



2017 Report of the Chief Administrator of the Courts on the
STATUS *of* FORECLOSURES
Pursuant to Chapter 507 of the Laws of 2009



LAWRENCE K. MARKS
Chief Administrative Judge

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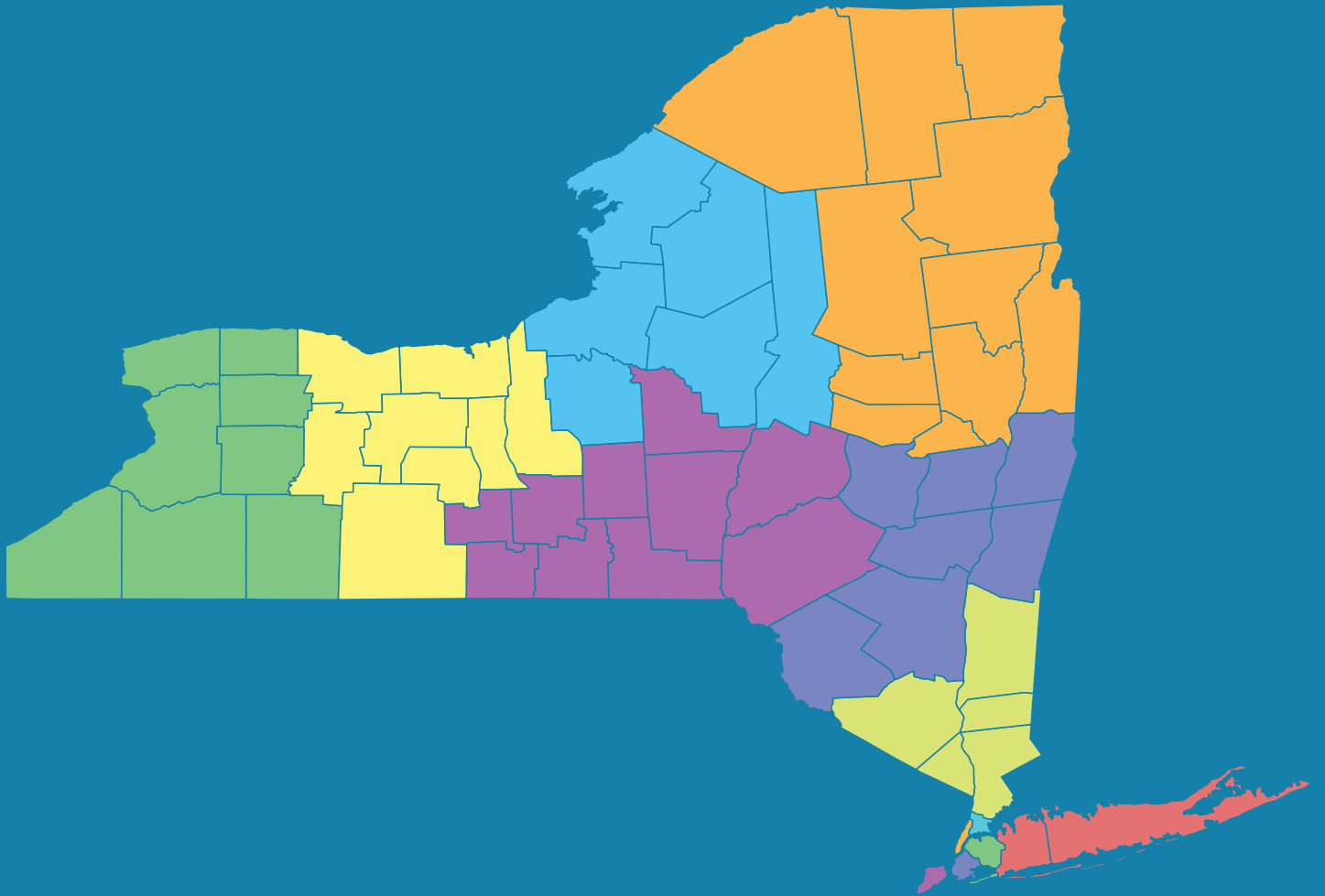
Preface

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 11, 2016 to October 9, 2017.



Lawrence K. Marks
Chief Administrative Judge



I. Introduction

Foreclosures have affected New York State’s economy and our cities, towns, and rural communities for the better part of a decade. These cases likewise significantly affect the Unified Court System’s (UCS) operations, representing 21% of the Supreme Court civil inventory statewide – although that is a decrease from the high of nearly 33% as reported in 2013 (see Fig. 1). Because of the ongoing commitment of Chief Judge Janet DiFiore, and in furtherance of the Excellence Initiative, the Judiciary continues to prioritize these cases not only to better assist litigants, but also to strengthen neighborhoods across the state.

This significant reduction in the pending foreclosure inventory is in part due to the fact that the UCS has continued to invest heavily in foreclosure-related resources. Dedicated judges and court personnel have been assigned to these important cases. Court procedures have been streamlined to improve access to justice for lower income New Yorkers. As a result, during the October 11, 2016 to October 9, 2017 reporting period (Reporting Period), 62% of homeowners appearing for statutorily mandated foreclosure settlement conferences received the legal representation they needed, loan modifications were on the rise, and the total number of foreclosure cases in New York State was reduced.

This Report reviews the UCS’s 2017 foreclosure initiatives and examines important caseload trends and statistics.

II. Excellence Initiative

In response to Chief Judge DiFiore’s Excellence Initiative, the UCS continues to improve foreclosure case processing statewide, and a number of innovative yet budget-neutral measures have been implemented to eliminate case backlogs. These include improved computer caseload tracking, streamlined court processes, enhanced services for unrepresented litigants, and standardized conference forms and motion templates.

Uniform Foreclosure Settlement Conference (FSC) forms are now mandated for use across the state in every settlement conference. These forms provide each and every homeowner and lender with clear instructions as to their responsibilities for future court appearances. As a result, homeowners now have a better understanding of their role in the settlement conference process, lenders are better-informed of their responsibilities, and courts have more complete records than ever before.

Master calendars have been implemented in courts statewide to more efficiently track foreclosure cases in which settlement conference efforts were unavailing. These calendars enable courts to ensure that all parties comply with court orders and motion practice deadlines. Creation of the master calendars also allows for dismissal of foreclosure actions brought by plaintiffs who abandoned their cases without notifying the court. In many of those cases, the lien was vacated upon being dismissed, thereby removing a barrier that was otherwise needlessly impacting homeowners’ creditworthiness.

In a noteworthy step, the UCS is improving court access for litigants who are facing foreclosure and divorce proceedings at the same time. As discussed below, to benefit divorcing couples, recommendations have been made to amend court rules for judgments in matrimonial actions.

To provide easy-to-understand information to the public, the UCS Office of Policy and Planning is producing a foreclosure informational video for homeowners. The video, to be available online, will provide homeowners with a step-by-step guide to the conference process and the structure of a foreclosure case. Updates have been made to the UCS website to provide more information to the public on court operations and available resources. Foreclosure seminars are again being scheduled to update judges and court personnel on legal and operational issues and best practices. We anticipate that members of the plaintiff and defense bars will participate in these seminars to further the ongoing dialogue between the courts and practitioners. Site visits to courts statewide continue in order to ensure best practice standards and to resolve local practice issues.

Uniform Foreclosure Motion Templates have been approved by the UCS's Administrative Board of the Courts after a public comment period during which the UCS received valuable feedback from civil legal service providers, attorneys, public officials, and members of the public. These motion templates will create uniform standards for foreclosure motion practice, further increasing case processing efficiencies. The motion templates will be mandated for use statewide in 2018.

Finally, this past year New York law was amended to make most reverse mortgage cases settlement conference eligible. Before this legislative change, many courts had taken the initiative and conferenced reverse mortgage cases to afford homeowners every opportunity to remain in their homes. With the new statutory requirements, all reverse mortgage cases (with a few statutory exceptions) will be conferenced.

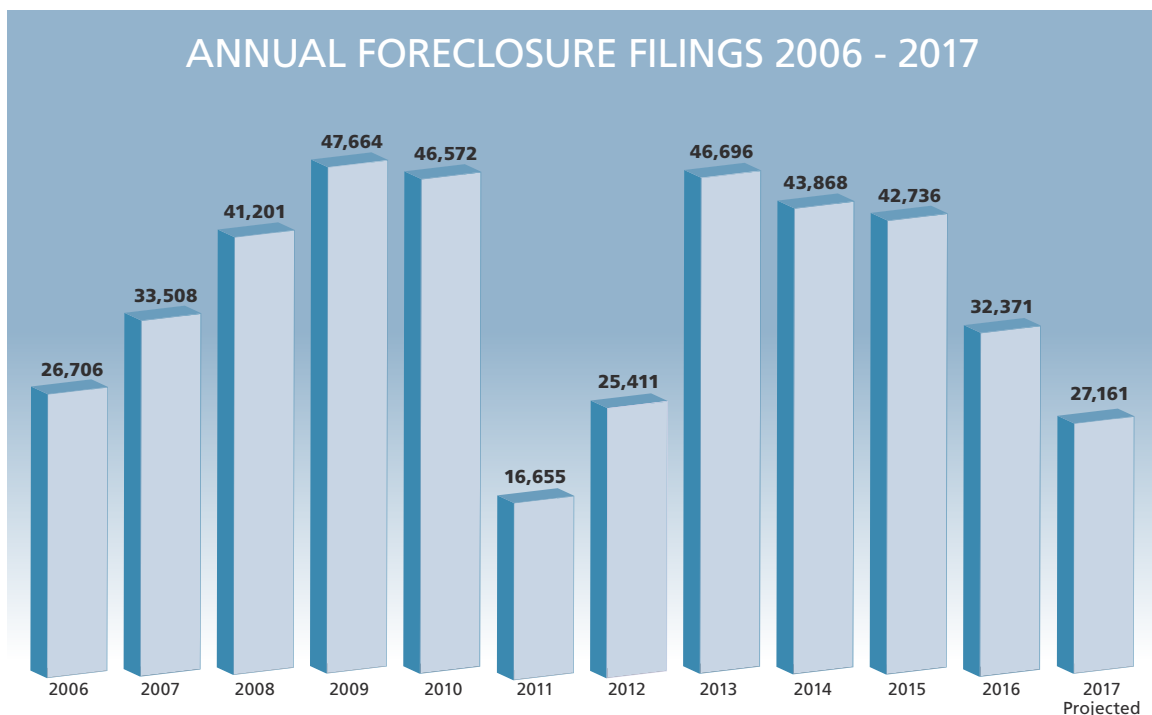


Figure 1

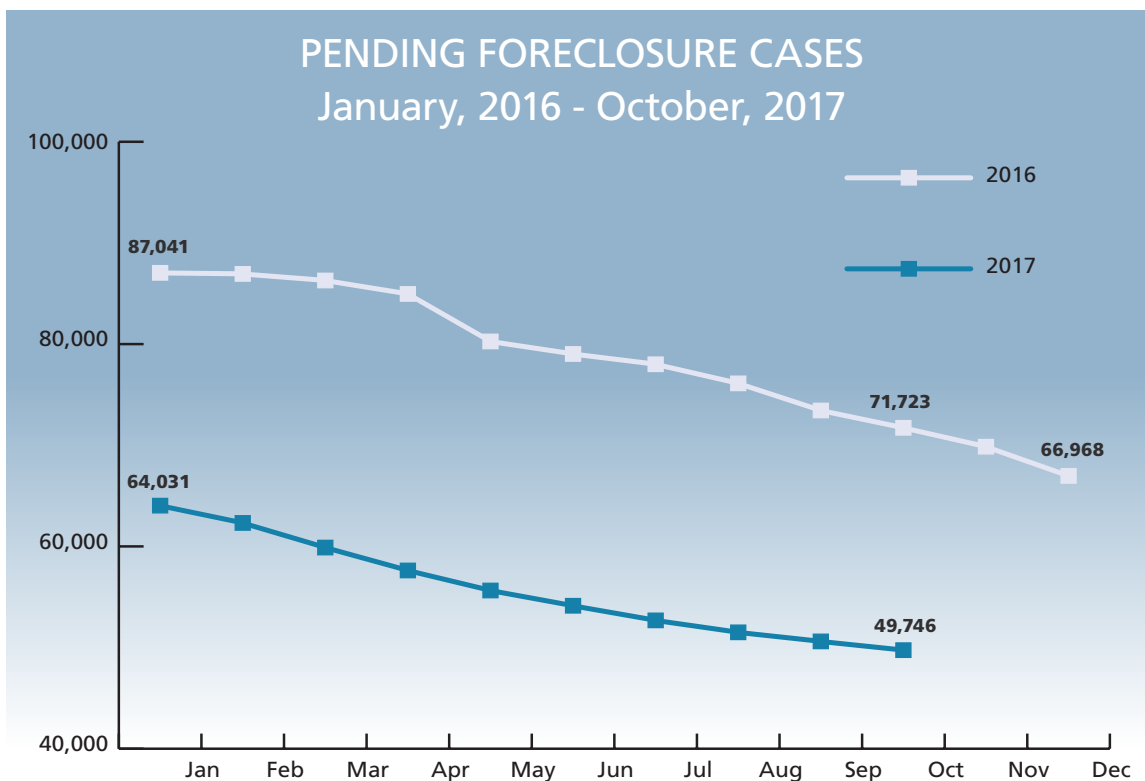


Figure 2

III. Filing Trends

During the Reporting Period (October 11, 2016 – October 9, 2017), 26,949 foreclosure cases were filed statewide. This represents a decrease of almost 20% from the 33,641 foreclosure cases filed as reported in the 2016 Annual Report and a 36% decrease from the 42,162 foreclosure filings reported in the 2015 Annual Report (see Fig. 1).¹

Of the 26,949 new foreclosure cases filed during the Reporting Period, more than 19,687 required statutorily-mandated foreclosure settlement conferences. The UCS will continue to dedicate substantial resources to these conferences, which now include most reverse mortgage cases. Additional court attorney-referees have been hired and assigned to settlement conference parts statewide.

The volume of new filings in the Reporting Period varied by court term, with a statewide high of 2,380 in Term 1 of 2017 and a statewide low of 1,762 in Term 9 of 2017. New filings in courts within New York City totaled 6,452. New filings in courts outside of New York City totaled 20,497.

As of October 9, 2017, the end of the Reporting Period, 49,746² foreclosure cases were pending statewide (see Fig. 2). This number represents a reduction of more than 30% from the 71,723 cases pending at the end of the previous reporting period (as set forth in the 2016 Annual Report), and a 44% reduction from the 89,365 pending cases (as reported in the 2015 Annual Report).

¹ The numbers depicted in Fig. 1 for the years 2006-2016 represent annual filings. The 2017 number is a projection.

² This includes estimated numbers for Westchester County, due to the transition to a new case management system.

IV. Foreclosure Settlement Conferences

During the Reporting Period, 58,387 foreclosure settlement conferences were held in courts statewide (see Fig. 3). This number reflects the significant downward trend from the high of 118,394 conferences reported in the 2014 Annual Report, the 101,523 reported in the 2015 Annual Report, and the 81,138 reported in the 2016 Annual Report. Additionally, during the Reporting Period, there were 36,586 adjournments in the foreclosure settlement parts. Defaults by homeowners occurred in 6,446 cases; voluntary discontinuances were recorded in 445 cases; and 117 cases were dismissed by the court.

With the expiration at the end of 2016 of the federal Home Affordable Modification Program (HAMP), which enabled homeowners to qualify for lower interest rate loan modifications, New York State is doing its part to increase opportunities for homeowners to secure a loan modification. To that end, the NYS Mortgage Assistance Program (MAP) provides 0% interest mortgage loans of up to \$40,000 to eligible New York homeowners at risk of foreclosure so they can reinstate their mortgages. UCS judges and court attorney referees who preside over settlement conferences have been informed about these loss-mitigation options and continue to work with all parties to provide homeowners the best possible opportunity to remain in their homes or achieve the most financially viable resolution. Because of the Chief Judge's commitment to families in need, the UCS continues to provide judges and referees who preside over foreclosure cases the legal and technological resources needed to conference thousands of cases each year so that all litigants in our courts have full and meaningful access to court and community resources.

More than 28%³ of homeowners who participated in the settlement conferences 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. The 28% constitutes a slight increase from the 27% of homeowners who obtained home loan modifications in 2016.

³ This represents cases conferenced and released from the foreclosure settlement conference parts during the reporting period, excluding defaults, cases that were stayed, and cases that are still actively being conferenced.

FORECLOSURE SETTLEMENT CONFERENCE APPEARANCES

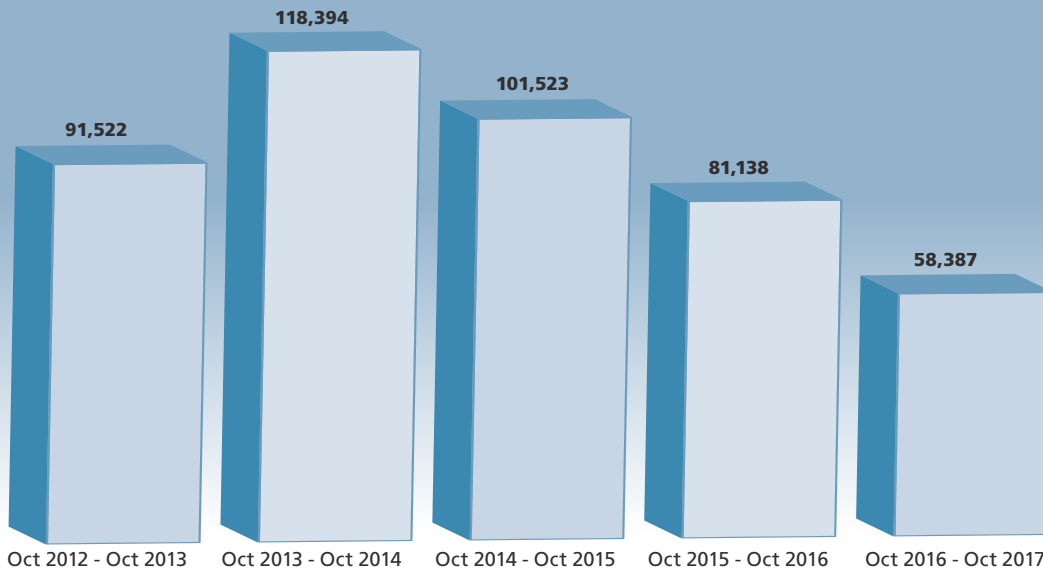


Figure 3

V. Legislation and Court Rules

As reported in the 2016 Annual Report, recent amendments to New York law expanded the responsibilities of banks and homeowners during the settlement conferences, and for the first time required judges and court personnel who preside over foreclosure settlement parts to instruct homeowners on the importance of filing an answer. To comply with this legislation, the UCS created a bench card for judges and an information packet to be provided to all homeowners at their first settlement conference. The information packet includes a sample answer and a list of free local and statewide civil legal service providers and housing counselors. These documents have proven to be very effective in advising homeowners of their rights and the resources available to them.

The Legislature also amended the Real Property and Proceedings Law by requiring the UCS to send a special notice to a homeowner if a bank moves for a judgment of foreclosure and sale on the ground that the subject property is vacant and abandoned. To ensure consistency statewide, and recognizing that many homeowners are not familiar with legal terminology, the Office of Policy and Planning and the Access to Justice Program developed a “plain-language” notice to ensure that homeowners understand their rights and responsibilities under the amended law.

Reverse mortgages present special issues, as they tend to have a greater impact on New York’s elderly than on other segments of the population. Thus, for years, many courts statewide had included foreclosure cases involving reverse mortgages in their settlement conference programs even though there was no requirement that they do so. As noted above, however, recent legislative changes to the foreclosure process mandate the inclusion of reverse mortgage cases in the settlement

conference process. The UCS has therefore ensured that all eligible homeowners in foreclosure cases with reverse mortgages have an opportunity to resolve their matters and remain in their homes.

Similarly, complicated legal issues surround couples facing foreclosure and divorce proceedings at the same time. Because of financial constraints, it can often be difficult for divorcing couples to maintain the marital home. In some cases, a failure to file the requisite documents to fully transfer the home to the spouse who has been given the home by court order or agreement can further compound the hardship as lenders require all titled parties to apply for a loan modification. Without participation from all titled parties, the mortgage loan is usually ineligible for modification, thereby precluding otherwise qualified families from being able to remain in their homes.

Thus, to prevent families from losing their homes because a titled party has failed to participate in the loan modification process, the UCS Matrimonial Practice Advisory and Rules Committee, in collaboration with the UCS Office of Policy and Planning, has drafted a proposed court rule change that would require 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 will ensure that the person who remains in the home will have all documents necessary to enable him or her to apply for a mortgage loan modification or other loss mitigation option if necessary.

As noted above, foreclosure settlement conference (FSC) forms are now mandated for use in all settlement conferences. Accordingly, intake and status forms were created and approved for use in all foreclosure settlement conferences. Since being implemented in 2016, the FSC forms have not only proven beneficial to the litigants, but have also helped courts keep better track of case progress and reduce backlogs. Likewise, the UCS has developed and will shortly be implementing Uniform Foreclosure Motions Templates, which, like the FSC forms, will further assist in streamlining case processing and reducing backlogs. These templates were developed in consultation with, and after extensive feedback from, the UCS's Statewide Foreclosure Working Group composed of judges and court personnel from each judicial district, as well as members of the New York City Bar Association's Residential Mortgage Foreclosure Task Force, which includes representatives from civil legal service providers, the defense bar, and the plaintiffs' bar. Comments were also solicited from the public. These new forms do not present the first instance of uniform motion forms being adopted for use in civil cases. For many years now, uniform motion forms have been used in uncontested divorce cases and have proven highly effective. As with divorce cases, the standardization of motion practice in foreclosure cases will enable judges and court personnel to more efficiently review and process cases and will assist litigants by ensuring uniformity of practice statewide.

VI. Legal Representation

Chief Judge DiFiore’s commitment to civil legal representation for lower income New Yorkers remains steadfast. In collaboration with our partners in government, the UCS has continued to provide civil legal and housing counseling services to New Yorkers, especially low-income individuals and families who cannot afford to retain a private attorney. Over 151,000 New Yorkers have already benefited from housing and foreclosure-related legal services during the UCS’ 2017 fiscal year.

That over 151,000 individuals benefitted from civil legal and housing counseling services is in large part due to the Judiciary’s dedication of \$100,000,000 from its own budget to civil legal service providers and housing counselors. The UCS oversees and monitors these providers to ensure high-quality free representation for indigent homeowners.

During the reporting period, 62% of defendants in foreclosure cases were represented by counsel (Fig. 4). This is identical to the 62% as reported in the 2016 Annual Report and continues the upward trend from the 33% reported in 2011.

Underscoring the UCS’s commitment to access to representation for indigent New Yorkers is the appointment of Hon. Edwina Mendelson as Deputy Chief Administrative Judge in the newly created Office for Justice Initiatives (OJI). OJI’s mission is to ensure meaningful access to justice for all New Yorkers, and as such is spearheading a program to make it easier for unrepresented homeowners to file an answer to a foreclosure complaint.

The UCS continues to collaborate with civil legal service providers, housing counseling agencies, bar associations, law schools, and law firms to promote access to free legal services for homeowners facing foreclosure.

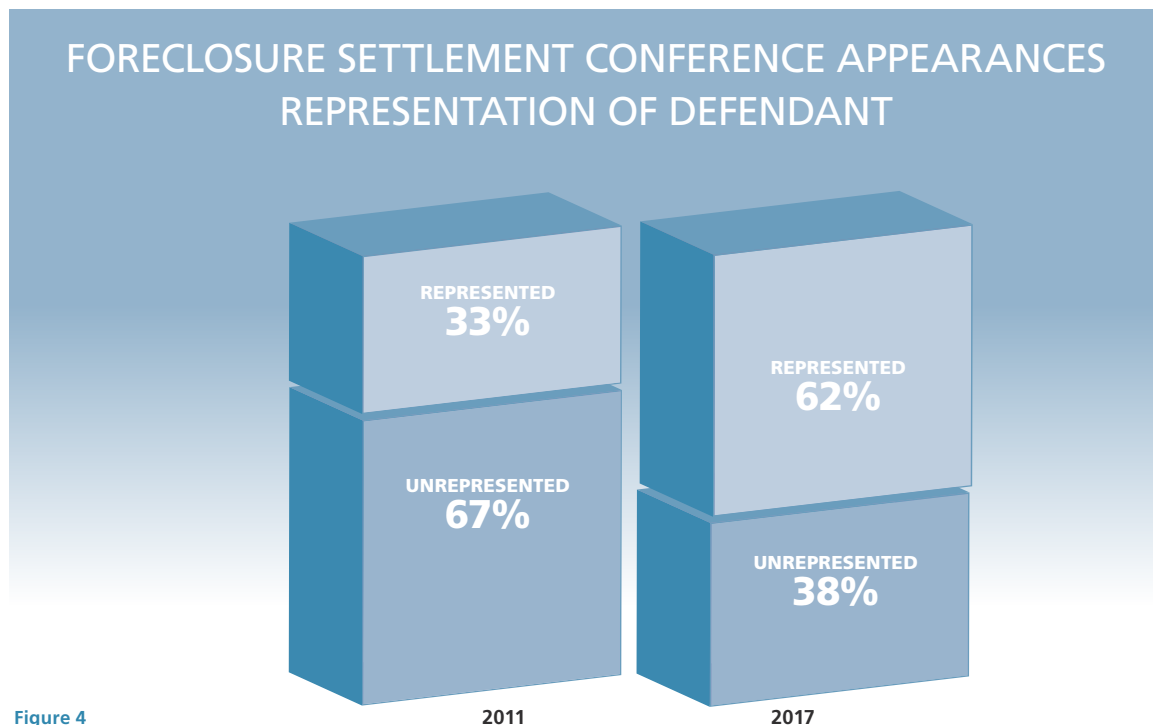


Figure 4

VII. Specialized Foreclosure Parts

Specialized foreclosure parts have proven to be effective tools in reducing backlogs. Several counties have implemented new procedures and programs for enhancing the foreclosure process by facilitating the expeditious review of loan modification applications.

Servicer part programs are being expanded to include additional banks and loan servicers in many counties statewide. For example, in 2017 servicer calendars were implemented in the Eighth Judicial District, which includes Buffalo and the surrounding areas, and in the Third Judicial District, which includes Albany and the surrounding areas. Under these programs, like many other servicer parts, banks are required to send to settlement conferences a representative with knowledge of the cases and the authority to enter into meaningful settlement negotiations. These servicer parts have been embraced by both counsel for the banks and the local legal service providers.

To assist with the recent legislative changes that permit homeowners to file an answer within 30 days of the initial foreclosure settlement conference, the Westchester County Pro Bono Local Action Committee started an Attorney for the Day program in January 2017. Supervised by court personnel and staffed by volunteer attorneys in private practice, program participants assist homeowners in preparing answers to foreclosure complaints and motions to vacate judgments of foreclosure, and offer general foreclosure advice. Homeowners still have access to certified housing counselors in the settlement conferences, but this Attorney for the Day program provides much needed help to homeowners who need litigation assistance.

In addition, Queens County has an Expedited Trial Part for cases where the homeowner has not appeared at the foreclosure settlement conferences and, despite court outreach, no answer has been filed or served. At trial, the bank must present sufficient evidence to warrant a determination that it is entitled to a judgment of foreclosure. This program enables the foreclosure case to proceed on a faster track.

VIII. Statewide Foreclosure Committee

The Statewide Foreclosure Committee is an internal UCS working group of judges, court attorney-referees, chief clerks, district executives, and court personnel from across the state. Chaired by the Hon. Sherry Klein Heitler, Chief of the Office of Policy and Planning, committee members regularly communicate with each other regarding foreclosure trends, best practices, and new legal issues. Committee members were also actively involved in the development of the Uniform Foreclosure Settlement Conference forms and the Uniform Foreclosure Motion Form Templates. The committee meets regularly to discuss legal issues, data trends and operational issues as they arise.

IX. Collaboration

In addition to working closely with our partners in government, UCS representatives meet regularly with members of both the plaintiff bar and defense bar for the purpose of improving court operations. UCS personnel also meet regularly with lender and loan servicer attorneys, civil legal service providers, members of the private defense bar, and housing counseling agencies, all of whom were instrumental in the drafting of the Foreclosure Motion Form Templates.

SUMMARY TABLE
OCTOBER 11, 2016 - OCTOBER 9, 2017

Conferences Held	58,387
Number of Adjournments	36,586
Discontinuances	445
Dismissals	117
Defaults	6,446
Defendants Appearing with Counsel*	31,916
Defendants Appearing without Counsel*	19,829

* Based upon the conferences held between October 11, 2016 and October 9, 2017, excluding appearances where the defendant defaulted.

X. Conclusion

Since 2009, the UCS has been on the front line of the mortgage foreclosure crisis brought on by the economic downturn. Foreclosures have had an enormous impact on families and communities across New York State, from our largest cities to our rural hamlets. These cases have affected court operations in the form of record high filings and record high pending caseloads, although the foreclosure case inventory has declined recently.

With a sustained dedication to the highest standards inspired by Chief Judge DiFiore, circumstances have improved. Case dispositions are now outpacing filings across the state, and New Yorkers have benefitted from much needed legal assistance. The pending foreclosure inventory has been significantly reduced. As a direct result of the Chief Judge's commitment to provide free legal representation to New Yorkers in need, more than 151,000 people have benefitted from foreclosure-related legal services. Indeed, 58,387 settlement conferences were held in courts throughout the state during this past year, to provide every opportunity for homeowners in need to explore all avenues to remain in their homes and communities.

UCS judges and court staff have streamlined court processes, implemented uniform practice standards statewide, and improved data collection and oversight, all the while ensuring that the rights of the parties are not infringed. The Judiciary is committed to adjudicating these resource-intensive cases fairly and efficiently. To achieve that goal, we will continue to invest in foreclosure settlement conference parts, and ensure that civil legal service providers receive the funding they need to assist low income New Yorkers throughout the foreclosure process.

The Judiciary remains fully dedicated to providing the highest level of service to litigants involved in these important matters.

