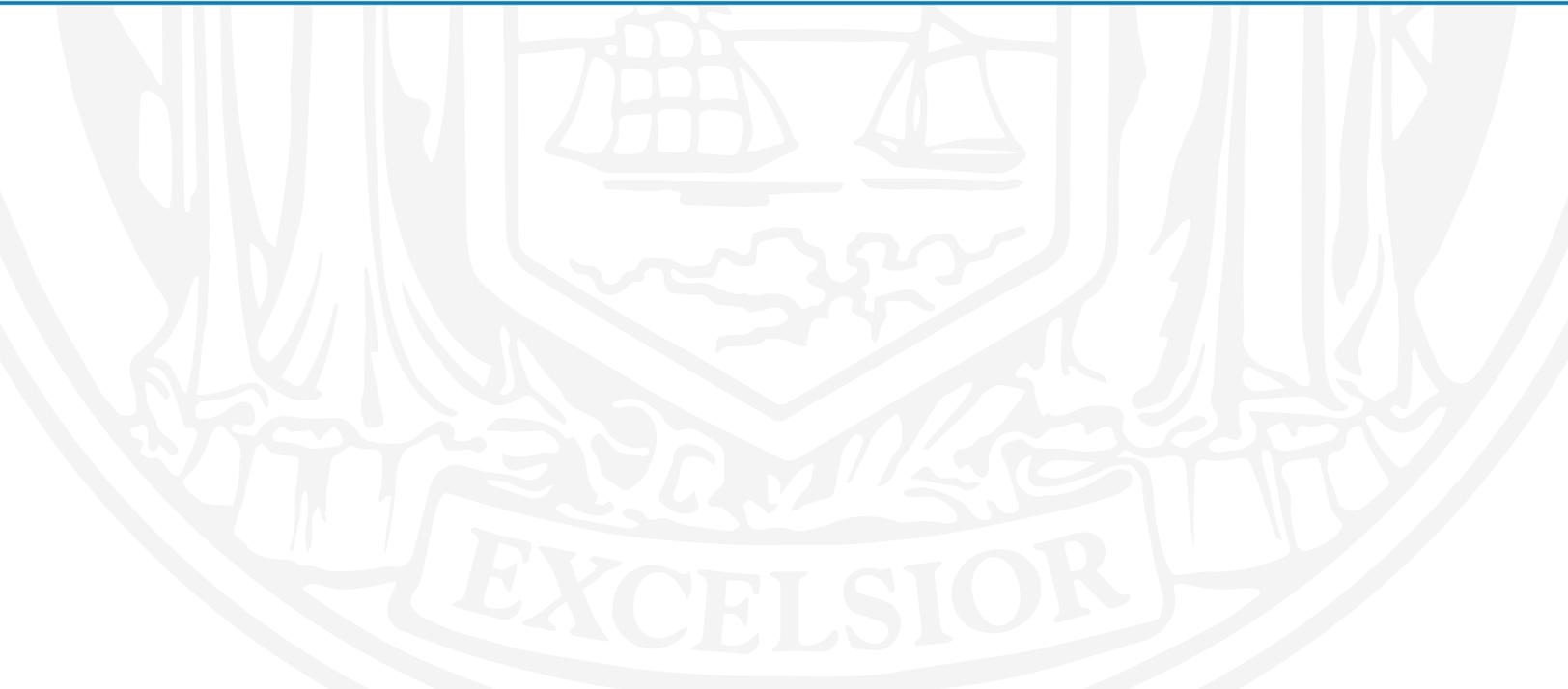
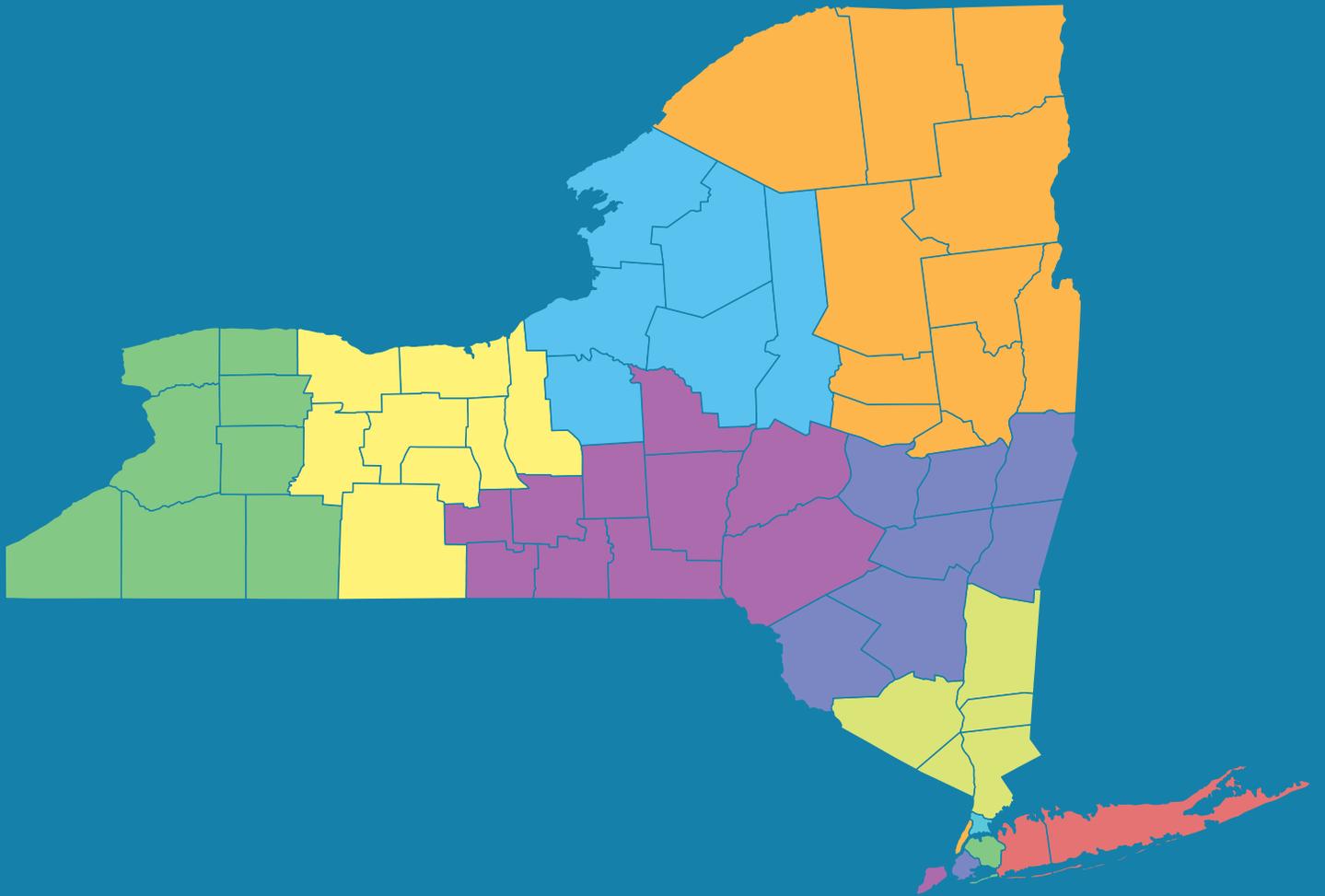




2018 Report of the Chief Administrator of the Courts on the
STATUS *of* FORECLOSURE CASES
Pursuant to Chapter 507 of the Laws of 2009



LAWRENCE K. MARKS
Chief Administrative Judge

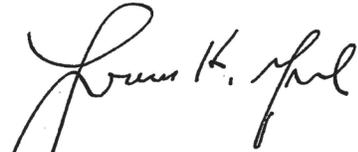


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Preface

To the Governor and the Legislature of the State of New York:

I am pleased to submit this report on the status of foreclosure settlement conferences in the New York State Courts. Section 10-a(2) of Chapter 507 of the Laws of 2009 directs that “the chief administrator of the courts shall submit a report...to the governor [and key legislative officials] on the adequacy and effectiveness of the settlement conferences authorized [under section 10-a(1)]...which shall include, but not be limited to the number of adjournments, defaults, discontinuances, dismissals, conferences held, and the number of defendants appearing with and without counsel.” Accordingly, this Report provides the required data and other additional information regarding residential foreclosure cases and the foreclosure settlement conferences for the period October 10, 2017 to October 8, 2018.



Lawrence K. Marks
Chief Administrative Judge

I. Introduction

Recognizing that foreclosures have a huge impact on communities throughout New York State, the Unified Court System (UCS) has dedicated significant resources to these important cases. Under Chief Judge Janet DiFiore's Excellence Initiative, the pending foreclosure inventory has been reduced by 49.8%¹ from the almost 90,000 cases pending statewide in January 2016. Since that time, the number of foreclosures in New York State has dropped to less than 45,000. Bolstered by the rebounding economy, new foreclosure filings have decreased as well, from a high of almost 48,000 in 2009 to less than 26,000 in 2017. To put things into perspective, in 2013 one out of every three pending Supreme Court civil cases was a foreclosure action. Today, through the sustained

hard work of dedicated judges and court staff, foreclosures represent 18.4% of the Supreme Court civil inventory statewide.

While New York's economy has rebounded, mortgage foreclosures continue to affect thousands of individuals and families every day. As such, the UCS will continue to prioritize foreclosure matters statewide in order to assist litigants in navigating these often-complex matters. At the same time the court system will strive to give all homeowners access to free representation and the opportunity to participate in meaningful settlement conferences.

This report reviews the UCS's 2018 foreclosure initiatives and examines important caseload trends and statistics.

II. Excellence Initiative

In furtherance of Chief Judge DiFiore's Excellence Initiative, the UCS has implemented considerable changes to foreclosure case processing, all of which have made the courts more efficient and user-friendly.

Uniform Foreclosure Settlement Conference forms continue to be mandated for use in every settlement conference. These forms ensure that courts have an accurate and complete record of all conferences. The homeowner and the lender are given copies of the forms, which are a road map for the settlement process. Judges and court-attorney referees can track settlement discussions and make sure that both the lenders and the homeowners are negotiating in good faith. Most importantly, the forms provide all involved parties, but especially unrepresented homeowners, a

better understanding of their rights and responsibilities during the settlement conference process. The forms have proven to be an essential tool in helping homeowners negotiate loan modifications and stay in their homes. Revisions to the forms, to make them more user-friendly, will be implemented shortly.

In 2018 the UCS promulgated **Uniform Motion Templates** in cases where the homeowner has not contested the foreclosure. The templates were created by the UCS Office of Policy & Planning in consultation with, and after extensive feedback from, the Unified Court System's Statewide Foreclosure Working Group comprised of judges and court personnel from each judicial district. The UCS also worked with a Mortgage Foreclosure Task Force, which includes representatives from civil legal

1. January, 2016 to October, 2018.

service providers, the defense bar, and the plaintiffs' bar. The templates were then submitted for public comment. Standardizing motion practice in foreclosure cases has enabled judges and court personnel to more efficiently review and process cases. These templates also assist litigants by ensuring uniformity of practice statewide.

Integrating and sharing case processing data between courts is now possible with the ongoing roll-out of the UCS' new **Universal Case Management System (UCMS)**. In partnership with the UCS Division of Technology, the Office of Policy and Planning is pursuing a project to share information between New York City Housing Court and Supreme Court with the goal of expediting, where appropriate, housing matters where there is a related foreclosure proceeding. If a homeowner who relies on rental income to pay the underlying mortgage can quickly resolve a non-payment proceeding in Housing Court, the homeowner can then earn enough rental income to obtain a loan modification, thereby keeping the property.

E-filing, which permits the filing of court papers electronically, is quickly becoming the standard throughout New York State, and foreclosures are no exception. Every effort has been made to assist unrepresented homeowners with e-filing, and new forms have been promulgated that promote e-filing while protecting homeown-

ers' rights. Written in plain language, the forms explain to homeowners the benefits of e-filing and provide step-by-step instructions on how to register for e-filing. They also list contact information for homeowners who want to learn more about the process. Court personnel have been specifically trained to assist unrepresented litigants with e-filing, but homeowners have the option to either participate in e-filing or to opt-out and receive hard copies of any filings. Great attention has been paid to the e-filing process to make homeowners comfortable with the way they receive court documents, whether electronically or by mail. It is extremely important that the homeowner receives all correspondence from both the court and the lender.

In 2018 the Office of Policy and Planning organized two regional **foreclosure seminars** to keep judges and court personnel up-to-date on recent developments in the law and on operational issues. The programs included an appellate case law update, a presentation on statewide policies and e-filing, an overview of effective settlement conference strategies, and a panel discussion by members of the foreclosure bar. Both seminars also included a comprehensive overview of the policies concerning court access for people with disabilities, with a focus on best practices in providing access to our courts for individuals who have special needs.

III. Filing Trends

During the Reporting Period (October 10, 2017 – October 8, 2018), 24,830 foreclosure cases were filed. This represents a 7.9% decrease from the 26,949 cases filed as reported in the 2017 Annual Report (see Fig. 1)², a 26.2% decrease from the 33,641 filings reported

in the 2016 Annual Report, and a 41.1% decrease from the 42,162 foreclosure filings reported in the 2015 Annual Report.

Of the 24,830 new foreclosure cases filed during the Reporting Period, 19,137 were assigned to the foreclosure settlement con-

2. The numbers depicted in Fig. 1 for the years 2007-2017 represent annual filings. The 2018 number is a projection.

ference part pursuant to CPLR 3408. These parts are designed to offer lenders and homeowners the opportunity to settle the foreclosure case, generally through a loan modification, but also through a short sale or other loss mitigation option. The UCS commits substantial resources to these conferences, with judges, court-attorney referees, court clerks, and other court employees all staffing these parts.

The volume of new filings in the Reporting Period varied by court term, with a statewide high of 2,392 in Term 4 of 2018 and a statewide low of 1,696 in Term 13 of 2017.

New filings in courts within New York City totaled 5,710. New filings in courts outside of New York City totaled 19,120.

As of October 8, 2018, the end of the Reporting Period, there were 43,739 foreclosure cases pending statewide (see Fig. 2). This represents a reduction of 12.1% from the 49,746 cases reported in the 2017 Annual Report, a 39% reduction from the 71,723 cases pending as reported in the 2016 Annual Report, and a 51% reduction from the 89,365 pending cases as reported in the 2015 Annual Report.

Annual Foreclosure Filings: 2006 – 2018



Figure 1

Pending Foreclosure Cases: January 2017 – October 2018*

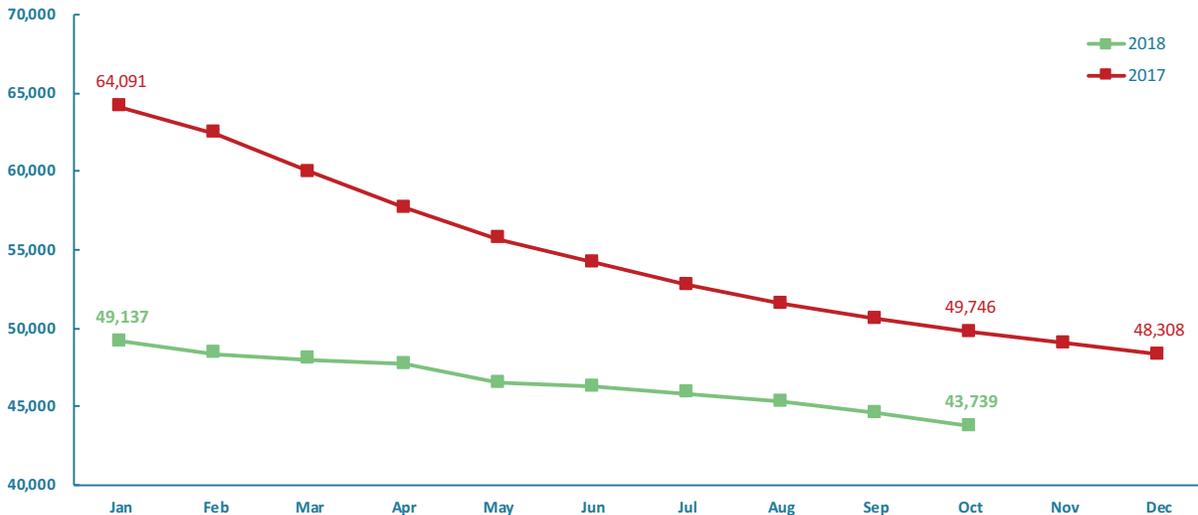


Figure 2

*The 2017 figures include foreclosure cases pending from January 3, 2017 to January 2, 2018 (Terms 1-13). The 2018 figures reflect cases pending as of January 28, 2018 (end of Term 1) through October 8, 2018 (end of Term 10).

IV. Foreclosure Settlement Conferences

During the Reporting Period, 41,442 foreclosure settlement conferences were held in courts statewide (see Fig. 3). This continues the downward trend from the past four years, with 118,394 conferences reported in 2014, 101,523 in 2015, 81,138 in 2016, and 58,387 in 2017. Most cases require several conferences to determine whether a settlement can be reached. As such, during the Reporting Period, there were 26,654 adjournments in the foreclosure settlement parts. Defaults by homeowners occurred in 4,511 cases, voluntary discontinuances were recorded in 376 cases, and 28 cases were dismissed by the court.

Of homeowners who participated in the settlement conferences, 21%³ obtained modifications of their home loans to an affordable level. These modifications have allowed thousands of families in communities across the state to continue to build equity in their own homes.

As reported in 2017, the expiration of the federal Home Affordable Modification Program (HAMP) has made it more difficult for homeowners to obtain lower interest rate loan modifications. But a loan modification is not the only option available for homeowners trying to prevent their homes from being foreclosed. One program that has provided relief in the form of low-interest loans is the **Mortgage Assistance Program (MAP)**, which provides 0% interest mortgage loans of up to \$80,000 to eligible New Yorkers at risk of foreclosure. Applying for a MAP loan often takes several months, and as a result courts have had to spend additional time and resources monitoring these cases. The UCS is, however, committed to keeping families in their homes. It will continue to provide foreclosure settlement parts with the staffing and technological resources needed to conference these important cases and ensure that homeowners have the time needed to apply for a MAP loan.

Foreclosure Settlement Conference Appearances

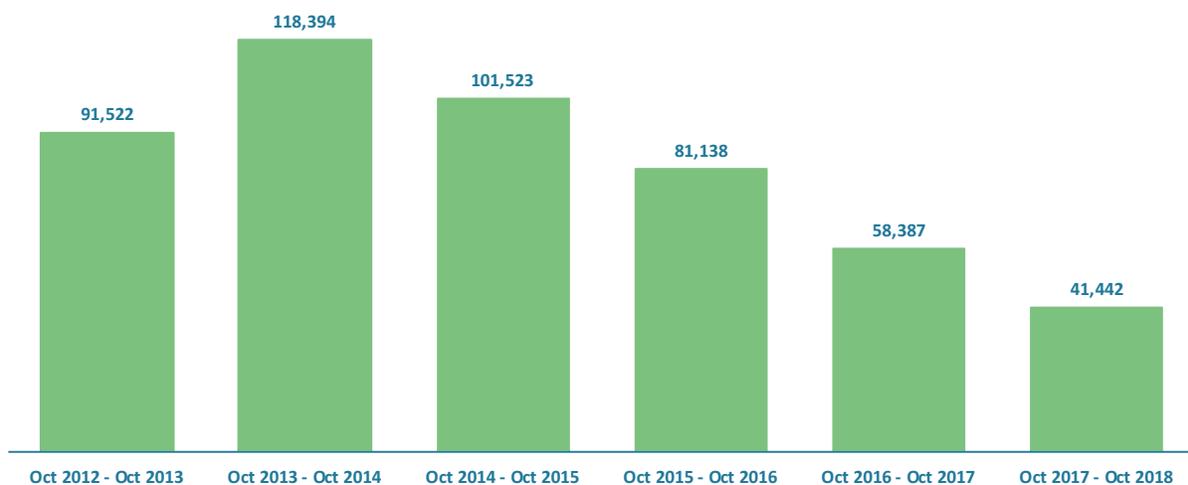


Figure 3

3. This represents cases conferenced in the foreclosure settlement conference parts during the Reporting Period, excluding defaults, cases that were stayed, and cases that are still actively being conferenced.

V. Legislation and Court Rules

In 2018, the Administrative Board of the Courts approved a court rule requiring the parties in both uncontested and contested **divorce cases** to effectuate the transfer of any title, deed, and any other relevant mortgage documents as a condition of a divorce judgment. This rule places all parties in a divorce action on notice that additional documents may be necessary to fully effectuate any agreed-upon property transfer. Now there can be no doubt that the person who remains in the home after the divorce is finalized will have all documents necessary to enable that person to apply for a mortgage loan modification or other loss mitigation option if necessary.

The UCS has made significant strides in foreclosure case tracking over the last few years. With the implementation of “**Master Calendars**”, each court can more carefully monitor cases in which settlement conference efforts were not successful and ensure that all parties comply with court orders and motion practice deadlines. Despite these efforts, one ongoing issue of concern arises when the plaintiff fails to comply with court orders and motion practice deadlines. To remedy this, the UCS is drafting an amendment to the court rules to allow for an administrative dismissal of a claim where the lender fails to move for an order of reference or judgment of foreclosure and sale within a certain period after the case is released from the settlement conference part.

Reverse mortgages are loans that allow homeowners aged 62 and older to borrow money against their home equity while remaining in their homes so that they have enough income to cover their living expenses. Unfortunately, in recent years the UCS has seen an increase in reverse mortgage foreclosures. Until recently reverse mortgages had been statutorily excluded from the foreclosure settlement conference process, although many courts took the initiative to include them in their conference parts notwithstanding. Finally, in 2017, legislation was enacted to ensure that most reverse mortgage cases qualify for mandatory settlement conferences. These protections were expanded in 2018 with new legislation (RPAPL 1304[1-a]) that requires lenders to serve defaulting reverse mortgage homeowners with a pre-foreclosure 90-day notice similar to the 90-day notice that had already been required for traditional mortgages. The 2018 statute requires that the new 90-day notice provide details about the asserted reverse mortgage default and disclose basic information to the homeowner at risk of foreclosure. These measures have brought increased transparency to the foreclosure process and allowed New York’s vulnerable senior population to take advantage of additional foreclosure prevention tools. The UCS has made sure that the judges and other court staff who work on these cases are aware of these important changes and is providing assistance where needed.

VI. Legal Representation

The Unified Court System is committed to ensuring that New Yorkers facing foreclosure have access to free, high-quality legal representation. The UCS continues to provide civil legal service providers and housing counseling agencies

with funding so that they can assist lower-income individuals and families who cannot afford to retain an attorney. With the budgetary support provided by the Governor and Legislature, this year the UCS allocated \$100,000,000 to civil legal service providers

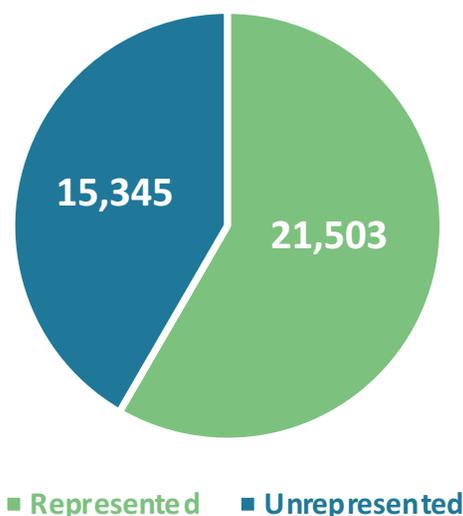
to represent homeowners in court and to housing counselors to assist homeowners with their loan modification applications. This matches the \$100,000,000 previously provided by the UCS in 2016 and 2017.

The settlement conference process affords most homeowners the best opportunity to negotiate home-saving solutions like loan modifications, and it is vital that homeowners have expert assistance during this process. With the continued commitment to civil legal service representation, approximately 155,000 New Yorkers have already benefited from housing and foreclosure-related legal services during the 2018 fiscal year.

During the Reporting Period, homeowners were represented by legal counsel at 21,503 settlement conferences. Homeowners were unrepresented at 15,345 settlement conferences.

Homeowner Representation at Foreclosure Settlement Conferences

October 2017 – October 2018



VII. Statewide Foreclosure Committee

The Statewide Foreclosure Working Group is an internal UCS working group chaired by the Hon. Sherry Klein Heitler, Chief of the court system's Office of Policy and Planning. Comprised of judges, court attorney-referees, chief clerks, district executives, and court personnel from across the state, the foreclosure committee has been an integral part of all the foreclosure pilot projects and programs that have been implemented

by the UCS in recent years. Committee members were instrumental in the development of the Uniform Foreclosure Settlement Conference forms and Uniform Motion Templates. They continuously provide updates on day-to-day court operations, and regularly communicate with each other on best practices and complicated issues as they arise. Their keen insight has been invaluable to court administrators on both a legal and operational level.

XIII. Collaboration

The UCS continues its ongoing collaboration with our partners in government and the attorneys who practice in this area of law. With their assistance and input, the UCS strives to ensure that homeowners have access to free representation, foreclosure practices are fair and uniform statewide, and every judge

and court attorney who presides over settlement conferences is current on foreclosure rules and loss-mitigation options. For this reason, court personnel meet regularly with lender and loan servicer attorneys, civil legal service providers, members of the private defense bar, and housing counseling agencies.

SUMMARY TABLE

October 10, 2017 - October 8, 2018

Conferences Held	41,442
Number of Adjournments	26,654
Discontinuances	376
Dismissals	28
Defaults	4,511
Defendants Appearing with Counsel ¹	21,503
Defendants Appearing without Counsel ¹	15,345
1. Based upon the conferences held between October 10, 2017 and October 8, 2018, excluding appearances where the defendant defaulted.	

IX. Conclusion

Due to the sustained implementation of the Excellence Initiative, and building upon the trend that began in 2016 and 2017, pending foreclosure cases in New York once again dropped significantly in 2018. Case dispositions outpaced filings across the state and hundreds of thousands of New Yorkers benefitted from civil legal service providers and housing counselors. Court practices were also further standardized at the statewide level. Underscoring all of these accomplishments is the UCS' fundamental commitment to preserving the rights of all litigants and to treat each and every person who walks into a New York State courthouse fairly.

Aided by an improved economy, and inspired by Chief Judge DiFiore's call to excellence, court personnel have presided over 41,442 foreclosure settlement conferences designed to assist homeowners

who seek to remain in their homes. Many of the homeowners who participated in these conferences who would not have been able to afford private counsel obtained meaningful legal assistance at no cost due to the UCS' strong commitment to free, quality legal representation for those in need. At the same time, court processes are being streamlined and data collection and oversight are being enhanced.

The UCS is fully prepared to adjudicate foreclosure matters in the future and to provide low-income New Yorkers access to legal representation to help negotiate home-saving solutions.

The New York State Judiciary is as committed as ever to providing a just and fair resolution for all litigants involved in these important cases.

