State of New York Unified Court System

2010 Report of the Chief Administrator of the Courts

Pursuant to Chapter 507 of The Laws of 2009

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Chief Administrative Judge

STATE OF NEW YORK UNIFIED COURT SYSTEM

2010 REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS

PURSUANT TO CHAPTER 507 OF THE LAWS OF 2009

Chapter 472 of the Laws of 2008 and Chapter 507 of the Laws of 2009 were enacted as part of the effort to address the residential foreclosure crisis in New York. The legislation amended various sections of the laws that govern foreclosures, including the addition of the requirement that courts conduct settlement conferences in foreclosure cases that fall within the scope of the legislation. In accordance with section 10-a2 of Chapter 507, this report provides the required data (See Appendix 1) and describes the foreclosure settlement process throughout the state.

I. Introduction

In 2008, with the onset of the economic downturn, New York State experienced a sharp increase in the number of residential foreclosure filings. Compounding this increase was the fact that most homeowners did not participate in foreclosure cases; it was essentially a "paper process" with few, if any, court appearances and orders of foreclosure were often issued on default. Alarmed by these trends, the court system developed a pilot project that was designed to bring the lenders and homeowners together in the courts to participate in meaningful settlement conferences. As the pilot project was being implemented, Chapter 472 of the Laws of 2008 was enacted.

Among other things, Chapter 472 required settlement conferences in foreclosure cases involving high-cost or subprime loans for owner-occupied residences. For cases filed before

September 2008, a conference would be held at a homeowner/defendant's request after receiving notification from the court of the foreclosure and the opportunity for a conference. For those filed after September 2008, a court conference was mandated to be held 60 days after the plaintiffs' filed proof of service of the pending matter on the homeowner with the County Clerk. As the legislation notes, the conferences are designed to create a forum to determine "whether the parties can reach a mutually agreeable resolution to help the defendant avoid losing his or her home . . .". (L 2008, ch 472, §3).

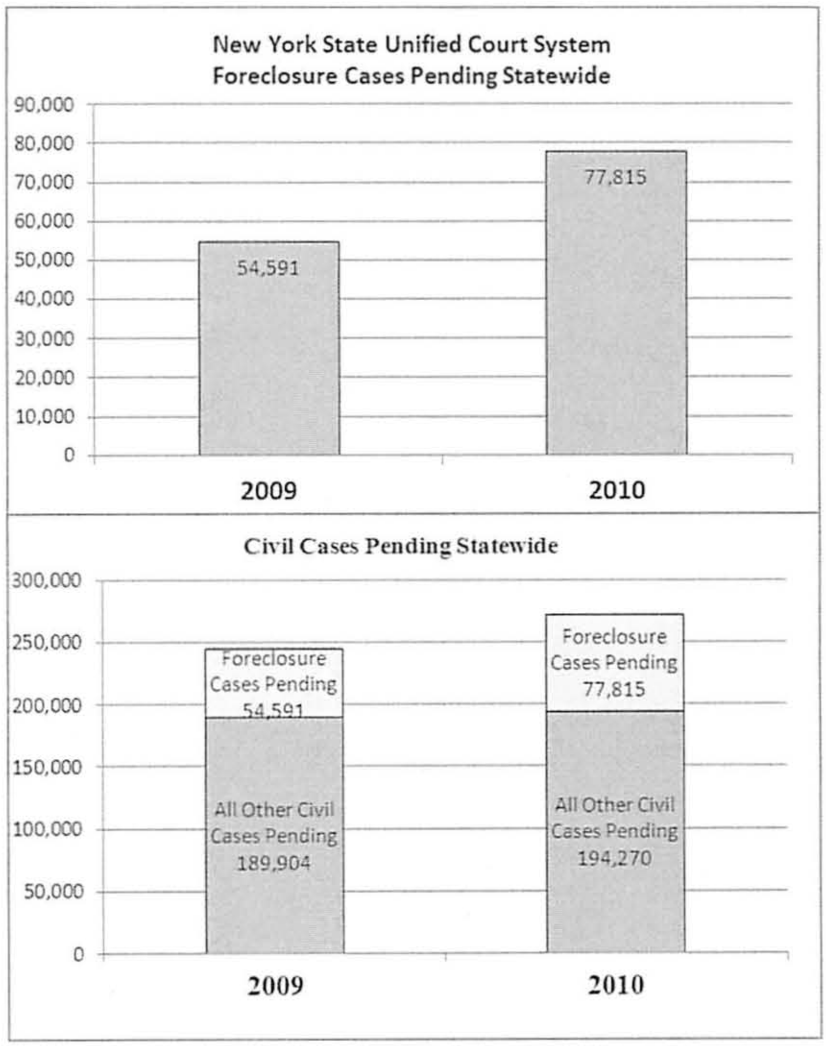
To fulfill this mandate, the courts, using the pilot project as a template, developed new statewide protocols for processing residential foreclosure matters. While court personnel began the challenging task of identifying and calendaring tens of thousands of foreclosure cases, training was undertaken for judges, court attorneys and clerical staff on the new mortgage foreclosure laws. To assist us with the statewide training program, the court system built partnerships with legal service providers and members of the plaintiffs' bar. The program that was ultimately developed consisted of two-day intensive training sessions covering a variety of topics that examined all aspects of residential foreclosure, including federal and state statutes and initiatives. We also offered training on settlement conference procedures, modifications and workouts of loans, as well as the role of housing counselors in the conference process.

The court system's partnership with legal service providers extended to the development of a model conference notification letter that apprises homeowners of their rights under the legislation and provides them with the names, addresses and telephone numbers of local housing counselors and legal service providers. (See Appendix 2). During this first phase of the operation, the courts mailed out over 40,000 letters to homeowners throughout the state.

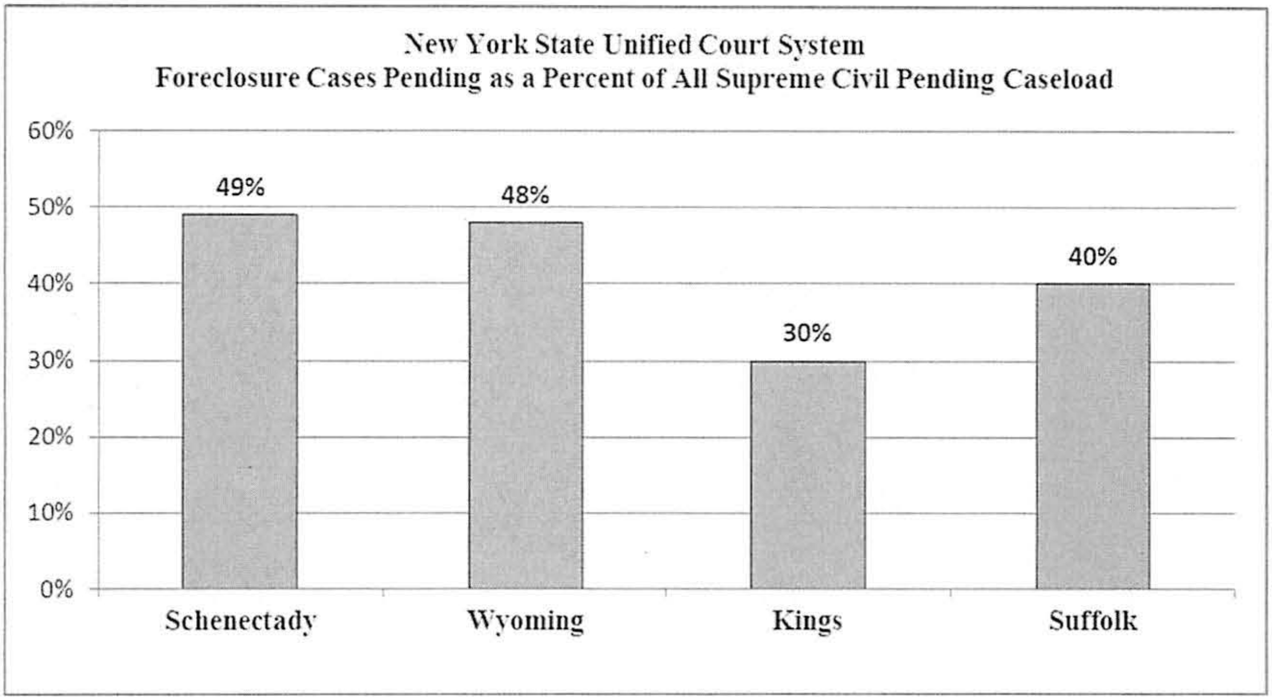
In January 2009, conferences first began in courts throughout the state. In some jurisdictions with fewer foreclosure cases, judges presided over the settlement conferences. In many high volume jurisdictions, centralized foreclosure settlement parts were created with specially trained Judicial Hearing Officers and/or court attorney referees presiding. Through the first year of the program, the number of conferences steadily rose. Meanwhile, as the economy continued to suffer and job losses mounted, the foreclosure crisis spread from the subprime market to the more traditional prime mortgages. In response, the legislature enacted Chapter 507 of the Laws of 2009, which extended the mandatory court conferences to all owner-occupied one-to-four family homes and to condominiums regardless of the loan type.

In addition to increasing the pool of conference eligible cases, Chapter 507 also requires the courts to send either copies of the Request for Judicial Intervention (RJI) or the homeowner's contact information to DHCR-approved housing counseling agencies. Although local courts were already supplying much of this information to housing counselors, standard protocols were developed to ensure that the agencies receive the information shortly after it is filed with the court. To date, over 45,000 notifications have been sent to housing counselors throughout the state.

After conducting tens of thousands of foreclosure settlement conferences, we have learned that these conferences play an essential role in helping to prevent the loss of people's homes. What was not apparent from the outset is how complex and labor intensive the conferences are. Because judges, hearing officers and court attorney referees make every effort to reach mutually agreeable resolutions, it is not uncommon for a single foreclosure case to require six to eight settlement conference appearances before it can be resolved. The long lifespan of these cases in the conference parts, coupled with a dramatic increase in foreclosure filings, has resulted in an unprecedented shift in the civil caseload of the New York State Supreme Court.



In Schenectady County, for example, foreclosure cases now make up 49 percent of the overall civil caseload. In Kings County, foreclosures account for 30 percent of the pending civil caseload. In Wyoming County, the number is 48 percent and in Suffolk County, foreclosures comprise 40 percent of all civil cases in the Supreme Court.

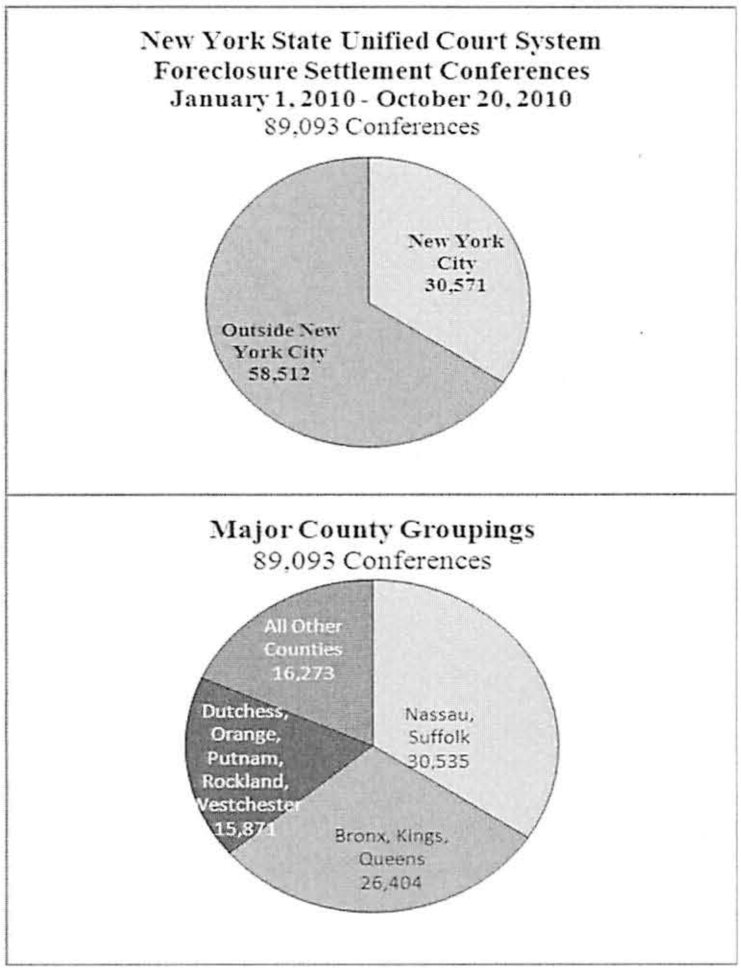


While the increase in the raw number of foreclosure filings over the last few years has garnered the most attention, the pending foreclosure cases are of significant concern for the court system. Because the conferences require repeated appearances to move to resolution, the cases stay in the courts for an extended period of time while the parties move toward settlements. To keep pace, court resources have to be drawn from other areas. In some courts, judges and staff who handle matrimonial cases have been asked to assist with foreclosure cases. In other jurisdictions, personnel from the Administrative Judge's office have been reassigned to handle conferences. In many courts, attorneys who research decisions for judges have been dedicated exclusively to foreclosure work. As the foreclosure caseload grows, the need to divert resources will continue unless the courts receive funding to deal with this crisis.

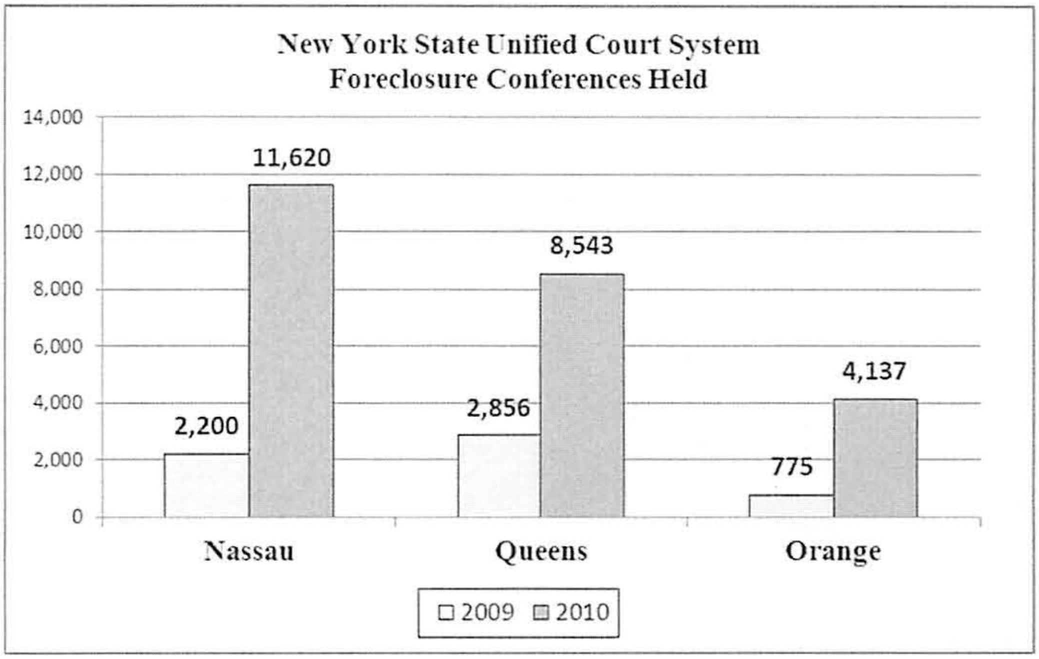
II. Foreclosure Settlement Conference Statistics

1. Conferences Held

From the beginning of this year through the middle of October, a total of 89,093 conferences have been held statewide, and the numbers are growing.



In Nassau County, for example, 2,200 conferences were held in 2009. From January through mid-October 2010, that number has grown to an astounding 11,620. In Queens County, there were 2,856 conferences in 2009 and 8,543 through the first ten months of this year.



In addition to year to year growth, we have experienced a steady rise in the numbers of conferences throughout the course of this year. For example, in January 2010, the Orange County Supreme Court conducted 105 conferences; in September 2010, that court held 682 conferences. In fact, the number of conferences in Orange County in September 2010 alone nearly matched the total of 775 for all of 2009. (See table above).

Beyond the statutorily mandated conferences, the courts in the larger jurisdictions have added an additional layer of intervention. Shortly after the case conferences began, it became apparent that both parties were unprepared to engage in serious settlement discussions. To address this issue, homeowners were asked to come to the courthouse several weeks before the scheduled conference so that they could participate in a pre-conference screening. At the screening, homeowners are matched with HUD-certified housing counselors who discuss the process with the homeowner, put the paperwork in order and, ideally, lay the groundwork for a modification proposal that can be communicated to banks prior to the conferences. The screening also helps secure counsel for the unrepresented homeowners. While the screening process has further strained the courts' resources, it clearly results in more meaningful conferences.

2. Defaults

Prior to the new legislation, the default rate - - instances where there defendant neither files an answer nor participates in any of the proceedings - - was very high in foreclosure cases, nearly ninety percent by some estimates. Cases often proceeded to sale without a single appearance by the parties before a judge. Since the legislatively mandated conferences began, however, the default rate has improved significantly and many more homeowners are taking part in foreclosure settlement conferences. In 2010, a total of 10,866 homeowner/defendants failed to appear for any of their scheduled conferences, a default rate of twenty percent.

The increased level of homeowner participation is due, in part, to the court system's public outreach campaigns. In Queens County, Supreme Court judges and court staff participated in evening and weekend programs to inform the public about court procedures under the legislation as well as the availability of housing counseling and legal services. In addition, staff from the Queens County Supreme Court Help Office were trained to assist in procedural issues relating to settlement conferences and to direct homeowners to appropriate legal service organizations. In Nassau County, court staff conducted a "foreclosure fair" in order to provide information on housing counseling and legal services and to set a date for a conference. Moreover, various groups, including housing counselors, civil legal service organizations and state and local bar associations have been instrumental in publicizing conferences and have worked hard, often in partnership with local courts, to ensure that homeowners are informed of the potential benefits of availing themselves of the settlement conference process.

3. Adjournments

So far this year, there were 59,597 adjournments in the conference parts statewide. As noted earlier, it is not uncommon for a case in the foreclosure conference part to be adjourned multiple times. Given the careful and comprehensive attention that foreclosure cases receive in the conference parts, an average of four to eight appearances is needed before a case can complete the settlement process. The example below illustrates the lengths the courts must go through to reach a fair resolution of a case:

> In 2009, a foreclosure case was commenced against Ms. L. in Queens County. In January 2010, Ms. L. appeared for her initial settlement conference before the court attorney referee in the central foreclosure settlement part. At the conference, Ms. L. explained that she had fallen behind on her mortgage payments due to her husband's illness. The parties and the referee then engaged in a lengthy discussion of Ms. L.'s eligibility for a mortgage modification under the Federal Government's "Making Home Affordable Program" (HAMP). Before the conference concluded, Ms. L. was approved for a HAMP trial loan modification which was to run from January to March, 2010. When the parties returned to the conference part in April, Ms. L. was under the impression that she had successfully concluded her trial modification and was hoping that a permanent modification would result.

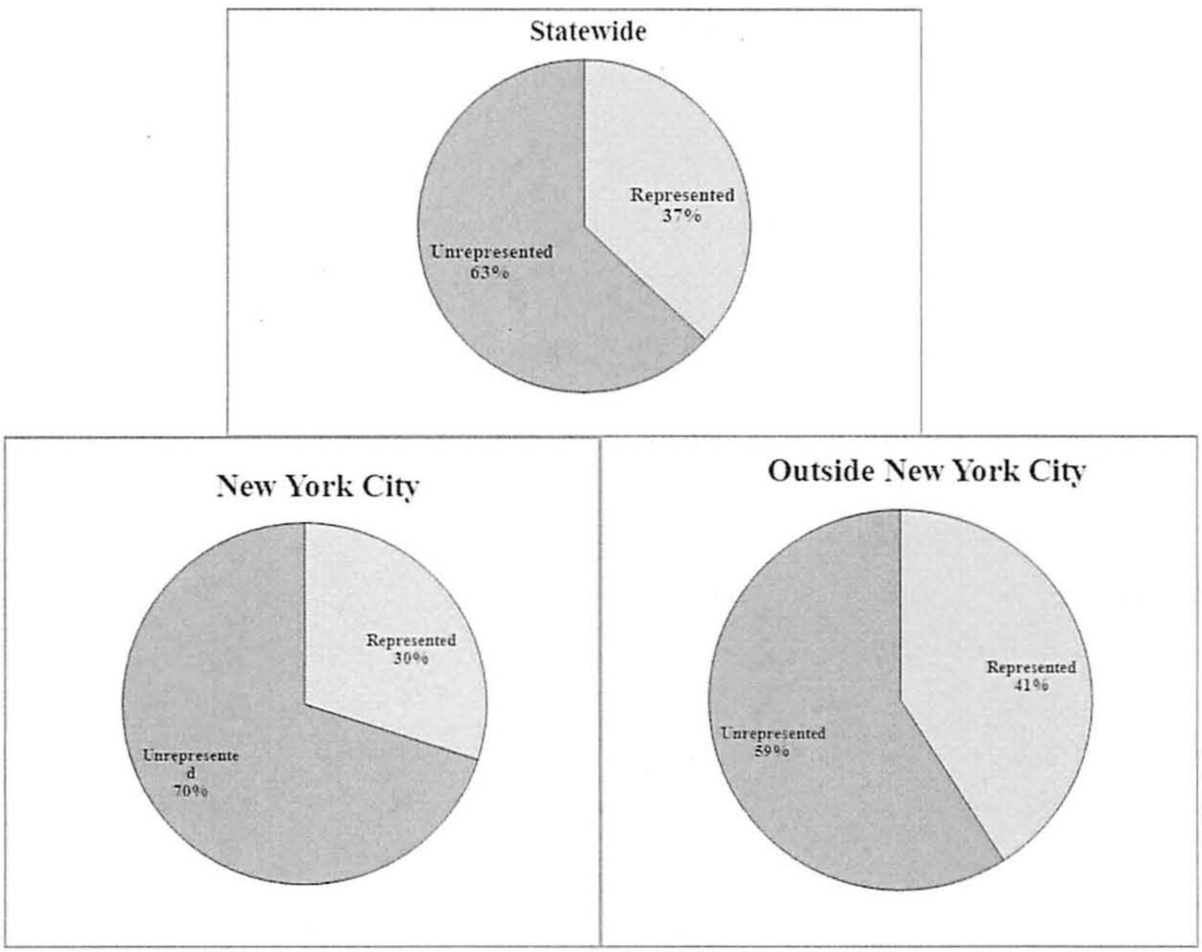
The attorney for the lender, however, stated that Ms. L.'s application for a modification was not yet complete, insisting that Ms. L. had failed to fill out some materials that had been mailed to her home. When Ms. L. denied receiving any such materials, the referee adjourned the case to June 2010, so that the necessary paperwork could be completed.

At the June conference, Ms. L. submitted the requested documents, but the lender's attorney now insisted that the bank required updated pay stubs and other documentation. Rather than immediately adjourn the case again, the referee directed the lawyer to call the lender and determine precisely what would be required to achieve a permanent modification. After reaching out to his client, the lawyer gave Ms. L. a list of what additional material was needed for a settlement and the parties were instructed to return on August 11, 2010. At that appearance, the bank attorney stated that the matter was in final review and that no other documents were needed..

On October 27, 2010, some ten months after the initial conference, the parties returned for a fifth time. At this conference, Ms. L. was notified that her permanent HAMP modification had been approved and the matter was marked settled.

4. Representation

As with defendant-homeowner participation, there has been an increase in legal representation over the course of the settlement conference program. There remains, however, a significant portion of homeowners who participate in settlement conferences without the benefit of legal representation. This year, 63 percent of homeowners attended conferences without counsel.



When homeowners are unrepresented, judges and court staff must carefully explain the process and assist those defendants to the fullest extent permissible. These cases also require more adjournments, so that the court can make the conferences manageable and clear to the homeowner and also attempt to secure representation for the defendant. The lack of representation in foreclosure cases continues to be one of the greatest challenges we face in fulfilling our statutory mandate.

5. Settlements

From the beginning of this year through the middle of October, there were 4,062 settlements statewide. This number reflects the ongoing nature of the conference process and the reality that the vast majority of foreclosure cases are still being negotiated. Thus, it is difficult and somewhat premature to calculate precisely the effectiveness of settlement conferences overall. In light of this, perhaps the best way to measure the efficacy of the conferences is to focus on what happens to cases when they complete their time in the conference parts. For example, in Queens County, in 2009, approximately 30 percent of the cases that fully completed the settlement process reached a resolution that avoided loss of the home to a foreclosure sale. So far this year, that settlement rate has increased to approximately 54 percent. Similarly, in Richmond County, there were 67 settlements in 2009; through the first ten months of 2010, that number more than tripled to 270. As these cases continue to work their way to resolution, we expect to see comparable results throughout the state.

IV. Conclusion

The Judiciary's role in New York's response to the foreclosure crisis has required an enormous undertaking on the part of the courts, which could not have been possible without the extraordinary efforts of so many of our judges and court personnel. As part of this report, we have been asked to comment on the "effectiveness" of the conference process. Over the past two years, we have seen real progress, from fewer defaults to an increasing number of settlements.

While fulfilling the legislative mandate has strained the court system's resources, the difficulty we are experiencing is tempered by the realization that each day homeowners and banks are reaching mutually acceptable solutions that prevent home loss and the further deterioration of communities.

Although we are encouraged by the trends that have arisen from the settlement conference process, we are now dealing with other pressing and complex issues regarding foreclosures. Effective October 20, 2010, the Chief Judge has required that attorneys for banks and lenders file an affirmation certifying that they have taken reasonable steps to verify the accuracy of the papers filed in support of a residential foreclosure case. Attorneys are being asked to contact bank representatives to confirm that crucial documents were thoroughly reviewed and that they were not "robosigned." As Chief Judge Lippman stated when he announced the new affirmation requirement:

> We cannot allow the courts in New York State to stand by idly and be party to what we now know is a deeply flawed process, especially when that process involves basic human needs – such as a family home – during this period of economic crisis. This new filing requirement will play a vital role in ensuring that the documents judges rely on will be thoroughly examined, accurate, and error-free before any judge is asked to take the drastic step of foreclosure.

Appendix 1

New York State Unified Court System
Summary Table
January 1, 2010 - October 20, 2010

Total Number of Foreclosure Cases That Were Conferenced	42,536
Conferences Held	89,093
Defendants with Representation*	11,801
Defendants without Representation*	19,869
Number of Adjournments	59,597
Defaults	10,866
Discontinuances	918
Dismissals	55

*Does not inlcude default cases.

Appendix 2

Supreme Court of the State of New York, Queens County
88-11 Sutphin Boulevard, Jamaica, New York 11435

Residential Foreclosure Part

Dear Queens Homeowner : **Index Number:** [redacted]

A mortgage foreclosure case has been started against you by your mortgage lender. It is important that you do not ignore this notice, or any court papers that you receive or **YOU MAY LOSE YOUR HOME.** **Free Help is available. You should get help immediately either by contacting one of the organizations listed below or by retaining your own lawyer.**

A Settlement Conference With You and Your Lender Is Scheduled

Under the law, a Court conference must be held with you and your lender to see if the case can be resolved. You must appear on **5/12/2010 AT 9:30 AM in Courtroom 42A.** **Please call 718-298-1092 one week before your conference date to let the Court know that you will attend the conference.** ***It is very important that you attend this conference even if you have spoken with your lender about your foreclosure.***

Required Housing Counseling Meeting

- A housing counseling meeting with **Brooklyn Housing & Family Services (718-298-0325)** has been scheduled for you on **12/16/09 AT 2:00PM in Room 25C** in the Queens County Supreme Court at the address listed above to help you prepare for your conference.

What to Bring to the Housing Counseling Meeting and Court Conference

It is important that you arrive at the Housing Counseling Meeting and Court Conference ready to discuss the facts of your case. To help the housing counselor and the court, please bring copies of the following documents if you have them :

- Current Mortgage Statement for Loan; Correspondence from lender regarding your past due status;
- Closing Package including Mortgage/ Note/ Riders/ HUD-1 Statement from last closing;
- Pay Stubs for past 30 days; W2's/ Tax Returns for past 2 years, Proof of other income, such as alimony, child support, disability; Lease(s) for tenants;
- Bank Statements for 2 months (all accounts); Bills/ Expenses being paid currently, including credit cards, car note, etc. (copy of each monthly statement); most recent property tax statements.
- Credit Report (if done recently); Hardship letter explaining why you fell behind on the monthly payments;
- Loan resolution proposals, applications, and other information resulting from previous workout attempts.

Responding to Court Papers

You must also respond to any court papers you receive. The number of days you have to respond is stated in the court paper called "Summons". Make sure you meet the deadline given in the Summons and any other deadline set by law .

Help is Available

- **Queens Legal Services, Foreclosure Prevention Porject :** 347-592-2182
- **The Legal Aid Society:** If you are **under 60 years old**, you may call Legal Aid at 718-286-2487 to set up an appointment.
- **Legal Services for the Elderly in Queens:** If you are **60 or older,** you may call Legal Services for the Elderly at 718-286-1512 to set up an appointment.
- **Court Help Center:** 718-298-1024, located in the courthouse, at 88-11 Sutphin Blvd., Jamaica, Queens, Room 109, also can assist you by providing information about the foreclosure process as well as sample court forms and instructions. Please bring this letter and your mortgage documents.
- **City Bar Justice Center, Foreclosure Project :** 1-212-382-6766
- **NYS Division of Housing and Community Renewal Website (List of Housing Counseling Agencies)**
http://www.dhcr.state.ny.us/Programs/ForeclosurePrevention/CounselListing.htm#a41

If you have a question about anything contained in this letter, please call the Residential Foreclosure Part at: 718-298-1092.

Dated: April 8, 2010

Appendix 3

NEW YORK STATE UNIFIED COURT SYSTEM

County	2005			Projected 2010		
	Foreclosure Filings	Total Supreme Civil Filings	% of Total	Foreclosure Filings	Total Supreme Civil Filings	% of Total
Albany	424	3,390	13%	722	3,333	22%
Allegany	79	264	30%	77	355	22%
Bronx	686	13,426	5%	2,075	14,281	15%
Broome	328	784	42%	359	1,213	30%
Cattaraugus	157	383	41%	131	367	36%
Cayuga	176	643	27%	172	470	37%
Chautauqua	304	578	53%	290	797	36%
Chemung	160	511	31%	172	430	40%
Chenango	74	178	42%	106	276	38%
Clinton	100	340	29%	143	511	28%
Columbia	74	421	18%	202	479	42%
Cortland	47	148	32%	92	207	45%
Delaware	52	225	23%	151	375	40%
Dutchess	276	2,922	9%	1,070	4,142	26%
Erie	2,726	7,726	35%	1,819	7,253	25%
Essex	49	212	23%	88	267	33%
Franklin	63	335	19%	55	359	15%
Fulton	160	561	29%	212	508	42%
Genesee	137	209	66%	122	283	43%
Greene	65	304	21%	223	551	41%
Herkimer	118	490	24%	157	567	28%
Jefferson	106	624	17%	152	636	24%
Kings	1,827	22,771	8%	5,621	24,042	23%
Lewis	40	146	27%	47	131	36%
Livingston	135	447	30%	149	413	36%
Madison	120	196	61%	148	296	50%
Monroe	1,917	6,133	31%	1,748	5,979	29%
Montgomery	96	352	27%	174	476	37%
Nassau	1,310	16,906	8%	5,378	20,850	26%
New York	209	21,398	1%	653	20,081	3%
Niagara	530	1,667	32%	587	1,816	32%
Oneida	393	3,494	11%	481	3,091	16%
Onondaga	1,053	2,741	38%	1,056	3,651	29%
Ontario	205	668	31%	226	699	32%
Orange	259	3,097	8%	1,847	5,072	36%
Orleans	171	215	80%	73	213	34%
Oswego	289	750	39%	270	735	37%
Otsego	81	250	32%	227	349	65%
Putnam	1	667	0%	464	1,168	40%
Queens	1,842	18,805	10%	4,616	21,351	22%
Rensselaer	315	1,147	27%	478	1,356	35%
Richmond	594	3,089	19%	1,711	5,038	34%
Rockland	183	3,133	6%	1,152	4,427	26%
Saratoga	155	1,239	13%	472	1,590	30%
Schenectady	332	1,025	32%	690	1,776	39%
Schoharie	66	108	61%	98	173	57%
Schuyler	41	77	53%	16	76	20%
Seneca	73	316	23%	77	417	18%
St Lawrence	119	410	29%	137	483	28%
Steuben	204	430	47%	169	580	29%
Suffolk	2,016	12,223	16%	8,948	24,663	36%
Sullivan	126	832	15%	466	1,192	39%
Tioga	72	164	44%	92	251	37%
Tompkins	78	248	31%	95	358	26%
Ulster	190	1,511	13%	712	1,539	46%
Warren	87	479	18%	211	601	35%
Washington	129	455	28%	206	510	40%
Wayne	293	779	38%	194	637	31%
Westchester	565	9,184	6%	2,432	11,475	21%
Wyoming	72	309	23%	78	371	21%
Yates	52	156	33%	37	146	26%
Total NYC	5,158	79489	6%	14,676	84,778	17%
Total ONYC	17,443	93202	19%	36,151	120,809	30%
Total State	22,601	172691	13%	50,827	205,617	25%

Appendix 4

New York State Unified Court System
Foreclosures 2010 YTD at the end of Term 10
run 10/12/2010

County	Filings	Dispos	Pending
Albany	602	421	954
Allegany	64	26	111
Bronx	1,729	918	3,950
Broome	299	158	565
Cattaraugus	109	30	184
Cayuga	143	76	156
Chautauqua	242	97	396
Chemung	143	84	259
Chenango	88	46	206
Clinton	119	20	604
Columbia	168	70	344
Cortland	77	32	212
Delaware	126	63	218
Dutchess	892	586	919
Erie	1,516	1,036	1,426
Essex	73	29	159
Franklin	46	46	74
Fulton	177	154	290
Genesee	102	56	176
Greene	186	117	205
Herkimer	131	41	155
Jefferson	127	131	153
Kings	4,684	1,685	14,351
Lewis	39	7	61
Livingston	124	72	140
Madison	123	58	291
Monroe	1,457	708	1,372
Montgomery	145	89	276
Nassau	4,482	2,300	10,708
New York	544	312	1,024
Niagara	489	194	595
Oneida	401	210	504
Onondaga	880	731	1,320
Ontario	188	96	228
Orange	1,539	1,184	1,478
Orleans	61	67	188
Oswego	225	135	517
Otsego	189	98	274
Putnam	387	285	260
Queens	3,847	1,593	9,032
Rensselaer	398	267	759
Richmond	1,426	762	1,627
Rockland	960	542	1,268
Saratoga	393	155	711
Schenectady	575	380	1,244
Schoharie	82	44	111
Schuyler	13	10	35
Seneca	64	37	67
St Lawrence	114	80	114
Steuben	141	86	164
Suffolk	7,457	3,711	12,326
Sullivan	388	368	622
Tioga	77	32	167
Tompkins	79	45	107
Ulster	593	413	817
Warren	176	100	295
Washington	172	170	304
Wayne	162	115	204
Westchester	2,027	982	2,393
Wyoming	65	20	91
Yates	31	18	54
Total	42,356	22,398	77,815