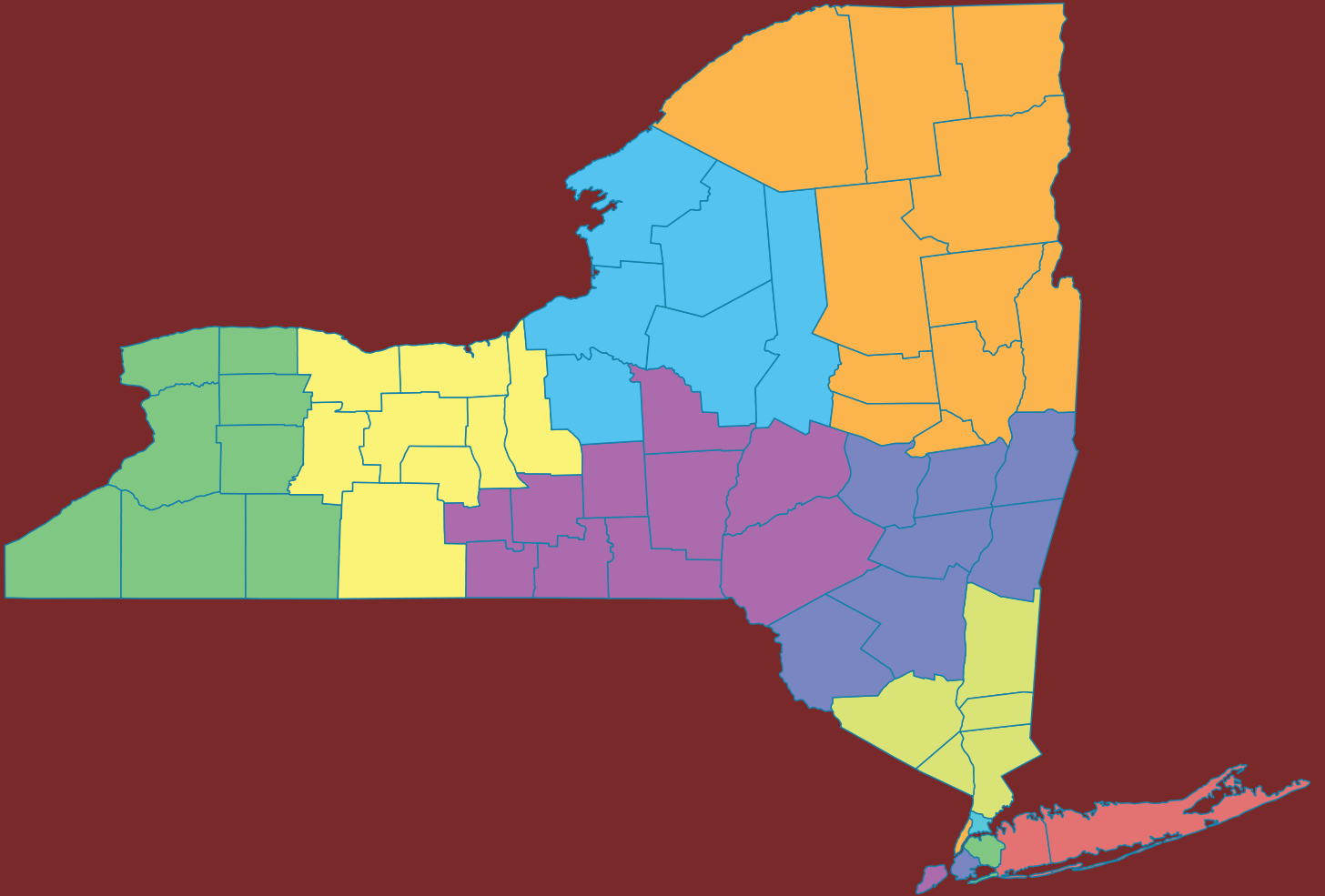




2023 Report of the Chief Administrator of the Courts on the  
**STATUS *of* FORECLOSURE CASES**  
Pursuant to Chapter 507 of the Laws of 2009



**HON. JOSEPH A. ZAYAS**  
*Chief Administrative Judge*



2023 Report of the Chief Administrator of the Courts on the  
**STATUS *of* FORECLOSURE CASES**

Pursuant to Chapter 507 of the Laws of 2009

## 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 10, 2022 to October 9, 2023.



**Hon. Joseph A. Zayas**  
*Chief Administrative Judge*

# I. Introduction

---

The COVID-19 pandemic left many New Yorkers emotionally and financially strained, but our collective momentum toward recovery has been strong, consistent, and multifaceted. Still, there have been widespread whispers of another recession for the better part of two years, fueled by an unprecedented housing market and a changing real estate landscape. Driven by the lifting of COVID-19 moratoriums, rising interest rates, and shifting housing demands, the collective impact has been a spike in homeowners who have fallen behind on their mortgage payments, and not unexpectedly, a corresponding increase in foreclosure filings.

Unified Court System (UCS) data confirms that foreclosures are on the rise, but they have not been, and are not expected to become, the tidal wave that many anticipated. One thing that has not changed from last year is that

many counties are still facing the lowest number of active, pending foreclosures in well over a decade. And, as a testament to the hard work of our judges and court personnel, dispositions continue to outpace filings throughout the state.

Nevertheless, the UCS must not ignore the significant year-to-year percentage increase in filings throughout the state, especially in New York City. Our long-term decision-making and resource allocation plans depend upon being data-informed, and it is evident from our data that more resources will need to be dedicated to the foreclosure settlement parts going forward.

This report reviews the UCS's 2023 foreclosure initiatives and examines important caseload trends and statistics.

# II. Legislation, Administrative Orders, and Current Trends

---

**FORECLOSURE ABUSE PREVENTION ACT** - On December 30, 2022, Governor Hochul signed into law the Foreclosure Abuse Prevention Act, which in part was a direct response to the Court of Appeals' decision in *Freedom Mtge. Corp v Engel*, 37 NY3d 1 (2021). In *Engel*, the Court held that where an acceleration of a loan occurred by virtue of the filing of a complaint, the noteholder's voluntary discontinuance of that action within six years of the filing served to stop the limitations clock and constituted a revocation of the acceleration.

The Foreclosure Abuse Prevention Act abrogated *Engel* and codifies other significant changes to the Civil Practice Law and Rules, Real Property Actions and Proceedings Law,

and General Obligations Law. Judges and court personnel who preside over foreclosure cases have been made aware of these statutory changes and continuing legal education on this topic is being planned for 2024.

**REMOTE BIDDING IN FORECLOSURE AUCTIONS** - In February, 2023, pursuant to Administrative Order 90/23, a pilot project began in Queens, Monroe, and Niagara Counties to permit remote bidding in foreclosure auctions. This project is in part a response to long-standing criticism by both lending institutions and civil legal services providers that foreclosure auctions lack transparency and are only open to individuals who can attend in-person.

Remote bidding allows individuals to place bids remotely through third-party auction platforms, simultaneous with in-person bidders, on properties being sold at auction as the result of a judgment of foreclosure. After a careful and deliberate planning process in each pilot county, remote bidding launched in September of 2023. But, due to the natural delay between the issuance of a judgment and the corresponding auction, it is anticipated that the first auction involving remote bidding will not occur until early 2024.

There are several potential benefits to remote bidding, including the potential for higher sale prices that directly benefit homeowners by giving them access to surplus proceeds. Remote bidding is also beneficial from an access to justice perspective because it permits individuals to participate who otherwise could not leave work or find it difficult to physically attend the auction.

Thus far, the operational impact on and additional resources required from the courts has been limited. There are no monetary costs to the court or to the homeowners since the plaintiffs are required to contract directly with remote bidding technology providers to market the property and provide remote bidding services.

In August, the UCS' Office for Justice Initiatives organized and facilitated a virtual continuing legal education program to educate the legal community about remote bidding. During the program, practitioners and court staff were able to view a demonstration of remote bidding technology and have their questions and concerns addressed.

As remote bidding continues to evolve, it is important that it be a collaborative process. Accordingly, pursuant to Administrative Order 54/24, the remote bidding pilot will expand to Albany, Bronx, Nassau, Rockland, and Saratoga Counties in 2024.

### **DORMANT SECOND LIEN FORECLOSURES -**

A new issue of concern among foreclosure prevention experts revolves around dormant second lien foreclosures, also known as "zombie loans", "80/20 mortgages", or "piggy-back mortgages." Specifically targeted to lower-income and first-time homebuyers before the 2008 financial crisis, these cases involve two mortgages, one for 80% of the home's purchase price and a second for 20% of the purchase price. Many homeowners who defaulted on their mortgages were able to restructure their primary debt through the Home Affordable Modification Program. The second loans were often written off by the servicers, and many homeowners stopped receiving statements and/or other communications entirely. With the rise in housing prices over the last several years, investors have stepped in to purchase many of the second mortgages that were previously written off but now have significant value. In April 2023, the Consumer Financial Protection Bureau and the Office of the New York State Attorney General co-hosted a field hearing about these unique mortgages and the possibility of such claims being time-barred.

On November 3, 2023, the UCS and the Office of the New York State Attorney General co-hosted a dormant second lien foreclosure virtual CLE program for judges and court staff. During this program, participants learned about dormant second lien foreclosures, how to identify them, and the specific legal issues to look for while adjudicating these cases.

### **FORECLOSURES AND APPELLATE DOCKETS**

- With the passage of the Foreclosure Abuse Prevention Act and the elimination of COVID-era restrictions on the ability to issue judgments, foreclosure advocates have expressed concern about the possibility of a spike in foreclosure-related appeals. However, in most of New York State, foreclosure appeals remain a very small portion of the appellate docket, with UCS data indicating that only 1% of the appeals pending in the First De-

partment involve foreclosures. The same goes for the Third and Fourth Departments, which disposed of ten and five foreclosure-related matters during the Reporting Report, respectively, which represent only 1% and 0.5%

of their total dispositions. Foreclosures have always been more prevalent in the Second Department, with approximately 600 foreclosure-related appeals pending as of October 30, 2023, representing 15% of its total docket.

### III. Filing Trends

During the Reporting Period (October 10, 2022 to October 9, 2023), plaintiffs filed 15,235 residential and commercial cases. This represents an almost 100% increase from the 7,621 cases filed during the 2022 Reporting Period. For information about annual filings from 2019 to 2023 YTD, see Fig. 1.

Of the 15,235 cases filed during the Reporting Period, 13,634 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

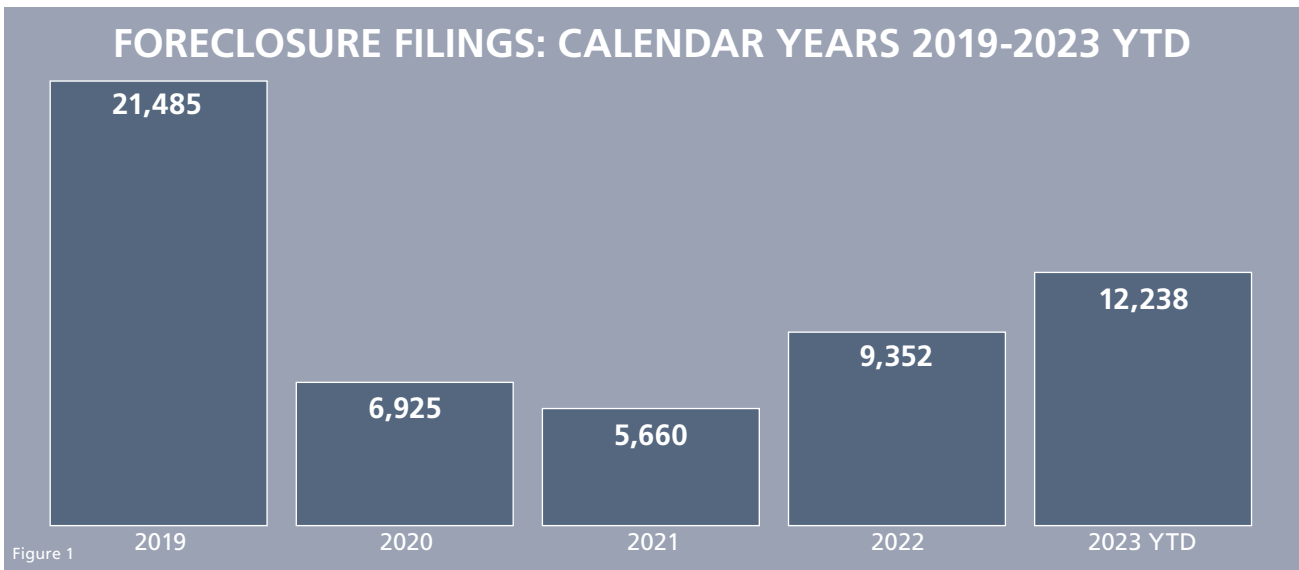


Figure 1

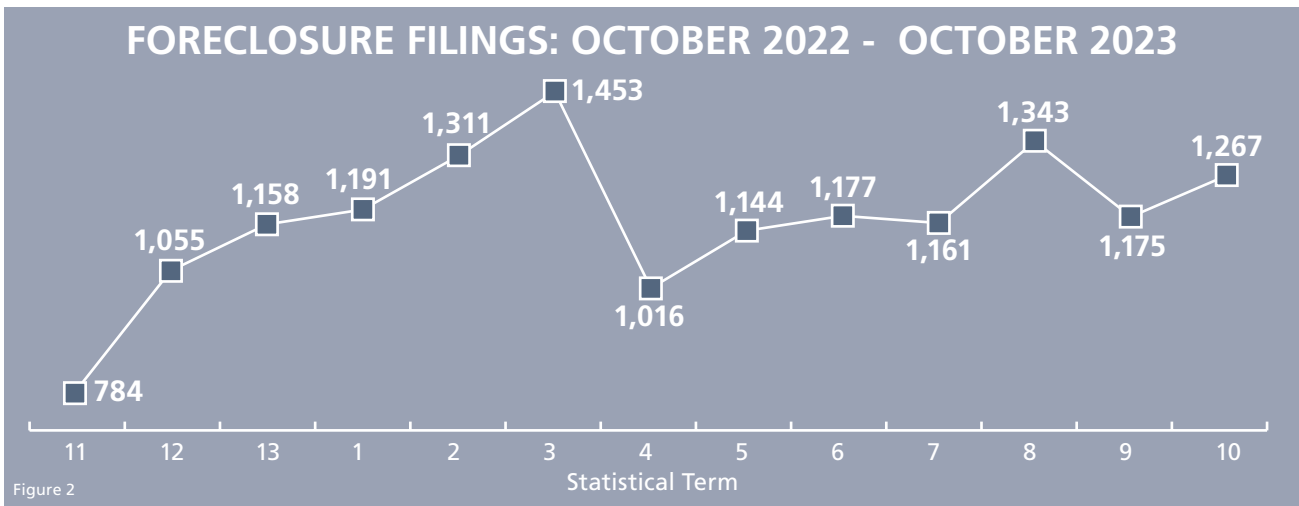


Figure 2

counties, but in most counties, they are led by court attorney 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 1,453 in Term 3 of 2023 and a statewide low of 784 in Term 11 of 2023 (see Fig. 2). New filings in courts within New York City totaled 4,498 and new filings in Districts three through ten totaled 10,737, with the number of filings varying by judicial district (see Fig. 3).

As of October 9, 2023, the end of this Reporting Period, there were 20,637 foreclosure cases pending statewide (see Fig. 4). This is a 34% reduction from the 31,035 cases pending at the end of the 2019 Reporting Period. The number of dispositions appears slightly less than the number of filings this year. This can be partly attributed to a change in the way the UCS tracks foreclosure data<sup>1</sup>, but also because a substantial portion of the total foreclosure inventory is still in the conference phase, as set forth in Section IV, below.

1. Due to the statewide implementation of our Universal Case Management System, the logic used to calculate foreclosure counts changed from Term 4, 2023 moving forward. As a result, dispositions may artificially appear as decreasing.

### FORECLOSURE FILINGS BY DISTRICT: OCTOBER 2022 - OCTOBER 2023

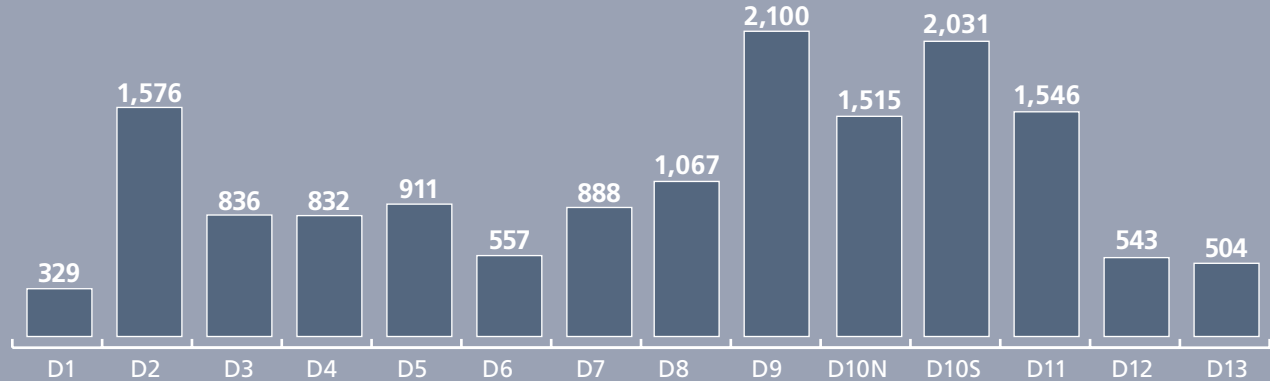


Figure 3

### PENDING FORECLOSURE CASES: CALENDAR YEARS 2019-2023

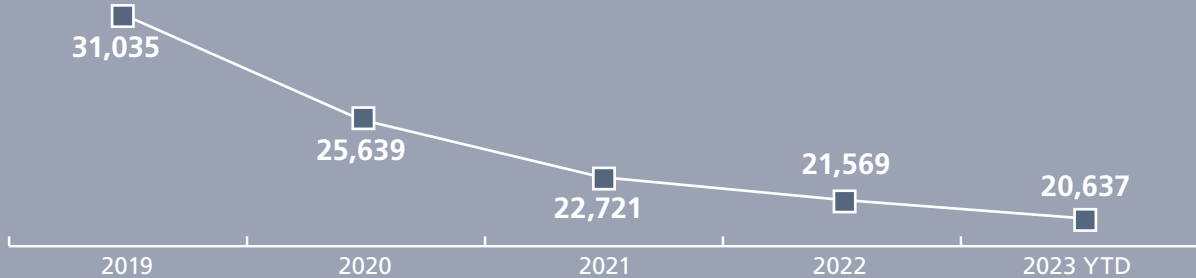


Figure 4

### FORECLOSURE CASES FILED & DISPOSED: CALENDAR YEARS 2019-2023 YTD

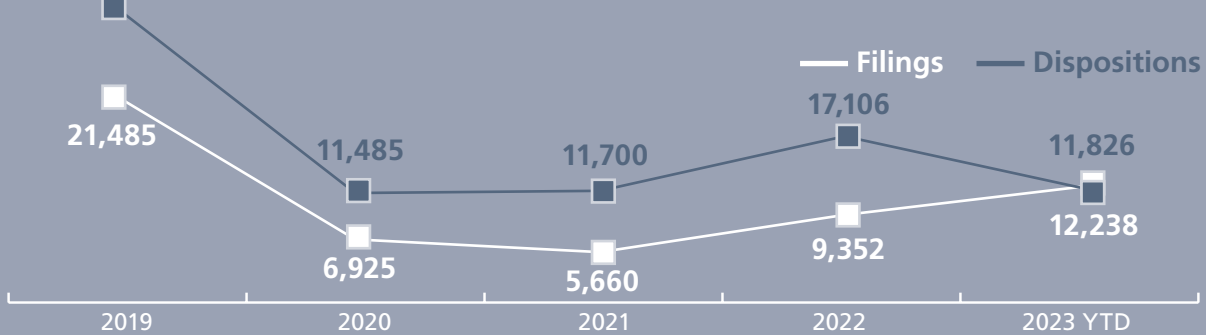
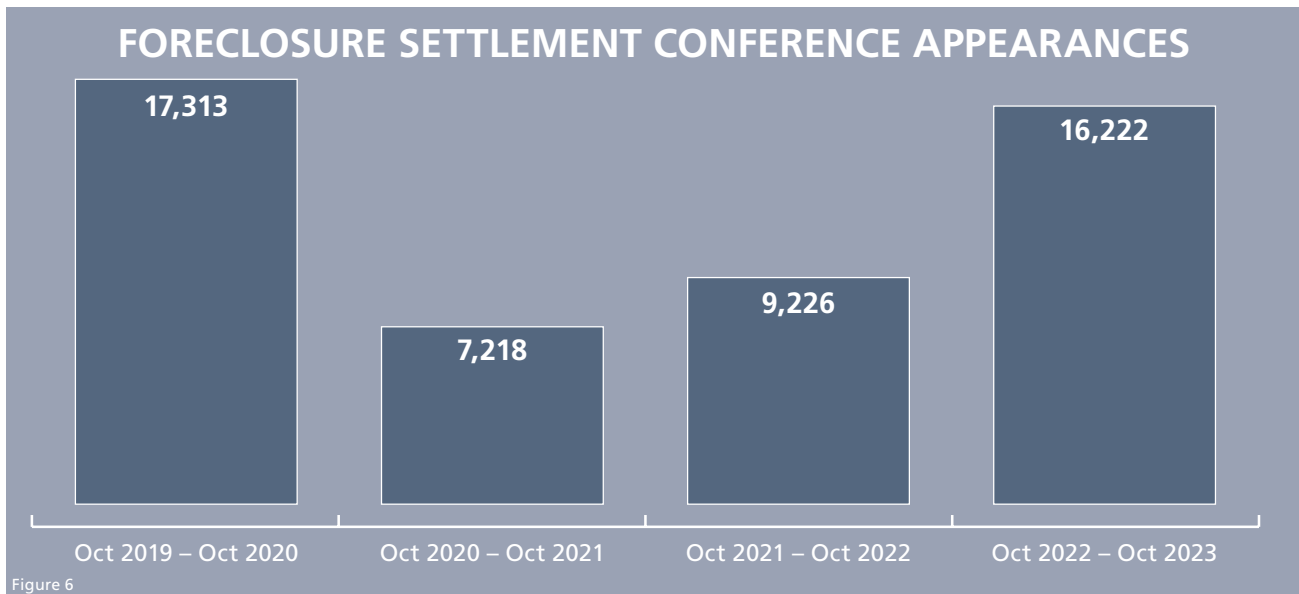
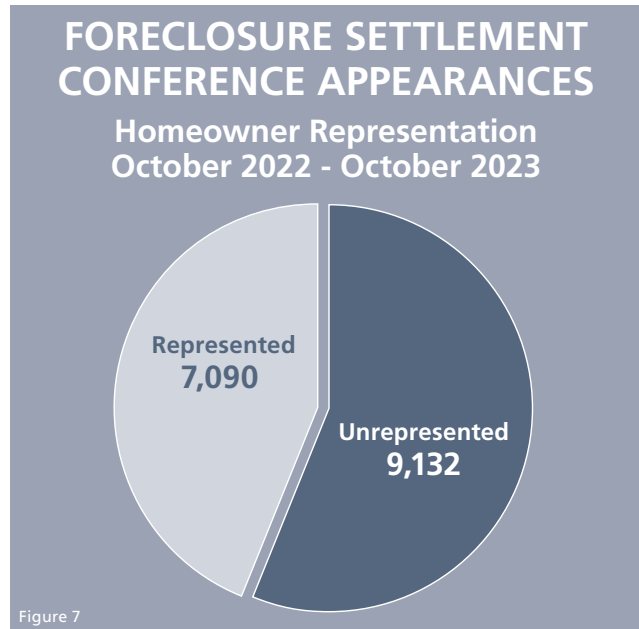


Figure 5

## IV. Foreclosure Settlement Conferences

During the Reporting Period, there were 16,222 CPLR 3408 settlement conferences held in courts throughout New York State (see Fig. 6), a 76% increase from the 9,226 conferences held during the last reporting period. Forty-four percent of such conferences 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 11,079 adjournments in the settlement parts. There were also 1,746 defaults by homeowners and 44 voluntary discontinuances (see Summary Table).

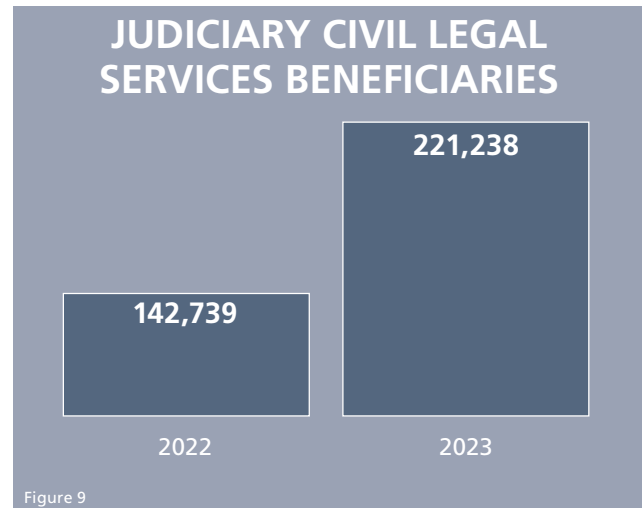
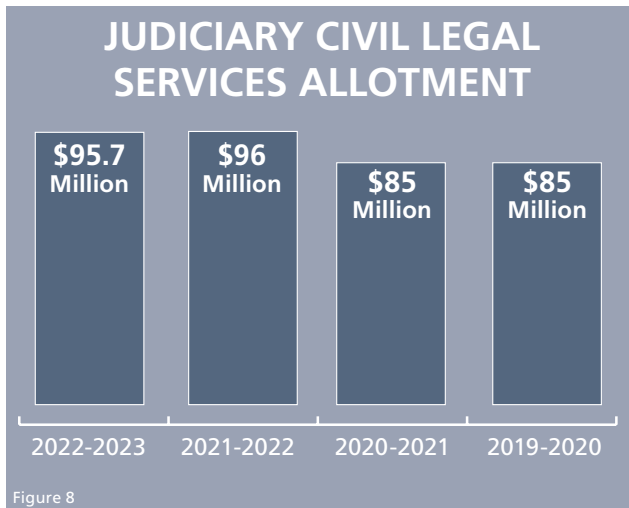




## V. Legal Representation

Homeowners at risk of foreclosure need free, high-quality legal representation. To demonstrate our support, the UCS allocated \$95,724,000 to civil legal services providers to represent low-income New Yorkers with “essentials of life” litigation during the 2022-2023 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 221,238 New Yorkers whose cases are now closed benefited from housing and foreclosure-related legal services, a 55% increase from the 142,739 persons who benefitted last year (see Fig. 9). Another 200,022 New Yorkers whose cases remain open also benefit from such services.



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

The UCS’ 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, 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 has been tasked with serving as a 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.

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 for practitioners and court staff.

## VII. Conclusion

Under Chief Judge Rowan Wilson’s leadership, the UCS has already undergone transformative changes geared towards improving the Judiciary and the lives of every New Yorker. We are more transparent, more collaborative, dedicated to delivering equal justice under the law, and committed to achieving a just, fair, and timely resolution of all matters that come before the courts. This would not be possible without the unwavering commitment from the judges, referees, law clerks, court clerks, interpreters, court officers, and other court professionals who work on these critically important cases. They understand, perhaps better than anyone, just how deeply foreclosures can affect individuals, families, and the communities that they live in, and we thank them for their continuing, extraordinary efforts.

Foreclosures are resource intensive. While the total number of pending cases continues to decline, we must be vigilant and ensure that foreclosure settlement parts always have sufficient personnel, technology, and resources. And while it is important to be data-driven and data-informed, it is equally important to

recognize that there is an intangible, unquantifiable human element to these cases if we are to truly engage in meaningful settlement discussions. In this regard, every homeowner should be provided with a reasonable opportunity to enter into a loan modification - or another mutually agreeable loss mitigation option - without having to worry about their case being released from the settlement part. This may take months or even years to achieve, but it is worthwhile if more New Yorkers can remain in their homes.

2024 will almost certainly bring another increase in foreclosure filings along with new obstacles for an already strained network of civil legal services providers and housing counselors. As the UCS strives to address these challenges and adapt to an ever-changing legal landscape, we remain dedicated to providing judges and their teams with high-quality resources, training, and technology. In turn, the judges and court personnel will continue to provide homeowners and the lending institutions with the highest level of justice and service.

### SUMMARY TABLE

October 10, 2022 - October 9, 2023

<b>Conferences Held</b>	<b>16,222</b>
<b>Number of Adjournments</b>	<b>11,079</b>
<b>Discontinuances</b>	<b>14</b>
<b>Dismissals</b>	<b>1,746</b>
<b>Defaults</b>	<b>3,339</b>
<b>Conferences Where Homeowners Appeared with Counsel<sup>(1)</sup></b>	<b>7,090</b>
<b>Conferences Where Homeowners Appeared without Counsel<sup>(1)</sup></b>	<b>9,132</b>
<small>(1) Based upon the conferences held between October 10, 2022 and October 9, 2023, excluding appearances where the defendant defaulted</small>	



