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Joint Legislative Public Hearings on 2017-2018 Executive Budget Proposal:

Housing

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Introduction

Thank you for the opportunity to testify today. My name is Kirsten Keefe and I am Senior Attorney for Empire Justice Center. We are a statewide legal services organization with offices in Albany, Rochester, Westchester and Central Islip (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 foreclosure prevention, public benefits, domestic violence and civil rights.

Empire Justice Center's budget priorities highlight ways for New York to uphold our shared values of liberty, equity and opportunity. Our testimony today will address ways in which New York has the opportunity to make strategic investments that will have a positive effect on the lives of New Yorkers, as well as a very practical economic and societal benefit for communities and our state.

Protect Homeowners by Preserving the Foreclosure Prevention Services Network

History of the Program

New York State's Foreclosure Prevention Services Network consists of 94 non-profit service providers statewide, including 63 housing counseling agencies and 31 legal services providers. The majority of these agencies have been providing direct assistance to homeowners in default and foreclosure since around 2008, when New York started the Network and provided funding through New York State Homes and Community Renewal (then called the New York State Division of Housing and Community Renewal) in response to the foreclosure crisis. Between 2008 and 2011, New York State provided approximately $50 million in funding for these services.

In 2012, the program moved to the Office of the Attorney General (OAG) after the agency was involved in the multi-million dollar National Mortgage Servicing Settlement. The OAG committed $20 million in annual funding for three years starting October 1, 2012. The OAG then committed an additional $40 million from proceeds they were allocated to spend from a 2013 settlement with Chase Bank. The program is in its fifth and final year, and will end September 30, 2017, with no hope for future settlement dollars being allocated directly by the OAG because of the change in state rules that now require settlement dollars to escheat to the state budget. The program needs a $30 million commitment to go to New York State Homes and Community Renewal (HCR) to revitalize its Foreclosure Prevention Services Program, including $10 million for the 2017-18 fiscal budget to cover services starting October 1, 2017 through March 31 2018, and $20 million in stable funding for the following fiscal year. Without funding, these services will end statewide.

Ongoing Foreclosure Crisis

Unfortunately, the foreclosure crisis continues in New York State and the need is still great. According to the 2016 Report from the State of New York Unified Court System to the Legislature regarding settlement conferences, there are 72,000 pending foreclosure cases in our courts, including nearly 34,000 new filings last year. Foreclosure filings comprise an alarming 26% of our supreme court's civil docket. As stated in that report, "These cases are of critical importance to the parties involved and have an undeniable economic impact on the State of New York and the vibrancy of our diverse communities." (2016 Report of the Chief Administrator of the Courts Pursuant to Chapter 507 of the Laws of 2009, November 2016, at 3.)

Delinquency numbers from the Department of Financial Services (DFS) are far higher. In 2016, there were a total of 200,788 filings made to DFS. These numbers come from the monthly filings required by mortgage servicers after they send homeowners the ninety-day pre-foreclosure filing notice pursuant to PRAPL 1304. (The ninety days refers to the number of days the mortgage servicers must wait after sending the notice before they can file a foreclosure, not the number of days the homeowner is delinquent.) This represents more than 16,000 filings per month. An important side note regarding these notices is that servicers are required by statute to provide a listing of at least five agencies in the geographic region of the homeowner along with the notices. DFS is mandated to provide this list which is primarily comprised of agencies funded solely through this Network.

Success of the Program, Services Provided and Employment Impact

There is no question the Network of providers is making a dent. Last year, over 27,000 families were served, and since 2012, almost 72,000 families have been helped. Over 26,000 families have received modifications with an average monthly savings per family of $410, or $4,920 annually. We can't say why, exactly, there is such a huge contrast between the number of delinquency filings and foreclosure filings in the past year, but one explanation is that families get in to see housing counselors early enough in the process and the counselors are able to help the homeowner resolve the issue and avoid foreclosure altogether. There has been a strong emphasis on consumer education within the Network, and hopefully these numbers evidence that these early-intervention efforts are working.

Through the Foreclosure Prevention Services Network, help is available to homeowners in every county of New York State. Homeowners come to these agencies through referrals from local government agencies, elected officials' offices, other non-profit organizations in the community, by word-of-mouth referrals, by referrals from the court or because of the ninety-day pre-foreclosure filing notice referenced above. The program has also funded a statewide homeowner hotline which has received almost 32,000 calls since 2013. (Homeowners who call the hotline are triaged and referred to the appropriate housing counseling or legal services agency in their area.) These non-profit agencies are well-established and well-known in the communities and often homeowners find them after attempts to work directly with their mortgage services on their own have frustrated them or failed.

The services provided by these agencies are critical for preserving homeownership and preventing properties from becoming vacant and abandoned eyesores in our communities. It is a well-oiled Network, with housing counseling working in conjunction with the legal services providers in their area. Incredibly efficient and effective systems have been developed, provide basic, though important counseling to homeowners for whom continued homeownership is not an option, and more in-depth counseling and legal representation for homeowners who can afford to remain in their homes. These agencies assess homeowners for continued homeownership viability, provide budget counseling, collect documents and compile loss-mitigation applications, negotiate with mortgage servicers to obtain loan modifications, and represent homeowners in our court-mandated foreclosure settlement conferences. One of the greatest services they provide is to explain the complicated processes and their rights to homeowners, and ensure that these rights are not trampled, and for homeowners who can no longer afford their homes, provide what is termed "soft-landings" such as assisting the homeowner in selling the home and establishing a time frame and game-plan for finding alternative housing.

The Network supports 545 jobs statewide. Since there is no other source of funding for these services, loss of this funding will not only mean a loss of these services across New York, but it will also mean significant job loss. These are professional-level jobs, for which the housing counselors and legal services providers have undergone extensive training. On-going training and technical assistance has been an important component of the program. Housing counselors must be certified through a training program provided by NeighborWorks America, and they regularly attend monthly webinars and participate in conference calls and listservs providing updates.

Similarly, the lawyers in the Network have received specialized training in foreclosure prevention and engage in ongoing training. This is an incredibly complicated area of the law with constantly evolving rules, best practices and programs. It is not an area of the law that one can dabble in and thus, despite major efforts to train the private bar, very few private attorneys are willing to take these cases and none in significant numbers. The Office of Court Administration reported in its October 2016 report to the Legislature that 62% of homeowners are represented in the settlement conferences. This is in stark contrast to pre-2008, when more than 90% of foreclosure cases ended in a default judgment against the homeowner. Without representation in court, homeowners are often overwhelmed and can get taken advantage of by lenders, who are always represented by legal counsel. In addition, representation of homeowners has led to much greater efficiency in the courts, which would be stymied by an onslaught of pro se homeowners. In the more densely populated parts of the state, such as New York City, Long Island, and the major cities upstate, courts have established settlement conference days with regular attendance by housing counselors and lawyers in the Network that provide immediate, on-site assistance to homeowners.

Economic Impact of Foreclosure and Zombie Properties

In terms of economic impact on New York State, in 2011, Empire Justice Center conducted an in-depth study and estimated that every foreclosure averted saves the state on average

$41,134 in direct costs (if indirect costs are included, the average savings goes up to $186,695). Using just the average for direct costs, based on the 26,351 modifications obtained through the Foreclosure Prevention Services Network since 2012, New York State has saved $1.084 billion.

Foreclosure prevention benefits surrounding homeowners and communities. Foreclosures are generally considered to decrease the property values of surrounding homes by 1%, and a total neighborhood loss of $70,000. Analysis done by the Center for New York City Neighborhoods found that for every foreclosure averted, approximately $260,000 in equity is also saved for all homes within 750 feet — that's the aggregate property value that would have vanished had the homeowner gone into foreclosure. This figure varies statewide depending on property values and home density: for New York City, the ripple effect is $740,000, on Long Island it is $280,000, while in the Capital Region it is $34,000. Preventing foreclosures ensures the benefits of housing stability for many low and moderate income families and seniors who would struggle to afford rental units at current market rates. This is true for homeowners as well their renters when there is more than one unit in the home. Preventing foreclosures avoids disruption to school and community ties for children.

Counties across New York State are struggling to deal with vacant and abandoned properties, so much so that the issue was voted a priority by the New York Conference of Mayors this year. When families are stabilized, it prevents homes from becoming vacant and abandoned, attracting blight, crime and unsafe health conditions for neighbors. While $27,000 is a common number cited as the cost of a vacant property to a local government, a Schenectady official estimated that a vacant and abandoned property can cost the city $65,000 a year. Preventing foreclosures ensures continued payment of property taxes and other utilities, maintaining homes in good repair and keeping sidewalks and driveways shoveled. It also avoids additional fire, police, housing authority and other costs for local governments.

Emerging Trends and Leveraging Settlement Dollars

There are several emerging trends in foreclosures and the mortgage servicing world that make the continuation of services as critical as ever. First, advocates are seeing a steep uptick in the number of reverse mortgage foreclosures. This is attributed to a number of factors including a rise in the number of these mortgages made over the past several years, and an increase in tricks and traps employed by lenders in the making as well as servicing of these mortgages. By definition, reverse mortgages impact a particularly vulnerable class of senior homeowners who have lived in their homes for years, if not decades. Governor Cuomo recognized this emerging issue in his Executive Budget by including language that would mandate settlement conferences for homeowners with reverse mortgages. Yet no funding was provided for assistance to and representation of these homeowners. For New York's judicial settlement conferences to be effective, it is imperative that homeowners have the assistance of professionals who can steer them through the systems to enable them to avoid foreclosure.

Another emerging trend is an increase in property tax foreclosures. Each county operates differently and again, it is extremely difficult for homeowners to go through these processes alone and succeed. No one wants to displace homeowners and it is especially shameful for families to lose their homes when it could have been avoided. The Center for New York City Neighborhoods runs a Statewide Mortgage Assistance Program (MAP) that provides 0% interest rate loans up to $40,000 that sit as liens on a homeowner's property until sold. These loans help homeowners cure arrears, get into loan modifications and pay past due property taxes. There is no other source of funding for this sort of assistance. MAP is currently being funded by up to $80 million in settlement dollars directly due to the state by Goldman Sachs to be paid out over the next three years. MAP depends on the Foreclosure Prevention Services Network, however, to disseminate these dollars. The direct services providers screen homeowners for eligibility and submit applications. They are a critical part of leveraging these settlement dollars for New York State. Without the Network, it is questionable whether we as a state will benefit from the full amount available through MAP.

Similarly, last year New York State established the Community Restoration Fund (CRF) within HCR with a dedication of $10 million in funding flowing from a bank settlement with Morgan Stanley. The goal is to purchase a pool of distressed mortgage notes in New York State from HUD that would otherwise be sold to a Wall Street private investor, and to modify, foreclose and sell when necessary, and rehabilitate the vacant and abandoned properties within the pool. In order to do this, HCR has already depended on the assistance of the Foreclosure Prevention Services Network in communities throughout New York State to go out and determine the status of properties. The expectation is that Network agencies will be instrumental in working with homeowners and connecting HCR to local revitalization services to reform the pool of loans. Without continued services, it is very uncertain how HCR will be able to achieve the goals set forth by the Legislature.

National trends are also impacting New York homeowners. The primary federal modification which streamlined loss mitigation efforts, the Home Affordable Modification Program (HAMP), ended in December 2016. This complicates the modification process for homeowners as they now have to navigate the individualized programs of each lender. Mortgage servicing standards adopted by the Consumer Financial Protection Bureau are at risk, as are all consumer protection statutes and regulations.

Recommendation

New York has done tremendous work in instilling protections for homeowners since 2008; arguably, the best in the country as we have set the national standard for foreclosure prevention. We've passed far-sighted legislation to ensure no home is illegally foreclosed upon and provided homeowners with a Network of professional housing counselors and legal services attorneys to preserve homeownership. Among the best of these protections have been the mandatory settlement conferences in judicial foreclosure cases, though these conferences work best only when a homeowner has assistance. To lose these services would break the stride and be a severe setback in in the protections we've provided to preserve homeownership.

By committing $30 million in funding ($10 million for the 2017-18 fiscal year and $20 million for the following fiscal year) to HCR for the Foreclosure Prevention Services Network, the State can leverage the successes of an established Network of service providers, as well as other programs such as MAP and the CRF, and refocus it so that it continues to mitigate home mortgage and tax foreclosures, and also becomes a direct response to emerging and growing problems like reverse mortgage defaults and zombie properties.

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