<u>State Rep. Jim Davnie</u>
Testimony – Saturday, January 23, 2010
Subcommittee on Housing and Community Opportunity

Madam Chair, and members of the Committee, I am grateful to have the opportunity to speak with you today.

The foreclosure epidemic that has swept our nation over the last several years continues to infect our neighborhoods with fear, uncertainty, and injustice.

As elected officials at the state and federal levels, we have a shared responsibility to meet this crisis together. Wielding the full resources of the Minnesota and United States governments, we can and must stop the hemorrhaging trend of foreclosures that has already severely damaged our economy; a crisis that continues to strip hope from the lives of countless Minnesota families.

The foreclosure crisis has hit Minnesota hard, particularly the Minneapolis neighborhoods I represent. Between 2005 and 2007, over 38,000 mortgages were foreclosed in Minnesota. Another 28,000 homes were foreclosed in 2008. And last year alone, more than 35,000 Minnesota homes went into foreclosure. Homeowners lost $7.8 billion in value in the Twin Cities metro area alone in 2009. And today, 15.5 percent of Minnesotans with a mortgage owe more than their home is worth.

Even though the writing was on the walls for years, the devastating outcome of a widely unregulated housing market were largely unforeseen – until it was too late. Since this crisis began, Minnesota has taken the lead in correcting the fundamental problems that caused it.

At the same time, we have been struggling with limited resources – like so many other states – to provide affordable housing opportunities for tens of thousands of homeowners displaced by the ongoing foreclosure crisis, and the nationwide economic recession.

Please discuss your efforts in the Minnesota House of Representatives in trying to address foreclosure prevention, and in trying to address the after-effects of the foreclosure crisis.

<u>2007 Legislative Session</u>
In 2007, the Minnesota Legislature focused heavily on addressing predatory lending and a wave of home foreclosures sweeping our state. Working with stakeholders from all parties, we created and passed an aggressive platform of smart, responsible foreclosure prevention bills that have set a national standard for homeowner protection.

A bill I authored in 2007 (HF1004) prohibited mortgage brokers from making loans to borrowers who have not demonstrated the ability to repay the loan and from refinancing mortgages to the detriment of the borrower. It also required mortgage brokers and lenders to accurately disclose the total monthly payment including taxes and insurance. Brokers in Minnesota are now required to act in the borrower's best interest when seeking out a loan rather than matching the borrower with the lender that gives the largest kickback to the broker.

Minnesota also enacted HF931, a bill that complemented HF1004 by creating criminal penalties and private rights of action against brokers who violate the law. It also prohibited prepayment penalties on subprime mortgages and required borrowers to receive financial counseling before refinancing an especially favorable mortgage.

Additionally, Minnesota passed HF1209 addressing the problem of "equity stripping." In particular, the law closed several loopholes in the existing law (MS 325N) regarding the unscrupulous practice of taking advantage of homeowners facing foreclosure by stripping their home out from under them. Among other things, the bill:

1. Permitted homeowners to stay in their homes while they contest their evictions by their new landlords in housing court; and
2. Eliminated the ability by foreclosure "rescuers" to engage in one mortgage rescue before becoming subject to the law.

<u>2008 Legislative Session</u>

With a softening economy and new foreclosure-related problems coming to light, Legislators recognized that more needed to be done to provide economic relief to homeowners and tenants who faced losing their homes to foreclosure, and to protecting neighborhoods.

The 2008 Legislature passed a robust package of new foreclosure measures aimed at easing the economic fallout of foreclosure for homeowners, owners of mobile homes and renters. These measures included an increased emphasis on foreclosure prevention outreach in the early stages of foreclosure, regulating mortgage broker practices, strengthening the position of renters living in foreclosing properties, and new foreclosure rights for owners of mobile homes.

The Legislature also invested in new measures aimed at increasing the stock of affordable housing and building emergency shelters, and temporary or transitional housing units for those who were struggling with homelessness both short and long-term.

Many of the housing related bills introduced and heard during the 2008 Legislative Session were products of a seven-month working group process that began in June 2007. The bills represented consensus among stakeholders participating in the process including elected officials, government agencies, nonprofit organizations, Legal Aid, lenders, neighborhood groups and citizens.

A broad variety of changes in the law were passed to clarify and improve the fairness of foreclosure procedures for homeowners and renters. Most importantly, the law required the default notice to inform the borrower that foreclosure prevention counseling services are available, and inform them their loan has been provided to an authorized foreclosure counseling agency. In addition, the borrower is required to refer specified information to an agency and the agency must notify the lender if it is providing counseling services to the borrower (SF2912).

The hallmark initiative of 2008 was a bill I authored (SF3396) that could have helped save the homes of more than 12,000 Minnesotans facing foreclosure. The Minnesota Subprime Borrower Relief Act would have given homeowners facing foreclosure an opportunity to work out an arrangement with their lenders and keep their homes.

The explosion in foreclosures does not just harm the individual homeowners, but neighbors and the entire community as well. The Minnesota Subprime Borrower Relief Act was targeted for homeowners who took out a subprime mortgage prior to August 2007 and were committed to making monthly mortgage payments and receiving counseling to avoid foreclosure.

Those homeowners could have deferred their pending foreclosure up to a year or until the lender made a good faith offer to restructure the mortgage based on the borrower's ability to pay. The purpose of the bill was simply to avoid foreclosures where possible.

Unfortunately the bill was vetoed. Just months later, America's financial industries collapsed, tens of thousands of Minnesota homes fell into foreclosure – unnecessarily hurting families that could have kept their homes, and kept paying their mortgages, had SF3396 been signed into law.

2009 Legislative Session

The Legislature continued its commitment in 2009 to fighting the foreclosure crisis.

A provision (HF 2088) passed in 2009 provided significant relief for homeowners facing foreclosure. It allowed homeowners to postpone the foreclosure sale by five months as long as they agreed to shorten the redemption period (following the foreclosure sale) by the same amount of time. Lenders and homeowners both supported the bill, as the postponement gives homeowners greater opportunity to bring their mortgage payments up-to-date and keep their homes.

The Legislature also changed the foreclosure process to allow rental property owners to postpone mortgage foreclosure sales for five months and reduce the post-sale redemption period by five weeks. The changes give homeowners more time to reinstate their mortgage loan, and allow homeowners to pay only the amount in default plus the lender's costs of the foreclosure, instead paying off the entire amount of the mortgage loan after the foreclosure sale (HF 19).

We also made significant efforts to pass a bill (HF 354) that would have given homeowners the opportunity to participate in mediation with their lenders so they could renegotiate the terms of the mortgage in a way that would avoid foreclosure and allow homeowners to stay in their homes. The bill was modeled on the Farmer Lender Mediation Program, which was established in the 1980s to deal with the farm crisis.

In response to concerns from banks and credit unions, the bill was changed to shorten the mediation period so the overall foreclosure process was not extended. Nonetheless, the Governor vetoed the bill noting, among other things, his concern about mediators being appointed by the Attorney General's office.

The Governor also vetoed a bill (SF489) that sought to strengthen Minnesota's law on reverse mortgages. Reverse mortgages are marketed to senior citizens, and lenders sometimes engage in predatory behavior. The bill would have stepped up existing counseling requirements, given borrowers a 10-day rescission period, and required lenders to determine that a reverse mortgage was suitable for each borrower. Despite passing 63-2 in the Senate and 106-26 in the House, the Governor vetoed the bill.

What other legislation have you worked on to address affordable housing?

2007 Legislative Session

In 2007, Minnesota aggressively addressed the issue of affordable housing. Our state has the highest growth in number of households that spend more than half their income on housing. This fact motivated the House to pass the strongest housing package in a decade. The package provided increased funding of $39.6 million in programs to help Minnesota families achieve housing security, $12.1 million for ongoing investments, and $27.5 million in one-time funds.

This landmark legislation was vetoed by Governor Pawlenty, but a comprise negotiated between the Governor and the Legislature reduced the investment in affordable housing by $4 million to offer a final housing package of $114.5 million; a $35.6 million increase over the last budget cycle.

The package restored cuts to housing programs from 2003 and provides new investments to increase affordable housing stock and improve the capacity of programs that support low-income families trying to purchase a home for the first time. In its original form, the bill took aim at the fallout from predatory lending-related mortgage foreclosures with investments in homeownership counseling programs and an economic model to help predict possible pockets of activity for sub-prime lenders and brokers.

The final bill eliminated funds for the predatory lending prediction model but retained, in a reduced amount, funds for homeowner education and counseling.

2008 Legislative Session

In 2008 we enacted a new law (SF 2909) allowing tenants to pay current charges owed for the most recent billing period, and mandating the utility or municipality to restore the service for at least one billing period. Under the new law, the landlord can be restored as the customer of record upon payment of or on completion of an agreement to pay all arrears and late charges. After submitting documentation to the landlord of the tenant's payment to the utility company or municipality, a tenant may deduct that amount from the next rental payment.

We also passed a bill (SF 2910) requiring mandatory expungement of eviction records where a tenant is a victim of foreclosure and either vacated prior to the end of the redemption period or before the commencement of the eviction action. This law also applies where a tenant did not receive required statutory notice.

Additionally, we put a new law (HF 3477) on the books that fills an important gap for owners of manufactured homes. The law outlines notice requirements to manufactured homeowners in default, extends the time for mortgage redemption by manufactured homeowners and applies predatory lending protections to manufactured home borrowers.

Unlike traditional site built homes, many manufactured homes are not eligible for traditional mortgages. This is due in large part to the fact that Minnesota law classifies manufactured homes as personal property. Instead of traditional mortgages, manufactured home owners have chattel or personal property loans, which lack the protections that exist for mortgages.

What is the state of public and assisted housing in your district?

The outlook for public and assisted housing in my south Minneapolis neighborhood remains challenging; however the federal funding of $19.5 billion that was directed to Minneapolis as part of the American Recovery and Reinvestment Act will help us in our efforts to turn meet the need for affordable housing.

Programs like the Minneapolis Public Housing Authority's Home Ownership Made Easy (HOME) program in partnership with private lenders are helping low-income families make home-ownership a reality. Since the program's inception, 144 former public housing and Section 8 families have purchased their own homes, and more than 700 families have received HOME Program counseling. Of those, there has been only one known foreclosure to date, compared to a national default rate (for all incomes) of 5-6% and a Minnesota default rate of less than 5%. Additionally, the HOME Program produces a "win-win" result with regard to affordable housing for families in our community, as each time a family successfully purchases a home, the public housing unit they were living in or Section 8 rent assistance they were utilizing becomes available for a family off of MPHA's waiting lists - thus benefiting two families at once.

Additional resources will help programs like HOME further ease the affordable housing challenges we face in Minneapolis.

Please describe what other federal resources are needed to address the foreclosure and affordable housing crises.

One of the biggest challenges Minnesota faces is that lenders who are not licensed in other states are not subject to our more stringent regulations. That makes it difficult to hold those out-of-state lenders to the same high standards that we hold Minnesota lenders to.

Uniform federal regulations that apply the same restrictions that we've successfully implemented in Minnesota would address these issues and eliminate the "patchwork" system that currently exists from state to state and that allow lenders to subvert meaningful regulation by simply operating out of states with looser policies that guide their business practices.