



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

2024



Hon. Joseph A. Zayas
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 from October 10, 2023 to October 7, 2024.

A handwritten signature in gold ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Hon. Joseph A. Zayas
Chief Administrative Judge



Introduction

In his 2024 State of the Judiciary address, Chief Judge Rowan D. Wilson called upon the entire Unified Court System (UCS) to embrace what he called an unorthodox vision to transform the court system from an institution that simply asks which party is “right” and which party is “wrong” into one that focuses on the best result for all parties involved. “Let’s think of courts as problem-solvers,” he said. For many, what comes to mind when we think of the problem-solving approach are our treatment courts, courts of criminal jurisdiction that focus on individuals overcoming their substance use and mental health issues as an alternative to incarceration. Chief Judge Wilson also noted that his vision applies to civil disputes, many of which resolve by settlement rather than through adversarial litigation.

For a long time, foreclosure disputes did not comport with the Chief Judge’s vision because most homeowners never secured representation and did not have the legal leverage needed to negotiate a settlement. That started to change in 2008 when New York enacted CPLR 3408. This law was and remains groundbreaking because it flipped the traditional progression of a civil action on its head. The parties to a mortgage foreclosure action engage in good faith settlement discussions at their first appearance before going through complicated, costly motion practice, and potentially years of appeals. In other words, our foreclosure settlement parts are, and always have been, problem-solving parts.

Yes, they are resource intensive. Yes, the settlement conference process can take months, even years. But in the end, the results have been worth the cost because thousands of New Yorkers have been able to keep their homes. It is for this reason that the UCS has dedicated so many of its resources towards resolving these cases. This report summarizes the UCS’ current initiatives and examine important caseload trends. And, starting this year, this report will also highlight the innovative and impactful work of specific courts and court personnel.



Settlement Conference Part – Spotlight

While all the judges and court staff who preside over the UCS' foreclosure cases and settlement conference parts are highly dedicated, this year we wanted to spotlight the Nassau County Supreme Court for their efforts to create a model foreclosure settlement conference part. Presided over and managed by Special Referee Anthony Provenzano, Esq., for over a decade, and under the guidance of First Deputy Chief Administrative Judge Norman St. George, Administrative Judge Vito DeStefano, Supervising Judge Jeffery Goodstein, District Executive Paul Lamanna, and Chief Clerk Ananias Grajales, the Nassau County Foreclosure Settlement Part has long embraced the problem-solving court model.

From an access to justice perspective, the court makes every effort to connect unrepresented homeowners with civil legal services providers and housing counselors to assist and represent them during the foreclosure settlement conference process. In Nassau, the settlement conference process is just that: a process, not a one-and-done situation where homeowners receive only a single chance to obtain loan modification. For example, Nassau was one of the first counties to organize “servicer days” aimed at settling groups of cases involving a single loan servicer. And while the court is mindful of the need to adjudicate cases in a timely manner, it often uses creative approaches including meaningful settlement conference to resolve cases, even if it means taking a bit longer than anticipated.

Special Referee Provenzano and other court staff have also always made themselves available to meet with members of the bar, and even organized foreclosure conferences and CLE training programs for court personnel and the Nassau County legal community. Additionally, at the request of the Office of the New York State Attorney General and the NYS Office of Homes and Community Renewal, Referee Provenzano addressed stagnant foreclosure cases that included a pending Homeowner Assistance Fund (HAF) application. Through his intervention, Referee Provenzano ensured that the communication between the servicers/lenders, the Office of the Attorney General, and HAF administrators remained timely and that the interaction was both collaborative and productive. These efforts facilitated a path for the appropriation and allocation of funds to those homeowners whose applications were pending and for those that were on the HAF waiting list.

Finally, and perhaps most importantly, the Foreclosure Settlement Conference Part staff have a reputation for being fair and knowledgeable, and for treating everyone with respect, dignity, and professionalism.



Legislative and Operational Updates

Homeowner Assistance Fund

The New York State Homeowner Assistance Fund (HAF), which began accepting applications in early 2022, was a federally funded program established under the American Rescue Plan Act that wound down at the end of 2024. Administered by the New York State Division of Homes and Community Renewal, and supported by the Office of the Attorney General, HAF was set up to mitigate financial hardships associated with the COVID-19 pandemic by preventing homeowner mortgage delinquencies, defaults, and foreclosures. Recognizing the importance of this program, the UCS encouraged judges and court attorneys / special referees to refer homeowners to HAF and give appropriate adjournments while the applications were being processed. In the almost three years that HAF was in effect, over \$425 million was distributed to New Yorkers, many of whom had active cases in either the settlement conference or post-judgment phase, leading to the resolution of hundreds of cases.

In Rem Tax Foreclosures

Article 11 of the Real Property Tax Law sets forth the procedures for tax foreclosures in New York State. These procedures are mandatory for all tax districts that did not “opt out” when Article 11 was first introduced in 1994. In 2024, New York enacted significant changes to the Real Property Tax Law in response to the United States Supreme Court decision *Tyler v Hennepin County* (598 US 631 [2023]). In *Tyler*, after a condominium owner accrued \$15,000 in taxes and penalties, the county foreclosed and auctioned the property. The unit sold for \$40,000, and the county kept the proceeds. The United States Supreme Court ruled that keeping the extra \$25,000 violated the Takings Clause of the Fifth Amendment.

The changes to New York law are nobly designed to ensure that homeowners who lose their home due to a tax foreclosure have a fair opportunity to obtain any surplus from the sale of their property. The operational impact of these reforms has been considerable, however, requiring impacted counties to develop new policies and procedures. For instance, the rules for making claim to a surplus are now more complicated and require enhanced judicial intervention. County Clerks and County Treasurers are also affected, as they are now responsible for receiving and disbursing such funds. Lastly, courts are required to notify all interested parties of the procedures to be followed to make a claim for a share of the surplus. The UCS’ Office for Justice Initiatives is developing a plain language form that courts can use for this purpose.



Partition of Heirs Property

There has long been a concern about the predatory use of partition proceedings to divest families of generational properties. This practice, first identified in the rural South to acquire land held by African American families during the Reconstruction period, started to become prevalent in New York, especially New York City, about a decade ago. Essentially, what happens is that when a property owner dies, an investor will approach one of the heirs, acquire a fractional interest, and then use a partition action to acquire the remainder via auction. This practice often ends up leaving heirs with less than what they would have had if the property had been listed on the market, and, more importantly, forces heirs (usually children) to sever ties to their communities.

New York’s Partition of Heir Property Act (RPAPL 993) was enacted in December 2019. It provides for a court-monitored settlement conference process modeled after the CPLR 3408 foreclosure settlement conference process and a second opportunity to answer the complaint following the initial conference. In practice, this law has led to a great deal of awareness about predatory practices and discussion about tools to address them. And, as a practical matter, those cases that do not settle are far more likely to result in an open market sale by a licensed broker instead of an auction.

In July 2024, additional changes to RPAPL 993 went into effect which aim to eliminate the predatory use of partition actions altogether. Now, only those who inherit property can initiate a partition action; real estate investors who purchase shares of property from heirs cannot. The Legislature also enacted a right of first refusal in these cases such that when an heir receives an offer from a non-co-tenant to purchase their shares, the other heirs shall have the right to purchase such shares for the identical price, terms, and conditions. In theory, these cases will likely be few and far between going forward. However, we will remain vigilant in looking for investors seeking to skirt these provisions by failing to identify their complaint as a partition action in their request for judicial intervention.

Deed Theft Prevention

In November 2023, Governor Hochul signed legislation to further protect New Yorkers from deed theft by empowering the Attorney General and local district attorneys to pause eviction and ownership dispute proceedings pending a good faith investigation into whether the subject property was secured by theft or fraud. This law also requires the court to stay a quiet title proceeding where a charging instrument has been filed against a party for certain crimes like larceny and offering a false instrument. Additional protections went into effect in July 2024 which establish deed theft as a crime, lengthens the statute of limitations to give homeowners and prosecutors more time to seek relief, and grants the Office of the Attorney General criminal jurisdiction to prosecute deed theft.

Remote Bidding at Foreclosure Auctions

Pursuant to Administrative Order 90/23 and Administrative Order 54/24, remote bidding on properties being sold pursuant to a judgment of foreclosure and sale is authorized in eight counties: Albany, Bronx, Monroe, Nassau, Niagara, Queens, Rockland, and Saratoga. Remote bidding does not mean that the auction itself is conducted virtually. Rather, remote bidding allows individuals to place bids remotely through third-party auction platforms, simultaneous with in-person bidders. The auctions themselves will still be conducted live, in-person, and in the counties where the properties are located.

There are several benefits to remote bidding, but the two most important are transparency and the potential for higher sales prices. Transparency is needed to remedy the long-standing concern about auctions being attended by the same handful of buyers. With remote bidding, qualified individuals who otherwise could not leave work or are otherwise unable to physically attend the auction can participate, making these proceedings far more accessible. In turn, this may lead to higher sales prices which directly benefit homeowners by giving them the chance to avoid a deficiency judgment and instead obtain a surplus. The UCS will explore expanding remote bidding in 2025, either to additional pilot counties or statewide.

Guardians-Ad-Litem in Foreclosure Cases

In foreclosure cases in which a party dies post-commencement and without a will, historically most courts would mark the case stayed while the plaintiff sought the appointment of an estate representative in Surrogate's Court. In the past few years, however, courts have reported a significant increase in motions whereby the plaintiff instead seeks to serve the deceased borrower's unknown heirs via publication, and to have a guardian-ad-litem (GAL) appointed to represent any such unknown heirs. Whether the court grants these applications is a matter of judicial discretion, and the court may continue to direct the plaintiff to petition Surrogate's Court for the appointment of an estate representative. Regardless of which approach they choose, courts will soon have templates at their disposal that they can utilize when addressing these issues, namely an Order Denying Leave to Serve by Publication; an Order Granting Leave to Serve by Publication and Appointing a Guardian-Ad-Litem; a Guardian-Ad-Litem's Designation; and a Guardian-Ad-Litem's Qualifying Affirmation. These forms, and all our foreclosure forms, are available on the UCS website at <https://www.nycourts.gov/forms/foreclosure/index.shtml>.

Fee Waiver Applications and Appointed Counsel

Ever since the procedures set forth in CPLR 3408 went into effect in 2008, our judges and court attorney / special referees have presided over hundreds of thousands of settlement conferences, all while adapting to emerging issues and changes in the law. One such emerging issue came to light in 2021 when the Appellate Division, Third Department decided *Carrington Mtge. Servs., LLC v Fiore* (198 AD3d 1106 [3d Dept 2021]). In *Carrington*, the court stressed the importance of complying with CPLR 3408(b), which concerns motions for fee waivers by indigent homeowners and requests for the assignment of counsel therefor. To address operational concerns raised by court staff about this process while enabling the UCS to comply with the statute and track motion data, the UCS created two forms aimed at simplifying and standardizing this process. Both forms are available on our website (see above).

Our courts make every effort to refer unrepresented homeowners to the Homeowner Protection Program, a network of civil legal services providers and housing counselor organizations across the state that provide free help to homeowners. These agencies have proven to be essential to the settlement conference process. There is no doubt that tens of thousands of New Yorkers have saved their homes because of their assistance and zealous advocacy.

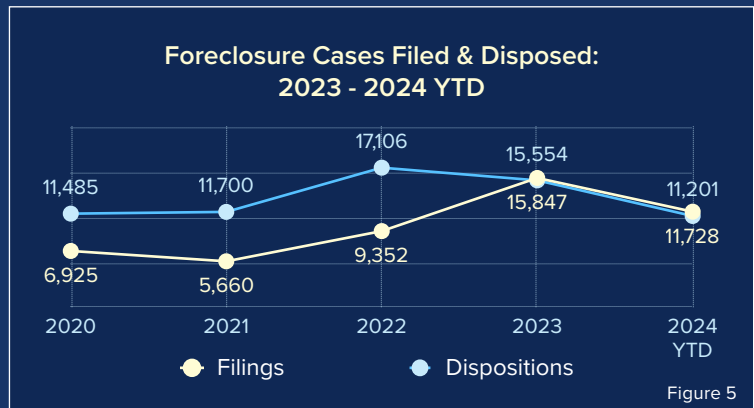
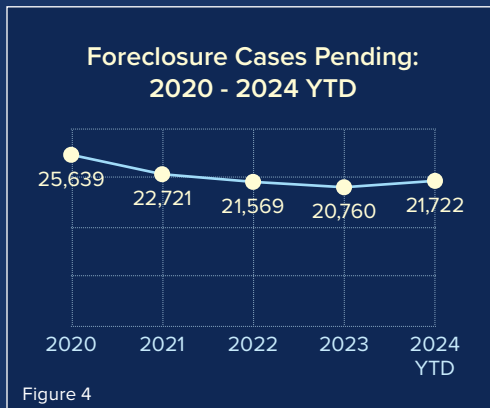
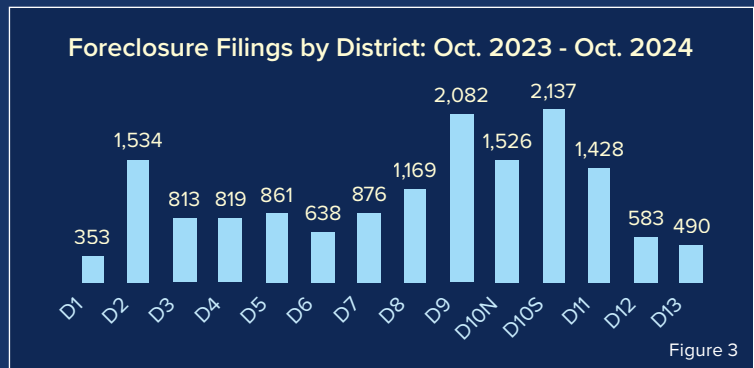
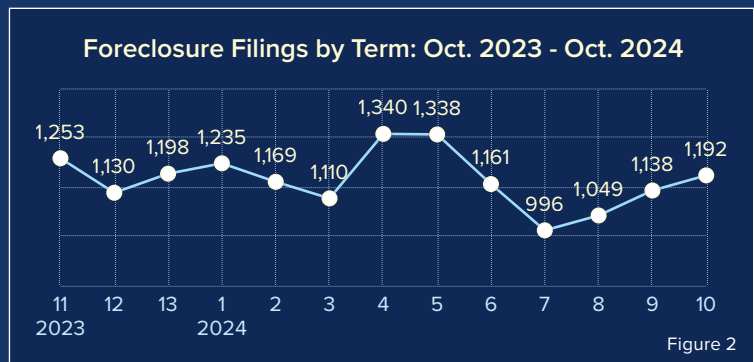
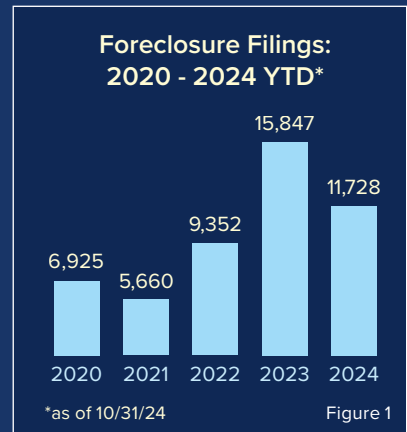
Filing Trends

During the Reporting Period (October 10, 2023 to October 7, 2024), plaintiffs filed 15,309 residential and commercial cases. This represents an almost 0.5% increase from the 15,235 cases filed during the 2023 Reporting Period. However, *annual* filings are on track for a year over year decrease (see Fig. 1).

Of the 15,309 cases filed during the Reporting Period, 14,348 were eligible to be scheduled for a foreclosure settlement conference pursuant to CPLR 3408. These conferences are essential to facilitating communication between lenders and homeowners for the purpose of entering into a loan modification agreement or other mutually agreeable settlement. Judges preside over these conferences in some counties, but, in most counties, they are led by court attorneys / special referees who have significant training and experience in this area.

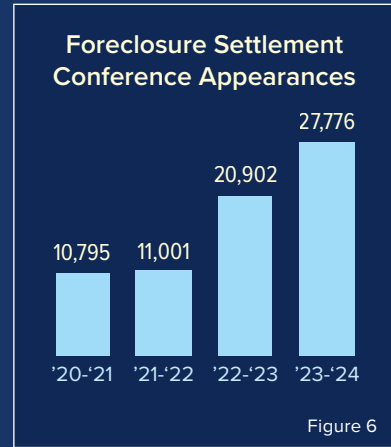
The volume of new filings in the Reporting Period varied by court term with a statewide high of 1,340 in Term 4 of 2024 and a statewide low of 996 in Term 7 of 2024 (see Fig. 2). New filings in courts within New York City totaled 4,388 and new filings in courts outside of New York City totaled 10,921, with the number of filings varying by judicial district (see Fig. 3).

As of October 7, 2024 (the end of this Reporting Period) there were 21,722 foreclosure cases pending statewide (see Fig. 4). This is a 15% reduction from the 25,639 cases pending at the end of the 2020. Filings slightly outpaced dispositions (see Fig. 5).



Foreclosure Settlement Conferences

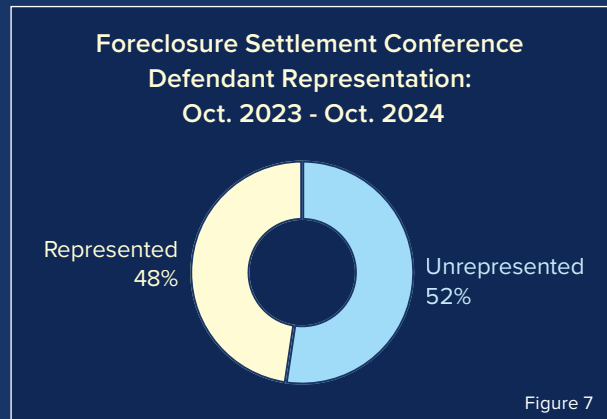
During the Reporting Period, there were 27,776 CPLR 3408 settlement conferences held in courts throughout New York State (see Fig. 6), a 33% increase from the 20,902 conferences held during the last reporting period. (Note: this chart reflects different numbers than the previous year’s report as the calculation was adjusted to accommodate a new case management system.) 48% of such conferences (excluding those where the homeowner did not appear) involved homeowners who appeared with assistance from legal counsel (see Fig. 7).



Most cases require more than one conference before determining if settlement is possible or if motion practice is required. As such, there were 19,266 adjournments in the settlement parts. There were also 2,075 defaults by homeowners and 466 voluntary discontinuances (see Summary Table).

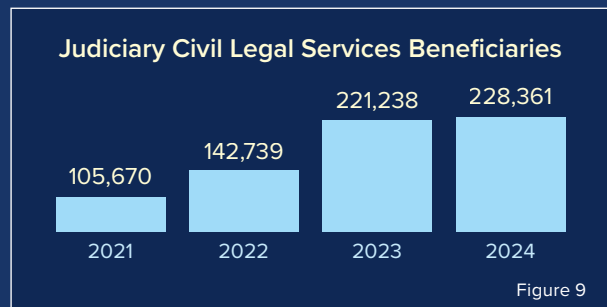
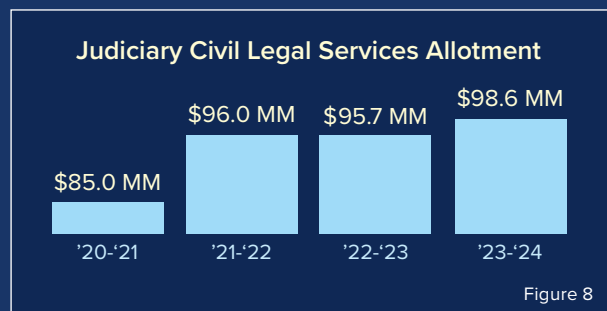
Summary Table	Oct. 10, 2023 to Oct. 7, 2024
Conferences Held	27,776
Number of Adjournments	19,266
Discontinuances	466
Dismissals	9
Defaults	2,075
Defendants Appearing with Counsel ¹	12,241
Defendants Appearing without Counsel ¹	13,460

1. Based upon the conferences held between October 10, 2023 to October 7, 2024, excluding appearances where the defendant defaulted.



Legal Representation

Homeowners at risk of foreclosure need free, high-quality legal representation. To demonstrate the UCS’ dedication to this principle, the UCS allocated \$98,600,000 to civil legal services providers to represent low-income New Yorkers with “essentials of life” litigation during the 2023-2024 fiscal year (see Fig. 8). 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 228,361 New Yorkers whose cases are now closed benefited from housing and foreclosure-related legal services, a 3% increase from the 221,238 persons who benefitted last year (see Fig. 9). Another 120,802 New Yorkers whose cases remain open also benefit from such services.



Collaboration

The UCS' internal Statewide Foreclosure Working Group is comprised of judges, court attorney / special referees, law clerks, chief clerks, district executives, and other court personnel from all thirteen Judicial Districts. Chaired by the Hon. Edwina G. Richardson, Deputy Chief Administrative Judge for Justice Initiatives, and supported by Steven Helfont, Esq., Director of the Office for Justice Initiatives' Division of Policy & Planning, this working group serves as a forum for court employees to discuss legal and operational concerns, including issues arising from appellate decisions and new legislation.

To ensure that statewide foreclosure practices are fair to all parties and uniformly applied throughout the State, the Office for Justice Initiatives serves as liaison between the UCS and the foreclosure bar. In this regard, lender and loan servicer attorneys, civil legal services providers, members of the private defense bar, and housing counseling agencies all have an open line of communication with court administrators.

The Office for Justice Initiatives' staff are also actively involved with the New York City Bar Association's Mortgage Foreclosure Task Force, whose membership includes lender and borrower attorneys, mortgage servicers, and civil legal services providers. The Task Force meets monthly to discuss current trends, comment on legislation, and organize CLE's for practitioners and court staff.

Conclusion

This is the Unified Court System's fifteenth report to the Legislature on the status of our foreclosure inventory. Over the same number of years, judges and court staff have presided over hundreds of thousands of settlement conferences, issued thousands of decisions, and, most importantly, engaged in work that has kept thousands of New Yorkers in their homes. Notwithstanding a constantly changing legal and operational landscape, judges and court staff have adjusted quickly to such changes, with little impact on court operations.

This past year has been no different, as major changes to the law concerning tax foreclosures, deed theft, and partitions went into effect and we standardized the procedures for fee waiver applications and requests for the appointment of guardians-ad-litem. Eight of our counties are now fully equipped to handle remote bidding, and we have plans to expand this process throughout the State.

Looking back on the last fifteen years, it would have been hard to predict how much things have changed, and how much we have accomplished as a Judiciary. What has never faltered, though, is our commitment to the judges, court attorneys / special referees, law clerks, court clerks, interpreters, court officers, and other court professionals who work on these cases, some of whom have dedicated their entire careers to this dynamic area of the law. Their service comports with the UCS' overall mission to deliver equal justice under the law and to achieve the just, fair, and timely resolution of all matters that come before our courts. That is one thing that will never change.



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