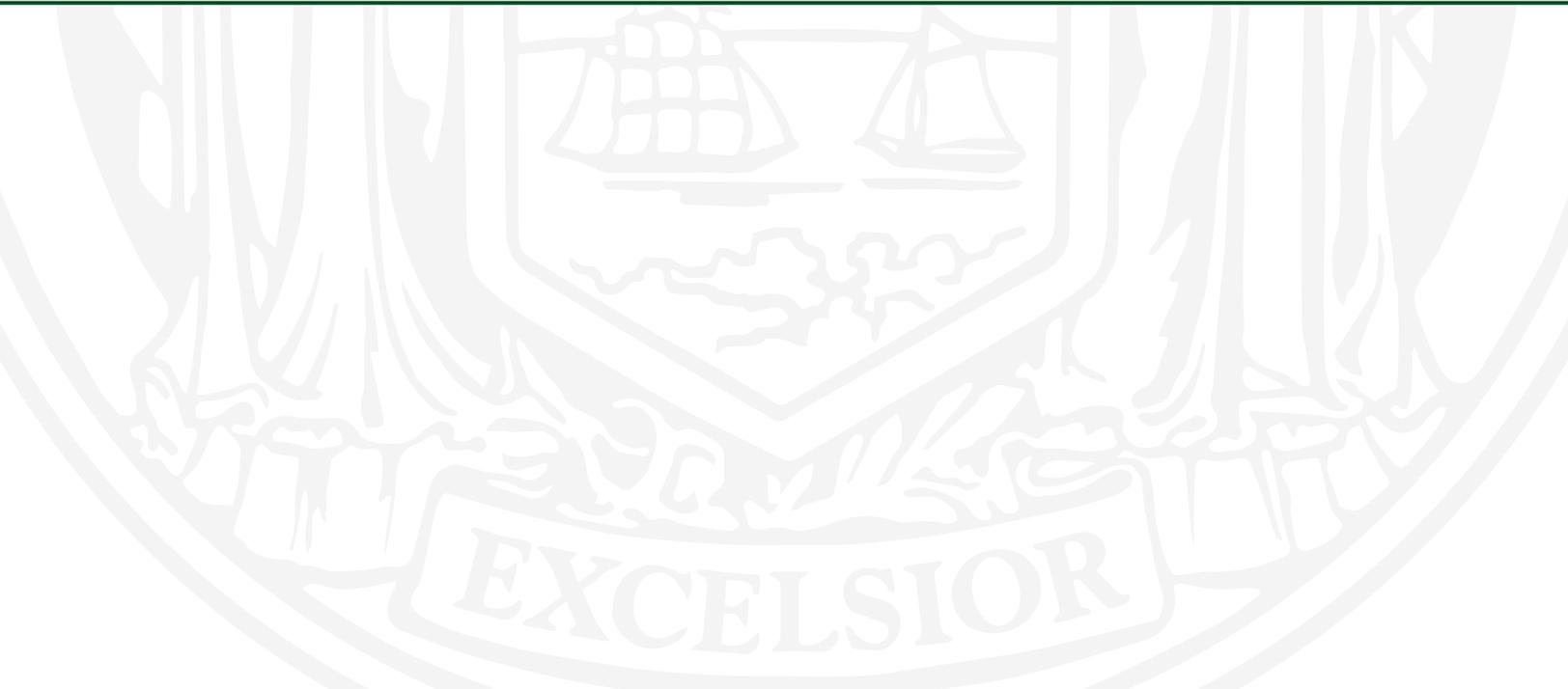




2022 Report of the Chief Administrator of the Courts On the
STATUS *of* FORECLOSURE CASES
Pursuant to Chapter 507 of the Laws of 2009



TAMIKO AMAKER
Acting 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 11, 2021 to October 9, 2022.



Tamiko Amaker
Acting Chief Administrative Judge

I. Introduction

At the beginning of 2022, there were reports that hundreds of thousands of New York homeowners were behind on their mortgages and property taxes and that distress rates were much higher than what we saw during the 2008 financial crisis. Aware that this could lead to a sudden increase in filings, court administrators made sure that our judges and staff had the resources and support to address their cases both fairly and expeditiously.

The surge that many predicted has not materialized, and hopefully never will, likely due to a combination of the strong housing market, federal policies and guidelines that encourage loan modifications, the willingness of lending institutions to engage in settlement discussions, and the existence of housing counselors and civil legal services providers who worked throughout the pandemic helping homeowners navigate the foreclosure process. To be sure, there are many new filings, certainly more than what we saw during the pandemic, but not nearly as sizable as the number of case dispositions.

The fact of the matter is that many counties are facing the lowest number of active, pending foreclosures in well over a decade. Foreclosures now comprise only 9% of the Supreme Court civil inventory statewide, a marked reduction from 2013 when one out of every three Supreme Court civil cases was a foreclosure action.

Notwithstanding, there are still thousands of families that continue to be affected by the pandemic and who are at risk of losing their homes. For this reason, the New York State Unified Court System will continue to prioritize foreclosure matters statewide and refer unrepresented litigants to housing counselors and civil legal services providers who are so adept at navigating these often-complex matters. Simultaneously, court administrators are working to make sure that every homeowner has meaningful access to settlement conferences in a post-pandemic, virtual world.

This report reviews the UCS's 2022 foreclosure initiatives and examines important caseload trends and statistics.

II. Legislation, Administrative Orders, and Current Trends

Throughout the pandemic, the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (EEFPA) and COVID-19 Emergency Protect Our Small Businesses Act of 2021 (EPOSBA) provided substantial protections for homeowners and commercial property owners facing foreclosure. Chapter 417 of the Laws of 2021 extended these protections through January 15, 2022.

Upon the expiration of both the EEFPA and the EPOSBA, all residential and commercial mortgage foreclosures cases, even those where a Hardship Declaration had been previously filed, resumed in the normal course. This was codified in Administrative Order (AO) 35/22, which superseded AO/262/21. In addition to directing that these courts return to pre-pandemic case processing procedures for residential and commercial mortgage cases, AO/35/22 directed that courts continue to explore ways to conference tax lien foreclosure matters. However, unlike mortgage foreclo-

sure cases which are governed by the CPLR and RPAPL, tax cases are governed by the RPTL, which provides far fewer protections for defaulting homeowners. This statutory framework makes it difficult for the court to establish statewide procedures to conference and settle tax foreclosure cases. However, efforts are being made in various counties, namely Erie, Albany, Queens, and Nassau, to name a few.

For the most part, auctions have also reverted to pre-pandemic practices, although some counties like the Bronx, Queens, and Kings may continue utilizing a combination of outdoor proceedings and smaller calendars to avoid large indoor gatherings. And in a permanent departure from pre-pandemic practices, in all 62 counties, the lenders' representatives are required to contact the court to schedule an auction date and time. This will allow courts to better keep track of post-judgment cases and avoid too many auction proceedings being held at the same time.

New York's Uniform Partition of Heirs Property Act (UPHPA) seeks to address predatory investment practices by individuals who target homes that pass to the heirs of the original title holder by inducing one co-tenant to sell their small minority interest, commencing a partition action, and then acquiring the entire property for a fraction of its fair market value at auction. The UPHPA is designed to prevent this from happening by requiring that courts schedule pre-note of issue settlement conferences for these cases, not unlike those required for residential mortgage foreclosure cases by CPLR 3408. To identify and divert these cases to settlement parts, the UCS promulgated (Administrative Order 009/22) an amended Request for Judicial Intervention form and a new Partition Request for Judicial Intervention Addendum. And, in partnership with the New York City Bar Association's Justice Center, the court offered continuing legal education program about the UPHPA and best practices to all judges and court staff.

As we continue to improve our statewide foreclosure processes, it came to our attention that a fair number of homeowners in foreclosure, particularly those in rural communities, do not receive mail at their homes, but instead at P.O. Boxes. While loan servicers are generally aware of these P.O. Boxes as reflected by the notices of default and pre-foreclosure notices, the P.O. Boxes are rarely if ever included on Requests for Judicial Intervention. This resulted in the court's notice to the homeowner of the foreclosure settlement conference being returned as undeliverable. To remedy this situation, we revised the Uniform Civil Rules for the Supreme and County Courts (specifically 22 NYCRR 202.12-a) to require that attorneys list the P.O. Box or other alternate address that they or their clients already possess on the foreclosure-RJI. This places virtually no burden on plaintiffs while greatly aiding the courts in making timely and effective notice to homeowners of the scheduling of settlement conferences.

The New York State Homeowner Assistance Fund (HAF), which began accepting applications in early 2022, is a federally funded program established under the American Rescue Plan Act. HAF was set up to mitigate financial hardships associated with the pandemic by preventing homeowner mortgage delinquencies, defaults, and foreclosures. As set forth in the UCS' 2021 Report on the Status of Foreclosures, the UCS encouraged judges and court attorney referees to refer homeowners to HAF and give appropriate adjournments where it was determined that successful application could lead to the resolution of a homeowner's foreclosure case. While the \$500 million fund was quickly accounted for, and program administrators are no longer accepting new applications, it is clear that HAF has already and will continue to prevent thousands of foreclosures.

The UCS is revising all the forms and motion templates promulgated for use in foreclosure cases. Once completed, the forms and templates will have links to our CourtHelp homepage and have contact information for those seeking accommodations under the Americans with Disabilities Act and/or court-appointed interpreters. Each form will also be available in both Word and PDF (fillable) format, and the forms that are designed to be used by homeowners will be converted to plain language.

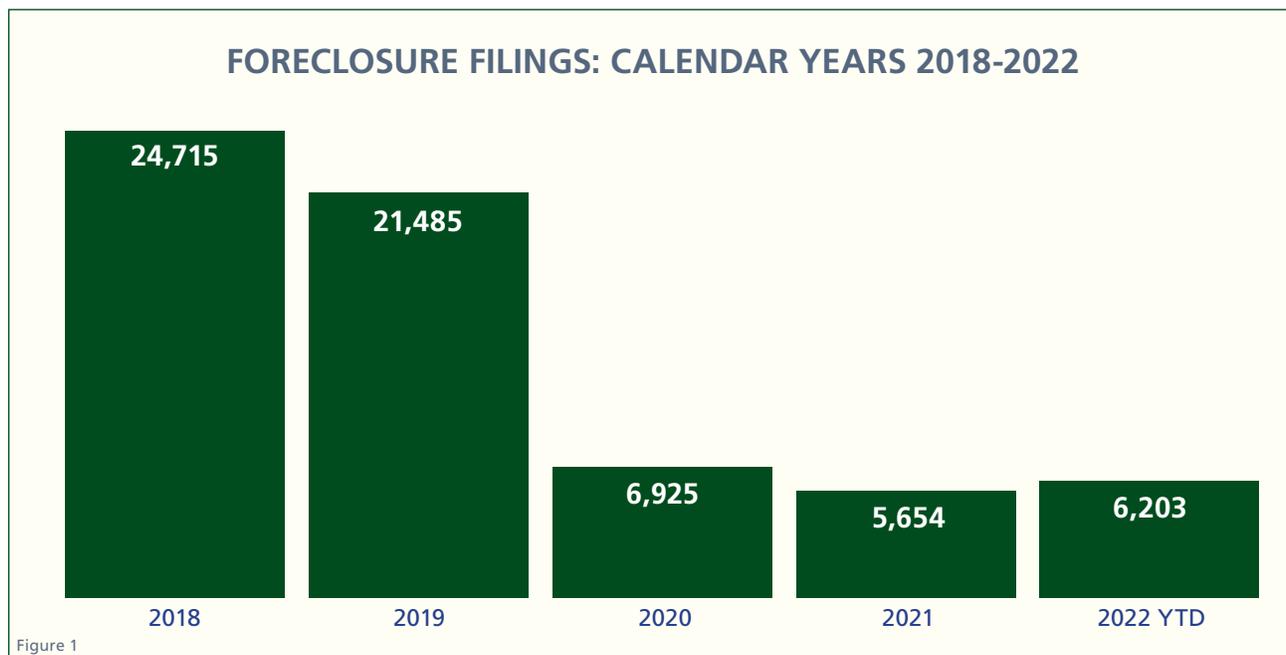
Finally, as noted in the 2021 Report, many proceedings continue to be held virtually to ensure high participation rates by homeown-

ers, especially in rural counties where they would otherwise have to travel a significant distance to appear in court. In-person appearances remain essential, though, particularly for homeowners who have no or limited internet access and who are unrepresented. As such, some counties require homeowners to appear for their first conference at the courthouse so that they can be referred to a civil legal services provider, but then hold all future conferences virtually. This hybrid approach has been successfully implemented statewide.

III. Filing Trends

During the Reporting Period (October 11, 2021 to October 9, 2022), plaintiffs filed 7,621 residential and commercial cases. This represents a 39% increase from the 5,485 cases filed during the 2021 Reporting Period, which is largely attribut-

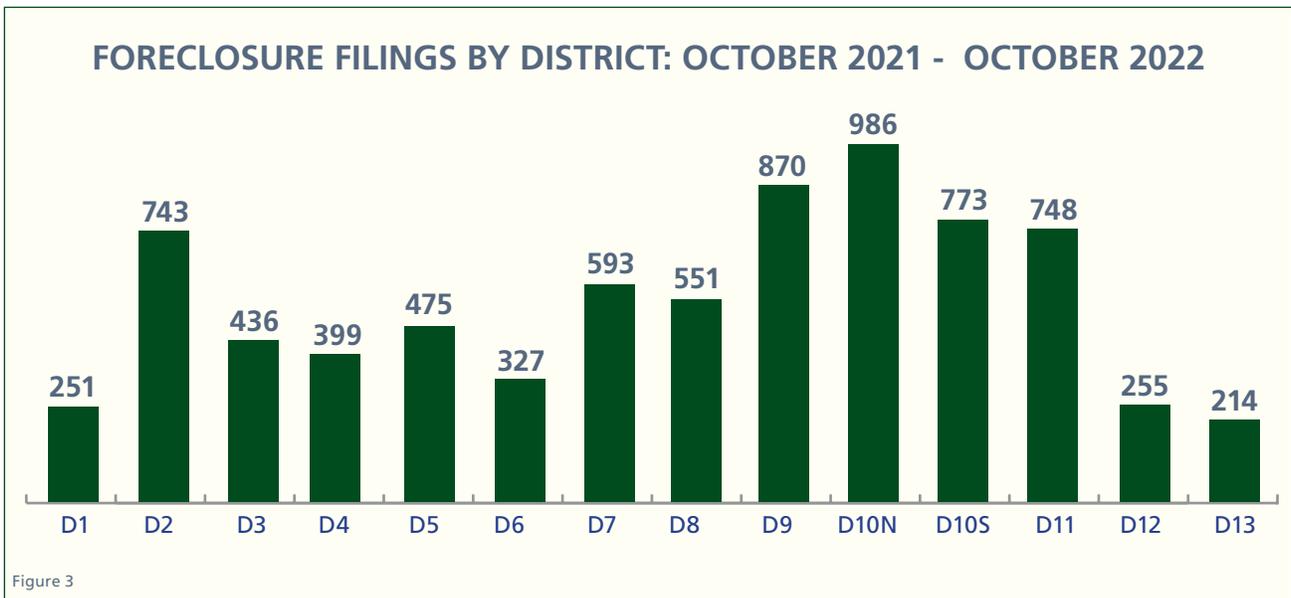
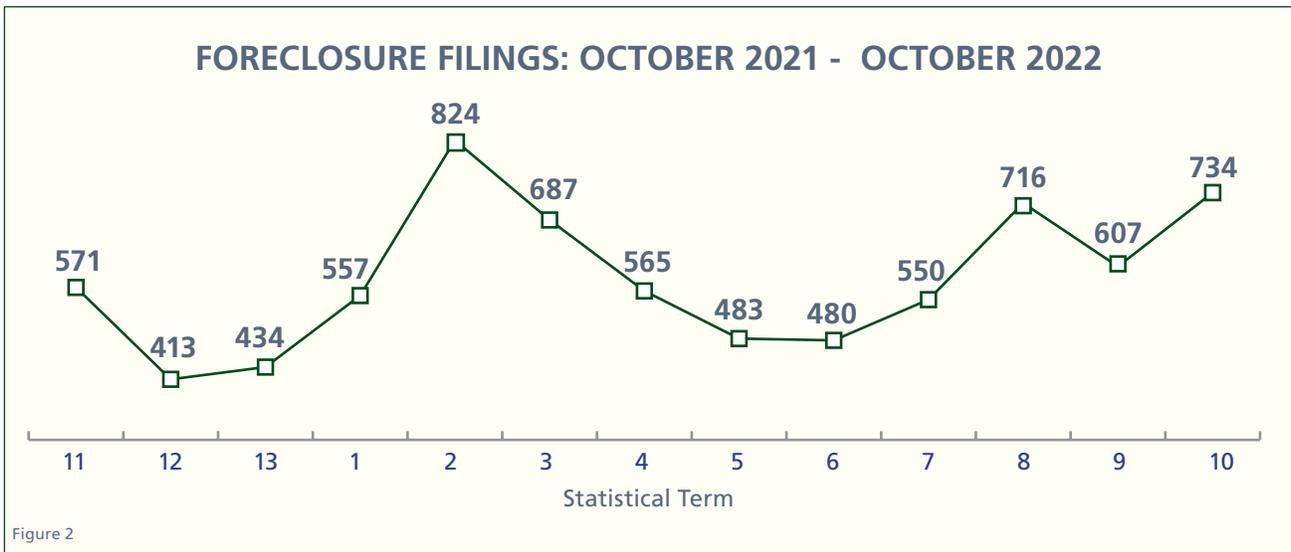
able to the easing of restrictions imposed upon foreclosure filings by New York State and the federal government. For information about annual filings from 2018 to 2022 YTD, see Fig. 1.



Of the 7,621 cases filed during the Reporting Period, 5,547 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. Depending upon the county, judges, court attorney referees, law clerks, and court clerks throughout New York State work to make sure these conferences are held in-person, virtually, or both. Regardless of the format,

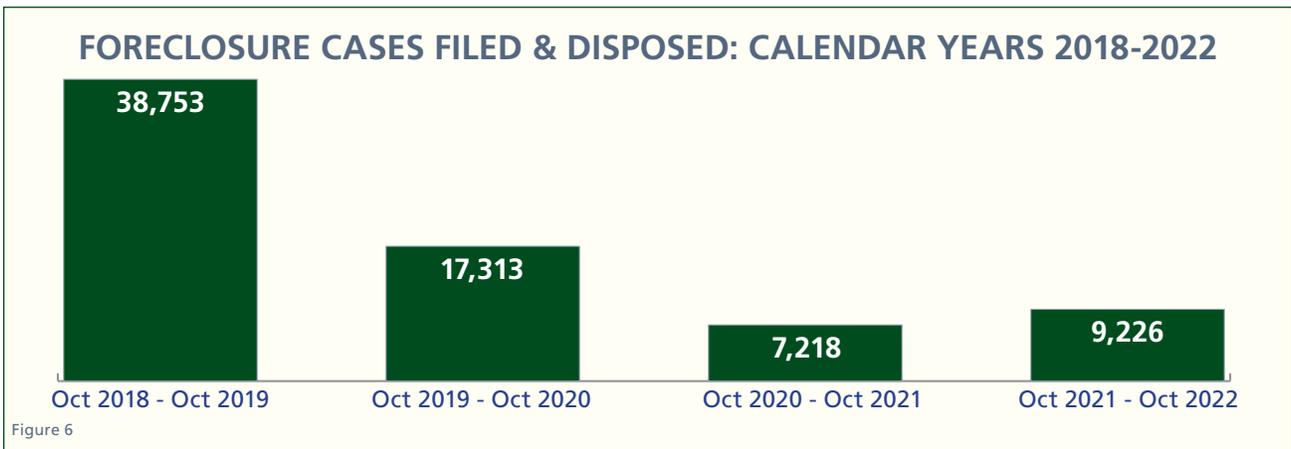
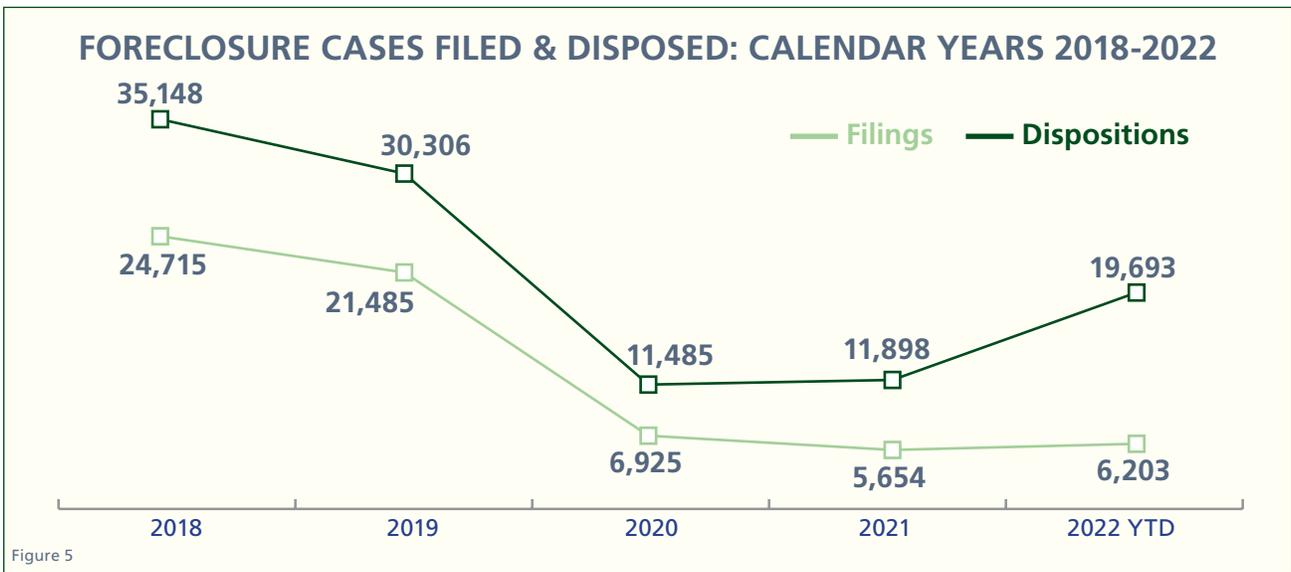
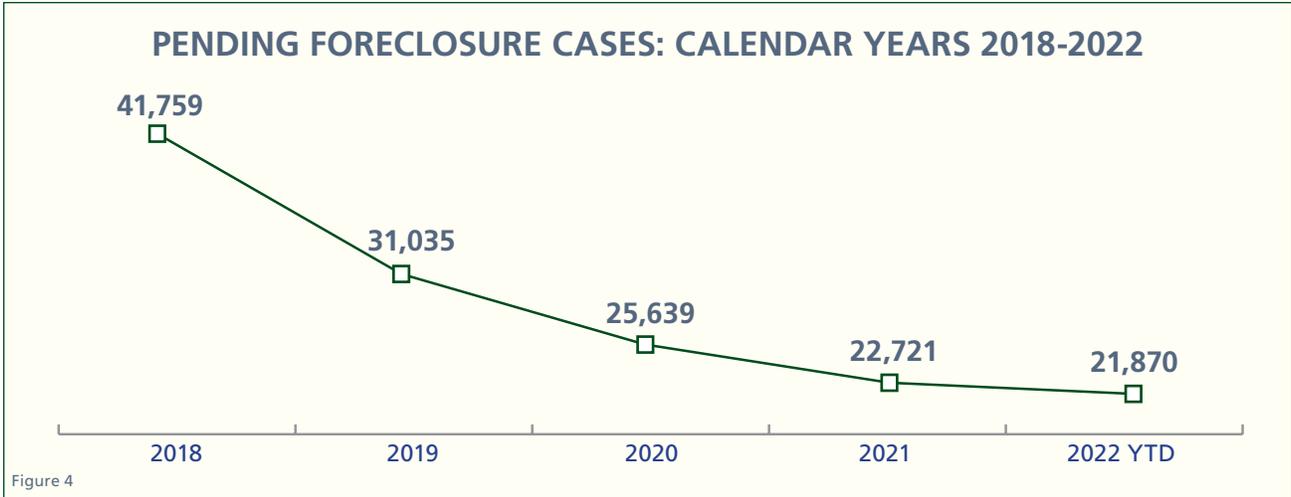
courts will make every effort to ensure participation by all interested parties, especially unrepresented homeowners.

The volume of new filings in the Reporting Period varied by court term with a statewide high of 824 in Term 2 of 2022 and a statewide low of 413 in Term 12 of 2021 (see Fig. 2). New filings in courts within New York City totaled 2,211 and new filings in courts outside of New York City totaled 5,410, with the number of filings varying by judicial district (see Fig. 3).



As of October 9, 2022, the end of this Reporting Period, there were 21,870 foreclosure cases pending statewide (see Fig. 4). This is a 50% reduction from the 43,759 cases pending at the end of the 2018 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 worked tirelessly throughout the pandemic (see Fig. 5).



IV. Foreclosure Settlement Conferences

During the Reporting Period, there were 9,226 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.

Most cases require more than one conference before determining if settlement is possible or if motion practice is required. As such, there were 6,486 adjournments in the foreclosure settlement parts throughout New York State. There were also 650 defaults by homeowners and 49 voluntary discontinuances.

V. Legal Representation

Homeowners at risk of foreclosure deserve access to free, high-quality legal representation. To demonstrate the UCS' dedication to this principle, the UCS allocated \$96 million to civil legal services providers - an increase from the \$85 million allocated in prior years - to represent low-income New Yorkers with "essentials of life" litigation during the 2021-2022 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 142,739 New Yorkers benefited from housing and foreclosure-related legal services, a 35% increase from the 105,670 persons who benefitted from such services last year. In addition, more than half of homeowners appeared at their settlement conferences with assistance from legal counsel from Term 11 of 2021 through Term 10 of 2022 (see Fig. 7).

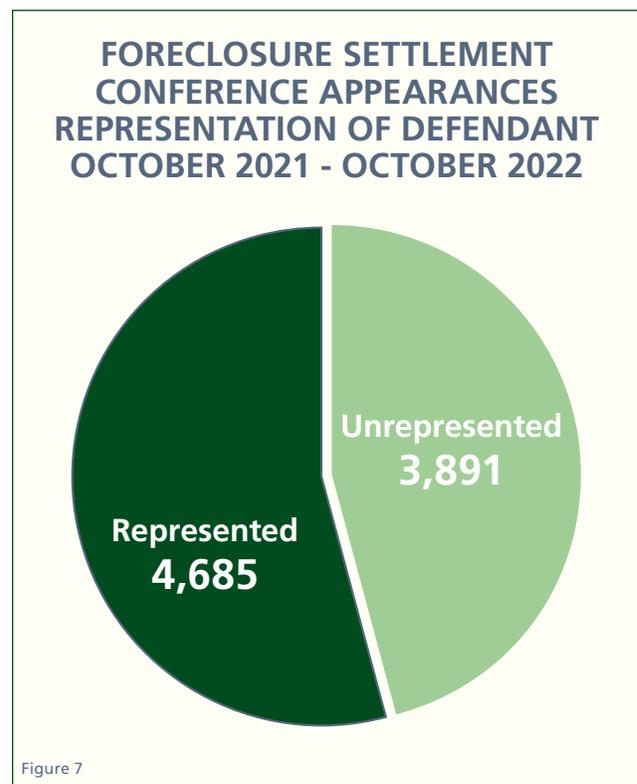


Figure 7

VI. Statewide Foreclosure Working Group and Collaboration with the Foreclosure Bar

The Unified Court System's internal Statewide Foreclosure Working Group is comprised of judges, court attorney-referees, law clerks, chief clerks, district executives, and other court personnel from all thirteen Judicial Districts. Chaired by the Hon.

Edwina G. Richardson-Mendelson, Deputy Chief Administrative Judge for Justice Initiatives, 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 has been tasked with serving as a liaison between the Unified Court System 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.

Office for Justice Initiative 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 for practitioners and court staff.

VII. Conclusion

There are now less than 22,000 foreclosure cases statewide, a nearly 76% drop from the almost 91,000 cases pending in 2014. This change is extraordinary considering how resource-intensive these cases can be. Indeed, beyond just overseeing motions, our judges, referees, law clerks, and court clerks have committed themselves to the settlement conference process and other forms of alternative dispute resolution. They should be acknowledged and thanked for their efforts. Not every case can be resolved, but without their expertise and willingness to work with both the lenders and the homeowners, many New Yorkers would have undoubtedly lost their homes.

But the task is not yet complete. While the pandemic continues to wane, the economy is still in distress, and the number of New Yorkers who are falling behind on their mortgage payments is rising fast, particularly in our urban minority communities and rural communities that were particularly hard-hit by the pandemic.

Mindful of the uncertainty that lies ahead, the New York State Unified Court System is re-committing itself to ensuring equal justice for all, above all else. This means making sure that homeowners are given every opportunity to meaningfully participate in the settlement conference process, whether virtually or in-person. It means re-opening court-based help-centers and referring unrepresented homeowners to

local civil legal services providers and housing counselors. And it means giving the parties the time they need to work out a settlement. At the same time, court administrators will continue to focus on eliminating pandemic-related backlogs, but when it comes to people’s homes, we recognize the value in prioritizing people and their homes over numbers.

What is crucial to reiterate is that the UCS will always provide appropriate resources and training for our judges and staff. By doing so, and regardless of whether we are headed for a surge in filings in the years to come, the UCS will remain well-situated to adjudicate the entire foreclosure inventory both fairly and efficiently.

SUMMARY TABLE October 11, 2021 - October 9, 2022	
Conferences Held	9,226
Number of Adjournments	6,486
Discontinuances	49
Dismissals	6
Defaults	650
Defendants Appearing with Counsel*	4,685
Defendants Appearing without Counsel*	3,891
* Based upon the conferences held between October 11, 2021 and October 9, 2022, excluding appearances where the defendant defaulted.	

