

STATE OF NEW YORK UNIFIED COURT SYSTEM

2016 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 13, 2015 to October 10, 2016.



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I. INTRODUCTION

FORECLOSURE CASES REPRESENT nearly 26% of the statewide Supreme Court civil inventory, down from 30% at the end of 2015. These cases are of critical importance to the parties involved and have an undeniable economic impact on the State of New York and the vibrancy of our diverse communities. Under the leadership of Chief Judge Janet DiFiore and her Excellence Initiative, the New York State Unified Court System (“UCS”) has dedicated significant resources to the benefit of the litigants in these cases. UCS has reexamined foreclosure settlement conference procedures, streamlined case management, and brought more uniformity, efficiency, and transparency to the statewide foreclosure process. As a result, during the October 13, 2015 to October 10, 2016 reporting period homeowner loan modifications have increased while the total number of foreclosure cases in New York State has decreased significantly.

This Report reviews the Judiciary’s foreclosure management and case processing initiatives over the past year and examines caseload statistics.

II. THE EXCELLENCE INITIATIVE

CHIEF JUDGE JANET DIFILORE’S EXCELLENCE INITIATIVE aims to improve every facet of court operations in order to make the courts more efficient and accessible to litigants. Consistent with the Chief Judge’s initiative, the UCS Office of Policy and Planning has developed a comprehensive plan for enhancing the effectiveness of foreclosure settlement conferences, improving foreclosure case processing, and implementing best practice guidelines statewide. This plan was developed after site visits to courts throughout the state and in consultation with judges, court personnel, bank and loan servicer representatives, civil legal service providers, and plaintiff and defense practitioners.

We have prioritized the resource-intensive and vitally important settlement conferences in order to afford New Yorkers every opportunity to remain in their homes. Due to the nature of the loan modification process, these cases often require multiple court conferences to be held over the course of several months to determine whether a settlement can be reached or further proceedings are required. Among the steps taken to improve this process, our Office of Policy and Planning, in consultation with the foreclosure bar, judges and court staff, developed two **Uniform Foreclosure Settlement Conference forms**, an intake form and a status form. The intake form will be used at the first conference and the status form will be used at all subsequent conferences. Beginning early next year, these forms will be implemented for use in every settlement conference part statewide, and will ensure that everyone has clear direction and guidance from the court on how to proceed step-by-step through the loan modification process. The forms will assist litigants by providing a detailed record of the court directives which must be followed for the next conference, and will be of particular assistance both to self-represented litigants as they navigate the court system and plaintiffs that utilize per diem counsel. The forms will also provide a comprehensive and consistent court record for use by judges to whom cases are transferred if a loan modification cannot be effectuated. UCS personnel are currently working on the development of **Uniform Foreclosure Motion forms** to further standardize case processing and increase efficiencies for the courts and litigants across the state.

The life span of a foreclosure case has an economic impact on both the homeowners and the lenders, and active management of these cases is critical. Toward that end, **master calendars**, which are centralized calendars for post-settlement conference foreclosure cases, have been established in each judicial district to better track cases upon their release from the specialized settlement conference parts. Master calendars will ensure that these cases are processed more efficiently by the courts to the benefit of the parties.

In response to the problem of inadequately prepared counsel, which has plagued courts statewide, **best practice guidelines** have been developed for judges and court personnel to help ensure that counsel for all parties are prepared at every court appearance. Toward that end, the Uniform Foreclosure Settlement Conference forms will assist counsel to meaningfully participate during each court appearance.

Another significant step designed to improve outcomes for litigants is **improved coordination between foreclosure parts and matrimonial parts** in situations where homeowners are simultaneously involved in foreclosure and divorce proceedings. Fostering communication between these parts will greatly increase homeowners’ chances of obtaining loan modifications, which will enable them to remain in their marital homes.

In another innovative measure to reduce case backlogs, a **Suffolk County Motion Project** is being overseen by Hon. Michael V. Coccoma, Deputy Chief Administrative Judge for Courts Outside New York City and Hon. C. Randall Hinrichs, Administrative Judge for Suffolk County, where judges preside over the highest volume of foreclosure cases in the state. The project involves court attorneys statewide who volunteered to prepare draft decisions for motions filed in Suffolk County foreclosure matters. Due to the efforts of and cooperation from administrative judges, part judges and law clerks statewide, the outstanding backlog in Suffolk County has been reduced. This statewide collaborative effort is a classic example of the Excellence Initiative at work.

Projects for 2017 include updating the UCS website to make it more comprehensive for the public, development of an informational video to explain the foreclosure process to homeowners, and presentation of additional seminars for judges and court personnel. Also planned are continued site visits to courts statewide to disseminate best practice standards.

III. FILING TRENDS

DURING THE REPORTING PERIOD, FROM OCTOBER 13, 2015 TO OCTOBER 10, 2016, 33,641 foreclosure cases were filed statewide. This represents a significant decrease of 20% from the 42,162 foreclosure filings as reported in the 2015 Annual Report (see Fig. 1).

The volume of new filings varied by court term during the reporting period through Term 10 of 2016, with a high of 2,902 in Term 2 of 2016, and a low of 2,314 in Term 7 of 2016. During the reporting period, new filings in courts within New York City totaled 8,112; new filings in courts outside of New York City totaled 25,529.

Of the 33,641 new foreclosure cases filed during the reporting period, more than 25,600 required statutorily-mandated foreclosure settlement conferences. The Unified Court System continues to dedicate substantial resources to these conferences to ensure that the rights of all litigants are protected.

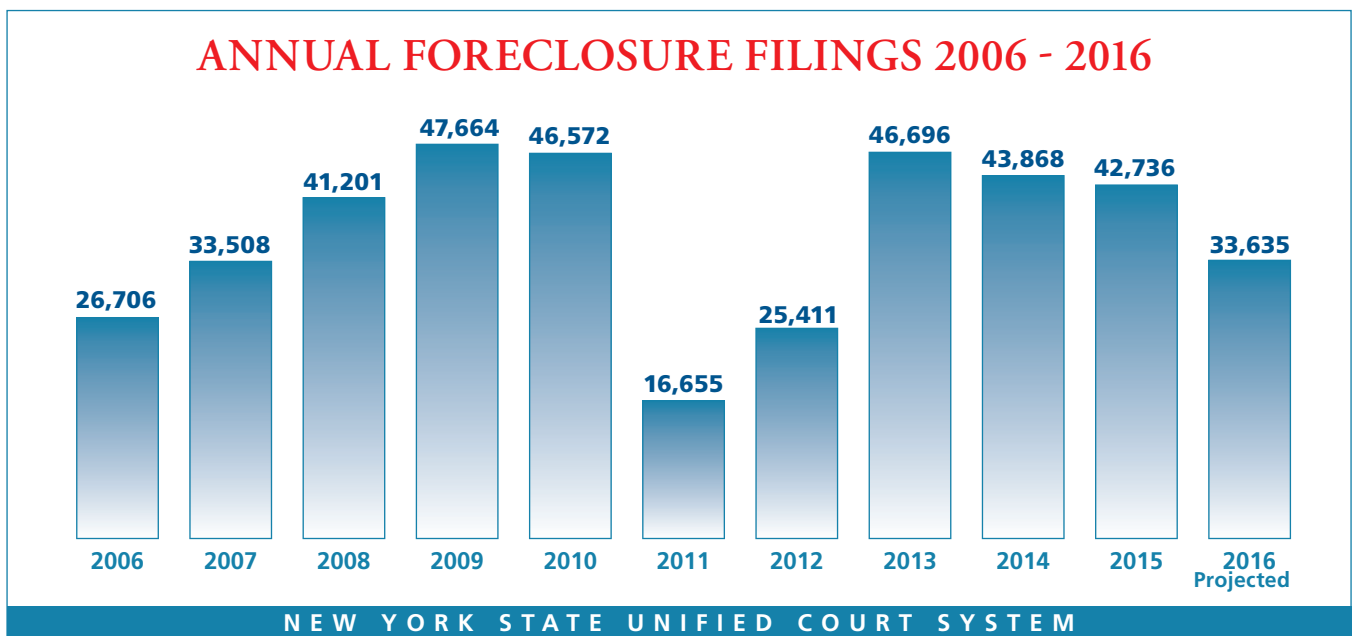


Fig. 1¹

¹ The numbers depicted in Fig. 1 for the years 2006-2015 represent annual filings. The 2016 number represents projected filings for calendar year 2016.

As of October 10, 2016, the end of the reporting period, 71,723 foreclosure cases were pending statewide (see Fig. 2). This represents a 20% reduction from the 89,365 cases pending at the end of the previous reporting period as set forth in the 2015 Annual Report.

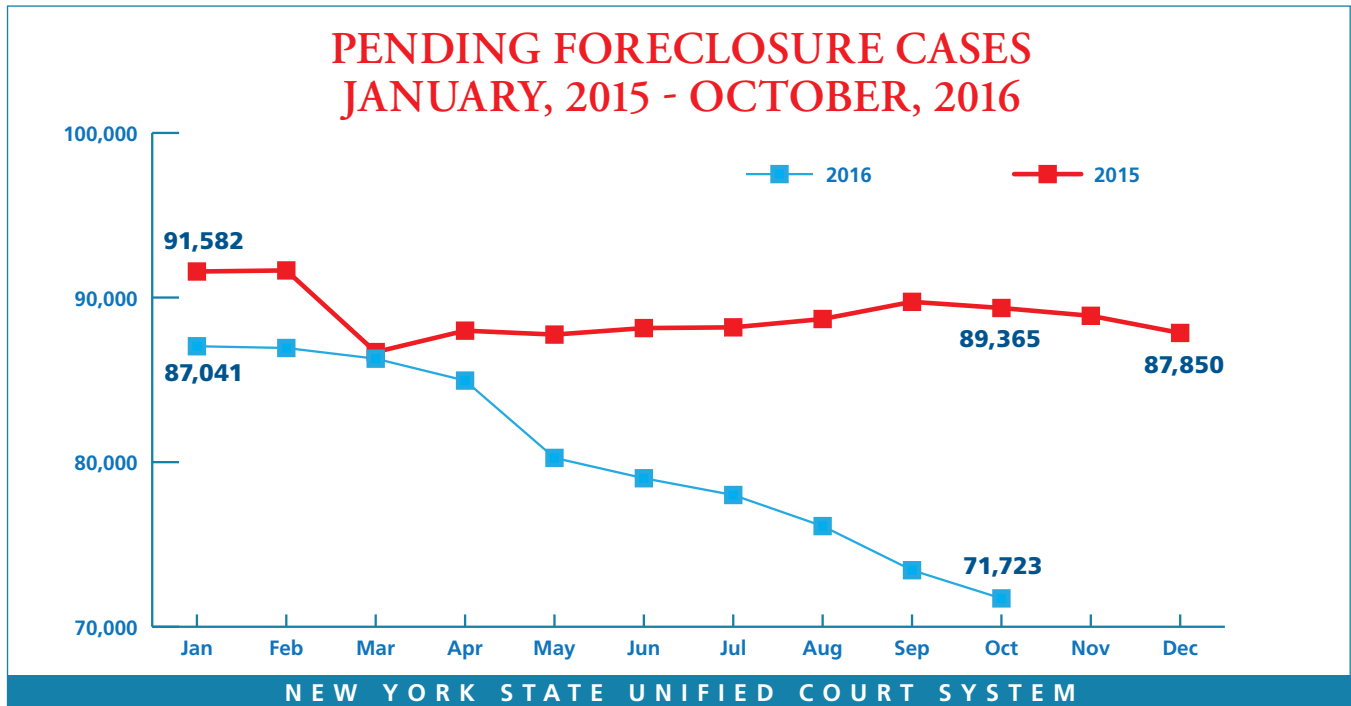


Fig. 2

IV. NEW LEGISLATION

SIGNIFICANT LEGISLATIVE CHANGES to the foreclosure process were signed into law by Governor Andrew Cuomo in June 2016.² In relevant part, the new legislation, effective December 20, 2016, expands the Judiciary’s responsibilities concerning mandatory foreclosure settlement conferences and, for the first time, requires judges and court personnel who preside over foreclosure settlement parts to instruct homeowners on the importance of filing an answer and the consequences of failing to do so. To assist the Judiciary to comply with these statutory requirements, the Office of Policy and Planning and the UCS’s Access to Justice Program have developed a bench card and a comprehensive information packet. The information packet will be distributed to each homeowner at the first court conference. It is written in plain language and is intended to provide guidance for the self-represented litigant. Each packet includes explanations of the various court pleadings at issue with instructions on how to file and serve an answer, as well as a sample answer and a sample affidavit of service. The information packet also includes a list of locally available resources for foreclosure prevention assistance as well as a Consumer Bill of Rights which has been promulgated by the New York State Department of Financial Services.

To address concerns of community blight due to abandoned homes, the new legislation provides for expedited case processing for vacant and abandoned properties and imposes a significant duty on banks and loan servicers to maintain abandoned properties. The courts are prepared for the new applications anticipated to be filed due to these requirements, and the Rules of the Chief Administrative Judge have been amended to ensure consistency with these new laws.

These legislative changes and court initiatives were the focus of two regional foreclosure seminars developed for judges and court personnel. These comprehensive seminars addressed legal and operational updates in foreclosure law and case processing and allowed attendees to exchange ideas and discuss strategies for conducting effective foreclosure settlement conferences.

2 L. 2016, c. 73, pt. Q.

V. FORECLOSURE SETTLEMENT CONFERENCES

DURING THE REPORTING PERIOD, 81,138 foreclosure settlement conferences were held in courts statewide (see Fig. 3). This continues the downward trend reported by the Judiciary in 2014 and 2015, with a significant drop from the high of 118,394 conferences reported in the 2014 Annual Report and the 101,523 reported in the 2015 Annual Report.

The settlement conference process mandates that all loss-mitigation options be considered, thereby ensuring that every homeowner has the best possible opportunity to remain in the home or achieve the most financially viable resolution. The foreclosure settlement conference process requires ongoing active oversight by judges and other court personnel. To effectuate the UCS's commitment to these critically important conferences, and in spite of significant staff shortages in other court functions, new personnel have been hired statewide to work specifically on foreclosure matters and to ensure that litigants have full and meaningful access to court and community resources.

More than 27%³ of homeowners who participated in the settlement conferences obtained modifications of their home loans to an affordable level. This allowed thousands of families in communities throughout New York State to save their homes and continue to build equity. This is an increase from the 23% of homeowners who obtained modifications as reported in the 2015 Annual Report.

During the reporting period, there were 49,777 adjournments in the foreclosure settlement parts. Defaults by homeowners occurred in 9,493 cases. Voluntary discontinuances were recorded in 977 cases and 122 cases were dismissed by the court.

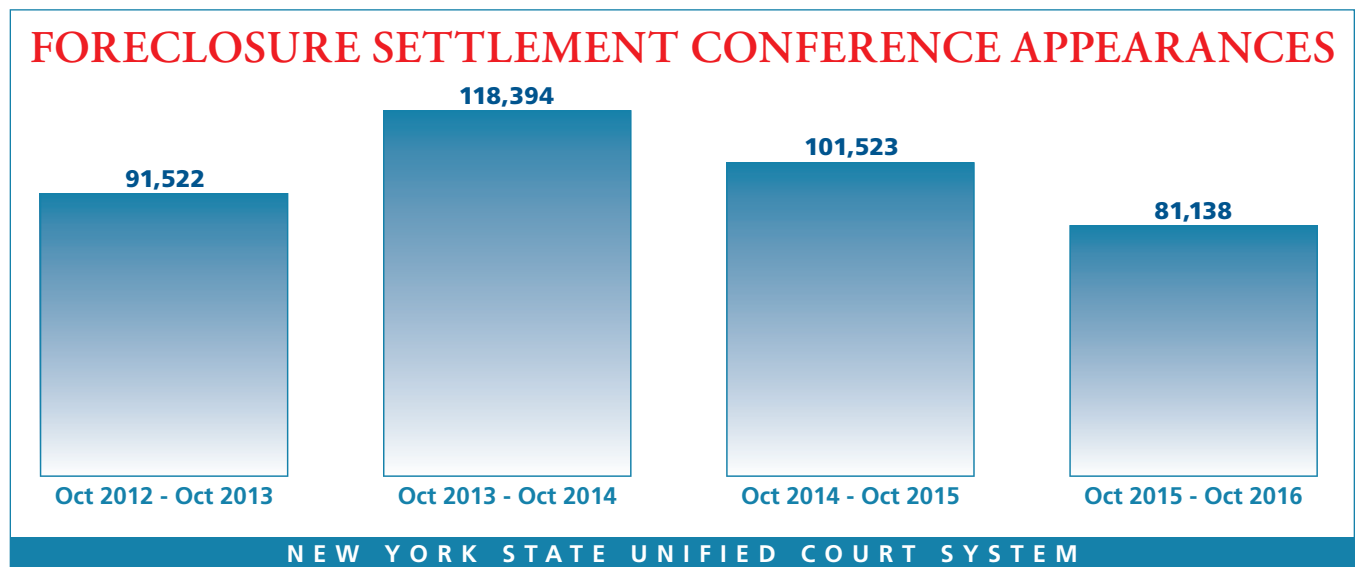


Fig. 3

VI. LEGAL REPRESENTATION

DUE TO CHIEF JUDGE DIFIORE'S commitment to provide civil legal services for low income New Yorkers, almost 170,000 individuals have already benefited from foreclosure-related legal services during the Unified Court System's 2015-2016 fiscal year, an increase from the 148,000 individuals who benefited from foreclosure-related legal services as reported in the 2015 Annual Report. This was accomplished because the Judiciary, in collaboration with our partners in government, has once again significantly increased funding for civil legal service providers by dedicating \$100 million from its budget.

³ This represents cases conferenced and released from the foreclosure settlement conference parts during the reporting period, excluding defaults, stayed and on-going cases.

The UCS will continue to dedicate court personnel to oversee and monitor these providers to ensure high-quality free representation for indigent homeowners.

During the reporting period, 62% of defendants in foreclosure settlement conferences were represented by counsel (see Fig. 4). This continues the steady upward trend from the 33% reported in 2011.

The Unified Court System also continues to expand its collaboration with civil legal service providers, housing counseling agencies, bar associations, and law schools, all in order to promote access to representation for indigent litigants. These partnerships have resulted in increased access to legal representation and wider dissemination of information about the foreclosure process for homeowners statewide. In addition to expanding existing court programs in creative new ways to provide access to legal advice for unrepresented litigants, new programs have been started in previously underserved rural counties.

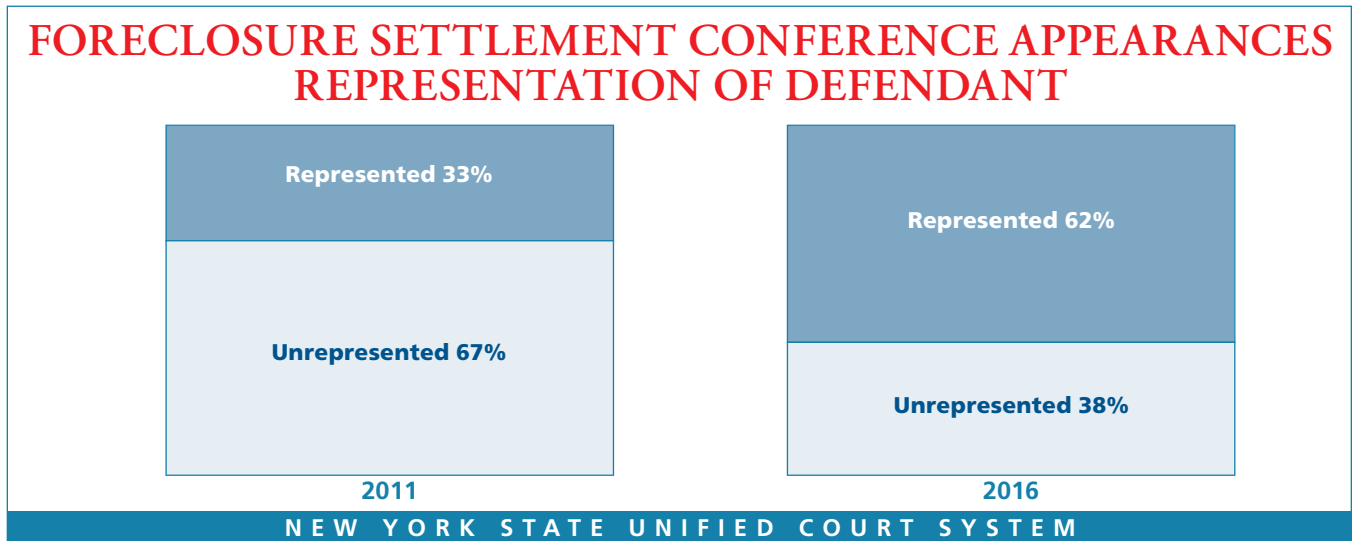


Fig. 4

VII. SERVICER PARTS

IN RESPONSE TO ongoing requests from the bar, specialized servicer conference parts are increasingly being used throughout the state. In these parts, dedicated calendar days are set aside for cases from a particular lender or loan servicer. Their legal teams must be fully prepared and knowledgeable about each scheduled case, and a representative from the lender or loan servicer who is fully conversant with the facts of each case and has decision-making authority must be present in court. These parts are designed to assist the courts and the parties in resolving outstanding issues with loan modification applications. The servicer program has expanded greatly in courts statewide, and now dozens of banks and loan servicers are participating in these specialized calendars. These parts have successfully guided the parties through the often complex loan modification process, and result in greater efficiencies for the court as well.

VIII. STATEWIDE FORECLOSURE COMMITTEE

THE STATEWIDE FORECLOSURE COMMITTEE, chaired by Hon. Sherry Klein Heitler, Chief of the Office of Policy and Planning, is an internal Unified Court System working group composed of judges, referees, court administrators and court personnel statewide. The Committee meets regularly to review foreclosure case processing and to share best practice information on both the macro and micro levels. Committee members were actively involved in the development of the Uniform Foreclosure Settlement Conference forms and will assist in the development of the Uniform Foreclosure Motion Form designed to standardize case practice statewide. Committee members communicate regularly among themselves as new operational and legal issues arise.

SUMMARY TABLE

October 13, 2015 - October 10, 2016

Conferences Held	81,138
Number of Adjournments	49,777
Discontinuances	977
Dismissals	122
Defaults	9,493
Defendants Appearing with Counsel *	44,572
Defendants Appearing without Counsel *	27,073

* Based upon the conferences held between October 13, 2015 and October 10, 2016, excluding appearances where the defendant defaulted.

IX. COLLABORATION

THE UNIFIED COURT SYSTEM engages in an ongoing dialogue with stakeholder partners as we work toward improving the foreclosure process. Representatives from the Office of Policy and Planning meet regularly with members of the bar with a view toward strengthening court processes statewide and addressing new issues as they arise. Representatives from the UCS also are committed participants in a residential mortgage foreclosure task force comprised of lender and loan servicer representatives, civil legal service providers, members of the private defense bar and representatives from housing counseling agencies.

X. CONCLUSION

THE MORTGAGE FORECLOSURE crisis has had an enormous impact on the economic vitality of New York communities and on the Unified Court System's operations over the past decade. Chief Judge DiFiore's commitment to excellence and her dedication to assisting unrepresented New Yorkers in our courts have benefited almost 170,000 New Yorkers, strengthened the foreclosure settlement conference process, and significantly reduced the pending foreclosure caseload.

Despite ongoing court personnel shortages, 81,138 settlement conferences were held during the reporting period in courts statewide, giving tens of thousands of homeowners the opportunity to remain in their homes. In order to give homeowners every opportunity to modify their loans and remain in their homes, the Judiciary will continue to prioritize foreclosure settlement conferences.

The Unified Court System's resolve to assist low income New Yorkers has once again increased legal representation for those in need. With a significant funding increase, the UCS continues to demonstrate its commitment to ensuring that New Yorkers remain in their homes whenever possible. In addition, we are confident that the new foreclosure legislation enacted this year will provide a strong mechanism for eliminating community blight.

The stewardship of Chief Judge DiFiore has resulted in a coordinated statewide approach to foreclosure case management that has reduced the pending inventory by 20% and resulted in foreclosure cases being processed more efficiently and transparently. Loan modifications have increased and the entire foreclosure process is becoming more uniform in courts throughout the state, all the while ensuring that the rights of all parties are protected.

Underscoring all of these efforts is the Unified Court System's commitment to providing justice for all who walk through our doors. The entire Judiciary will continue to strive for excellence and remains dedicated to safeguarding the rights of all New Yorkers.

