banks across the country were not prepared for the volume of properties they were taking title to, and most had no way of properly preserving the properties for sale.

Further, lenders were not prepared to take on the additional risk of owning distressed properties across the whole of the United States, resulting in the common use of court-ordered receivership.[7] As the relative costs of preserving and protecting prices began to rise, and as there

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[4] Know Your Options: Modification, FannieMae, http://knowyouroptions.com/modify/modification.
[5] Know Your Options: Short Sale, FannieMae, http://knowyouroptions.com/avoid-foreclosure/options-to-leave-your-home/short-sale.
[6] Federal Reserve Policy Statement on Rental of Residential Other Real Estate Owned Properties, The Federal Reserve (April 5, 2012), http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20120405a1.pdf.
[7] David Graham, Receivers' Catch: Foreclosures, The Wall Street Journal (July 29, 2009, 11:59 pm), http://online.wsj.com/news/articles/SB124882357170588363.

appeared to be no end to the foreclosures in sight, the federal government, including the Obama Administration, the Federal Reserve, and numerous Washington D.C. think tanks,[8] started to look for options to stabilize a radically fluctuating market. Where home values fell as much as nineteen (19) percent in 2008, effective rental prices never fell more than one point one (1.1) percent over that same period.[9] When combined with a growing need for affordable housing, the concept of the foreclosure rental market was born.

At the time, many analysts were cautiously optimistic about such a plan. Ben Bernanke, Chairman of the Federal Reserve, testified to Congress in July of 2011 that a foreclosure rental scheme was "worth looking at."[10] A spokeswoman for the Federal Housing Finance Agency (FHFA) said that the FHFA was "open to considering initiatives that are consistent with [its] goals."[11] This statement from the FHFA came after it had taken Fannie Mae and Freddie Mac under conservatorship, indicating that serious consideration was being made towards implementing such a scheme.

Other analysts saw the rental plan as a welcome option to the current system of taking possession of properties through foreclosure and immediately flipping them back onto the market for resale. During 2011, the sale of distressed homes accounted for more than thirty (30) percent of all home sales in the United States.[12] An economist for the Center on Budget and Policy Priorities stated that "adding more stock [to the housing market] simply increases that overhang,"[13] referring to the number of distressed homes that lenders were adding back onto the

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[8] Nick Timiraos, Government Considers Ways to Rent Foreclosed Homes, The Wall Street Journal (July 22, 2011), http://online.wsj.com/news/articles/SB10001424053111904233404576458300001332210.
[9] Timiraos, supra note 8.
[10] Timiraos, supra note 8.
[11] Timiraos, supra note 8.
[12] Timiraos, supra note 8.
[13] Timiraos, supra note 8.

open market. With Fannie Mae and Freddie Mac concerned with stabilizing the home buying market and once again turning a profit, too many single family homes were entering the market too quickly. This system lowered the value of homes by flooding the market with inventory, mostly in already overly served areas. Fannie and Freddie's use of the present buy-sell system was said to be "undermining their own recovery"[14] because a large share of the distressed homes being purchased were being bought by investors, not single families. Neighborhood stabilization was forced to take a back seat to profit driven investors looking to increase inventory.

Other groups, including the National Association of Realtors (NAR), were not as optimistic about the rental scheme. A top economist for the NAR said that because nearly all of the distressed properties were being purchased on the open market by investors, "a government proposal to turn bank-owned properties into rentals on a large scale does not appear to be needed."[15] This criticism was aimed primarily in defense of States which had above average foreclosure completion times and little backlog to speak of, boasting an investor market that was able to absorb most of the distressed home portfolio. As long as the properties were selling, a foreclosure rental system that was operated entirely by lenders was not needed. For other areas of the country, like Florida, Illinois, and New Jersey, the rental scheme made more sense. By targeting the most distressed areas, institutional lenders and the government believed that the burden of holding so many single family homes could be relieved.

In 2011, the FHFA announced that it was reviewing the need for a private rental market. In early 2012, an official proposal was issued, seeking investors to prequalify for a Real-Estate Owned (REO) initiative that would result in the release of Fannie Mae and Freddie Mac owned

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[14] Timiraos, supra note 8.
[15] Alan Zibel, Realtors Slam Obama Foreclosure-Rental Plan, The Wall Street Journal (February 22, 2012, 4:28 pm), http://blogs.wsj.com/developments/2012/02/22/realtors-slam-obama-foreclosure-rental-plan/.

homes with the condition that they be rented for a specified period of time.[16] The pilot program allowed for the offering of "sale pools" comprised of a variety of assets.[17] The assets included in the "sale pool" were a variety of rental properties, vacant properties, and non-preforming loans which were owned or held by Fannie Mae and Freddie Mac. The FHFA's solicitation for investment marked the beginning of a governmental shift in favor of a private rental market for distressed and foreclosed homes in America. Investment groups finally had the support necessary to implement a national foreclosure rental system.

To take advantage of this new concept, some of the largest institutional lenders began implementing their own foreclosure rental system in light of rising regulatory support. Deutsche Bank was among the first major banks to take advantage of what they described as a "major market need."[18] CitiMortgage, subsidiary of Citibank Corp., rolled out its own foreclosure rental program and called it the Deed-for-Lease option.[19] Homeowners hoping to take advantage of the program were required to be ineligible to receive an affordable loan modification but still have the resources to make monthly rental payments. They must also occupy the property and be delinquent for more than one hundred twenty (120) days.[20] Bank of America joined the pilot program, offering the rental option to certain homeowners by invitation only.[21] Across the

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[16] FHFA Announces Interested Investors May Pre-Qualify For REO Initiative, Federal Housing Financing Agency (February 1, 2012), http://www.fhfa.gov/webfiles/23196/REO2112F.pdf.
[17] FHFA, supra note 16.
[18] John Gittelsohn, Deutsche Bank Offers U.S. Plans for Renting Foreclosed Homes, Bloomberg News (December 27, 2011, 11:59 pm), http://www.bloomberg.com/news/2011-12-27/deutsche-bank-among-firms-giving-u-s-plans-for-renting-foreclosed-homes.html.
[19] Ilyce Glink, Facing Foreclosure? Rent Your Home From the Bank, CBS News (August 9, 2012, 11:58 am), http://www.cbsnews.com/news/facing-foreclosure-rent-your-home-from-the-bank/.
[20] Glink, supra note 19.
[21] Nelson Schwartz, Bank of America Tests Rental Program as Alternative to Foreclosure, DealBook (March 22, 2012, 7:42 pm), http://dealbook.nytimes.com/2012/03/22/bank-of-america-tests-rental-program-as-alternative-to-foreclosure/.

board, lenders began applying for and utilizing the newly formed foreclosure rental market to take advantage of a growing national need.

Unfortunately, many of the first "lender implemented" rental systems did not achieve neighborhood stability. Citibank and Bank of America presented their respective rental programs to distressed homeowners as a way out of foreclosure.[22] Homeowners who were in default were asked to transfer title to their home over to the banks. In turn, the banks offered to rent the property back to the former homeowners. While successful, many rental deals were for limited periods of time, often for one or two year leases, and rather than retaining title to the properties, the banks would sell the rented properties to investment companies. When the leases ran out, the investment companies would refuse to renew, pushing the tenants out so that the properties could be resold as single family homes. This process created further marketplace instability. Without formal regulation of the foreclosure rental marketplace, institutional lenders were free to take advantage of distressed homeowners looking for a way out of foreclosure.

The Federal Reserve Policy Statement

On April 5, 2012, the Federal Reserve (Fed) released its formal approval of the foreclosure rental market. Dubbed the "Federal Reserve Policy Statement on Rental of Residential and Other Real Estate Owned Properties," the measure describes the Fed's approval of and recommendations for the growing new market. Where lenders holding distressed properties once were required to actively market and/or sell their portfolio so as to refresh the residential property market, the additional option of renting had become commonplace for lenders. As stated above, major lenders and banks across the country began instituting schemes to take advantage of the new system even before the Fed's policy statement was released. At the

[22] Schwartz, supra note 21.

time the policy statement was issued, Fannie Mae had already released a small group of homes to investors for the sole purpose of generating rental income.

For the purposes of this writing, the modern foreclosure-rental market was born with the issuance of the Federal Reserve Policy Statement on Rental of Residential Other Real Estate Owned Properties. In it, the Federal Reserve described its reasoning behind the need for a national foreclosure-rental market in light of the foreclosure crisis: "[i]n light of the large volume of distressed residential properties and the indications of higher demand for rental housing in many markets, some banking organizations may choose to make greater use of rental activities in their disposition strategies than in the past."[23] Prior to this policy shift, the position of the Fed was that institutional lenders should make "good-faith efforts"[24] to remove residential foreclosure properties from their books. Beyond the potential for an alternative revenue stream, lenders who properly implemented a foreclosure-rental system, such that it "meets the definition of community development under the Community Reinvestment Act,"[25] may receive favorable consideration under the policy.

Implementation of any foreclosure-rental scheme requires the utilization of sophisticated risk management strategies. In recognition of this fact, the Federal Reserve outlined some specific strategies that must be adopted to remain in compliance with the policy. Maximum holding periods, compliance with state landlord-tenant laws, and compliance with generally accepted accounting practices are just a few of the minimum requirements.[26] More specific requirements apply to lenders who intend to use "large-scale" rental systems, generally defined

[23] Federal Reserve Policy Statement on Rental of Residential Other Real Estate Owned Properties, The Federal Reserve, 1 (April 5, 2012), http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20120405a1.pdf.
[24] Federal Reserve, supra note 23, at 1.
[25] Federal Reserve, supra note 23, at 1.
[26] Federal Reserve, supra note 23, at 3.

as the rental of more than fifty (50) properties. One such requirement is the use of a "documented rental strategy" with specific "policies and procedures" for rental activities.[27] Use of a "documented rental strategy" aligned with the FHFA's system, which was still in its pilot program, and set forth a list of requirements that every lender must follow. In actuality, the Federal Reserve's guidelines were drafted in light of lender failure to properly account for the risk involved with mortgage lending and securitization.

Further, the Fed recognized the risks involved with the likely use of third-party vendors for the management of distressed rental properties. Nationally chartered lenders and banks are not suited for the local, market specific issues that can arise. Similar to how lenders began relying on court appointed receivers to shield them from liability and to protect properties during the foreclosure crisis, lenders looking to rent distressed properties in different areas of the country began utilizing localized property managers to collect rents and maintain the properties.

This new party to the transaction created an additional cost and an additional layer of risk. To combat this issue, the Fed outlined the criteria that a property manager must meet, referencing "appropriate expertise" and "sound financial condition" as necessary components.[28] The Federal Reserve also called for the vendors to have a "good track record" managing rental properties.[29] Ultimately, however, the responsibility rested with the lenders to ensure that appropriate contracts were in place with the vendors to ensure that the rented properties did not become distressed rental properties. Documentation and communication are crucial for the implementation of any rental strategy, and the Federal Reserve has recognized a need for acute and responsive oversight to ensure the prevention of mismanagement.

[27] Federal Reserve, supra note 23, at 4.
[28] Federal Reserve, supra note 23, at 5.
[29] Federal Reserve, supra note 23, at 5.

Securitization of the Foreclosure Rental Market

In the wake of the Federal Reserve's blessing of the formal foreclosure rental market, the banking industry began looking for ways to transfer the risk of structured rental income to investors. Rather than retaining the risk of renting the properties themselves, banks began looking for ways to pool rental properties together into new, nationally diversified securities, backed by the stream of income that the properties generated. As the number of rental properties began increasing, it became easier to diversify a rental foreclosure portfolio across the entirety of the United States. By combining the now privately owned rental portfolios from different lenders, investment groups started to look at the option of selling the generated income as a security. If the banks were to implement a long-term rental system, the proposed security had to satisfy federal oversight and account for the additional risk involved in a foreclosure rental market. Any system developed by lenders directly would be short lived under the Federal Reserve's policy because lenders were required to remove the properties from their books as soon as possible.

To circumvent this issue, major investment groups like the Blackstone Group, began purchasing large quantities of properties, primarily from low to middle income neighborhoods,[30] with money borrowed from directly from banks who owned the properties to begin with. Backed by a three billion six hundred million (3,600,000,000) dollar credit line from Deutsche Bank,[31] Blackstone was able to pay cash for its entire portfolio, buying properties well below market price. Blackstone then began renting the properties, primarily single-family homes, developing different areas across the country and diversifying its rental income group.

[30] Gottesdiener, supra note 2.
[31] Gottesdiener, supra note 2.

In early November of 2013, Blackstone Group issued its first set of rental-backed securities in the form of a bond.[32] About five years after Wall Street was blamed for packaging home loans into securities and causing the worst financial crisis since the Great Depression, investment companies like the Blackstone Group have begun looking for investors for its newest security scheme. Investment is limited to private entities and private capital pools. To understand the apparent impropriety of Blackstone's new offering, it is important to focus on Blackstone's ownership. As of December 31, 2013, over sixty-five percent (65.13%) of the Blackstone Group's outstanding shares were owned by institutional entities.[33] In fact, seven of the top ten institutional investors in Blackstone were major banks: Morgan Stanley, Fidelity, ING Bank, Bank of America, Ameriprise Financial, Deutsche Bank, and Citi Group.[34]

Despite clear optimism towards Blackstone's capabilities on the part of its institutional investors, issues have arisen on the financial side of such a structure. First, some investors have raised issues with the quality of the investment and its ability to return a profit. The bonds, which are being used by Blackstone to purchase even more distressed homes for use in the foreclosure rental market, carry a loan-to-value ratio of seventy five (75) percent.[35] The loan-to-cost ratio, however, is significantly lower at only eighty eight (88) percent.[36] For example, if a property was acquired for eighty thousand (80,000) dollars, and the cost to renovate for the rental market was twenty thousand (20,000) dollars, the all-in cost would be one hundred thousand

[32] Jody Shenn, Blackstone Lures Investors to Home-Rental bonds: Credit Markets, Bloomberg (November 6, 2013, 12:40 pm), http://www.bloomberg.com/news/2013-11-06/blackstone-lures-investors-to-home-rental-bonds-credit-markets.html.
[33] The Blackstone Group L.P. Institutional Ownership, NASDAQ (December 31, 2013), http://www.nasdaq.com/symbol/bx/institutional-holdings.
[34] The Blackstone Group L.P. Institutional Ownership, supra note 33, at 2.
[35] Adam Tempkin, CORRECTED – Investors Show Concern Over Blackstone Home-Rental Bond, Reuters (November 1, 2013, 3:56 pm), http://www.reuters.com/article/2013/11/01/blackstone-abs-homerental-idUSL1N0IM1C620131101.
[36] Tempkin, supra note 35.

(100,000) dollars. At a loan-to-cost ratio of eighty eight (88) percent, the lending party would have fronted eighty eight thousand (88,000) dollars of the total one hundred thousand (100,000) dollar costs, leaving an equity margin of only twelve thousand (12,000) dollars. This ratio, while relatively low considering that this securitization scheme is so new, has not proven enough to scare away investors.[37]

Another potential issue with the securities involves the geographic location of the properties that have been acquired.[38] Thirty four (34) percent of the properties used in the deal are located in the Phoenix area.[39] Another seventeen (17) percent are located in the Riverside-San Bernardino-Ontario region of California.[40] The remainder of the portfolio is comprised of properties from other parts of California, Florida, Georgia, and Illinois. As described above, diversification of the portfolio was balanced against the difficulty of managing properties that are too widespread. Property management is a key issue in effectively managing properties in States across the nation. It remains to be seen whether this newly created market will result in profit or loss for investors who are once again being asked to buy into an untested securitization scheme.

Regulation and Enforcement

With the foreclosure rental market taking shape, concerns regarding the regulation and enforcement of this new market are taking center stage. Taking a historical perspective as to the financial crisis that began in 2007-08, much of the criticism towards the banking industry related to one of three categories: 1. lack of government oversight and regulation as to brokers and rating agencies; 2. lack of proper risk management by financial institutions; or 3. lack of

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[37] Adam Tempkin, CORRECTED – Investors Show Concern Over Blackstone Home-Rental Bond, Reuters (November 1, 2013, 3:56 pm), http://www.reuters.com/article/2013/11/01/blackstone-abs-homerental-idUSL1N0IM1C620131101.
[38] Shenn, supra note 32.
[39] Shenn, supra note 32.
[40] Shenn, supra note 32.

investment transparency such that investors could make informed investment decisions as to the various securities that are being offered. Each of these issues relate to the general lack of accountability and transparency that exists in the securities market.

The remainder of this writing will focus on the lack of effective regulation and legislation that exists on both the federal and state levels. First, by describing how problems first arose in the securitization market, the new rental-backed securitization market can be analyzed for its similarities and differences with the home mortgage securities market. Next, similarities between the markets can be compared and scrutinized to highlight the potentially perilous areas. Finally, by discussing the Federal Reserve's latest reaction to the new activity in the real estate market, largely due to the increase in rental backed securities, recommendations can be made to increase consumer protection. These recommendations will be referenced to their potential use in Florida, a state in which distressed home rentals are on the rise. Florida-specific legal and regulatory issues will be scrutinized, focusing on the potential for ensuring renter protection and avoiding unnecessary real estate market fluctuations.

Lack of Government Oversight

While it is difficult to pinpoint a consensus as to the cause of the 2008 financial crisis, lack of regulation and government oversight was a commonly cited problem, being the target of major legislation in both the state and federal levels including the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank).[41] Dodd-Frank outwardly targeted the securities market by increasing both investor protection and regulatory enforcement.[42] But the new rental-backed securities market appears to have all of the hallmarks of the under-regulated

[41] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 78).
[42] Dodd-Frank, supra note 42.

mortgage backed securities market. By funding private investors to develop and maintain the rental securities market, institutional lenders have again developed a way to shift risk away from their own portfolio while complying with the Federal Reserve's policy on foreclosure rentals and securitization.

Rental-backed securities have yet to be offered to the general consumer market. Investment for the new securities is taking the path of almost all new securities and is first being presented to institutional investors.[43] As is generally the case, institutional investors have significantly more information available to them when making investment decisions. Institutional investors can rely not only on determinations made by analysts and ratings agencies, but they also have their own analysts, attorneys, and economists who excel in accurately predicting the likelihood of generating profit. For the general consumer, investment information is limited to data produced by the investment broker or by ratings agencies. This information gap has been referenced in federal legislation, and is cited as a major cause of the financial crisis of 2008.[44]

On this point, the projected data for the new rental-backed securities is disconcerting. First, Moody's, Kroll, and Morningstar, three of the largest ratings agencies in the United States, have assigned their top AAA rating to fifty eight (58) percent of the securities. Comparing this number to the average percentage of AAA rated sub-prime mortgage backed securities since 2008, approximately six (6) to nine (9) percent, and the rating appears to be less than conservative.[45] Having no track-record to speak of, ratings agencies are relying primarily on the value of the underlying properties to formulate their rating.

[43] Shenn, supra note 32.
[44] *See generally,* Dodd-Frank Wall Street Reform and Consumer Protection Act, 124 Stat. 1376, 1871 (2010).
[45] Shenn, supra note 32.

Morningstar Incorporated, the primary ratings agency charged with generating a risk assessment of Blackstone's offering, published its methodology in September of 2013.[46] Morningstar cited its use of both quantitative and qualitative analysis in forming its opinion and even cited the use of its proprietary "Single-Family Rental Subordination Model."[47] Quantitative analysis focused on relative property values and property expenses such as taxes, insurance, homeowner association fees, property management fees, leasing/marketing costs, and expected capital expenditures.[48] Qualitative values included in Morningstar's formula are comprised of capitalization rates, vacancy rates, and net cash flow adjustments,[49] with all of the applicable data being processed via use of Morningstar's proprietary model.

Like Morningstar, Moody's Investor Service provided an explanation of its methodology; however, Moody's chose not to develop a new, proprietary formula for evaluation of residential securitization and instead used "Moody's Approach to Rating Large Loan/Single Borrower Transactions" which Moody's developed in July of 2000.[50] Compared to Morningstar's preliminary ratings, which were released on the same day, the valuation of Triple-A debt was strikingly similar. In fact, the relative ratings for both Morningstar[51] and Moody's[52] was exactly the same, with two hundred seventy eight point seven million dollars ($278,700,000) worth of

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[46] Morningstar, Inc. Single-Family Rental Securitization Ratings Methodology (September 5, 2013), https://ratingagency.morningstar.com/PublicDocs/20130905%20Morningstar%20SF%20Rental%20Ratings%20Methodology.pdf
[47] Morningstar, supra note 47, at 3 (with analysis and explanation of the Subordination Model at http://ratingagency.morningstar.com).
[48] Morningstar, <u>supra</u> note 47, at 4.
[49] Morningstar, <u>supra</u> note 47, at 4-5.
[50] Moody's Investor Service, <u>Rating Action: Moody's assigns ratings to Invitation Homes 2013-SFR1</u>, (October 31, 2013), https://www.moodys.com/research/Moodys-assigns-provisional-ratings-to-Invitation-Homes-2013-SFR1--PR_266653.
[51] Michelle Weiss, <u>Morningstar Credit Ratings Assigns Preliminary Ratings to Invitation Homes 2013-SFR1 (IH 2013-SFR1)</u>, (October 31, 2013), http://corporate.morningstar.com/US/asp/subject.aspx?filter=PR5011&xmlfile=174.xml.
[52] Moody's Investor Service, <u>supra</u> note 51.

debt being rated Triple-A. Despite Morningstar's use of a "proprietary" methodology, Moody's was able to generate the exact same analysis of Blackstone's offering.

Moody's claims that its outlooks have been adjusted for particular discrepancies that relate to the deal. The properties used in the security require less property insurance coverage than is usually required for similar deals.[53] The structure of the security also pools multiple properties under a single mortgage, rather than the "one property, one mortgage" system that is employed in previous securities. This is done, according to Moody's, so that "excess cash flow from on property can augment another's cash flow to meet debt service requirements."[54] Although this model seems to more adequately distribute the risk across multiple properties, the terms of the deal highlight the potential problems.

As explained above, properties pooled into securities are geographically centralized to allow for easier management. Properties with excess cash flow are used to supplement properties with below average cash flow, protecting property pools during times of tenant turnover. But if a property with lower cash flow is unable to recover, either because of market forces or degradation, the higher performing property may not be able to adequately support the lower performing property for extended periods of time. Unlike in the residential mortgage security market, which generally uses fixed mortgages of up to thirty (30) years, rental properties experience greater periods of vacancy and have higher average costs. Using higher performing properties to "prop up" lower performing properties is, at best, a temporary fix.

Also, the new multi-property mortgages that are being used in Blackstone's offering allow for the sale of the most profitable properties, depending upon certain circumstances.

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[53] Moody's Investor Service, supra note 51.
[54] Shenn, supra note 32.

According to the terms of the deal, individual properties secured by a multi-property mortgage can be sold for between one hundred five (105) and one hundred twenty (120) percent of their allocated share of the total mortgage. While an important factor for would-be investors, it reduces the likelihood that the highest performing properties will remain a security for the duration of the mortgage. Rather than taking advantage of the excess cash flow as outlined previously, investors may be tempted to "take the money and run," selling off the strongest performing properties and leaving only the weakest properties behind. This could potentially reduce the diversification of the underlying security and can unnecessarily increase the amount of risk for the overall investment.

Even more glaring are the estimated numbers that are being used by ratings agencies to rate the new securities. Cash flow analysis of the documents released to investors by Blackstone assumes that ninety five (95) percent of the properties will be rented at all times.[55] Additionally, the average monthly rent is estimated at over one thousand three hundred (1,300) dollars per property per month.[56] These numbers have been described as "ambitious" by industry experts and do not account for prolonged vacancy, a slow economy, or other contingencies related to the rental of single family homes.

With so many reasons to be skeptical, it is important to remember the Federal Reserve has formally backed the use of foreclosure rentals as a way to stabilize a very volatile housing market. Nobel Prize winning economist Robert Schiller has called rental-backed securities "revolutionary," explaining that they could help the housing market become more liquid and

[55] Gottesdiener, supra note 2.
[56] Gottesdiener, supra note 2.

home prices less "noisy."[57] But it is equally important to understand the reasoning behind the Federal Reserve's decision. Foreclosure rentals were theorized as a way to lower the effective cost of living in a home. By the Fed's mandate, institutional lenders were allowed to only rent properties for as long as absolutely necessary, making every effort to transition the properties back onto the open market. The intent was to lower the fixed cost of holding the properties while allowing the single-family homes to transition back onto the market, not to give institutional lenders a method to perpetuate the rental of those homes. These questionable practices are largely without regulation and have the potential to force the U.S. economy back into recession.

To understand what exactly is so questionable about the new rental-backed security offering, it is necessary to understand how Blackstone was able to accumulate so many properties in such a short time frame. In seeking to compile its portfolio of properties, Blackstone Group sought investment from its institutional owners including Morgan Stanley, Citigroup, Deutsche Bank, Bank of America, Goldman Sachs, and JP Morgan Chase.[58] Blackstone stands to make a profit on the new offering and so too does its institutional owners who played a major part in creating the underlying crisis.

Mortgage Securities vs. Rental Securities

As has been expected by industry insiders, the rental-backed security market and the home mortgage security market share many similarities in their creation and execution. Rental-backed securities have in fact been described as being "just like a residential mortgage-backed

[57] Rob Wile, The New Bond That's Supposed To Revolutionize The Housing Market Is Already A Huge Hit, Business Insider (November 8, 2013, 10:50 am), http://www.businessinsider.com/rental-backed-securities-are-here-to-stay-2013-11
[58] The Blackstone Group L.P. Institutional Ownership, supra note 33, at 2.

security."[59] But for many experts and think tanks, including the Center for Economic and Policy Research, skepticism still surrounds the new securities offering.[60] With so many striking similarities, it is hard to imagine why Wall Street thinks that this new system will produce different results than were achieved from 2008 to 2011.

To best understand just exactly how similar rental-backed securities and mortgage backed securities are, it is easier to outline the areas in which they differ. Significantly, the structure of the mortgages used to secure the properties could play a major role. As previously explained, mortgages securing multiple properties are being used by lenders to back the issuing of bonds. Multi-property mortgages are easier to manage and account for and investment groups prefer to group like properties under a single mortgage so that the terms of the mortgage remain uniform. According to the information provided to investors, under-performing properties may be supplemented by stronger ones. This method is implemented to reduce the risk of default by diversifying the risk across multiple properties.

But this strategy can lead to problems. In the mortgage backed securities market, foreclosure of the underlying security generally results from a default on the terms of the mortgage. This system ensures that homeowners will not find themselves in foreclosure without some measure of warning. Because the default is owner originated, foreclosure of a single mortgage limits the effect that the foreclosure has on the market by displacing a single owner/family at a time. Plus, with advance warning of an impending default, and prolonged judicial foreclosures, homeowners and families are able to adequately adjust to a change in living situation. This temporary delay, while disfavored by lender, is important for community and family stability and security.

[59] Gottesdiener, supra note 2.
[60] Gottesdiener, supra note 2.

Rental-backed securities, as structured, may threaten this delicate equilibrium. Unlike in the mortgage backed security industry, where a single default usually resulted in a single foreclosure, foreclosure of a mortgage tied to a rental backed security could lead to hundreds of evictions at any given time. By using mortgages that secure multiple properties, failure by the owner of the mortgage to avoid default could cause numerous evictions to occur in a very short time span.[61] Depending on the terms of the mortgage and lease agreements, renters could be asked to vacate properties or risk being evicted, especially if the foreclosing lender is looking for a way to renovate or convert the property. Further, the evictions could occur with little to no warning to the tenants. This instability could cause problems for vulnerable neighborhoods and schools, which may be subjected to mass upheaval of residents.

The success of these new securities may also rest on the quality of the property managers that administer the collection of rent and maintenance of the properties. Highlighting another way in which the rental-backed security market and the mortgage backed security market differ, homeowners with mortgages pooled in a mortgage backed security market have incentive to maintain the properties. It was generally not until after a property became "underwater," and foreclosure proceedings began, that lenders became concerned with how well the property was being maintained. The homeowners, to maintain their equity in the home, had a reason to ensure that the property was not falling to disarray. Even when lenders were concerned with the condition of a property, the use of receivership, as previously outlined, allowed lenders to distance themselves from bad investments and hazardous properties.

With rental properties, institutional lenders must account for the additional risk of poor quality renters. The task of managing this risk falls largely on the property managers, which may

[61] Gottesdiener, supra note 2.

have a disincentive to effectively manage the properties. The structure of compensation for property managers will play a major role in how well the unnecessary risk is compensated for. Performance based compensation, a common form of compensation in the property management industry, may likely reward high occupancy rates. With projected occupancy of over ninety five (95) percent[62], property managers that achieve those high rates will likely be rewarded, creating an incentive towards favoring quantity over quality. Rather than adequately screening each applicant, property managers may find it more profitable to ensure that a new renter is placed in the property, regardless of credit or stable renter history. There is even the possibility that property managers may target lower income neighborhoods, with incentives such as introductory rates, to increase the number of occupied units. This may result in higher turnover and lower renter quality, likely resulting in the degradation of the underlying security.

Property managers will also likely be incentivized for reducing cost and maximizing profitability. This push for profitability, without the necessary oversight, could result in properties going without proper maintenance and repair. Unlike the current property management system, often comprised of smaller property management firms with a vested interest in the property, securitization could reward property managers for neglecting properties and harassing tenants for payment. By distancing itself from the underlying asset, lenders may actually reduce the likelihood of success of the new securities market. Property managers may lack supervision, therefore meaning that the properties themselves may lack supervision and repair.

Analysis of the current management strategy being utilized by property managers for Blackstone Group indicates that rapid turnover may be the trend. In Charlotte, North Carolina,

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[62] Gottesdiener, supra note 2.

property managers have already filed for evictions against over ten (10) percent of the renters in Blackstone owned homes.[63] If rental-backed securities continue to expand, large investment groups could end up controlling a significant sector of single-family housing. This control could result in undue influence over particular markets, which could be used to artificially inflate prices for traditional home buyers or to detrimentally reduce property taxes.[64] Undue influence and high eviction rates could also further affect minority groups who lost their wealth in the financial crisis.[65] Without regulatory oversight, institutional lenders and investment groups may leave the market susceptible to another recession.

The Federal Reserve's Reaction

On December 5, 2013, economists Raven Molloy and Rebecca Zarutskie of the Federal Reserve published their reaction and analysis (FEDS Notes) of the burgeoning new single-family home investor market.[66] The paper highlighted the staggering numbers behind the growing investor industry. At the outset of 2004, approximately one percent of all new homes purchased in the United States were purchased by investors.[67] By the end of 2012, the national number was over six percent with certain metro areas rising as high as sixteen (16) percent.[68]

One important topic touched upon in the FEDS Notes paper, a topic too complex to be sufficiently analyzed in the writing, is investor use of real estate investment trusts (REITs). As

[63] Gottesdiener, supra note 2.
[64] Heather Perlberg and John Gittelsohn, Wall Street Unlocks Profits From Distress With Rental Revolution, Bloomberg (December 20, 2013), http://www.bloomberg.com/news/2013-12-20/wall-street-unlocks-profits-from-distress-with-rental-revolution.html (reporting that a hedge fund purchased 1 in 11 homes in a small town and the pushed for property tax cuts, placing the local school district at risk).
[65] Perlberg, supra note 66 (reporting that Blackstone was turning away would-be renters who were on government assistance).
[66] Raven Molloy and Rebecca Zarutskie, Business Investor Activity in the Single-Family-Housing Market, (December 5, 2013), http://www.federalreserve.gov/econresdata/notes/feds-notes/2013/business-investor-activity-in-the-single-family-housing-market-20131205.html.
[67] Molloy, supra note 68 (Business Investor Home Purchase Shares Chart).
[68] Molloy, supra note 68 (Business Investor Home Purchase Shares Chart and Business Investor Activity in 2012 (Table 1)).

described in the FEDS Notes, the primary purpose of REITs is to allow investors to transfer their liability to a new set of investors, thereby tapping a "broader investor base, which includes both individuals and institutions such as mutual funds and pension funds."[69] As a publicly traded entity, REITs publish financial reports. In the second quarter of 2013, the REITs which are a product of the recent investor activity, American Homes 4 Rent, American Residential Properties, and Silver Bay Realty Trust, each declared a negative net income.[70] The funding of investor home purchasing has been done, thus far, with a relatively limited use of debt. But according to Molloy and Zarutskie, it can be expected that investors will increasingly fund their purchases with debt as revenues increase and stabilize over time,[71] adding additional risk and allowing under-funded and inexperienced investors to enter the marketplace.

Molloy and Zarutskie concluded the FEDS Notes paper with one important statement: "[t]o our knowledge, no studies exist on the effect of single-family-real-estate business investor activity no housing markets or other outcomes."[72] Despite optimism regarding the deployment of otherwise stagnant capital pools, both economists agreed that the limited track-record of the new rental market adds significant risk. Despite Triple-A (AAA) ratings from both Moody's and Morningstar,[73] the FEDS Notes paper describes issues such as over estimating the need for rentals in a particular market.[74] If a particular rental market loses its need for rental properties, or if rental prices fall below a sustainable level for the investor, individual real estate markets can

[69] Molloy, supra note 68.
[70] Molloy, supra note 68.
[71] Molloy, supra note 68.
[72] Molloy, supra note 68 (Potential Benefits and Risks of Investor Activity in Single-Family-Housing Markets).
[73] Moody's Investor Service, supra note 51.
[74] Molloy, supra note 68.

become depressed. Although the relative risk to the national real estate market is low,[75] issues can arise as this new industry grows and finds additional financing.

Recommendations for Government Oversight

As the rental foreclosure market begins to gain prominence, additional investors may seek to take advantage of the new profit stream. If left unchecked, investment by private institutional lenders to the scale proposed would turn many urban areas into "company towns," reminiscent of the late 1800's and early 1900's.[76] Regulation will undoubtedly play a key role in successfully limiting the potential problems associated with a rental-backed security market and could ultimately determine the extent to which rental-backed securities are the cause of another financial recession.

As far as state and federal regulation of this new industry is concerned, there are virtually no safeguards explicitly in place to limit the extent of this practice. Dodd-Frank, while an important piece of legislation in the realm of mortgage-backed securities, deals primarily with disclosure and risk management problems related to banks that maintain over five hundred billion (500,000,000,000) dollars in assets.[77] This threshold limits the impact of the legislation on rental-backed securities. Further Dodd-Frank's enforcement is largely tasked to the U.S. Securities and Exchange Commission's enforcement division, which has only recently turned its focus to "enforcing new regulations from the 2010 Dodd Frank Act."[78] Consumer protection is

[75] Molloy, supra note 68 (stating that risk is low due to the relatively low market share of rental properties).
[76] Hardy Green, Monuments to Power, The Economist (October 14, 2010), http://www.economist.com/node/17249000?story_id=17249000&fsrc=rss (describing small rural towns in which a single company owned the properties that its workers lived in, never allowing for the purchase of property).
[77] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 78).
[78] Joshua Gallu, SEC's Canellos Says Enforcers Shifting to Dodd-Frank, Bloomberg (April 26, 2013, 10:49 am), http://www.bloomberg.com/news/2013-04-26/sec-s-canellos-says-enforcers-shifting-to-dodd-frank.html.

vital, especially while this industry is being navigated by potential renters who have never had to deal with an "institutional landlord."

Areas of the country most susceptible to the dangers of the new securitization system are easily identified as the same areas that were most affected in the 2008 financial crisis. As described above, States where foreclosure rates were highest, California, Arizona, Florida, and Illinois, are the areas first targeted by the new rental market ("at risk States"). To protect against exploitation of new renters, and to stifle the uncontrolled growth of the foreclosure rental market, regulators and legislators may look to utilize three important legislative tools: rent control, zoning law, and landlord-tenant law. Rent control, often used by States to combat inflation and/or depression, can be employed by "at risk States" to protect against the rapid rise and fall of rental prices. Stricter zoning regulation can be used to promote owner-occupied single-family homes. And finally, stronger landlord-tenant laws with even greater consumer protections can be enacted to reduce the risk of fraudulent activity. By targeting the methods used by investment groups like Blackstone, States can reduce the risks associated with unproven markets.

Preemptive Legislation in Florida

In recognizing the pitfalls that can develop in over-inflated real estate markets, it is crucial that safeguards are put in place to protect former homeowners who are now left renting their homes. Balancing the needs of landlords and tenants, while difficult, is best done prior to any serious increase in the numbers of single-family rental properties. Legislation that inhibits a free financial market is often criticized by both legal and economic scholars,[79] but the purpose of

[79] The High Cost of Rent Control, (2014), National Multifamily Housing Counsel, http://www.nmhc.org/ThirdPartyGuidance.cfm?ItemNumber=60869; *see also* Peat Marwick, A Financial Analysis of Rent Regulation in New York City: Costs and Opportunities (1988).

legislation proposed herein is precisely that. By slowing the growth of the new foreclosure rental market, individual markets may be less susceptible to exploitation.

As a test case, Florida meets and even exceeds the criteria of an "at risk State." Florida has already experienced the first accusation of fraud in relation to the Blackstone Group's rental properties. In Orlando, a property management group tasked with keeping track of its rented properties sent a fraudulent eviction letter to a homeowner, claiming that the eviction had been filed in court, even though the court had no record of any documents ever being filed.[80] Unlike any other state in the Union, Florida has two cities (Tampa and Miami) that are listed in the top ten[81] for investor activity in the foreclosure rental market. With a housing market that fell over fifty (50) percent in value during the 2007 financial crisis,[82] and with areas like South Florida which are reportedly renting as many as two hundred (200) properties per day,[83] issues that arise because of recent investor activity will likely be first seen in Florida.

First, there is the subject of rent control. Again, criticism of its use has been highly documented. But more recent scholars have begun to analyze the potential benefits of a limited use of rent control.[84] Generally speaking, "rent control" can be thought of as a government imposed limitation on a landlord's ability to increase a tenant's rent over a particular period of time. Calculations are made every year to determine the rent increase that landlords are allowed in any given market. This method decreases the risk of rapid inflation or deflation in real estate markets and also protects against unsustainable gentrification. When used in conjunction with

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[80] Gottesdiener, supra note 2.
[81] Molloy, supra note 68.
[82] Molloy, supra note 68.
[83] Peter Zalewski, Demand, cost rise rapidly for residential rentals, (February 24, 2013), The Miami Herald, http://www.miamiherald.com/2013/02/24/3251803/demand-cost-rise-rapidly-for-residential.html.
[84] Jeffrey James Minton, Rent Control: Can and Should It Be Used to Combat Gentrification?, 23 Ohio N.U.L. Rev. 823 (1997).

targeted zoning laws and ordinances, rent control can protect renters from being pushed out of their homes with little notice.

The dangers of an improper use of rent control cannot be understated. Healthy "free markets" are capable of producing fair and adequate pricing for the goods that are being bought and sold and disrupting this delicate balance may scare away buyers and sellers alike. Rent control, while beneficial when properly implemented, can inadvertently depress otherwise thriving real estate markets. By discouraging rental investors from entering a particular market, capital transfer is reduced and traditional buyers and sellers of homes may see less opportunity for growth. It is for that reason that rent control should remain an option of last resort.

Should the conditions for rent control exist, however, rent control can be an effective method for combating issues that have been highlighted previously. Over-inflation of real estate markets can be reduced. Highly leveraged investment activity can be discouraged. And perhaps most importantly, consumer/tenant confidence can be maintained, allowing for calculated growth in the real estate markets and preventing speculative rent increases by investors.[85] As real estate prices begin to rise, investors may be tempted to structure tenant turnover to maximize profit. Rent control, along with stricter landlord-tenant laws, can combat that temptation while protecting tenants' interests.

In Florida, rent control can be best implemented in areas with relatively low renter turnover. Areas like Miami Beach, where the rental market is established and where there are generally fewer single-family homes, is not well suited for the use of rent control. Areas with lower population density and a greater number of single-family homes are better for the rent

[85] Minton, supra note 86, at 834.

control. Any legislation introduced in Florida relating to rent control must be sufficiently drafted to overcome judicial scrutiny,[86] but the temporary use of rent control in Florida may be viable.

As a second option, strict zoning laws can be important for reinforcing a government's interest in protecting against unsustainable growth. Zoning has already been used prominently for controlling traffic, crime, allocation of public resources, school districting, and other important governmental functions. For its application in the foreclosure rental market, zoning ordinances may provide a way to identify particular geographic areas which would benefit from the promotion of owner-occupied single-family housing. Should investors begin utilize the practice of converting single-family homes into multi-family units, zoning can be used to inhibit this practice and preserve neighborhood integrity.

When used in conjunction with rent control, zoning can be used to protect non-investors from the potentially detrimental effects of investor speculation and development. One major issue referenced in the FEDS Notes publication was the risk to real estate markets if investors find it no longer profitable to operate in a particular area.[87] If the investor is unable to find a buyer for his/her properties, bankruptcy and foreclosure may occur. For investors who are not geographically diversified, individual real estate markets can suffer the effects of a massive turnover of homes. Moreover, tenants who are living in the foreclosed properties may be subject to eviction, which could lead to a substantial exodus away from communities with the greatest number of rented homes. Zoning laws can prevent investors from exploiting the "at risk" areas by promoting investor diversification and by preventing investor access to certain geographical areas. Beyond maintaining the traditional function of crime reduction, traffic management, and resource control, this zoning can help stabilize neighborhoods that would otherwise be at risk.

[86] *See generally*, *City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066 (Fla. 3d DCA 1981)
[87] Molloy, supra note 68.

Because a targeted zoning scheme is best implemented where investor density is the highest, Tampa, Florida could be a potential candidate of such a scheme. The Tampa Bay area has already seen over eight hundred million dollars ($800,000,000) in investor activity,[88] with Tampa being the fourth most targeted market by investors.[89] Protecting non-investing homeowners from fluctuations in the marketplace is important for the stability of the real estate market, and Tampa is especially susceptible to these issues. With such a large portion of new homes being purchased by investors, the market may already be feeling the effects of undue inflation. Zoning laws can be used in areas where investors have acquired the greatest quantity of houses, ensuring that governmental resources are properly allocated.

As a final step towards better non-investor protections, strong landlord-tenant laws must be in place to protect tenants living in single-family homes. Single-family rentals will likely be occupied by single families at a rate much higher than those found in other rental arrangements. Single families, many of whom have children, may have an even greater likelihood of becoming renters, and the needs of a single family are significantly different from some other tenants. Low-income renters can also benefit from stricter landlord-tenant laws, especially when coupled with rent control. Since 1978, low-income families with children have seen a reduction in inadequate housing, but they have also seen an increase in the cost burden of taking care of children.[90] This indicates that the need for quality, low-cost housing is important for low-income families with children who are less mobile in the event of an eviction and who are less able to fight an eviction in court.

[88] Drew Harwell, Blackstone, Big Investors Slow Their $800 Million Tampa Bay Home-Buying Binge, (October 31, 2013), The Tampa Bay Times, http://www.tampabay.com/news/business/realestate/blackstone-big-investors-slow-their-800-million-tampa-bay-home-buying-binge/2145419.
[89] Molloy, supra note 68.
[90] Housing problems: Percentage of households with children ages 0–17 that reported housing problems by type of problem, selected years 1978–2011, (2011), http://www.childstats.gov/americaschildren/tables/phy5.asp?popup=true#c.

Landlord-tenant laws that are to deal with the issues presented here need to be focused on protecting people who are most susceptible to issues arising from an investor driven foreclosure rental market. One way in which such laws can be made stronger is by increasing the transparency related to landlord-tenant agreements. Documents that affect title to property are generally recorded in public record books[91] so as to place other would-be creditors and interested parties on notice. Following that line of thinking, a lease which pertains to the use of a single-family residential home could be treated not as a contract between two parties, but as an instrument which affects real property and must necessarily be recorded. This added transparency would help prevent legal disputes between landlords and tenants which arise over particular terms in a lease agreement, and would also afford tenants protection against eviction due to a change in ownership of the property.

Comprehensive landlord-tenant reforms could also slow down the eviction process to allow tenants a greater opportunity to find alternative living. At first, the added costs associated with such a law would be difficult for investors seeking profit, but these issues may be remedied with larger deposits and slightly increased rent. By increasing the mandatory time periods for tenant notice and eviction, renters of single-family homes would have a better opportunity to adjust. In Florida, where an eviction notice for residential eviction is limited to just three days,[92] notice requirements can be extended for renters in single-family homes. Working in tandem with zoning regulation, renters in single-family homes can be given additional protections that are better suited for single families.

Mandatory judicial oversight, possibly in the form of a simple hearing, is another low risk method that could be implemented to allow tenants the ability to dispute an eviction without the

[91] Section 695.26, Florida Statutes (2013).
[92] Section 83.56, Florida Statutes (2013).

assistance of an attorney. For legally unsophisticated tenants, and for low-income tenants who are unable to afford an attorney's services, a mandatory hearing date will give the parties an opportunity to be heard while slowing the eviction process. A hearing will also afford tenants a better explanation of the eviction process, ultimately allowing them to understand and plan for an impending eviction. Florida has already previously implemented a similar methodology in foreclosure litigation when it briefly required mandatory mediation for all newly filed foreclosure actions.[93] This system, while unsuccessful in Florida[94] foreclosure litigation, may have greater success for newly filed evictions where both the landlord and the tenant are incentivized to work out a deal.

Possible problems associated with a slower eviction process can be largely aimed at the additional financial burden a slower process will place on landlords and owners. Increased downtime is especially detrimental to institutional investors, many of whom have structured their securities to account for a particular industry downtime average.[95] For that reason, it is important to stress the preemptive nature of the legal remedies suggested here. By implementing changes before issues arise, potential investors are better able to analyze the rental market and are better able to determine the viability of foreclosure rentals. Until the differences between the old rental landscape and the new large scale single-family home rental market are fully understood, the proper legislative reaction can only be speculated. But if economist predictions are correct, a major change will be happening soon, and it has the potential to significantly change the rental landscape in Florida and the United States.

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[93] In re: Final Report and Recommendations on residential Mortgage Foreclosure Cases, A.O.S.C. 09-54 (2009).
[94] Donna DiMaggio Berger, Mortgage foreclosure mediation program terminated by Florida Supreme Court, (January 2012), The Sun Sentinel, http://blogs.sun-sentinel.com/condoblog/2012/01/mortgage-foreclosure-mediation-program-terminated-by-florida-supreme-court.html.
[95] Moody's Investor Service, supra note 51.