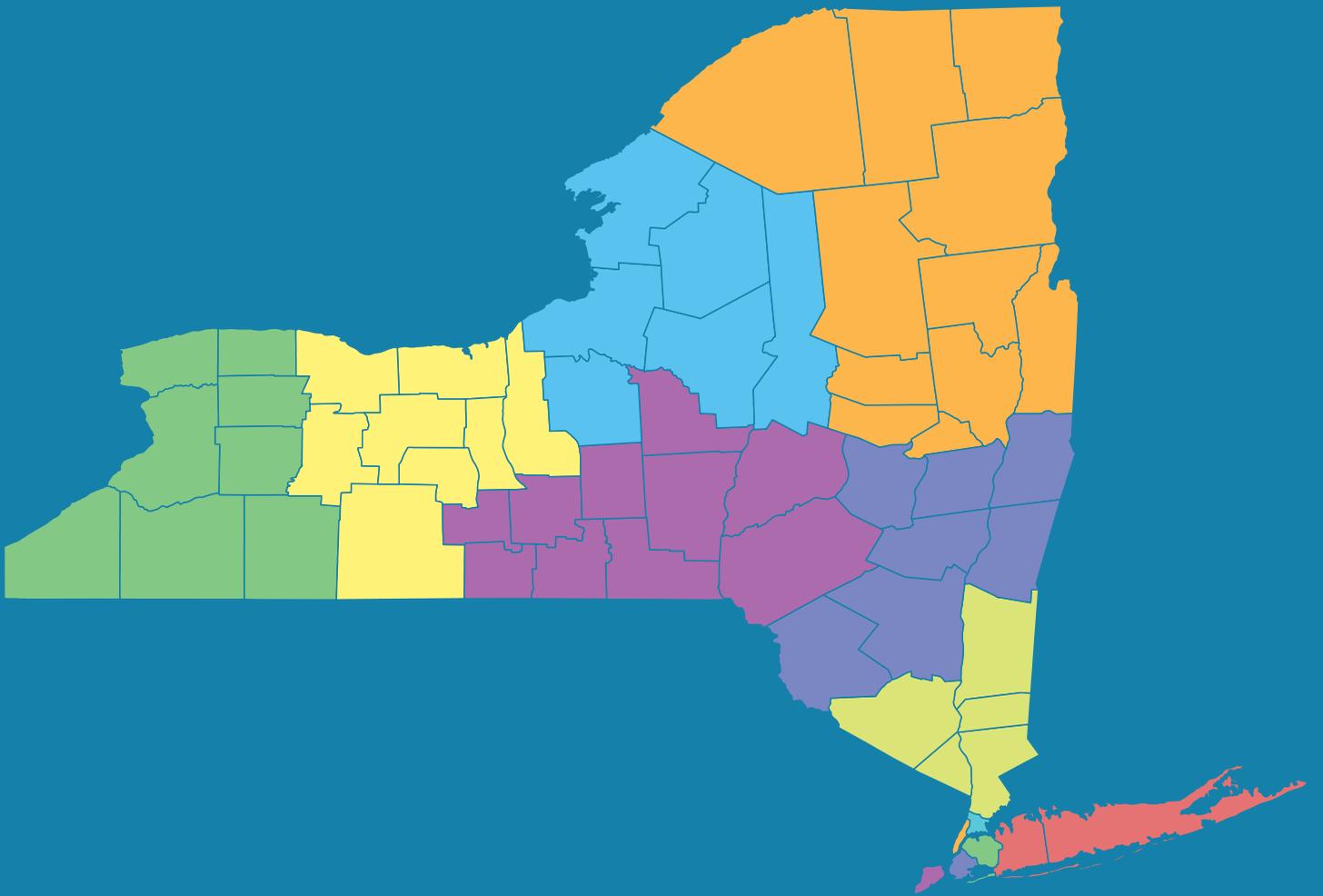




2019 Report of the Chief Administrator of the Courts on the
STATUS *of* FORECLOSURE CASES
Pursuant to Chapter 507 of the Laws of 2009



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 9, 2018 to October 6, 2019.



Lawrence K. Marks
Chief Administrative Judge

I. Introduction

A great deal has changed in the ten years since the New York State Unified Court System began reporting to the Legislature on the status of foreclosures. The first report highlighted the 2008 financial crisis and the resulting economic downturn which led to a sharp increase in the number of residential foreclosure filings. Combined with the lack of statutory protections and housing programs in place for homeowners at that time, most defendants did not participate in the foreclosure process. Those that did participate had little access to free civil legal services, and many New Yorkers who might have otherwise been eligible for a loan modification lost their homes.

In the years that followed, lenders filed cases in unprecedented numbers, with more than 40,000 filings each year from 2008-2010 and 2013-2016. In fact, at the end of 2015, there were over 90,000 pending foreclosure cases in New York State, representing over one-quarter of the statewide Supreme Court civil inventory.

Fast-forward to 2019 and we see a different story altogether. Inspired by Chief Judge Janet DiFiore's Excellence Initiative, the UCS has devoted significant resources toward foreclosure settlement conference and motion parts, standardizing case processing, and ensuring homeowners have access to free civil legal services providers and housing counselors. The UCS is doing everything possible to make the foreclosure process as user-friendly and transparent so that more homeowners are able to take advantage of foreclosure resources than ever before. These efforts have unquestionably been at the heart of reducing case backlogs and helping New Yorkers retain their homes. There are now fewer than 33,000 foreclosure cases pending in New York State, representing a case reduction of over 50,000 from the end of 2015.

Still, there is always more that we can do and will do as laws evolve and new issues arise. This Report details our new case processing initiatives and examines recent foreclosure case statistics.

II. Recent Developments

In 2019 Chief Judge DiFiore announced a plan to revitalize the court system's commitment to Alternative Dispute Resolution to eliminate case backlogs and enhance the quality of justice for litigants across New York State. ADR is particularly important in foreclosure cases, where mediation plays a key role in the settlement conference process – one that has proven to be highly efficient and cost-effective. Codified in the Civil Practice Law and Rules and the Uniform Rules of the Trial Courts, the foreclosure settlement conference is often a homeowner's first interaction with the court system. At these conferences, which are less formal and stressful than a traditional court proceeding, lenders and homeowners can discuss their cases with an eye towards settlement. Homeowners are provided information about the foreclosure process, provided a list of local civil legal services providers and housing counselors, and advised that they have the right to file an answer within 30 days from the date of their first conference. This is a unique feature of the foreclosure process that

has allowed many homeowners to preserve affirmative defenses that would otherwise be deemed untimely.

To assist in this regard, the court's system's Office for Justice Initiatives and the Office of Policy and Planning, in partnership with Legal Assistance of Western New York, Inc. and Legal Services NYC, developed a **DIY (Do-It-Yourself) computer program**. This program asks homeowners a series of questions relating to their foreclosure case, generates personalized answer forms ready for filing with the court, and provides filing instructions and responses to frequently asked questions. Homeowners can complete the program at a courthouse DIY terminal or in their own homes.

One important program that provided relief to homeowners through low-interest loans of up to \$80,000 was the Mortgage Assistance Program (MAP). Due to limited funding, MAP stopped accepting applications in February 2019. Recognizing that homeowners were losing a valuable

loss mitigation option, the UCS stepped up its efforts to improve the foreclosure process by creating user-friendly resources for unrepresented homeowners.

For example, in the spring of 2019, the Office of Policy & Planning released a **video** that provides valuable information about the foreclosure process so that homeowners have an idea what to expect when they come to court. Among other things, the video depicts one of the most important aspects of a foreclosure case – the settlement conference – and identifies several options available to homeowners. The video also provides plain language descriptions of several legal documents, emphasizes the importance of filing an answer, promotes the UCS’ e-filing system, and advises homeowners of the questions they should expect from the presiding judge or referee. The video is available on the Office of Policy and Planning webpage ¹ and has been distributed to court officials so that it can be streamed to homeowners awaiting their first conference. The video is also available in closed captioning for those who are hearing impaired and will soon be available in Spanish.

The court system is also taking a novel approach to **tax lien foreclosure actions**. Unlike traditional and reverse mortgage foreclosure actions which are subject to the settlement conference process and require banks to provide homeowners with certain warnings before commencing a lawsuit, tax lien foreclosure cases have not been part of the foreclosure settlement conference process. There is also no requirement that tax lienholders provide homeowners with warnings before suing. Bringing tax lien foreclosures in line with traditional and reverse mortgages would require legislative action. In the meantime, the UCS is encouraging courts to treat tax lien foreclosure cases like other foreclosure cases by, among other things, scheduling these cases for settlement conferences. In Erie County, for example, tax lien cases are scheduled for an annual “blockbuster” where municipal representatives and homeowners make every effort to work out payment plans. This has proven incredibly successful in helping homeowners avoid foreclosures. The UCS hopes to replicate this model going forward. The UCS has also created a form notice to be sent to homeowners named in tax lien foreclosure

lawsuits. This notice, written in plain language, will identify the date, time, and location of the homeowner’s first court conference and will direct them to a directory of free civil legal services providers, housing counselors, and to the New York State Attorney General’s Homeowner Protection Program.

In some foreclosure cases, it is necessary to appoint a **guardian-ad-litem** (GAL) to represent the interests of an unknown homeowner, the homeowner’s heirs, or a homeowner on active military duty. As a practical matter the GAL will accept service of the summons and complaint. But since GAL’s are not advocates in the same way that a civil legal services provider would be, the UCS recently promulgated a template for their appointment in these cases that clearly defines the GAL’s rights and responsibilities. Importantly, the template makes it clear that the GAL must answer or otherwise respond to the complaint and must appear in court if instructed to do so by a judge or referee. Equally important, the template prohibits the GAL from waiving any of the homeowner’s affirmative defenses or right to receive notice of any hearings or motions.

The UCS also revised the standard **surplus monies form** which is used to track funds when a property sells at auction for more than the amount due to the bank. Accompanying the form are clear and concise instructions for tasks referees should complete before the sale, immediately after the sale, and within 30 days of the sale. This new form will help ensure that court-appointed referees perform their duties and that judges are able to keep track of each case after a judgment is entered to verify that their orders have been followed.

Finally, in the fall of 2019 the Office of Policy and Planning held two **regional foreclosure seminars** to keep judges and court personnel up-to-date on recent developments in the law and on operational issues. The seminars included an appellate case law update, a presentation on reverse mortgages, an overview of the UCS’ new system for appointing referees, and a presentation by private practitioners on the role of the court-appointed referee in foreclosure cases. Continuing legal education and other relevant materials were distributed to all attendees.

1. <http://ww2.nycourts.gov/admin/OPP/foreclosures.shtml>

III. Filing Trends

During the Reporting Period (October 9, 2018 – October 6, 2019), 22,147 foreclosure cases were filed. This represents an 11% decrease from the 24,830 cases filed during the 2018 Reporting Period. In terms of annual filings, the court system is projecting 22,437 new cases for the 2019 calendar year, an 8% decrease from the 24,406 filings during the 2018 calendar year (see Fig. 1)². This continues the decline in filings since 2015, when there were almost 43,000 filings during the calendar year.

Of the 22,094 new foreclosure cases filed during the Reporting Period, 17,521 were assigned to a foreclosure settlement conference part pursuant to CPLR 3408. These parts facilitate communication between lenders and homeowners with the hope that they might enter into a loan modification agreement or other loss mitigation option such as a short sale. Foreclosure settlement parts are staffed by dedicated judges,

court-attorney referees, and law clerks, all of whom have an expertise in this area of law and know when a case is ready for settlement.

The volume of new filings in the Reporting Period varied by court term with a statewide high of 1,907 in Term 2 of 2019 and a statewide low of 1,458 in Term 12 of 2018. New filings in courts within New York City totaled 5,239. New filings in courts outside of New York City totaled 16,908.

The number of pending foreclosure cases has decreased steadily from the 89,365 pending cases as reported in the 2015 Annual Report. As of October 6, 2019, the end of this Reporting Period, there were 32,679 foreclosure cases pending statewide (see Fig. 2), an almost 65% reduction from the 92,339 cases pending at the end of the 2014 Reporting Period. This is because case dispositions have outpaced filings throughout the State since 2016 (see Fig. 3).

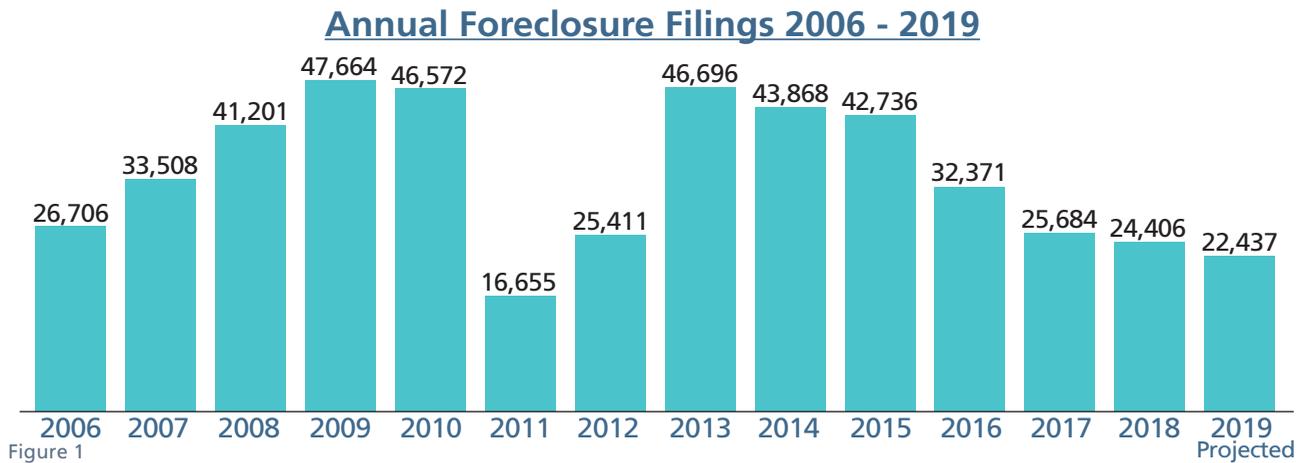


Figure 1

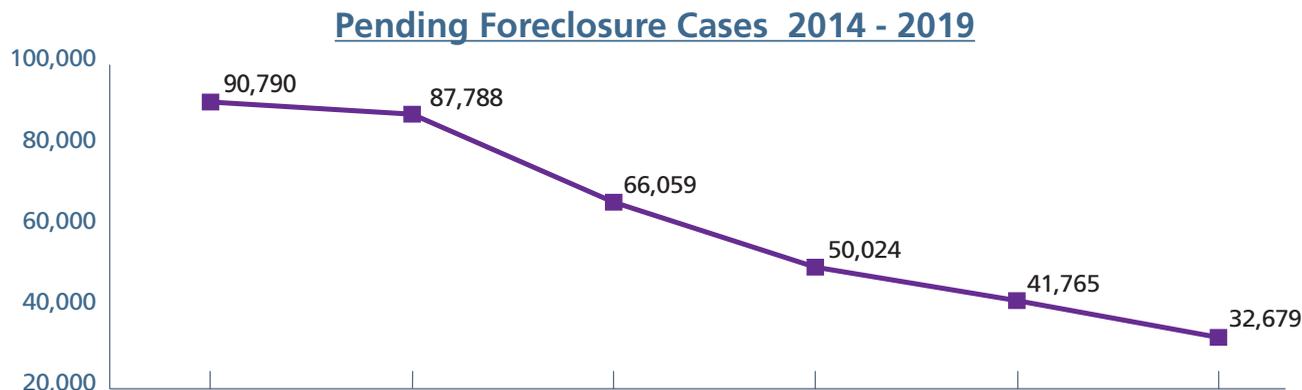


Figure 2

2. The numbers depicted in Fig. 1 for the years 2007-2018 represent annual filings. The 2019 number is a projection.

Foreclosure Cases Filed And Disposed 2014-2019

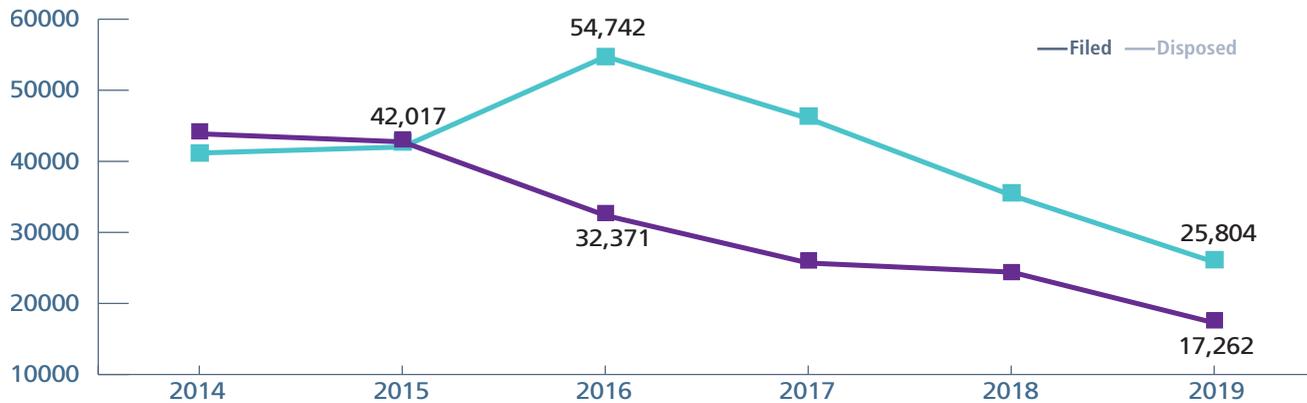


Figure 3

Foreclosure Settlement Conference Appearances

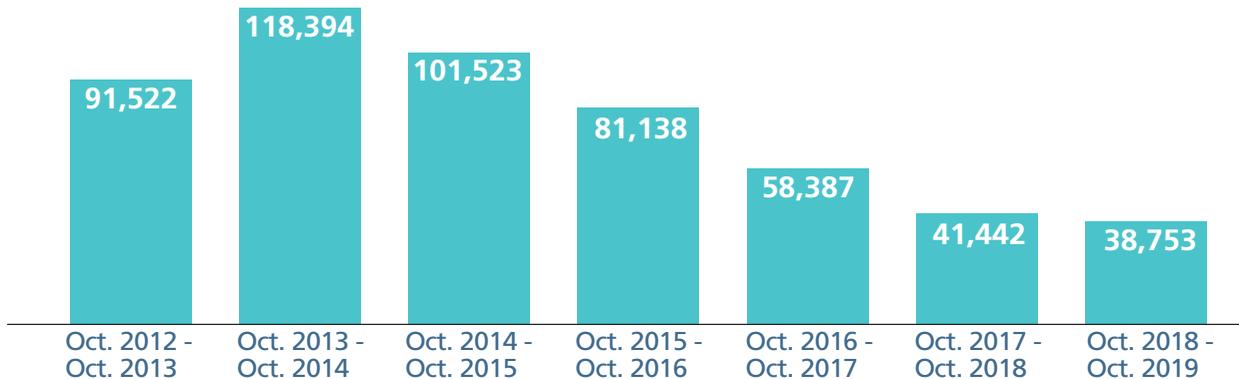


Figure 4

IV. Foreclosure Settlement Conferences

During the Reporting Period there were 38,753 foreclosure settlement conferences held in courts throughout New York State (see Fig. 4). This continues the downward trend from the past four years. Since many cases require several conferences for the parties to gather financial documents and ascertain whether a settlement can be reached, there were 25,283 adjournments in the foreclosure settlement parts. There were also 4,372 defaults by homeowners, 573 voluntary discontinuances recorded, and 26 cases that were dismissed by the court.

Of homeowners who participated in the settlement conferences, 32%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.

Providing homeowners with loss mitigation options is the primary purpose of the settlement conference process. With the Mortgage Assistance Program ending, MAP administrators received a huge influx of applications that required several months to fully process. Mindful that the timely adjudication of all cases is one of the hallmarks of the Chief Judge’s Excellence Initiative, court personnel were asked to retain cases in the settlement conference part that had pending MAP applications if they believed that an approved application could lead to a settlement. While this may have extended the lifespan of the case, it prevented unnecessary motion practice and allowed more New Yorkers to stay in their homes.

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 Practices

As in years past, the UCS continues to mandate the use of uniform settlement conference forms in all residential foreclosure cases. These forms have proven essential to both the litigants and the court system. The same can be said for “Master Calendars,” which help administrators keep track of cases that have been released from the settlement conference part and are awaiting motion practice. Master calendars, often presided over by the local administrative judge, ensure that the litigants comply with their obligations and that cases are adjudicated expeditiously. To further promote court efficiency, motion templates are available for use in cases where the homeowner has not contested the foreclosure.

The RPAPL 1304 pre-foreclosure notice and the CPLR 3408 settlement conference have become essential parts of the court process. In 2019 the Legislature removed provisions from these laws that would have caused them to sunset in 2020. By making these provisions permanent, homeowners will have a chance to pursue loss mitigation options or avoid a foreclosure lawsuit altogether.

The Legislature also enacted several laws to provide homeowners with additional protections from fraudulent, unfair, and deceptive lending practices. For example, the 2006 Home Equity Theft Act, recently amended, now provides a mechanism by which homeowners can petition to have their title restored if their property is

taken through fraudulent means. The Legislature also recently strengthened the 2009 Distressed Property Consultant Law by preventing individuals from providing foreclosure prevention services without a written contract. The law prevents these same individuals from charging homeowners upfront fees. Another new statute prohibits deceptive advertising with respect to home equity conversion mortgages, more commonly referred to as reverse mortgages.

Referees are an essential part of the foreclosure process. In many jurisdictions, referees are used both to compute the amount due to the lender and to supervise the sale of a foreclosed property at auction. Until recently, a referee’s customary fee pursuant to an order of reference was set at \$50 per day and the customary fee for conducting a sale was set at \$500. In 2019 the Legislature amended CPLR 8003 to increase the compensation that judges may award to mortgage foreclosure referees. Following the amendment, the customary reference fee rose to \$250 per day and the customary fee for conducting a sale rose to \$750. In turn, an amendment to the Rules of the Chief Judge raised the threshold fee at which a referee is required to file a notice of appointment and certification of compliance from \$750 to \$1,100. This legislation and rule amendment will allow the court system to continue attracting qualified referees and prevent court personnel who work on fiduciary appointments from being overburdened.

VI. Legal Representation

The UCS has always been committed to ensuring that New Yorkers have access to free, high-quality legal representation. With the budgetary support provided by the Governor and Legislature, this year the UCS allocated \$100,000,000 to civil legal services providers to represent low-income New Yorkers with “essentials of life” litigation, including housing, family matters, access to healthcare, and education. In addition, \$20 million from New York State’s budget has been allocated to 89 housing counseling and legal services programs across the state to help middle and working class homeowners navigate complex housing challenges, including foreclosure prevention, the threat of displacement, and mortgage fraud.

With this continued commitment to civil legal services representation, approximately 172,711 New Yorkers benefited from housing and foreclosure-related legal services during the 2018-2019 fiscal year. Also, from Term 11 of 2018 through Term 10 of 2019, homeowners appeared with legal counsel at 18,779 settlement conferences (Fig. 5).

**Foreclosure Settlement
Conference Appearances
Representation
Of Defendant**
October 2018 - October 2019

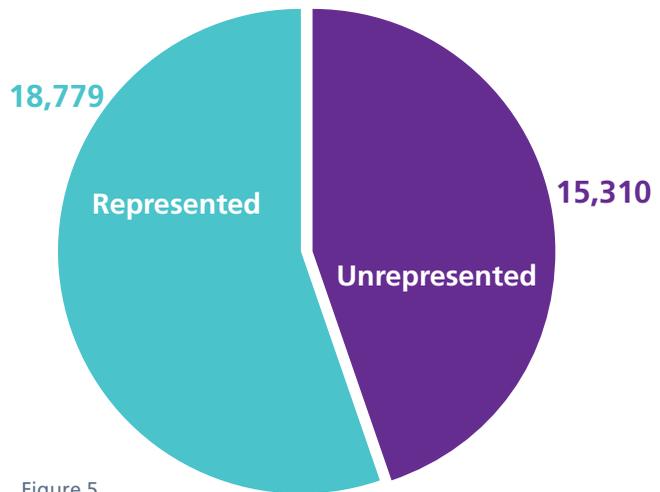


Figure 5

VII. Statewide Foreclosure Committee

The Statewide Foreclosure Working Group is chaired by the Hon. Sherry Klein Heitler, Chief of Policy and Planning for the New York State Court System. It is comprised of several hundred judges, court attorney-referees, law clerks, chief clerks, district executives, and other court personnel from across the state. The Foreclosure Working Group has been an integral part

of all foreclosure pilot projects and programs implemented by the UCS. During quarterly meetings members discuss legal and operational issues and provide insight into filing and disposition trends. It is an important resource for court administrators and one of the reasons the UCS has been so successful in reducing case backlog.

VIII. Collaboration

The UCS collaborates with foreclosure experts in both the public and private sectors to ensure that homeowners have access to free representation and that foreclosure practices are fair and uniform. To accomplish these goals, court personnel meet regularly with lender and loan servicer attorneys, civil legal ser-

vices providers, members of the private defense bar, and housing counseling agencies. With the assistance of and input from these partners, the UCS ensures that every judge and court attorney presiding over settlement conferences is well-informed on current foreclosure statutes, case law, rules, and loss-mitigation options.

SUMMARY TABLE

October 9, 2018 - October 6, 2019

Conferences Held	38,753
Adjournments	25,283
Discontinuances	573
Dismissals	26
Defaults	4,372
Defendants Appearing with Counsel ¹	18,779
Defendants Appearing without Counsel ¹	15,310

1. Based upon the conferences held between October 9, 2018 and October 6, 2019, excluding appearances where the defendant defaulted.

IX. Conclusion

It has been a decade since the UCS first reported on the sharp increase in residential foreclosure filings due to the 2008 financial crisis and resultant economic downturn. In February 2016, when Chief Judge Janet DiFiore launched the Excellence Initiative, foreclosure cases comprised nearly 30% of the statewide Supreme Court civil caseload.

Since then, and in large part due to the UCS' re-allocation of resources to foreclosure cases, the number of pending foreclosure cases in New York has dropped significantly and continues to decline. With the statewide standardization of court settlement conference forms and motion templates, the streamlining of court processes, and the enhancement of data collection and oversight, case dispositions now outpace filings across the state. Aided by an improving economy, the number of pending foreclosure cases is now at pre-recession levels.

At the same time, the UCS is mindful that several loss mitigation options are no longer available to homeowners in foreclosure. The federal Home Affordable Modification Program (HAMP), which enabled homeowners to qualify for lower interest rate loan modifications, expired at the end of 2016. New York's own Mortgage Assis-

tance Program, which offered interest free loans of up to \$80,000 to qualified applicants, stopped accepting applications at the beginning of 2019. Simply put, while there are fewer foreclosures in New York, it has arguably become harder for homeowners who face foreclosure to obtain a loan modification.

With this in mind, court personnel have continued to conduct tens of thousands of foreclosure settlement conferences each year, using creative strategies so that homeowners seeking to remain in their homes or find another alternative to foreclosure can do so. Thousands of these homeowners, who would otherwise not have access to affordable legal advice, obtained meaningful legal assistance from civil legal services providers and housing counselors at no cost due to New York State's strong commitment to free, quality legal representation for those in need.

As we now enter a new decade, judges and other court staff who work on foreclosure cases will continue to receive the tools and resources they need. High quality, free representation for low income New Yorkers will remain a priority. Most important, the UCS remains committed to providing a just and fair resolution in all foreclosure cases.

