

Cambridge University Press
978-1-108-41557-6 — The Foreclosure Echo
Linda E. Fisher, Judith Fox
Frontmatter
[More Information](#)

THE FORECLOSURE ECHO

This book tells the story of the foreclosure crisis from a new perspective – that of ordinary people who experienced it. This angle has not been thoroughly communicated before now. The authors are legal academics who have worked for decades defending low- to moderate-income people from foreclosure and challenging predatory lending practices. They have a wealth of experience representing people whose American Dream was shattered when they were threatened with losing their homes. Using actual experiences – often examined through a legal lens – supplemented by economic, social science and legal research, *The Foreclosure Echo* explains how people experienced the crisis and how their lenders and public institutions let them down. The book also details the lingering effects of the crisis – such as vacant and abandoned buildings – and how these effects have magnified inequality. Finally, the book suggests reforms that could help avoid another crisis.

LINDA E. FISHER is Professor of Law at Seton Hall Law School, where she teaches and litigates foreclosure and mortgage fraud cases on behalf of lower-income clients. She has published in the areas of subprime lending, mortgage fraud and civil rights. She has testified before the House Financial Services Committee and presented at a Federal Trade Commission conference. She has also been a Network Fellow at the Safra Center for Ethics at Harvard and an American Association of Law Schools Bellow Scholar. She was co-chair of the Subcommittee on Legislation, New Jersey Supreme Court Committee on the Residential Foreclosure Process, and has been a member of the Court's Committee on Minority Concerns. Professor Fisher also received the New Jersey AARP's Advocate of the Year Award for work on anti-predatory lending legislation.

JUDITH FOX is Clinical Professor of Law at the Notre Dame Law School, where she teaches and practices consumer law. Fox directs the Economic Justice Project, a low-income clinic specializing in predatory lending and mortgage law. She has served on a number of committees and task forces including, most recently, the Indiana Mortgage Foreclosure Task Force and the Indiana Supreme Court's Coalition for Court Access. She was a member of the Consumer Financial Protection Bureau's Consumer Advisory Board until Acting Director Mulvaney disbanded it on June 6, 2018. Over the years, Professor Fox has been honored for her tireless work for low-income borrowers. She has received numerous awards, including the Rodney Ganey, Faculty Community Based Research Award, the Greenville Clark Award for service to the cause of peace and human rights and the St. Joseph Valley Project Community Achievement Award for Social Justice.

Cambridge University Press
978-1-108-41557-6 — The Foreclosure Echo
Linda E. Fisher , Judith Fox
Frontmatter
[More Information](#)

The Foreclosure Echo

HOW THE HARDEST HIT HAVE BEEN
LEFT OUT OF THE ECONOMIC RECOVERY

LINDA E. FISHER

Seton Hall University School of Law

JUDITH FOX

University of Notre Dame School of Law



CAMBRIDGE
UNIVERSITY PRESS

Cambridge University Press
 978-1-108-41557-6 — The Foreclosure Echo
 Linda E. Fisher, Judith Fox
 Frontmatter
[More Information](#)

CAMBRIDGE
 UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
 One Liberty Plaza, 20th Floor, New York, NY 10006, USA
 477 Williamstown Road, Port Melbourne, VIC 3207, Australia
 314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
 79 Anson Road, #06–04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781108415576

DOI: 10.1017/9781108234214

© Linda E. Fisher and Judith Fox 2019

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2019

Printed and bound in Great Britain by Clays Ltd, Elcograf S.p.A.

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

NAMES: Fisher, Linda E., 1953- author. | Fox, Judith L., author.

TITLE: The foreclosure echo : how the hardest hit have been left out of the economic recovery / Linda E. Fisher, Seton Hall University School of Law; Judith Fox, University of Notre Dame School of Law.

DESCRIPTION: Cambridge, United Kingdom ; New York, NY, USA : Cambridge University Press, 2019. | Includes bibliographical references and index.

IDENTIFIERS: LCCN 2018056179 | ISBN 9781108415576 (hardback) | ISBN 9781108401616 (paperback)

SUBJECTS: LCSH: Foreclosure—Economic aspects—United States. | BISAC: LAW / Banking.

CLASSIFICATION: LCC KF697.F6 F57 2019 | DDC 332.7/20973—dc23

LC record available at <https://lccn.loc.gov/2018056179>

ISBN 978-1-108-41557-6 Hardback

ISBN 978-1-108-40161-6 Paperback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Cambridge University Press
978-1-108-41557-6 — The Foreclosure Echo
Linda E. Fisher , Judith Fox
Frontmatter
[More Information](#)

*This book is dedicated to all of our foreclosure clients who have
struggled to keep believing their American Dream.*

Cambridge University Press
978-1-108-41557-6 — The Foreclosure Echo
Linda E. Fisher , Judith Fox
Frontmatter
[More Information](#)

Contents

<i>Acknowledgments</i>	<i>page</i> xi
Introduction	1
Historical Background of Housing Policy	6
The Rise of Behavioral Economics	13
1 The Housing Crisis	18
Securitization Basics	18
Mortgage-Backed Securities, Fraud and Misrepresentation	20
The Borrowers' Role	25
Payment Option ARMs: The Worst of the Worst	29
Predatory Lending, Racial Targeting and Reverse Redlining	33
Deregulation's Contribution to the Crisis	35
Foreclosure Basics and the Explosion of 2006–10	36
The Mortgage Note, Robo-Signing and MERS	38
Document Creation and "Art Departments"	41
Responses to Robo-Signing and Other Reactions to the Crisis	48
2 The Breakdown of Mortgage Servicing and Loss Mitigation	50
Servicing and Securitization	50
Fraud and Servicing	53
Servicer Incompetence and Dysfunctional Bureaucracy	55
Servicing Transfers	59
Servicer Excuses and Defenses	61
Principal Reduction and Consequences of Failure to Take It	63
Foreclosure Mediation	67
Continuing Mortgage Servicing Issues, Conflicts of Interest and Banking Culture	74

3	Zombie Mortgages and Abandoned Properties	77
	Stalled Foreclosures	78
	Abandoned Foreclosures	79
	Zombie Mortgages	84
	Consequences of a Zombie Loan	91
	Strategic Default and Other Theories behind Abandoned Properties	94
4	The Benefits and Harms of Intervention	99
	The Federal Housing Finance Agency (FHFA)	99
	Mortgage Electronic Registration System (MERS)	105
	Distressed Asset Stabilization Program (DASP)	109
	Freddie Mac's Multifamily Small Balance Loan Securitization	112
	Small Banks and Small Loans	114
	Home Affordable Modification Program (HAMP)	117
	Home Affordable Refinance Program (HARP)	122
	The Consumer Financial Protection Bureau	123
5	Rethinking <i>Home</i>: Housing Post-Crisis	130
	The Changing Demographics of Homeownership	132
	The Affordability Crisis in Rentals	135
	The Resurgence of Contract Buying	140
	Homelessness in America	144
6	Foreclosure or a More Sustainable Mortgage?	146
	Brief History of Mortgage Law	146
	The Harms of Foreclosure	148
	Deficiency Judgments	155
	The Rise of Fast-Foreclosure Laws	160
	Tax Foreclosures	162
	Homeowner Association Foreclosures	168
	Some International Perspectives	169
7	Picking Up the Pieces and Revitalizing Neighborhoods	172
	Moving from Crisis to Recovery	174
	Community Development, Financial Institutions and Mortgage Acquisition	176
	Land Banks	180
	Renovation Innovation in Detroit	184
	Remaining Concerns	187

	<i>Contents</i>	ix
8	Where Do We Go from Here?	189
	Homeownership since the Crisis	189
	Private Mortgage Lending Reforms	192
	Shared Appreciation and Continuous Workout Mortgages	192
	Mortgage Insurance for Borrowers	194
	Servicing Reforms	195
	Policy Changes and Government Assistance	196
	More Support for Housing Counseling and Neighborhood Revitalization Efforts	198
	Legal Changes	199
	Housing as a Human Right	202
	Conclusion	207
	<i>Index</i>	209

Cambridge University Press
978-1-108-41557-6 — The Foreclosure Echo
Linda E. Fisher , Judith Fox
Frontmatter
[More Information](#)

Acknowledgments

As the dedication to this book demonstrates, our biggest debt of gratitude is to our clients, who bear their struggles with dignity and grace, despite the threat of losing their homes. We also acknowledge the many efforts made by concerned citizens and professionals in the Newark, New Jersey, and South Bend, Indiana areas to help prevent foreclosures, as well as mitigate their effects and rehabilitate neighborhoods. If only there were more such people, perhaps the crisis would not have been so deep and lasting.

More directly, Seton Hall Law School provided financial support and encouragement. We received extraordinarily helpful comments from the Progressive Property Scholars Conference, the Association for Law, Property and Society, the Safra Center for Ethics at Harvard, the Association of American Law Schools Bellows Scholars program and many others. We want to offer a special thanks to Kate Ravin for her wonderful assistance in editing. Our research assistants saved us many hours of investigation and their enthusiasm for the project was contagious. Not only were our academic colleagues helpful, our consumer lawyer colleagues were as well; together, they provided us with multiple perspectives on the issues. Peggy Jurow and Kevin Kelly have been enormously helpful in covering cases and classes while we wrote.

We also wish to thank our friends and families, and in particular our spouses Richard Gutman and Christopher Fox, for putting up with our preoccupation, obsessiveness and sometimes anxiety about ever finishing this book. Finally, we thank each other for simplifying the process of coauthoring.

Cambridge University Press
978-1-108-41557-6 — The Foreclosure Echo
Linda E. Fisher, Judith Fox
Frontmatter
[More Information](#)

