

Testimony by Brooklyn Bar Association Volunteer Lawyers Project, Inc.

Presented before the Joint Legislative Hearing

on the Crisis Facing Brooklyn Homeowners

March 15, 2019

Introduction

My name is Sarah Filcher, and I'm here today with my colleague, Peter White. Over the course of my legal career, I have personally worked on or examined over 1,000 residential foreclosure cases. Currently, I am serving as a Senior Staff Attorney, Foreclosure, at the Brooklyn Bar Association Volunteer Lawyers Project ("VLP"). The VLP is a non-profit legal service provider that focuses exclusively on serving low-income residents of Brooklyn facing a variety of civil legal issues, including foreclosure prevention. The VLP is also a proud member of the Communities First Coalition.

Thank you for the opportunity to offer comments on the current housing crisis as it affects Brooklyn homeowners. My remarks today will briefly focus on three issues of concern facing our clients: ensuring ongoing accessibility to consumer protections, assisting older adults to prevent financial fraud, and preserving affordable housing across the borough.

Trained Legal Advocates and Housing Counselors ensure City, State, and Federal Consumer Protections are Accessible to all Homeowners.

New York is a judicial foreclosure state, meaning homeowners facing foreclosure are sued in court. As a result, their foreclosure status is an easily accessible public record. Most of my clients have already received numerous unwanted phone calls and solicitations by opportunistic swindlers before I have ever meet them. The phone calls are often threatening and involve blatant lies about the status of their case. For example, a scammer will tell the frightened homeowners that their home will be sold at auction next week if the homeowners fail to hire the scammer or transfer the deed to them. Some of these scammers are even brazen enough to show up at a homeowners' doorstep.

Thankfully, over the past decade, New York State has enacted a number of consumer protections to help homeowners navigate the foreclosure path. Most notably, pre-foreclosure notifications inform homeowners of their rights prior to being sued and post-foreclosure settlement conferences allow homeowners to negotiate with a representative from the bank immediately at the outset of the lawsuit. The State of New York Unified Court System recognizes the need for seasoned legal advocates to accompany homeowners to court, "[t]he settlement conference process affords most homeowners the best opportunity to negotiate home-saving solutions like loan modifications, and it is vital that homeowners have expert assistance during this process."¹

¹2018 Report of the Chief Administrator of the Courts on the Status of Foreclosure Cases, available at <http://ww2.nycourts.gov/sites/default/files/document/files/2018-12/18_Foreclosure-Annual_Report.pdf>.

Given the recent end to popular and effective homeowner assistance programs, especially the New York State Mortgage Assistance Program “NYS-MAP” loans² and Home Affordable Modification Program (“HAMP”) loan³ modifications, the need for skilled housing advocates will only increase. Funding for Communities First is required to ensure that all homeowners, regardless of income, are advised of and afforded the benefits of consumer protections at the city, state, and federal levels. Brooklyn cannot afford to lose or even reverse the progress that has been made since the Great Recession.

Older Adults remain particularly Vulnerable to Fraud and Financial Exploitation.

You may be surprised to learn how many older adults are at risk of requiring foreclosure prevention services. Nationwide, approximately 38 percent of households headed by a person aged 65-74 are carrying debt secured by their primary residence.⁴ Approximately 26 percent of households headed by a person aged 75 years or older are carrying debt secured by their primary residence.⁵ These figures are expected to continue to rise as the baby boomer generation ages.⁶

Locally, aging in place is becoming an even greater challenge for older adults in Brooklyn. As the price of real estate has skyrocketed, older adults with newfound increased equity are especially vulnerable to becoming targets of deed theft, real estate scams, and/or predatory lending in the form of reverse mortgages. Older adult homeowners can find themselves in foreclosure due to defaulting on a traditional mortgage, defaulting on a reverse mortgage, or becoming delinquent on a property tax or water bill. I have found that reverse mortgage foreclosures are far more confusing for homeowners to navigate than traditional mortgages. I suspect this is because there are more ways to default on a reverse mortgage than a traditional mortgage. The fine print truly matters—sometimes defaulting on a reverse mortgage is as simple as forgetting to renew an annual homeowners’ insurance policy. Moreover, we often meet widows or widowers who have the added challenging of grieving a deceased spouse while facing prompt foreclosure on the home they made with the most important person in their life.

A critical asset trained legal advocates and housing counselors can offer their older adult clients is access to institutions and essential resources. For example, the New York Foundation for Senior Citizens has several free programs that would benefit older adult homeowners in Brooklyn, such as its Home Safety Audits service to check and repair immediate safety hazards in the home. Sadly, many of our clients have never heard of such programs prior to meeting with the VLP. In addition to foreclosure prevention, trained housing advocates can assist older adults in managing their property tax liabilities, budgeting for retirement, monitoring the deed to their home, and avoiding various financial scams. Ensuring funding for Communities First will

²NYS-MAP provides homeowners a 0% interest mortgage loan up to \$80,000 for eligible New York Homeowners at risk of foreclosure. Due to the limited availability of remaining funds, NYS-MAP stopped accepting new loan applications after February 15, 2019.

³<https://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/mha/Pages/hamp.aspx>.

⁴2016 Federal Reserve System Survey of Consumer Finances, Table 13, available at <https://www.federalreserve.gov/econres/scfindex.htm>.

⁵*Id.*

⁶<https://www.nytimes.com/2017/06/02/business/retirement/mortgages-for-older-people-retirement.html>.

empower the older adults who built the borough into what we know and love today to be able to age in place with safety and dignity.

Funding to Fight Foreclosure is Funding to Preserve Affordable Housing.

Creating and preserving affordable housing in New York City will require policy solutions for renters and homeowners alike. According to Zumper (an online apartment finder service) the median price to rent a one-bedroom apartment in Williamsburg was \$2,890 as of the spring of 2018.⁷ Typically, my clients pay less than that for their monthly mortgage payment (including taxes and insurance). Additionally, many of my clients rent a portion of their home at below-market rates, both allowing another family to access affordable housing and enabling my clients to pay their mortgage. My clients are not unique in choosing to charge lower rates.⁸

Unfortunately, New York City's homeownership rate has not yet recovered to its 2008 levels.⁹ Moreover, the loss in homeownership was not felt in the same way. The Great Recession disproportionately affected black and Hispanic families: nationwide, half of the collective wealth of black families was lost in the Great Recession while Latinx families lost 67 percent.¹⁰ Even now, only 27% of New York City homeowners live in Brooklyn.¹¹ This is a pivotal moment to be reflecting on how to better assist homeowners, not ending vital services. Providing funding for Communities First is making a commitment to create and preserve affordable housing both in New York City and New York State.

Communities First Coalition Members Save Homes.

Ms. C found the VLP in early 2018. She had fallen behind on her mortgage due to a combination of health issues and job loss. After her medical needs were resolved, she struggled to quickly regain full-time employment, and found herself in foreclosure. Despite Ms. C's uncertain employment status, the VLP decided to take her case because she had lived in her home for over 35 years and we believed she would have difficulties navigating the case on her own without a stable income. That suspicion later proved to be correct. Through legal advocacy in the foreclosure matter and financial counseling conducted at the VLP office, the VLP coached Ms. C both in and out of the courtroom. She eventually found a full-time position with a company she enjoys. Unfortunately, she was still denied for a loan modification due to a strict loan servicing guideline, despite having found stable employment once again. However, the VLP and Ms. C refused to give up. The VLP assisted Ms. C in applying for assistance through NYS-MAP. She was approved, and her home was saved just in time for Thanksgiving.

Without NYS-MAP and access to free legal services, Ms. C would have lost her home. We need funding for Communities First to ensure that more Brooklyn families, especially those with seniors, have an equal opportunity to save their homes.

⁷<<https://ny.curbed.com/2018/4/24/17276238/nyc-manhattan-brooklyn-the-bronx-one-bedroom-rent-prices-comparison>>.

⁸<<https://cnycn.org/supporting-homeowners-can-protect-affordable-rents-nyc/>>.

⁹<https://s28299.pcdn.co/wp-content/uploads/2018/10/CNY002-AH-Summit-Report_v7_FINAL_online.pdf>.

¹⁰*Id.*

¹¹*Id.*

Conclusion

Thousands of New York families continue to rely on foreclosure prevention housing counselors and legal service providers for assistance. We appreciate the opportunity to testify before the Joint Legislative Hearing on the Crisis Facing Brooklyn Homeowners. We are asking the State to include \$20 million in the 2019-2020 Budget for Communities First to continue funding critical services to homeowners and communities throughout the state. We look forward to working with you and your committees to continue to fight foreclosures and preserve affordable homeownership in Brooklyn. My colleague and I are happy to answer any questions.

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About the BVLP and the Communities First Coalition:

Brooklyn Bar Association Volunteer Lawyers Project, Inc.: Since 1990, the Brooklyn Bar Association Volunteer Lawyers Project, Inc. (VLP) has worked to ensure that the legal system is accessible to residents of Brooklyn who, because of special needs or the overwhelming burdens of poverty, would not otherwise have their rights protected or their voices heard. The VLP is an independent 501(c)(3) non-profit incorporated under the laws of the State of New York and governed by an independent 16-member Board of Directors.

The VLP provides direct civil legal services to residents of Brooklyn, borough-wide, living at or below 200% of the Federal Poverty Guidelines, assisting them to overcome life-altering legal challenges, including family breakdowns, devastating debt, immigration status, threatened homelessness, and ongoing predatory practices that overwhelmingly target the poor, older adults, and individuals with disabilities. Recognizing that the pro bono commitment of the private bar can be most effective and efficient in accessing justice for the poor, the VLP trains and supervises volunteer attorneys, law students and other legal professionals who, with the support of the VLP, provide high quality, compassionate direct legal representation, advice and counsel and community education throughout Brooklyn.

The legal needs of the poor and the working poor continue to rise in both volume and intensity. Since the financial crisis of 2008 and continuing to the present, severe economic realities have created an immediate and urgent need for legal assistance to stem what is often a downward spiral into domestic disarray and violence, homelessness and unmanageable despair. Pro bono attorneys, trained and supervised by the VLP, confront the devastating life issues created by poverty and help our clients obtain and retain critical necessities and regain dignity and control over their lives. The VLP's ongoing programs address:

- Family stability and integrity - custody, visitation, child support, and uncontested divorce
- Foreclosure intervention and prevention, including Chapter 13 bankruptcies
- Individual (Chapter 7) bankruptcies and consumer debt
- Article 17A Guardianship petitions in Surrogate's Court
- Elder law
- Community legal education through the National Grid Foundation Senior Legal Education and Assistance Program and Foreclosure Prevention Education and Financial Literacy
- Immigration issues and partnership programs for naturalization and pathways to citizenship

In addition to providing both direct representation and advice and counsel to individuals and families in the above practice areas, the VLP staffs and supervises several courthouse and pro se clinics for unrepresented litigants and petitioners.

The VLP's foreclosure prevention program strives to build and preserve economic security and independence among low-income individuals and families by providing Brooklyn homeowners with holistic foreclosure legal assistance. The VLP provides comprehensive foreclosure defense, with staff and pro bono attorneys assisting in negotiating loan modifications with the bank and litigating a homeowner's case through trial. VLP direct representation foreclosure clients are offered the opportunity to receive free financial literacy education to bolster their future economic independence through newfound financial skills. The VLP staff trains, recruits and supervises pro bono attorneys handling VLP foreclosure matters to ensure successful outcomes. Additionally, the VLP staffs and manages four legal clinics and provides valuable advice and counsel to pro se defendants in need of brief assistance. The VLP staff works collaboratively on managing the substantial volume of walk-in clients, telephone inquiries, clinic attendees, and full-representation cases. The VLP assists clients in-house in both English and Spanish. For all other languages, every effort to place homeowners with volunteer attorneys who speak their primary language. The VLP staff regularly attends foreclosure trainings and meetings with local housing advocates not only to stay current on best practices and emerging trends, but also to strive to serve as thought-leaders among nonprofit legal service providers.

For more information about the VLP, please visit <http://brooklynvlp.org>.

Communities First: Communities First is a statewide coalition of 167 advocacy organizations, businesses and labor unions that is requesting the Governor include \$20 million in funding for vital housing counseling and legal services programs to assist New York families facing foreclosure. The network includes 89 nonprofit members, and the VLP is proud to be a nonprofit member of the Communities First Coalition. The Communities First Coalition seeks build on New York's existing network of foreclosure prevention services to preserve homeownership and prevent homelessness and rejuvenate neighborhoods through affordable housing. The foreclosure prevention services network has already helped over 100,000 New York Homeowners avoid being displaced because of foreclosure, scams, or mortgage distress.

For more information about Communities First, please visit <https://www.nycommunitiesfirst.org>.

The foreclosure prevention services network: The foreclosure prevention services network was established in 2008 with \$25 million in state general funds to NYS Homes and Community Renewal ("HCR"). In 2009, the state directed \$21.825 million more to support foreclosure prevention services through December 2011. In 2012, the program moved to the NYS Office of the Attorney General after \$60 million was committed to fund foreclosure prevention services for three years, at a rate of \$20 million per year. The funding was provided by a national mortgage servicing settlement. Thanks to subsequent bank settlements, the Homeowner Protection Program ("HOPP") was not only created but also extended twice. HOPP continues to operate at a cost of approximately \$20 million per year, and is now in its seventh and final year, with funding scheduled to end on March 31, 2019.