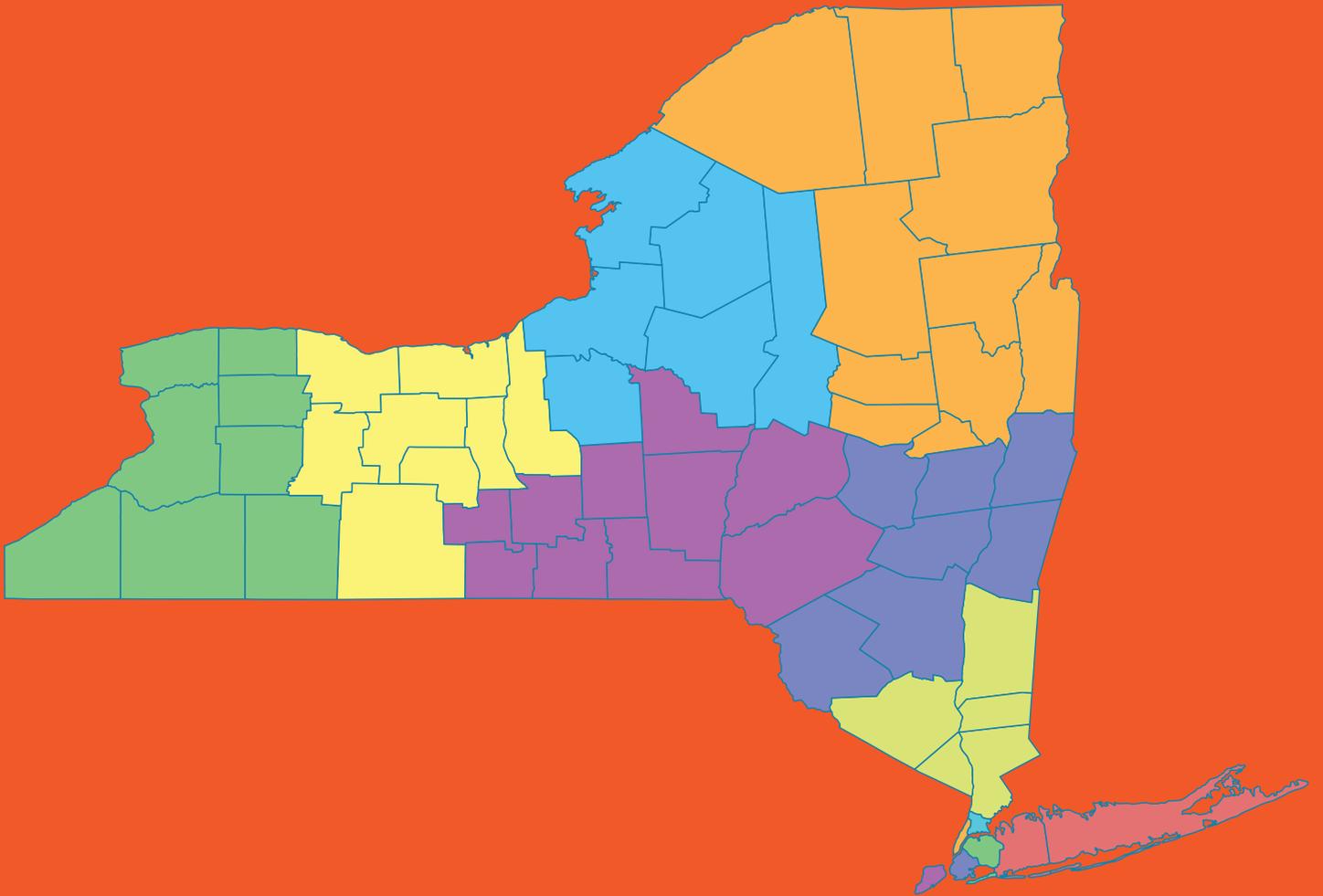




2021 Report of the Chief Administrator of the Courts on the
STATUS *of* FORECLOSURE CASES
Pursuant to Chapter 507 of the Laws of 2009



LAWRENCE K. MARKS
Chief Administrative Judge



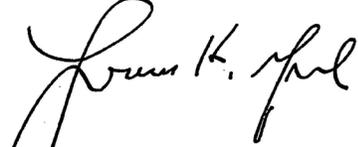
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Preface

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

I AM PLEASED TO SUBMIT THIS REPORT on the status of foreclosures in the New York State Unified Court System. 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.” This Report provides the required data and additional information regarding foreclosure cases and the foreclosure settlement conference process for the period October 6, 2020 to October 12, 2021.



Lawrence K. Marks
Chief Administrative Judge

I. Introduction

Notwithstanding the continued presence of COVID-19 in our communities, there is hope that New York State is on a path towards a strong recovery. However, it is no secret that thousands of businesses shuttered in 2020 and 2021, leaving hundreds of thousands of New Yorkers unable to manage their expenses. For New York's homeowners, some estimates suggest that almost 12% are currently delinquent on their mortgages. This is three times the delinquency rate at the height of the 2008 financial crisis and over five times the delinquency rate in January 2020 before the pandemic began.

Recognizing a potential surge in foreclosure filings, the New York State Legislature acted swiftly, enacting restrictions that would prevent lenders from moving forward with residential and commercial foreclosures where the property owners were suffering from a COVID-19 related hardship.

New York State Unified Court System (UCS) administrators have worked hard to ensure that our judges and non-judicial staff are aware of these mandates and are carefully monitoring local dockets to ensure compliance. Underlying this active case management approach is the UCS' commitment to meaningful access to justice for all, including for the many thousands of homeowners who cannot afford legal representation and do not have access to free civil legal services.

Anticipating an increase in foreclosure case filings in 2022, the UCS will do everything possible to treat both lenders and homeowners fairly, connect unrepresented New Yorkers with local attorneys, give homeowners time to apply for mortgage assistance relief, and encourage settlements and other loss mitigation options. This Report details our current approach to foreclosure case processing and sets forth a blueprint for how the UCS will address foreclosure cases moving forward.

II. Federal Mandates and New York State Legislation

A. FEDERAL MANDATES

The Coronavirus Economic Stabilization Act of 2020 (CARES Act) placed a foreclosure moratorium on certain properties with federally-backed mortgages through August 31, 2020. An administrative order from the Federal Housing Administration (FHA) authorized several extensions that ended on July 31, 2021.

The sunset of FHA's moratorium coincided with new rules from the Consumer Financial Protection Bureau that went into effect on August 31, 2021. As a practical matter, these rules prevent federally-backed lenders from foreclosing on many residential mortgages until early 2022. However, lenders may still pursue cases involving abandoned properties, homeowners who were more than 120 days delinquent before March 1, 2020, homeowners who are at least 120 days behind on mortgage payments but have not responded to servicer inquiries for 90 days, and homeowners who do not qualify for any other loss mitigation options.

B. NEW YORK STATE LEGISLATION

In December 2020, New York enacted the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (EEFPA), which provides substantial protections for defendants in residential foreclosure matters. The EEFPA initially stayed eligible residential foreclosure actions for sixty days and further stayed proceedings until May 1, 2021 where a mortgagor submitted a declaration attesting to a hardship arising from or during the COVID-19 pandemic. This stay was extended through January 15, 2022 by Chapter 417 of the Laws of 2021.

In March 2021, New York enacted the COVID-19 Emergency Protect Our Small Businesses Act of 2021 (EPOSBA), which provides substantial protections for defendants in commercial foreclosure matters. Like its residential counterpart, EPOSBA required that the court stay proceedings through May 1, 2021 where the property owner filed a Hardship Declaration. This stay was also extended by legislation through January 15, 2022.

Both EEFPA and EPOSBA directed the UCS to mail blank Hardship Declarations to homeowners and property owners. Over 70,000 declarations were mailed to homeowners in both English and Spanish with instructions available in Arabic, Bengali, Chinese-Simplified, Chinese-Traditional, Haitian Creole, Polish, and Russian. The UCS also translated the residential Hardship Declaration to Al-

banian, Burmese, French, Karen, Nepali, Punjabi, Urdu, Vietnamese, and Wolof, and posted them to www.nycourts.gov. Almost 7,000 declarations were mailed to commercial property owners in English and Spanish with instructions available in Arabic, Bengali, Chinese-Simplified, Chinese-Traditional, and Polish.

III. Administrative Orders

During the Reporting Period (October 6, 2020 to October 12, 2021), the UCS issued four foreclosure-related Administrative Orders to ensure equitable and uniform procedures throughout the pandemic.

Administrative Order 341/20 (December 31, 2020) Consistent with the Emergency Eviction and Foreclosure Prevention Act of 2020, AO/341/20 directed the stay of all pending residential foreclosure matters covered by the Act for 60 days. This order further directed that, once the stay ended, new filings could only be made if accompanied by a special affidavit demonstrating that the lender served the homeowner with a Hardship Declaration (as well as other notices required by the RPAPL) and did not receive a signed copy in return. If the homeowner submitted a hardship declaration to the lender or the court, the matter was stayed until May 1, 2021. In cases where a judgment had already been signed but the property had not yet been sold at auction, the auction could not be held until the court held a status conference with the parties. During the conference, if the homeowner submitted a Hardship Declaration to the lender or the court, the auction had to be stayed until May 1, 2021.

Administrative Order 95/21 (March 15, 2021) Consistent with the Emergency Protect Our Small Businesses Act of 2021, AO/95/21 directed the stay of all pending commercial foreclosure matters covered by the Act for 60 days. This order further directed that, once the stay ended, new filings could only be made if they were accompanied by a special affidavit demonstrating that the lender served the property owner with a Hardship Declaration (as well as other notices required by the RPAPL) and did not receive a signed copy in return. If the property owner submitted a hardship declaration to the lender or the court, the matter was stayed until May

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Administrative Order 159/21 (May 24, 2021) AO/159/21 directed that the stay period be extended through August 31, 2021 in any covered residential or commercial action, and further made clear that any action not covered by either EEFPA and EPOSBA should continue in the normal course, subject to federal and state emergency relief programs. AO/159/21 also reiterated that auctions had to be conducted in accordance with the plans developed by each judicial district to ensure compliance with the UCS' COVID-19 safety protocols on social distancing, masks, and screenings.

Administrative Order 262/21 (September 9, 2021) – Following the expiration of the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 and the COVID-19 Protect Our Small Businesses Act of 2021, Governor Hochul signed into law Chapter 417 of the Laws of 2021. Among other things, Chapter 417 extends the stay period for covered cases through January 15, 2022, but also created a mechanism for lenders to challenge a Hardship Declaration. AO/262/21 tracks this new law while encouraging courts to actively manage caseloads. As a result, courts have been resuming CPLR 3408 settlement conferences, holding status conferences to determine whether a matter remains subject to a forbearance program, referring unrepresented parties to local civil legal services providers and housing counseling agencies, and making unrepresented parties aware of the new Homeowner Assistance Fund (see Section IV).

IV. Recent Developments

The Unified Court System's 2020-2021 foreclosure-related initiatives were rooted in creating meaningful access to justice for both lenders and homeowners and in complying with Federal and State directives. In this regard, while very few orders of reference and judgments were signed, judges and court-attorney referees actively conferenced existing cases with an eye towards statutory compliance and amicable resolution. Before the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 and the COVID-19 Protect Our Small Businesses Act of 2021 went into effect, court staff focused on whether a homeowner was entitled to relief under now expired Executive and Administrative Orders (See 2020 Foreclosure Annual Report, www.nycourts.gov/admin/OPP/foreclosures_report.shtml).

COVID-19 Assessment Conferences, as they have come to be known, were critical to ensuring that unrepresented homeowners did not face foreclosure without due process, especially during the early stages of the pandemic when most court operations were virtual. Building in an extra layer of protection, if a homeowner did not appear, the UCS required that a second conference be noticed before a case could proceed. Beginning in January 2020, the filing of a Hardship Declaration in a covered matter had the effect of staying the proceedings. Many courts, however, continued to inquire from homeowners and to meet with the parties in an attempt to broker settlements.

Active case conferencing has become increasingly important since the federal forbearance program ended on September 30, 2021. Instead of holding conferences for the purpose of determining whether a homeowner is entitled to COVID-related relief, courts are now being encouraged to return to pre-pandemic conferencing, keeping in mind that cases where Hardship Declarations have been filed cannot proceed until at least January 15, 2022.

The UCS is also encouraging judges and court attorney referees to refer homeowners to the Homeowner Assistance Fund (HAF) which is expected to launch in January 2022. Established under the American Rescue Plan Act of 2021, the HAF will provide upwards of \$500,000,000 in fi-

nanacial assistance to New York State through the Division of Housing and Community Renewal. It is critical that our judges and non-judicial personnel have an opportunity to refer homeowners to this vital program that will undoubtedly help thousands of New Yorkers keep their homes.

Since HAF Funds will be available to homeowners who have fallen behind on their mortgage payments, but also to homeowners who have tax arrears, the UCS is now directing that tax lien foreclosures be given settlement conferences. For cases pending in Supreme Court, this means that cases will be assigned to the appropriate foreclosure settlement conference part in the first instance. To support the judges and referees presiding in these parts, the UCS created a tax lien conference form modeled after the form currently in use for residential mortgage foreclosure cases. UCS administrators will be working with County and City courts, which do not have formalized settlement parts for foreclosure cases, to develop protocols and establish new compliance/settlement calendars as appropriate. This initiative is important because it creates equity in the treatment of foreclosure cases that simply did not exist previously. Also, since tax foreclosure cases generally involve much smaller arrears than mortgage foreclosure cases, it is anticipated that courts will be able to resolve these cases at very high rates compared to other cases. A longstanding tax lien settlement initiative in Erie County, for example, has led to the successful resolution of most of Buffalo's tax lien disputes for years. In 2022, the UCS will work to build similar programs throughout the State.

Finally, as we near the end of this pandemic, it is evident that virtual proceedings will become a permanent fixture within the UCS, particularly in civil cases like foreclosures. Since affording homeowners the opportunity to appear virtually, many courts have reported much higher participation rates by homeowners compared to pre-pandemic levels. These rates are particularly evident in some of our rural counties where homeowners would otherwise have to travel a significant distance to appear in court. This is not to say that homeowners are required to appear virtually, as some courts encourage in-person appearances, especially for a homeowner's first

settlement conference. The UCS is also mindful of the digital divide, i.e., lack of internet access, lack of smart devices, and a lack of understanding of how to access services online by some court users. While efforts are being undertaken to narrow

this gap, the fact remains that virtual proceedings have and will continue to allow New Yorkers to take a more active role in their court proceedings. For that reason, the UCS will continue to enhance and promote our virtual capacities.

V. Filing Trends

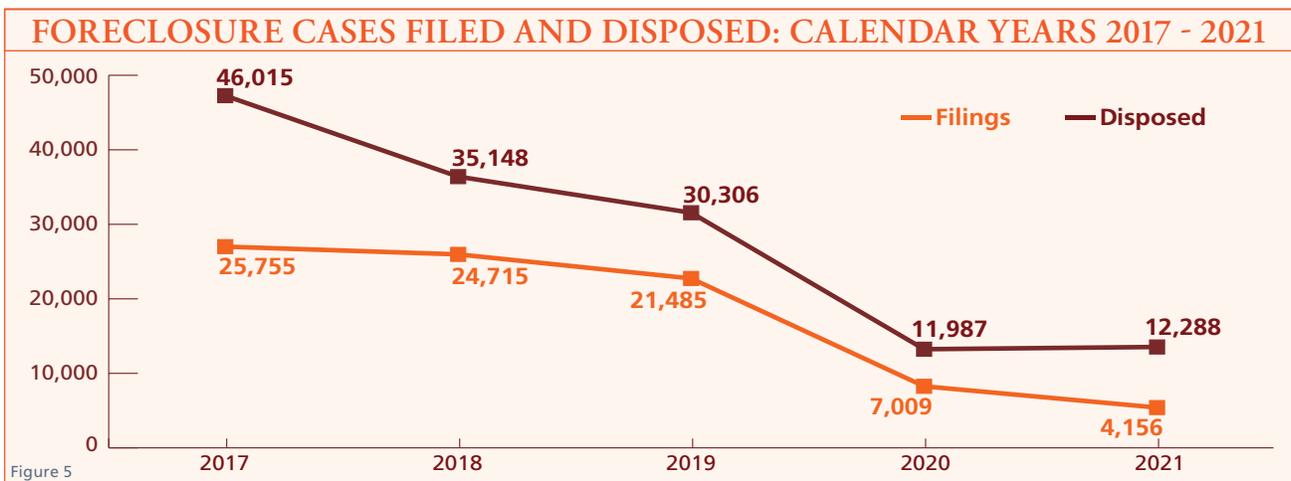
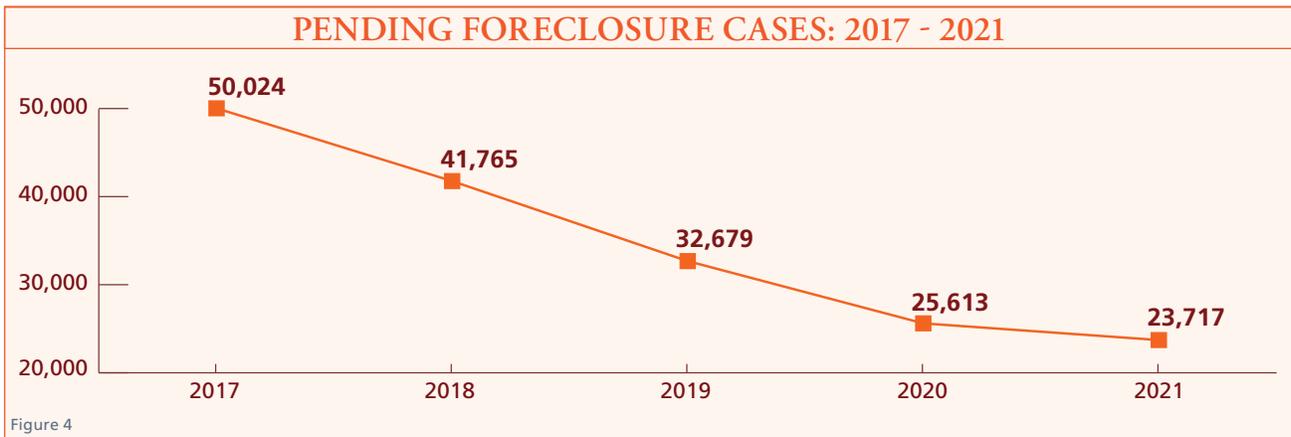
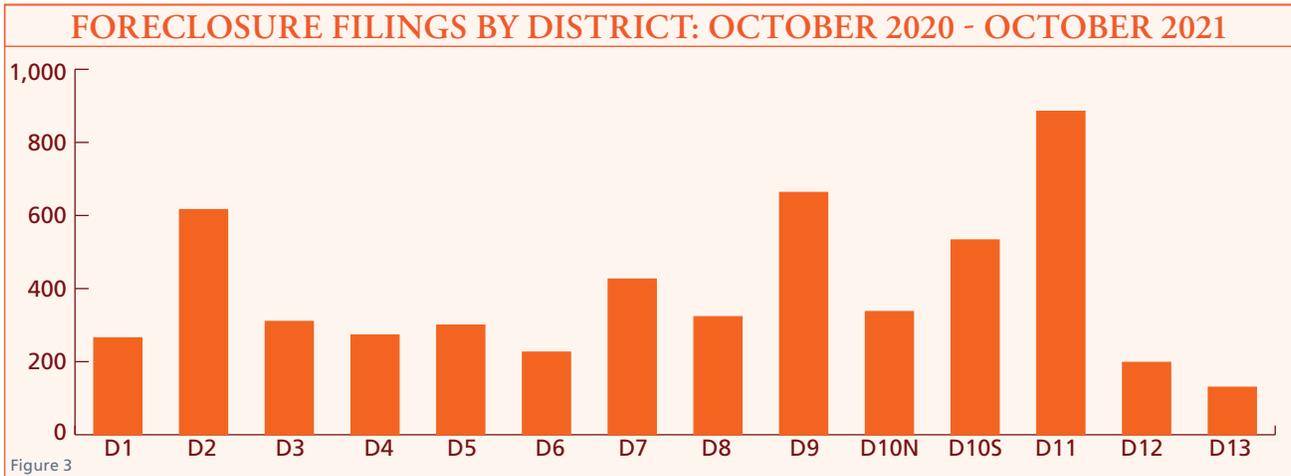
During the Reporting Period (October 6, 2020 to October 12, 2021), plaintiffs filed 5,485 residential and commercial cases. This represents a 46% decrease from the 10,149 cases reported during the 2020 Reporting Period and a 75% decrease from the 22,147 cases reported during the 2019 Reporting Period. This substantial reduction in case filings is attributable to the restrictions imposed upon foreclosure filings by New York State and the federal government as well as the existence of long-term forbearance programs. For information about annual filings from 2017 to 2021, see Fig. 1.

Of the 5,485 cases filed during the Reporting Period, 3,648 were eligible to be scheduled for a foreclosure settlement conference pursuant to CPLR 3408. These conferences are designed to facilitate communication between lenders and homeowners with the goal of entering into a loan modification agreement or other mutually agreeable settlement. Throughout the pandemic, teams of judges, court-attorney referees, and other non-judicial personnel who are experts on foreclosures continued to preside over these conferences, first virtually, but now many in person as well. Regardless of the format, the UCS' goal is to ensure participation by all sides, particularly from unrepresented homeowners.



The volume of new filings in the Reporting Period varied by court term with a statewide high of 599 in Term 8 of 2021 and a statewide low of 249 in Term 1 of 2021 (see Fig. 2). New filings in courts within New York City totaled 2,094 and new filings in courts outside of New York City totaled 3,391, with the number of filings varying by judicial district (see Fig. 3).

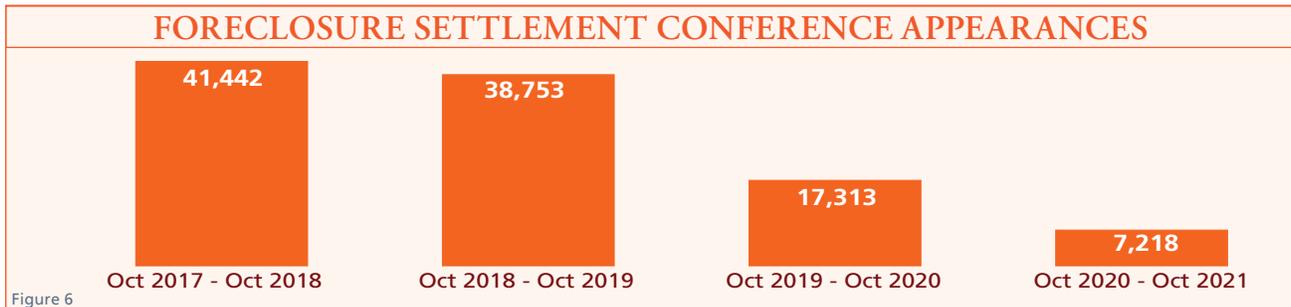
As of October 12, 2021, the end of this Reporting Period, there were 23,717 foreclosure cases pending statewide (see Fig. 4), a 53% reduction from the 50,024 cases pending at the end of the 2017 Reporting Period. Case dispositions continue to outpace filings throughout the State, in no small part due to the tremendous efforts of our judges and non-judicial staff who have worked throughout the pandemic (see Fig. 5).



VI. Foreclosure Settlement Conferences

During the Reporting Period, there were 7,218 foreclosure settlement conferences held in courts throughout New York State (see Fig. 6). This includes conferences conducted pursuant to CPLR 3408 as well as COVID-19 Assessment Conferences held pursuant to Administrative Orders. Again, because of COVID-19 re-

strictions, this represents a significant decrease from the number of settlement conferences held in recent years. Since many cases required more than one conference, there were 5,360 adjournments in the foreclosure settlement parts. There were also 275 defaults by homeowners and 63 voluntary discontinuances recorded.



VII. Legal Representation

It is crucial that New Yorkers at risk of foreclosure have access to free, high-quality legal representation. To demonstrate the UCS' dedication to this principle, the UCS allocated \$85,000,000 to civil legal services providers to represent low-income New Yorkers with "essentials of life" litigation during the 2020-2021 fiscal year. This includes landlord/tenant cases, family court matters, and matters involving access to healthcare and education. With this continued commitment to civil legal services representation, approximately 105,670 New Yorkers benefited from housing and foreclosure-related legal services during the 2020-2021 fiscal year. As a marked improvement over previous years, almost two-thirds of all homeowners appeared at their settlement conferences with assistance from legal counsel from Term 11 of 2020 through Term 10 of 2021 (see Fig. 7).



VIII. Statewide Foreclosure Working Group

The Statewide Foreclosure Working Group, chaired by the Hon. Edwina G. Mendelson, Deputy Chief Administrative Judge for Justice Initiatives, is comprised of several hundred judges, court attorney-referees, law clerks, chief clerks, district executives, and other court personnel, representing all thirteen Judicial Districts. The working group has remained

very active throughout the pandemic, serving as an essential forum for members to discuss legal and operational issues arising from new legislation, administrative orders, and governmental relief programs. Working group leadership has been extraordinarily helpful as we continue to make our foreclosure-related protocols more efficient and more equitable.

IX. Collaboration

Throughout the pandemic the UCS has collaborated with foreclosure experts in both the public and private sectors to ensure that foreclosure practices are fair and uniform. To accomplish these goals, court personnel maintain regular contact with lender and loan servicer attorneys, civil legal services providers, members of the private defense bar, and hous-

ing counseling agencies. Court personnel are also actively involved with the New York City Bar Association's Mortgage Foreclosure Task Force. The large membership includes lender and borrower attorneys, mortgage servicers, civil legal services providers, and academics who practice across New York State.

X. Conclusion

Despite legitimate concerns that there will be a surge of new foreclosure filings in 2022, the Unified Court System is fully prepared to adjudicate every case fairly, timely, and efficiently. Since the last financial crisis in 2008, the UCS has built its operational capacity by allocating significant resources to foreclosure settlement conference parts. We have standardized conference and motion forms, enhanced data collection and oversight, and prioritized technical support and educational opportunities for UCS judges and non-judicial staff to ensure they are prepared for this constantly changing landscape. At the same time, dispositions have outpaced filings for years, and the existing foreclosure inventory is at its lowest levels in over a decade.

Notwithstanding these improvements, the UCS is mindful of what may lie ahead, and is shifting its focus towards ensuring that all parties have equal access to justice throughout the court process. This means eliminating the backlog of outstanding motions, providing homeowners with sufficient time to apply for mortgage assistance relief and to connect with civil legal services providers and housing counselors, collaborating with county officials so low-income New Yorkers do not lose their homes due to unpaid taxes or

utilities, encouraging virtual court appearances, and making our technology easier to use. Underlying these initiatives is our deep commitment to continuous improvement through community engagement.

There are undoubtedly challenges and struggles ahead for litigants, homeowners, and the Judiciary, but the Unified Court System is well-positioned to oversee foreclosure matters in 2022 and beyond.

SUMMARY TABLE	
October 6, 2020 - October 12, 2021	
Conferences Held	7,218
Number of Adjournments	5,360
Discontinuances	63
Dismissals	1
Defaults	275
Defendants Appearing with Counsel*	4,458
Defendants Appearing without Counsel*	2,485
* Based upon the conferences held between October 6, 2020 and October 12, 2021, excluding appearances where the defendant defaulted.	

