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New York State Legislature 2019 Joint Budget Hearing

Housing

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Introduction

Thank you for the opportunity to submit testimony for the Legislative Joint Budget Hearing on Housing. Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, Westchester and Central Islip on Long Island. Empire Justice provides support and training to legal services and other community-based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low-income individuals, as well as classes of New Yorkers, in a wide range of poverty law areas including consumer law and mortgage foreclosure defense.

Empire Justice has been working on homeownership and predatory mortgage lending issues since the 1990's. We work on behalf of homeowners who are the proverbial David in the fight against Goliath, the big banks and mortgage servicers who own the majority of mortgage loans in this country. The odds are stacked against homeowners who stand very little chance of winning their battles without professional assistance. This testimony focuses on the need for continued funding for New York's network of 89 housing counseling and legal services programs that have been keeping homeowners in their homes since 2008.

Prior to the creation of these services and the mandatory settlement conferences, over 90 percent of foreclosures ended in a default judgment against homeowners – meaning, virtually no homeowners but a few were saving their homes once they went into foreclosure.¹ **Since 2012, the network of 89 housing counseling and legal services programs have helped 100,000 families statewide and have saved homes in 34 percent of those cases by loan modification, and even more if we were to factor in homes saved through reinstatement, litigation or other loss mitigation option.**²

Funding is running out for all programs on March 31, 2019. Without \$20 million in funding from the State for Communities First, two-thirds of these services will stop being available to homeowners and communities immediately, and further cuts will come to services over this year. Without assistance, the rate of homes lost in foreclosure will likely climb back up to over 90 percent.

History of the Foreclosure Prevention Services Network

The Foreclosure Prevention Services Program was established in 2008 with an allocation of \$25 million in state general fund dollars to the Housing Trust Fund Corporation, within New York State Homes and Community Renewal (HCR). Funding provided competitive collaborative grants,³ training and

¹ State of New York Unified Court System, 2011 Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009, at 4 (stating “From November 2010 to September 2011, only ten percent of homeowner-defendants did not appear for any of their scheduled conferences, down from an estimated 90 percent prior to the legislation.”).

² While preventing foreclosures and saving homes are the ultimate goals of housing counselors and legal services lawyers, the services they provide even when preserving the home is not an option are equally valuable. These services include helping folks to list their homes for sale to preserve their equity, or executing a deed in lieu of foreclosure, negotiating short sales, and helping families plan to transition from their home to alternative housing. Perhaps more significant than anything, is the attention, counseling and education that is provided to homeowners while they go through one of the most psychologically stressful times in their life, potentially losing their home. Even if the home is not saved, homeowners do not need to go through the ordeal alone and understand why they are losing it, and have an action plan for next steps.

³ In its first request for proposal process, HCR required housing counseling and legal services programs serving the same geographic area to submit a memorandum of understanding as a way of fostering relationships between these agencies. HCR promoted efficiency by encouraging housing counselors and lawyers to work symbiotically to

technical assistance to housing counseling and legal services programs to provide direct assistance to distressed homeowners. In 2009, New York directed \$21.825 million more in AARA funding (American Recovery and Reinvestment Act) to the program, which supported services through December 2011. HCR implemented an aggressive training program over this period, as well. Seventy trainings were conducted between 2009 and 2012 to teach legal services and private attorneys how to defend mortgage foreclosures (though the trainings resulted in few private lawyers representing homeowners full-time because of the nature and complexity of the cases). Housing counselors were trained primarily through NeighborWorks America's intensive in-person trainings on foreclosure prevention.

In early 2012, as the New York State Legislature was trying to find funding to continue the program, the National Mortgage Servicing Settlement was signed. New York State Office of the Attorney General (OAG), in control of the settlement dollars, entered an agreement with the Legislature and State to ensure continuity of services. The OAG gave HCR funding to continue the program through September 2012. The program then moved to the OAG, where the Attorney General created the Homeowner Protection Program (HOPP) with an initial commitment of \$60 million for three years (\$20 million per year). In 2015, with proceeds from another bank settlement, the OAG dedicated \$40 million more to continue HOPP for two years. Additional administrative dollars were allocated to provide for oversight of the grants, and ongoing training and technical assistance to HOPP grantees. The OAG was able to direct dollars from two other bank settlements to network partners which extended the program, as well. HOPP continues to run at about \$20 million per year (again, not including administrative costs for oversight, training, and programming) and is now in its seventh and final year, scheduled to end March 31, 2019.⁴

Communities First – Seeking \$20 Million in Funding to Continue and Broaden Services

Empire Justice Center was contracted by the OAG to oversee the grants made to housing counseling and legal services programs outside of New York City (60 of the 89 grantees).⁵ One of the most critically important aspects of this network – particularly to me as an upstate advocate - is that we have ensured that there are both housing counseling and legal services available to homeowners in every county of the state. I cannot emphasize this enough because funding for these services is an access to justice issue, it is an issue of fairness, and it is a rural, small town and small city issue. According to a survey our network conducted in late fall of 2018 of all network partners, services will decrease by two-thirds if funding is not provided in the 2019 budget. In the Central New York region (comprised of eleven counties: Broome, Chenango, Cortland, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Oswego and Otsego) there will be no services on the ground. Also very alarming - particularly because Long Island consistently had among the highest numbers of defaults and foreclosures - Nassau and Suffolk counties will collectively see an 87 percent reduction in services.

While the basic needs for housing counseling and legal services for individual homeowners in default and foreclosure have not changed, the foreclosure crisis has evolved, as has the industry and our

help homeowners. These relationships have grown and continue today. HCR's foresight is one of the reasons why New York has the most effective network of partners in the country.

⁴ In 2015, the State amended the rules regarding settlements secured by the OAG, state agencies and departments. Now, monetary awards go into the general fund to be appropriated by the Legislature and Governor, rather than remaining in the possession of the office. It is our understanding that the OAG has no further funding from settlements prior to this change in 2015 to keep HOPP going.

⁵ Of the 60 organizations overseen by Empire Justice, 45 are housing counseling organizations and 15 are legal services. A regional breakdown is as follows: Central NY – 8 agencies, Hudson Valley – 11 agencies, Long Island – 15 agencies, Northeast – 11 agencies, Southern Tier – 8 agencies, Western NY – 7 agencies.

economic landscape. Homeowners continue to need direct assistance to work with their lenders to get a loan modification or other workout. Federal programs, however, that provided streamlined assistance to homeowners under the Obama administration have gone away and individual cases take longer to resolve. Default rates, as measured by the 90 day pre-foreclosure filing notice (NY RPAPL sec. 1304) filings with the NYS Department of Financial Services, are up from last year. Network partners also report an uptick in foreclosures of senior homeowners with reverse mortgages, as well as an increase in tax foreclosures. The bottom line is that intake numbers remain steady across the state and though we believe we assist a majority of homeowners in New York State, the need still exceeds available services. No one doing this work is sitting idle yet, unfortunately.

We have also seen the changing landscape of our communities as a result of the foreclosure crisis over the last ten years, and a change – in part for the better, and in part for the worse – in the economies of families. The network providers are located in communities, they are on the ground working every day not just with homeowners but with neighbors living next to the many vacant and abandoned buildings left in the wake of the crisis. The solutions for homeowners and communities are complex and go deeper than just providing housing counselling and legal services to individual homeowners. To address the ongoing challenges in a systemic and strategic manner, the network needs to expand its work to more comprehensively preserve and foster homeownership and work in conjunction with related HCR programs.

Therefore, the network proposes a new program to be created at HCR called Communities First and seeks \$20 million in funding. In addition to direct housing counselling and legal services, Communities First will provide funding to agencies to collaborate with HCR's Community Restoration Fund, with land trusts and with municipalities including helping to enforce of the Zombie Property Law of 2016. Communities First will ensure access to assistance with mortgage default, reverse mortgage foreclosure, property tax foreclosure, and utility delinquency will continue for homeowners in every county of the state. Communities First will help revitalize neighborhoods by providing homebuyer education, repair program assistance, income stabilization, eviction prevention and scam prevention services, all with a goal of creating a regionalized, holistic approach to this work that will build on and amplify the good work that has been done via the HOPP network and HCR programs to date.

The Cascading Impact on State Laws and Programs If Funding is Not Provided

Since 2008, New York State has passed and implemented several laws and programs which include consumer protections for homeowners in default and foreclosure, rights for tenants living in foreclosed properties, and tools for municipalities and communities to deal with vacant and abandoned buildings and zombie properties. Some of these laws and programs are predicated on the existence of housing counseling and legal services being available to homeowners in every county of the state; all certainly depend on the network. If funding is not provided for Communities First, it is not just individual homeowners who will be impacted – courts, municipalities and counties, HCR, DFS and anyone wanting to refer a distressed homeowner for assistance, mortgage lenders and services - will all be deeply impacted, as well. Following is a description of the dozen New York State laws and programs and their interplay with the network:

1. **90 Day Pre-Foreclosure Filing Notices (RPAPL sec. 1304)** - Mortgage servicers are required to send a notice to homeowners at least 90 days prior to filing a foreclosure complaint. The notice language is prescribed in law and alerts homeowners of the seriousness of the default and provides resources. The servicer must attach a list of at least five non-profit housing counseling agencies serving the geographic region of the homeowner.

- The New York State Department of Financial Services (DFS) is mandated to maintain the statewide list of counseling agencies. The list is comprised almost entirely of network programs. The notice is a primary way homeowners find assistance, avoid scams and avoid foreclosure (NYS 90 day pre-foreclosure filing notice rates are higher than foreclosure filing rates).

- 2. **Settlement Conferences (CPLR 3408)** – A mandatory settlement conference must be scheduled by the court within sixty days of the filing of the affidavit of service. The purpose of the settlement conference is to bring the parties together to engage in good faith negotiations to find an alternative resolution to foreclosure if possible.
 - Network services are integral to the settlement conference process. Courts have developed systems to connect homeowners appearing pro se with services including having network providers available in the courthouse on settlement conference days to provide immediate assistance, providing local information on network services to homeowners, and inviting providers to give informational sessions to homeowners at the first settlement conference.
 - Recent amendments in 2016 to the settlement conference law provide defendants an additional opportunity to answer the complaint and avert a default judgment. Network legal services providers have been partnering with the courts and staffing settlement conference calendars to assist homeowners to ensure that their rights are preserved.

- 3. **Consumer Protections Extended to Reverse Mortgages (RPAPL sec. 1304.1-A, 1304.6(b)(2); CPLR 3408)** – In 2018, the Governor and Legislature extended the foreclosure mandatory settlement conference protections to seniors with reverse mortgage loans, as well as the 90 day pre-foreclosure notice, with a specialized reverse mortgage notice tailored to the needs of seniors at risk of foreclosure.
 - Network providers have seen a steady increase in homeowners seeking foreclosure assistance for reverse mortgages. Seniors are especially vulnerable to the scammers preying upon distressed homeowners. The recent protections for seniors with reverse mortgages will be hollow if they receive pre-foreclosure notices directing them to service providers who are no longer funded to assist them and if they lack access to legal representation during the judicial foreclosure process.

- 4. **New York Homeowner Bill of Rights (RPAPL sec. 1303.3-a)** – DFS publishes a Consumer Bill of Rights that must be provided by the courts to foreclosure defendants at the first mandatory settlement conference. The bill of rights sets forth the rights and responsibilities of parties in foreclosure proceedings and warns homeowners about foreclosure rescue scams.
 - The Homeowner Bill of Rights states that free legal services are available and refers homeowners to the DFS “Consumers, Mortgage and Foreclosure” webpage, which in turn refers homeowners to network legal services organizations in the network.

- 5. **Foreclosure Rescue Scam Prevention** – New York’s Distressed Property Consultant Law (RPL sec. 265-b) sets guidelines for those providing loan modification assistance for a fee including prohibiting payment of any fees until all services are completed. The “Help for Homeowners in Foreclosure” Notice (RPAPL sec. 1303) requires the foreclosing party to send a prescribed notice to homeowners along with the summons and complaint warning about scams and referring homeowners to DFS’s website and assistance from the network’s non-profit organizations.

- On its “Help for Homeowners” webpage, the NYS OAG website advises homeowners to contact a housing counselor and seek legal assistance if they are in default and foreclosure, and provides referrals to network partners.
 - The network partners comprise the referrals from these state agencies and are the strongest front against foreclosure rescue scams proliferating throughout the state.
6. ***DFS Business Conduct Rule for Servicing Mortgage Loans (Part 419 of the Superintendent’s Regulations)*** – Established in 2010, the rule sets forth standards of prescribed and prohibited behavior for mortgage servicing in New York State and provides guidance to courts.
 - Network partners are the main enforcers of the regulation, routinely raising violations with the courts and demanding compliance by mortgage servicers.
 7. ***Tenants Rights to Notice and Holdover (RPAPL secs. 1303, 1305, 1307)*** – Mortgage servicers must provide tenants in foreclosed properties a notice at the time the foreclosure is filed, and when completed to inform tenants of the right to remain in the property for up to ninety days.
 - Network partners often are the only source of information and counseling to tenants regarding these legal rights.
 8. ***Mortgage Assistance Program (MAP)*** - Through seed money from OAG settlements with banks, the Center for New York City Neighborhoods provides zero percent interest rate loans to homeowners to cure tax arrears, mortgage arrears, or get a loan modification.
 - MAP depends on network partners to screen, counsel, and submit loan applications and accompanying documents for homeowners.
 9. ***Homeowner Hotline (1-855-HOME-456)*** – The Center for New York City Neighborhoods staffs a statewide hotline for homeowners in default and foreclosure that triages calls and provides warm transfers for homeowners to the appropriate network housing counseling or legal services program servicing the homeowner’s area.
 10. ***The Community Restoration Fund (CRF)*** – The state provided funding to HCR to purchase discounted pools of defaulted residential mortgage loans in New York State.
 - HCR depends on network partners located in the communities of the mortgage loans to conduct outreach to borrowers and facilitate modifications with HCR where possible, and to determine whether properties are vacant and abandoned.
 11. ***Zombie and Vacant Properties Remediation and Prevention for Municipalities (RPAPL sec. 1308)*** – 76 municipalities across New York State received funding through LISC from an OAG bank settlement agreement to address housing vacancy and blight, with an emphasis on “zombie” property prevention and enforcement of the New York State Abandoned Property Neighborhood Relief Act of 2016.
 - Many municipalities subcontract with network partners to assist their work; most if not all municipalities depend on the services provided to homeowners as a piece of their neighborhood preservation efforts.
 - Network partners are keenly aware of zombie properties in their communities and address through various strategies independently and with community stakeholders.
 12. ***Land Banks*** – Land banks were created in New York State in 2012 and there are now 25 across the state working to proactively intervene and take control of abandoned properties.

- Network partners work with land banks in many areas to identify properties, prepare individuals to become buyers for properties, determine best solutions for properties, and address neighborhood blight.

Conclusion

Ten years ago, New York State started down its path to become the best in the nation for protecting homeowners in default and foreclosure. The first laws put in place were providing prescribed pre-foreclosure notices to homeowners and mandating settlement conferences for all residential home loans which immediately reduced the default rate in foreclosure cases from 90 percent to around 10 percent. Simultaneously, HCR started its funding for direct services to homeowners. Many laws and programs have been put in place to address new aspects of the problem – scammers, reverse mortgage defaults, vacant and abandoned homes, zombie properties and more.

With approximately 460 folks employed under HOPP statewide, we have the strongest network of housing counseling and legal services programs working together for homeowners in the country. Most importantly, we have helped over 100,000 New York families either remain in their homes or find a soft landing. It has been a decade of building capacity, institutional knowledge, networks, and systems within local courts and communities. All of that investment will be lost if further funding is not provided.

Thank you once again for the opportunity to testify today and again, we urge you to provide \$20 million in funding to Communities First.

For more information contact:

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