

STATE OF NEW YORK UNIFIED COURT SYSTEM

2015 REPORT OF THE
CHIEF ADMINISTRATOR OF THE COURTS

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 14, 2014 to October 12, 2015.



Hon. Lawrence K. Marks
CHIEF ADMINISTRATIVE JUDGE

I. INTRODUCTION

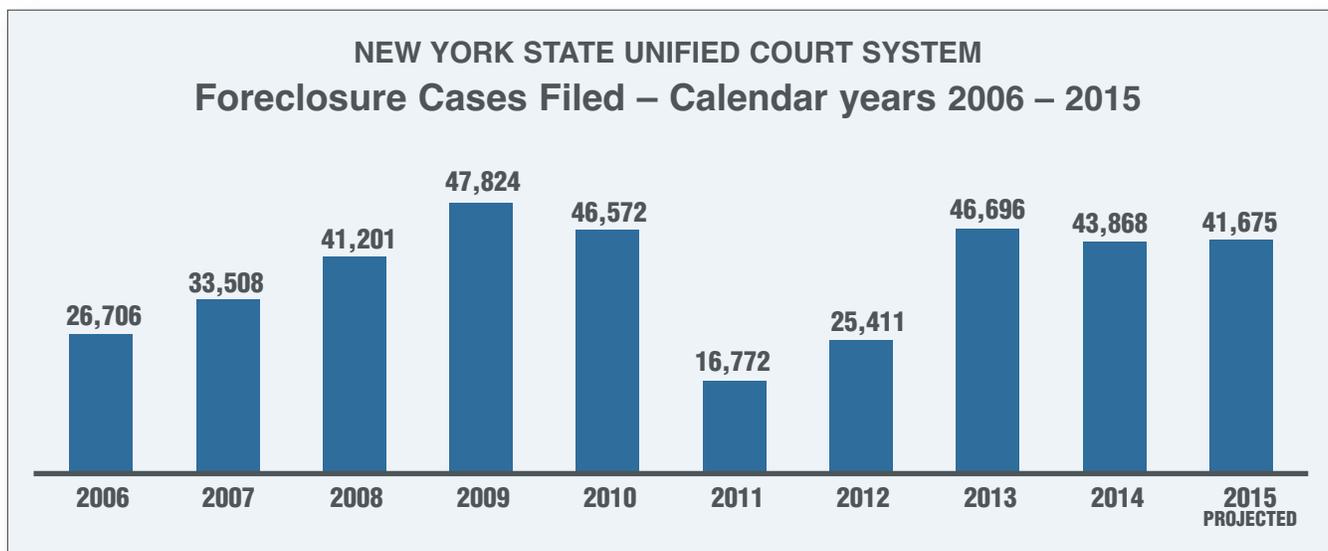
FORECLOSURE CASES COMPRISE NEARLY 30% of the statewide Supreme Court civil caseload and require the dedication of substantial Unified Court System resources. These cases are of critical importance to the litigants and impact the economic vitality of New York State. Chief Judge Jonathan Lippman continues to prioritize these often complex and time-consuming cases and the Judiciary remains dedicated to the foreclosure settlement conference process.

This Report examines foreclosure case statistics and discusses the court system’s ongoing efforts to improve case management in residential foreclosure cases.¹

II. FILING TRENDS

DURING THE REPORTING PERIOD, 42,162 foreclosure cases were filed. This represents a 7.5% decrease from the 45,589 cases filed in the reporting period covered by the 2014 Annual Report. In the midst of the foreclosure crisis caused by the economic downturn, new foreclosure filings in 2009 reached a peak of 47,824. After the imposition of new court rules designed to strengthen filing requirements, new filings dropped to a low of 16,772 in 2011. Plaintiffs have since adjusted to these stringent filing requirements and new foreclosure filings have remained at near historic highs for the past three years. (see Fig. 1)

FIG 1



The volume of new filings varies by court term during the reporting period, with a high of 3,995 in Term 8, 2015, and a low of 2,673 in Term 13, 2014.

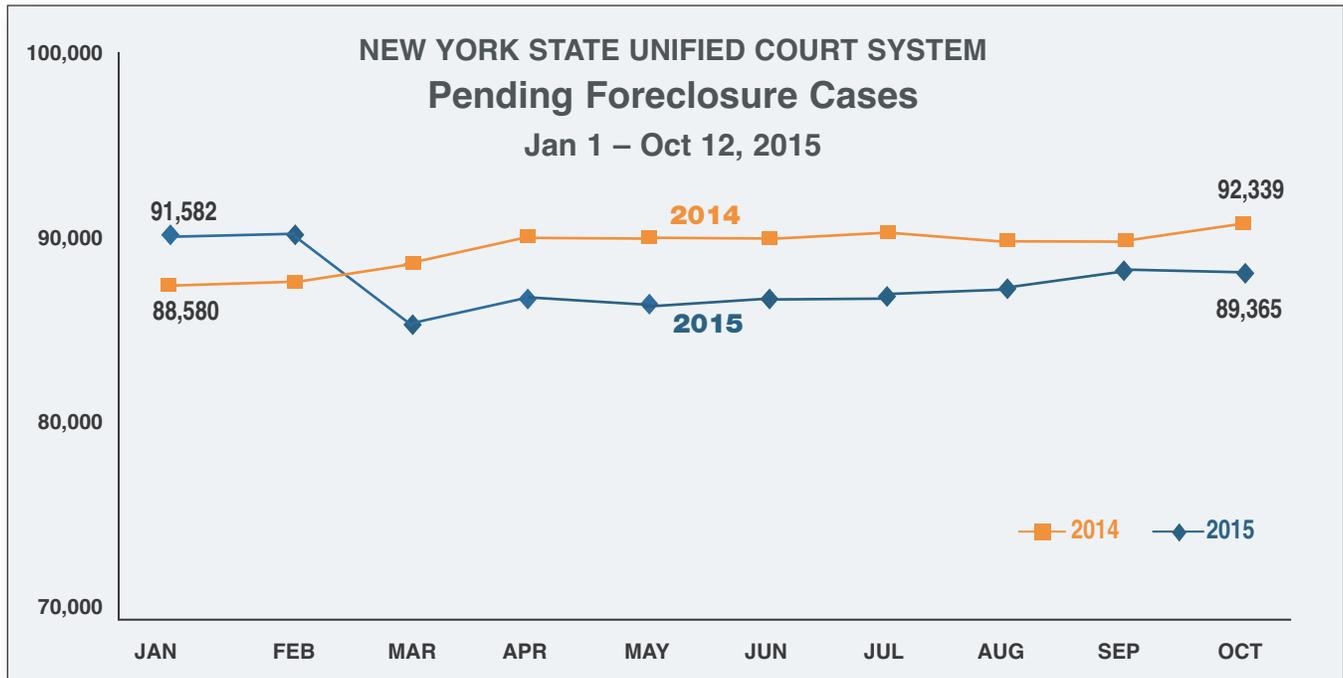
Of the 42,162 new foreclosure cases filed during the reporting period, 32,918 required a mandatory

¹ Caseload statistics are provided for the reporting period from October 14, 2014 to October 12, 2015 (the “reporting period”).

settlement conference. The Judiciary remains committed to the sustained effort of staffing the resource-intensive settlement conference parts.

As of October 12, 2015, 89,365 foreclosure cases were pending statewide. Due to ongoing efforts to review the pending inventory, this is a reduction from the 92,339 cases pending in October, 2014, as reported in the 2014 Annual Report. (see Fig. 2)

FIG 2



III. FORECLOSURE SETTLEMENT CONFERENCES

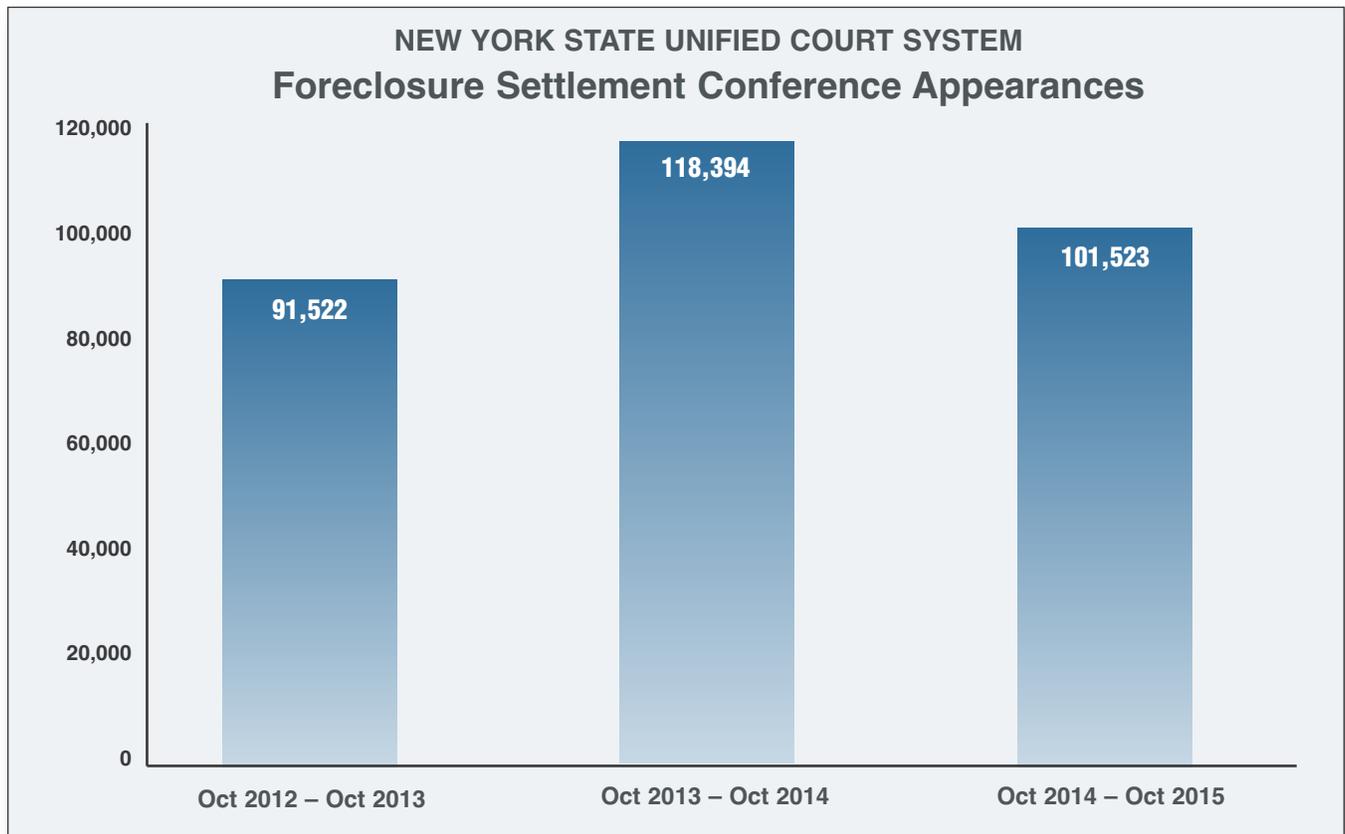
DURING THE REPORTING PERIOD, 101,523 statutorily-required settlement conferences were held statewide. While this is a reduction of 14% from the high of 118,394 conferences reported in the 2014 Annual Report, these cases continue to require a tremendous amount of court resources to protect the rights of all litigants. In cases where the homeowner wishes to remain in the home, the settlement conference process ensures that lending institutions carefully review all loan modification applications. The foreclosure settlement conference (FSC) process requires active participation by judges, referees and law clerks at all phases. During the conferences eligible homeowners are given every opportunity to qualify for a loan modification and remain in the home before a case is released from the conference part. (see Fig. 3 on page 5)

Due to these sustained efforts, 23%² of homeowners who completed the FSC process successfully modified their mortgages during the reporting period, allowing thousands of New Yorkers in need to remain in their homes.

For this reporting period, these conferences led to 63,233 adjournments, with defaults by homeowners recorded in 11,793 cases. Discontinuances were filed in 1,411 matters and 166 cases were dismissed.

² Percentage of cases conferenced and released from the FSC parts during the reporting period, excluding defaults, stayed and on-going cases.

FIG 3



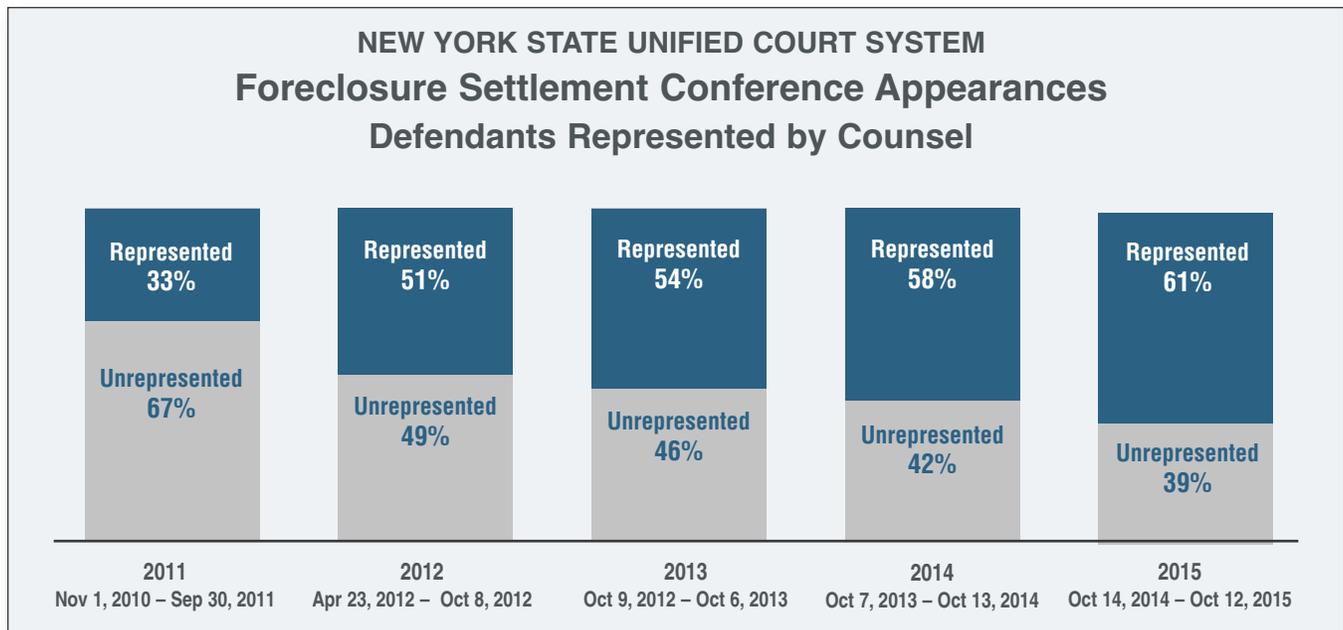
IV. LEGAL REPRESENTATION

FOR THE FIFTH STRAIGHT YEAR, Chief Judge Lippman’s unwavering commitment to providing access to counsel for New Yorkers in need has once again resulted in a significant increase in the number of homeowners represented by counsel at foreclosure conferences.

During the reporting period, 61% of homeowners were represented at foreclosure settlement conferences. This is another noteworthy gain from the more than 58% reported in the 2014 Annual Report, the 54% in 2013, the 51% in 2012 and a dramatic increase from the 33% reported in 2011. Remarkably, this means that almost 146,000 of our most vulnerable New Yorkers benefitted from direct legal assistance in foreclosure cases. With the strong support of our partners in state government, this fiscal year the Judiciary is committing \$85 million from its budget to provide civil legal services to New Yorkers in need. The Judiciary continues to work closely with civil legal service providers, housing counselors, bar associations and law schools to expand homeowner representation in the FSC parts. (see Fig. 4 on page 6.)

The UCS monitors the service providers on an ongoing basis to ensure continued access by homeowners to high quality, free legal representation.

FIG 4



V. SHADOW INVENTORY

AS PREVIOUSLY REPORTED IN 2012, 2013 AND 2014, the Judiciary continues to work with homeowners whose foreclosure cases were commenced prior to October 2010 to ensure they have an opportunity to participate in the conference process. In foreclosure cases filed before that time, many plaintiffs relied on documents “robo-signed” by bank representatives who claimed to have personally reviewed thousands of documents in implausibly short periods of time. Once these actions were filed, the plaintiffs were unable to proceed with their cases as the required documentation was missing. Since the plaintiffs could not proceed with the action, requests for judicial intervention (RJI) were never filed, leaving the affected homeowners in limbo with no access to the settlement conference process. These cases comprise what is known as the “shadow inventory.”

To curb this practice and afford homeowners an opportunity to save their homes, Chief Judge Lippman initiated a series of stringent reforms starting in October 2010 which required plaintiffs to certify the accuracy of all documents filed in a residential foreclosure action. This culminated with Administrative Orders 431/11 and 208/13, and the enactment of CPLR 3012-b. CPLR 3012-b, which applies to actions commenced after August 30, 2013, requires plaintiffs to file a certificate of merit along with the summons and complaint. It ensures that a plaintiff certifies there is a reasonable basis to commence the action and that the plaintiff is the creditor entitled to enforce the subject debt. CPLR 3012-b was designed to eliminate the shadow docket going forward and, in conjunction with CPLR 3408, ensures that all homeowners in foreclosure actions have an opportunity to participate in the settlement conference process. These measures have strengthened protections for all parties in foreclosure actions, and made the foreclosure process more efficient.

Specialized parts were created to review the shadow inventory, and the courts in New York City

identified over 7,500 of such cases. Homeowners were notified of status conferences by mail, and over 9,850 special status conferences were held in addition to the 101,523 FSC's discussed above. At these conferences, homeowners are provided with access to attorneys and housing counselors and given the opportunity to participate in the foreclosure settlement conference process. Review of the shadow inventory is resource-intensive and ongoing.

VI. SPECIALIZED PARTS

VACANT AND ABANDONED PROPERTY PART

IN RESPONSE TO COMMUNITY CONCERNS of economic and neighborhood blight, the UCS is committed to working with our municipal and local partners to streamline foreclosure cases where the homeowner has defaulted. Vacant and Abandoned Property (VAP) parts have already been set up, or are in the planning phase in various counties, to review these cases where it appears the property is vacant and/or abandoned. As some examples, the Suffolk County Supreme Court VAP Part continues to work with local municipalities to expedite judicial review of such cases, and Erie County is now working closely with local stakeholders to set up a VAP part. Courts in several other counties have also expressed interest in creating specialized calendars for vacant properties.

FORECLOSURE INQUEST PART

NASSAU COUNTY CONTINUES to operate the Foreclosure Inquest Part, which permits plaintiffs to petition for expedited judgments where the homeowner has defaulted, failed to appear or has exhausted all options in the foreclosure settlement conference part. To participate in this expedited track, plaintiffs must waive their rights to deficiency judgments, which protects homeowners from owing additional monies after judicial sales of their homes.

SERVICER PARTS

THE SERVICER PARTS are designed to speed up the FSC process by having an authorized representative from the lender or loan servicer present in court to provide timely assistance in the document-intensive loan modification process. The Servicer parts streamline the loan modification process by requiring active participation from plaintiff's representatives, and the defendant's counsel, where appropriate. The Servicer parts have been well-received by both the plaintiff and defense bars. In addition to the counties reported in the 2014 Annual Report — Bronx, Nassau and Suffolk Counties — servicer parts have been expanded to Erie, Westchester, Kings and Queens Counties. Other counties are in the process of setting up such parts.

VII. STATEWIDE FORECLOSURE COMMITTEE

THE STATEWIDE FORECLOSURE COMMITTEE, chaired by Hon. Sherry Klein Heitler, Chief of the UCS's Office of Policy and Planning, is comprised of judges, referees, court administrators and court personnel from judicial districts statewide. The Committee convenes regular meetings to review the foreclosure

inventory and share information on best practices to improve foreclosure case management and to monitor access to civil legal services. The Committee meetings provide an opportunity for the constant exchange of information and ideas statewide. A recent project to review cases with no activity resulted in a reduction in the foreclosure case backlog. The dialogue is constant and ongoing, and is critical to the Committee's mission of streamlining foreclosure procedures.

VIII. COLLABORATION

THE JUDICIARY ALSO REMAINS DEDICATED to improving case management and streamlining procedures in foreclosure cases and continues to work closely with stakeholder partners on foreclosure issues. Representatives from the Office of Policy and Planning continue to meet with a residential mortgage foreclosure task force comprised of civil legal service advocates, mortgage lender and servicer representatives, judges and court personnel as part of the UCS's ongoing review of its foreclosure inventory and case management procedures.

IX. CONCLUSION

FORECLOSURE ACTIONS REPRESENT nearly 30% of the New York court system's Supreme Court civil inventory. These frequently complex cases have an undeniable impact on homeowners, lending institutions, and indeed the economic health of the communities in our state. The Judiciary will continue to dedicate significant resources to expedite and resolve these cases.

Chief Judge Lippman's vision for equal justice for all has resulted in a significant increase — from 33% to 61% in just four years — in the number of low income New Yorkers represented by counsel in foreclosure settlement conferences. This is the fifth straight year of increased representation, and this dedication to access to justice for all benefitted almost 146,000 people, affording them an opportunity in many instances to remain in their homes.

It is the Judiciary's goal in the coming year to attain another increase in civil legal representation to assist struggling families with essential unmet civil legal needs.

Despite ongoing personnel shortages, more than 101,500 conferences were conducted with the goal of giving homeowners a chance to remain in their homes. An additional 9,850 conferences were held for the cases in the shadow inventory to provide homeowners with the opportunity to apply for a loan modification. In addition to extensive efforts to expedite settlement conferences, the courts also focused on the post-FSC pending foreclosure inventory, which resulted in a reduction in the number of pending cases. These efforts will continue with the goal of further improving the entire foreclosure process.

The Judiciary will continue to innovate to address the high volume of foreclosure cases, both in the conference and post-FSC inventories. Our commitment to these cases — and to ongoing collaboration with our partners in government and stakeholders — remains strong.

ATTACHMENTS

NEW YORK STATE UNIFIED COURT SYSTEM
SUMMARY TABLE

October 14, 2014 – October 12, 2015

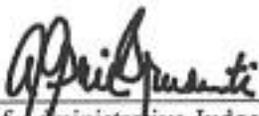
Conferences Held	101,523
Number of Adjournments	63,233
Defaults	11,793
Discontinuances	1,411
Dismissals	166
Defendants Appearing with Counsel*	54,654
Defendants Appearing without Counsel*	35,021

* Based upon the conferences held between October 14, 2014 and October 12, 2015, excluding appearances where the defendant defaulted.

ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and notwithstanding any provision in AO/431/11 to the contrary, I hereby order that, effective immediately,

- the provisions of AO/431/11 shall not apply to residential mortgage foreclosure actions commenced on or after August 30, 2013; and
- in residential mortgage foreclosure actions commenced prior to August 30, 2013, where no affirmation has been filed pursuant to AO/431/11, plaintiff's counsel may either (1) comply with AO/431/11, or (2) file with the court at the time of the filing of the Request for Judicial Intervention a certificate of merit whose contents are described in section 3012-b(a) of the Civil Practice Law and Rules.



Chief Administrative Judge of the Courts

Dated: August 1, 2013

AO/208/13

**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, at the direction of the Chief Judge of the State of New York and with the consent of the Presiding Justices of the Appellate Divisions, I hereby order and direct that, effective November 18, 2010, nunc pro tunc, plaintiffs counsel in residential mortgage foreclosure actions shall file with the court in each such action an affirmation, in the revised Form A attached hereto, at the following times:

- In cases commenced after the effective date of this Order, at the time of the filing of the Request for Judicial Intervention.
- In cases pending on such effective date, where no judgment of foreclosure has been entered, at the time of filing either the proposed order of reference or the proposed judgment of foreclosure.
- In cases where judgment of foreclosure has been entered but the property has not yet been sold as of such effective date, five business days before the scheduled auction, with a copy to be served on the referee.

This revised form affirmation shall replace the affirmation previously required pursuant to AO/548/10. However, a filing by counsel of that earlier form affirmation shall satisfy the requirement of this order.

In conjunction with the filing of Form A, a representative of plaintiff may file a supporting affidavit as set forth in Form B attached hereto, in addition to such other information as the court may require.



Chief Administrative Judge of the Courts

Dated: March 2, 2011

AO/ 431/11



