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## **New York State Legislature 2021 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, Yonkers 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. We also work on tax foreclosure, deed theft and foreclosure rescue scams, and neighborhood blight issues. This testimony focuses on the need for continued funding for the New York State Office of the Attorney General's Homeowner Protection Program (HOPP) - New York's network of 88 housing counseling and legal services programs that have been keeping homeowners in their homes since 2012, and prior to that through a program funded through New York State Homes and Community Renewal. (A history of HOPP and sources of funding over the years is attached as "Addendum A.")

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.<sup>1</sup> **Since 2012, the New York State Office of the Attorney General (OAG) Homeowner Protection Program (HOPP) network of 88 housing counseling and legal services programs have helped well over 115,000 families statewide and save homes in around 34 percent of those cases by loan modification. The percentage would be even higher if we were to factor in homes saved through reinstatement, litigation or other loss mitigation option.**<sup>2</sup>

In prior years, HOPP contracts were on an April 1 through March 31 cycle. Because the OAG issued a new Request for Applications process last spring, the start day of new contracts was pushed to July 16, 2020. Funding this year will run out on July 15, 2021. HOPP services are the only services in communities throughout New York State focused on helping homeowners in distress and there simply is no other dedicated funding source for these services. If stable funding of \$20 million is not provided in this year's budget from the State for HOPP, the vast majority of services will end at the very time the

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<sup>1</sup> 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.").

<sup>2</sup> 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.

new COVID foreclosure crisis begins this summer. Without assistance, the rate of homes lost in foreclosure will likely climb back up to over 90 percent.

### **New York State’s Current Delinquency Rate is Three Times Higher Than During the Great Recession**

The best publicly available data regarding how New York State is doing comes from the U.S. Census Household Pulse Survey. This data is reported in 13 day increments, called a “Week.” The data started with “Week 1” (April 23 – May 5, 2020), but reporting changed with Week 13 (Aug. 8-31, 2020) and runs now through Week 22 (Jan 6-18, 2021). This summary focuses on this last six month time period, consisting of Weeks 13 through 22 (August 8, 2020 through January 18, 2021).

During the last six months, in New York State, the average number of New York State homes reported with mortgages for a Week was 4,043,390. **The average number of those households delinquent on their mortgage payments for a “Week” was a staggering 533,313, representing 13% of households.** This number is an incredible historical high. Following the Great Recession, the year New York first invested \$25 million in foreclosure prevention services through the original program through NYS Homes and Community Renewal, the delinquency rate was 3.2%. The highest rate we hit in that period was 3.8% set in January 2009.<sup>3</sup> The U.S. Census Household Pulse Survey also tracks confidence in ability to pay next month’s mortgage payment. In the most recent reporting, for Week 22, **10% of New Yorkers reported “no confidence” and an additional 10% reported “slight confidence,”** representing a combined total of 782,266 New York households. Needless to say, we are in dire straits.

#### ***Impact on Homeowners and Communities of Color***

The U.S. Census Household Pulse Survey data tracks delinquencies and confidence according to homeowner race and ethnicity (among several other factors). Following are the past six-month average for a reporting period showing the percentage of homeowners by race and ethnicity who reported delinquency on their mortgage over the past six months:

<b>Race or Ethnicity</b>	<b>Weekly Average over last 6 months of homeowners delinquent on their mortgage</b>	<b>No or Slight Confidence in Ability to Make Next Month Payment (As of Jan. 18, 2021)</b>
Hispanic or Latino	23.29%	25%
White	9.87%	14%
Black	16.95%	32%
Asian	18.33%	38%
Two plus races	11.79%	15%

Homeownership has always been a civil rights issue. Empire Justice mapped in the early 2000’s the targeted impact of predatory and subprime mortgage lending on neighborhoods of color on Long Island in particular, as well as in other parts of New York State. The foreclosure crisis that followed the subprime boon and bust logically and tragically disproportionately impact these same communities. In the past year, much light has been shown on the disparate

<sup>3</sup> Consumer Financial Protection Bureau (CFPB), Percentage of mortgages 30–89 days delinquent: January 2008–June 2020, Available at <https://www.consumerfinance.gov/data-research/mortgage-performance-trends/mortgages-30-89-days-delinquent/#mp-line-chart-container>. Year to year comparison:

Jan. 2008 – 3.2%	Jan. 2012 – 3.5%	Jan. 2018 – 2.4%
<b>Jan. 2009 – 3.8%</b>	Jan. 2014 – 3.0%	Jan. 2020 – 2.2%
Jan. 2010 – 3.6%	Jan. 2016 – 2.7%	

impact of a myriad of facets of the COVID-19 pandemic on black and brown communities. The U.S. Census data is unfortunately not surprising but most certainly evidences the issues of economic justice layered onto the delinquency crisis and the new foreclosure crisis New York will fall into once the moratorium is lifted.

Statewide, 43% of the families served by HOPP are households of color; in New York City alone, the percentage is 75%. HOPP has always been a program primarily serving lower-income homeowners throughout the State,<sup>4</sup> and one of the strongest stop-gaps for preserving wealth in low-income communities and communities of color.

### **Timing: Foreclosures are Predicted to Rise Just When Current HOPP Funding Runs Out**

The Governor and New York State Legislature strong actions at the end of 2020 put a foreclosure moratorium in place through April 2021. This law has brought welcomed and needed comfort to New York State renters and homeowners who would have faced loss of housing over the winter and while we are still in the midst of the pandemic and fears over COVID-19 infection. There is no significant monetary relief for homeowners to ultimately cure their defaults, and delinquencies continue to accrue that will have to be reckoned with at some point.

Thanks for federal programs plus a state law generally covering state bank owned mortgages, a big chunk of homeowners who are delinquent are in forbearance agreements with their mortgage servicers. The forbearance agreements will not last forever either, though, and while there are guidelines for how forbearances are to be addressed when the time comes, mostly for homeowners with federally backed mortgaged (FHA, and Fannie Mae and Freddie Mac loans), these programs are confusing and complicated, and in many instances will still mean a bill of some amount will come due for homeowners in the next year.

Once the state moratorium is lifted May 1, 2021, we expect to see mortgage servicers initiate default actions immediately, starting with the pre-foreclosure filing notice pursuant to NY RPAPL sec. 1304 that must be sent to New York homeowners with “home loans” at least ninety days before the filing of a complaint. That means that new filings will be eligible to be filed starting August 1, 2021, the point in time when we expect the foreclosure rise to really begin. Current HOPP funding runs out July 15, 2021. Advocates have been laser focused on outreach to get homeowners to seek their services during this time period because it is always better to start planning early, but the reality is, homeowners are focused on other emergencies while their housing is temporarily stable.<sup>5</sup>

New York homeowners in many ways are better off today than they were following the Great Recession because of the multiple consumer protections instilled in our foreclosure process by the Legislature in response to the crisis. In addition to the pre-foreclosure notices, New York has mandatory settlement conferences as part of the foreclosure process for home loans, there is a “Homeowner Bill of Rights” which includes a pamphlet to be provided by the court to the homeowner referring them to services, the New York State Department of Financial Services has promulgated strong business conduct

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<sup>4</sup> HOPP does not set income limits for services, though network providers may set their own internal guidelines. Given the nature of homeownership in NYS, even low-income homeowners often fall above income limits set by other legal services funding sources. HOPP has been the only source of funding available under which much legal services can be provided to homeowners.

<sup>5</sup> HOPP providers continue to work with many homeowners, primarily those who had foreclosures filed against them pre-COVID.

rules for mortgage servicing (Part 419), and we have strong watchdogs over the industry with the NYS OAG as well as DFS.

Among the strongest consumer protections, has been the network of HOPP service providers who are now integral to all the consumer protections listed above, and more. The RPAPL sec. 1304 notices must include a list of non-profit agencies for homeowners to go to for assistance in their geographic region, as must the “Homeowner Bill of Rights” pamphlets, which are the HOPP agencies. HOPP providers are ingrained in the settlement conference processes in every part of the state – whether it be a physical presence in the court on settlement conference days, providing clinics for homeowners who appear pro se, and/or ready to take immediate referrals from courts. During the pandemic, as the courts began scheduling “COVID conferences” in foreclosure cases, HOPP legal services providers have virtually staffed the conferences and provided “friend of the court” assistance to unrepresented defendants, and have advocated with the judiciary to ensure best practices. The protections set forth in NYS law would be rendered in huge part meaningless if HOPP services became unavailable.

In addition to the protections laid out above, New York has passed and implemented a number of laws and programs to protect homeownership and preserve our communities, such as programs addressing zombie properties, vacant and abandoned properties, deed theft and scams and others that depend on the services of the HOPP network. A full listing of these laws and programs is attached in “Addendum B,” “New York State Laws and Programs that Depending on HOPP Network Services,” illustrating the cascading impact if HOPP services were to go away.

### **HOPP Services Will be Critical in the Coming Year to Save Homes and Preserve Communities**

The housing counseling and legal services programs that make up the HOPP network are well-integrated with each other and work in coordination to provide efficient services to homeowners. Housing counseling agencies generally assist homeowners in default but not in foreclosure with budgeting, financial education and counseling, and working with mortgage services to get loan modifications or other loss mitigation solutions. Legal service providers assist homeowners through litigation, advising on filing answers to foreclosure complaints, leveling the playing field by providing representation in the settlement conferences where the lenders always have legal counsel, asserting the legal rights of reverse mortgage borrowers and all borrowers, and litigating more complex cases involving predatory loans, deed theft and other scams.

In the wake of COVID, a complicated patchwork of federal and state programs has been developed which homeowners cannot navigate on their own. No uniform program has been established; FHA, Fannie Mae & Freddie Mac, and conventional lenders are developing independent programs to work with homeowners behind because of COVID. New York State enacted its own law on forbearance programs for non-federally-backed loans. Accessing relief requires understanding the details of these various interventions and knowing who owns your loan and what program you may be eligible for. We expect new programs to develop which will require continued expertise to understand and implement. Homeowners need help to insure they can access relief and they need advocates to make sure lenders are complying with applicable federal or NY laws and regulations.

HOPP service providers also assist homeowners facing property tax foreclosure, seniors with reverse mortgages – a very vulnerable population often targeted by scams, and homeowners who have been scammed by “foreclosure rescue” companies or have been victim of a deed theft scam.

Homeowners facing all of these issues literally have no place else to turn for direct assistance in New York State.

In cases where homeownership cannot be preserved, the HOPP providers provide invaluable services. 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, affordable housing. Losing a home, usually the greatest financial asset of families, can be among the most devastating life events. The psychological and emotional impact can be tremendous for a family, not to mention the loss of supports and social networks that can occur when a home is lost. Perhaps more significant than anything, is the attention, counseling and education that is provided to homeowners while they go through one of the most stressful times in their life. Even if the home is not saved, New York homeowners should not go through the ordeal alone and need to understand why they are losing it, and have an action plan for next steps.

Homeownership and community stability is integral to New York's economy. A year ago, Empire Justice conducted an in-depth study of the impact of foreclosures on New York's economy. The findings are attached herein, in "Addendum C." Given the uncertainty and general lack of data from 2020, we are unable to update these figures but suffice it to say, given the considerably higher rate of mortgage delinquencies today versus a year ago (2.2% compared to 13%), the economic forecast is much graver.

### **HOPP – Seeking At Least \$20 Million in Funding to Continue 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 (58 of the 88 grantees).<sup>6</sup> 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 would have decreased by two-thirds if funding was not provided in the 2019-20 budget. In the Central New York region (comprised of eleven counties: Broome, Chenango, Cortland, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Oswego and Otsego) there would have been no services on the ground. Also very alarming - particularly because Long Island consistently has among the highest numbers of defaults and foreclosures and collectively has 25 percent of all default and foreclosure cases in New York State - Nassau and Suffolk counties would have seen 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 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 once 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 (DFS), were down by just 10 percent in 2019 from the prior year – and still an alarming estimated number of 226,839. Foreclosure filings were down by about the same amount.

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<sup>6</sup> Of the 58 organizations overseen by Empire Justice, 43 are housing counseling organizations and 15 are legal services. A regional breakdown is as follows: Central NY – 8 agencies, Hudson Valley – 10 agencies, Long Island – 14 agencies, Northeast – 11 agencies, Southern Tier – 8 agencies, Western NY – 7 agencies.

Interestingly, less than 10% of delinquencies result in a foreclosure filing across New York State. This low rate is directly attributable to the services provided particularly by the HOPP housing counseling agencies who provide early intervention and help thousands of homeowners every year avoid foreclosure. New York State mandates a notice be sent to homeowners by the mortgage services when they are delinquent referring the homeowner directly to housing counseling in their geographic region. Many clients come in to HOPP agencies as a result of this notice. If HOPP goes away, foreclosure rates will start to rise again.

HOPP partners also report an uptick in foreclosures of senior homeowners with reverse mortgages, as well as an increase in tax foreclosures. Deed theft and foreclosure rescue scams are also on the rise, as highlighted in recent media reports in New York City. If HOPP didn't exist, more desperate homeowners would turn to these "too good to be true but you want to believe" promises of folks offering to help them save their homes, and there will be very few if any services to turn to to seek redress. 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 decade, 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. HOPP is a comprehensive network fostering homeownership, working in conjunction with agencies such as HCR on homeownership initiatives, and is the watchdog identifying misconduct and bad actors for our state regulators.

### **HOPP Needs a Permanent Funding Source**

HOPP ran on leftover funding from settlements for several years. No stable funding source causes incredible hardship and problems for the non-profit agencies that make up the network. Even before the pandemic, though delinquency and foreclosure trends were decreasing, they never decreased by much and the numbers a year ago (pre-COVID) were not far from those New York experienced during the subprime lending boom and subsequent crisis. A higher rate of delinquency and foreclosures were the new economic norm even during our improving economy (again, a year ago). Middle class incomes have not kept up pace with rising costs, jobs are more insecure than they ever were, unexpected medical costs that can turn a family upside down happen more often than before. COVID has certainly exacerbated all of this, but the fact is that a family even untouched by COVID is more likely to have an unexpected event that could cause them to fall behind on their mortgage than a family twenty or thirty years ago.

New York State must acknowledge that we are not returning to the days when foreclosures were rare. Our state has invested an incredible amount into the well-oiled HOPP network which is the state program for distressed homeowners. HOPP has a proven track record and it is the number one reason why so many homeowners are able to remain in their homes even after they fall behind.

### **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 well over 100,000 New York families remain in their homes or find a soft landing. It has been a dozen years building capacity, institutional knowledge, networks, and systems within local courts and communities. The new mortgage delinquency crisis brings a host of new challenges New York will face, but we are well-poised with our programs and services to do the very best we can to prevent the highest number of homes from ultimately being lost. All of this investment will be lost, and more, if further funding is not provided.

Thank you once again for the opportunity to testify today and again, we urge you to provide at least \$20 million in continued funding to the Homeowner Protection Program (HOPP).

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## Addendum A

### History of the Homeowner Protection Program (HOPP) and New York's 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,<sup>7</sup> training and 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's Office of the Attorney General (OAG), in control of the settlement dollars, entered into 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.<sup>8</sup>

In 2019, HOPP was extended with funding through a re-appropriation of funding allocated to a different program as part of the 2015 MOU, following the OAG settlement between J.P. Morgan Securities LLC and the people of the state of New York.<sup>9</sup> Last year, \$10 million of this still unspent pot of

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<sup>7</sup> 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 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.

<sup>8</sup> The OAG is no longer in control of settlement dollars and is unable to direct any further funding to HOPP. Since 2015, monetary awards from settlements entered into by state agencies and departments 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 old settlements to keep HOPP going.

<sup>9</sup> Aid to Localities – Reappropriations 2019-20, “8. Up to \$25,000,000 may be allocated and distributed for services and expenses of ~~[the restore New York's communities initiative pursuant to section 16-n of the New York state urban development corporation act; provided however, notwithstanding any law to the contrary, that such allocation and distribution is subject to the approval by the director of the budget of a plan for such program submitted by the administering department, agency, or public authority]~~ a homeowner protection program administered by the department of law. Within the amounts available hereunder and in conjunction with other remaining funds held by the attorney general consistent with the terms of the Settlement Agreement dated November 19, 2013 between J.P. Morgan Securities LLC (f/k/a "Bear, Stearns & Co. Inc."), JPMorgan

money was used to fund HOPP and an additional \$10 million was allocated from the Mortgage Insurance Fund. HOPP has been running at \$20 million a year, though (not including administrative costs for oversight, training, and programming), which actually is a conservative number as HOPP originally ran at \$30 million a year and decreased to \$20 million and has remained such for the past several years. Less than \$20 million would not ensure services continue to be available to homeowners in every county of the state which has been one of the basic tenants of HOPP and its predecessor program at HCR from the beginning. HOPP is now in its ninth year, with current contracts ended July 15, 2021.

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**Chase Bank, N.A., EMC Mortgage LLC (f/k/a "EMC Mortgage Corporation") and the people of the state of New York, \$20,000,000 shall be made available through March 31, 2020; provided further that any remaining amounts shall be made available beginning April 1, 2020;**

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## Addendum B

### New York State Laws and Programs that Depending on HOPP Network Services

Since 2008, New York State has passed and implemented significant laws and programs to help homeowners, communities and neighborhoods impacted by foreclosures. The following *laws require by law or are predicated upon* services provided by the HOPP network of 87 housing counseling and legal services providers:

**1. 90 Day Pre-Foreclosure Filing Notices (RPAPL sec. 1304)** – lenders are required to send a prescribed notice to homeowners at least 90 days prior to filing a foreclosure complaint. This law was set to sunset but was made permanently applicable to all home loans by the 2019 budget legislation.

- The notice must attach a list of at least 5 non-profit housing counseling agencies serving the geographic region of the homeowner. NYS Department of Financial Services (DFS) has to maintain the statewide list of counseling agencies which is comprised almost entirely of HOPP agencies.

**2. Settlement Conferences (CPLR 3408)** – courts must hold a mandatory settlement conference to bring the homeowner and lender together for good faith negotiations in order to prevent avoidable foreclosures, if possible. The law specifically provides homeowners with an additional opportunity to answer foreclosure complaints within 30 days of the first settlement conference, and requires the courts to provide homeowners with information about local legal services programs that can assist them. This law was set to sunset but was made permanently applicable to all home loans by the 2019 budget legislation.

- HOPP agencies are integral to the settlement conference process, representing homeowners in the conferences, at which lenders are always represented by large law firms. HOPP agencies have become ingrained in courts' processes across the state providing informational sessions for homeowners, being present in courts on conference days for defendants who appear *pro se*, and acting as the main referral source for courts. By law, the courts are required to advise homeowners at their first conference of their statutory right to answer the complaint, and many HOPP agencies staff clinics at "first-time-on" settlement conference calendars to intake cases, and assist homeowners in answering complaints on the spot.

**3. Consumer Protections For Reverse Mortgages (RPAPL sec. 1304.1-A, 1304.6(b)(2); CPLR 3408)** – In 2018, the Governor and Legislature extended the 90 day pre-foreclosure filing notice protections and the mandatory settlement conferences to seniors with reverse mortgage loans, and mandated a pre-foreclosure notice specifically designed for seniors confronting reverse mortgage foreclosures. This past session, the Legislature passed legislation providing additional consumer protections for seniors targeted for reverse mortgages (A05626/S04407) and legislation allowing for reverse loan originations for coops, which mandates similar pre-foreclosure notice and settlement conference protections (A02632/S03686).

- HOPP agencies have seen a steady increase of seniors needing reverse mortgage foreclosure assistance and who are particularly targeted by scammers. Availability of the HOPP network is the only means of ensuring that seniors with reverse mortgages are able to vindicate their rights under New York's pioneering provisions governing reverse mortgages.

**4. New York Homeowner Bill of Rights (RPAPL sec. 1303.3-a)** – DFS is required by law to promulgate a Consumer Bill of Rights that courts must provide to foreclosure defendants at their first appearance.

- The Homeowner Bill of Rights has prescribed language that must state that free legal services are available and provide referral information to HOPP agencies, a provision which is bereft of meaning if the HOPP network is absent.

The following additional laws and programs *depend on* the services provided by the HOPP network:

**5. Deed Theft Scam Prevention** - NY has two laws designed to help homeowners avoid being scammed (the Distressed Property Consultant Law (RPL sec. 265-b) and the “Help for Homeowners in Foreclosure” Notice (RPAPL sec. 1303)), which were both substantially amended to provide better protection by legislation signed this year by the Governor (Chapter 167 of the Laws of NY 2019-20).

- With the Governor’s recent announcement concerning the need to amplify protections for vulnerable homeowners preyed upon by deed theft scammers, it bears noting that the distressed homeowners victimized by deed fraud are dependent on the HOPP network of legal services providers in order to secure redress.
- The HOPP network is the strongest way to prevent homeowners from turning to scammers. Homeowners are routinely referred to HOPP agencies by state agencies, elected officials and the courts. Without the network, homeowners will be even more vulnerable to scammers.
- The OAG, DFS, HCR and local law enforcement look to and depend upon information from HOPP agencies to bring enforcement actions against bad actors. Members of HOPP agencies have recently been asked by DFS to participate in a task force convened at the Governor’s direction to discuss additional action to address deed theft.

**6. DFS Business Conduct Rule for Servicing Mortgage Loans (Part 419 of Superintendent’s Regs)** – The rule sets forth standards of prescribed and prohibited behavior for mortgage servicing and provides guidance to courts on mortgage servicing conduct.

- HOPP agencies are the main enforcers of the regulations and routinely identify violations during the settlement conference negotiations.

**7. Homeowner Hotline (1-855-HOME-456)** – A statewide hotline for homeowners in default and foreclosure to call and have their delinquency or foreclosure case triaged.

- Homeowners are given a warm transfer to the HOPP agency serving their area.

**8. Zombie and Vacant Properties Remediation and Prevention for Municipalities (RPAPL sec. 1308)** – Municipalities across NYS received funding to enforce the Abandoned Property Neighborhood Relief Act of 2016, a/k/a “the zombie property law.”

- Municipalities subcontract with HOPP agencies and depend on the services provided to homeowners as an important component of neighborhood preservation efforts; HOPP agencies identify zombie properties and prevent vacancies.

**9. Tenants’ Rights to Notice and Holdover (RPAPL secs. 1303, 1305, 1307)** – Tenants in foreclosed properties must be given notice when foreclosures are filed, and are given the right to remain in the property for up to ninety days after a foreclosure sale of a building.

- HOPP agencies often are the only source of information and counseling to tenants about their rights.

**10. Land Banks** – Created in NYS in 2012, there are now 25 land banks across the state.

- HOPP agencies work with land banks to identify properties, prepare individuals to become homebuyers, and assist in efforts addressing neighborhood blight.

## Addendum C

### The Economic Impact of HOPP - HOPP is Cost Effective

Two months ago, Empire Justice updated its research evaluating the economic impact of foreclosures on New York State, and the cost-savings of the services provided through HOPP. The bottom line is, at \$20 million a year, HOPP is a good deal. Servicing an average of almost 16,000 families per year, the cost per family comes to under \$1,300. If you count just the homes saved from foreclosure, the cost is just \$5,000 per family, though the services we provide to families who cannot sustain homeownership are equally valuable, helping them understand the process, find alternative housing, preserve savings, avoid savings and perhaps more than anything help folks to move from their home with dignity and understanding.

HOPP services save New York State over \$1.2 billion a year. Foreclosed homes cost New York State money in several calculable ways. Foreclosure depreciates the value of the foreclosed home, as well as an estimated 50 surrounding homes in non-rural areas.<sup>10</sup> Depreciated values impact tax revenue from homes sales, sales tax, as well as real property tax collections. Foreclosed homes, and especially homes vacated as the result of foreclosures, cost localities thousands of dollars every year in code enforcement, repairs, and emergency response calls. Just looking at the tax savings and additional property cost savings from foreclosed homes, every \$1 million invested in HOPP returns over \$5 million in savings to New York State. Here is a breakdown, based on county level property values and foreclosure rates:

	2019 Projected Losses to NYS If HOPP Did Not Exist	2019 Savings Realized by NYS Because of HOPP Services
<b>Impact on property values</b>	<b>\$4,385,207,338</b>	<b>\$1,096,301,834</b>
Direct impact on foreclosed homes <sup>11</sup>	\$1,529,959,498	\$382,489,874
Indirect impact on surrounding homes <sup>12</sup>	\$2,855,247,840	\$713,811,960

<sup>10</sup> There is no available research data regarding the impact on neighboring properties in rural areas but the impact would be similar, we just can't calculate it.

<sup>11</sup> Direct impact to foreclosed homes was calculated using methodology cited in Alliance of California for Economic Empowerment and the California Reinvestment Coalition, *The Wall Street Wrecking Ball*, (Sept. 2011), and citing Anthony Pennington-Cross, Marquette University, *The Value of Foreclosed Property*, at <https://static1.squarespace.com/static/58d8a1bb3a041137d463d64f/t/5ca7a3c56e9a7f1e0d7f4f17/1554490313328/Wrecking+Ball+-+San+Jose+-+Sep+2011.pdf>, and methodology from the U.S. Joint Economic Committee Report (*Sheltering Neighborhoods from the Subprime Foreclosure Storm*). Our estimates used Mundi index median county home value, our estimated foreclosure numbers for 2019, and the decline estimate from the above report of 22%; the 22% decline estimate is based on the most conservative property value decline ranging from 22% to 28%.

<sup>12</sup> Indirect impact on neighboring home value decline was calculated using methodology from the U.S. Joint Economic Committee and Dan Immergluck, Georgia Institute of Technology and Geoff Smith, Woodstock Institute, *The External Costs of Foreclosure: The Impact of Single-Family Mortgage Foreclosures on Property Values*, (March 2010), using what is considered to be a conservative decline estimate in value of .9%. For counties considered to be non-rural counties we have adopted the assumption that approximately 50 nearby homes will be impacted, approximating the number of homes to be encompassed in a 1/8 to 1/4 mile radius in a typically concentrated neighborhood; we applied the .9% decline to 2019 foreclosure estimates. We do not attempt to estimate, and have not included, any projections for impact costs in the 44 counties in NYS recognized as rural counties (see end note 2).

Tax loss/savings <sup>13</sup>	\$26,749,765	\$4,772,430
Additional property costs/savings to localities <sup>14</sup>	\$409,997,780	\$102,499,445
<b>TOTAL LOSSES and SAVINGS TO NYS</b>	<b>\$4,821,954,883</b>	<b>\$1,203,573,709</b>

There are additional savings to New York State that are not as easily quantifiable. One savings is the cost of homelessness. While it is impossible to know how many families avoid becoming homeless because of our services, even if that number is less than 3 percent of the clients we serve, HOPP saves money (based on an average cost between housing a homeless family for a year inside and outside of NYC of \$64,000). A second savings is the increased impact and costs that courts would have statewide if our services did not exist. State law requires courts to hold a mandatory settlement conference in every residential home loan foreclosure case.<sup>15</sup> In 2018, there were 41,442 conferences.<sup>16</sup> HOPP agencies are integral to the settlement conferences, being present in courts to assist *pro se* borrowers and providing clinics at first appearances.

A third savings is the cost of deed theft and other scammers. As mentioned above, HOPP agencies are the best defense against deed theft and foreclosure rescue scams. If HOPP services go away, it is inevitable that scams will increase exponentially as desperate homeowners seek assistance. Finally, are the societal costs of foreclosure. Despite our strong consumer protections, scammers still exist and homeowners fall prey. HOPP agencies typically assist homeowners who have been scammed to get their home or money back, and serve as watchdogs on the ground, reporting offenders to enforcement agencies. Deed theft scams, which heavily target gentrifying NYC boroughs but exist elsewhere, cost homeowners hundreds of thousands of dollars in equity, equity that should be going towards generational wealth-building. Foreclosure rescue scams, prevalent across the state, rip off homeowners in the range of \$5,000 to \$8,000 a scam. While the direct costs hit victim families, the state incurs indirect costs as the result of law enforcement efforts, the loss of trickle-down economic effects from equity building, and the opportunity costs of losing generational wealth building in low-income communities and communities of color.

Finally, there are the societal costs of foreclosure. Instability in housing impacts a number of other factors including health, financial stability, emotional distress, childhood education and development, criminal activity, and support networks particularly for older homeowners, to list just a few.<sup>17</sup> These factors have ripple effects on New York’s economy, particularly when families end up having to depend on state systems for support.

<sup>13</sup> Alliance of California for Economic Empowerment at 3. Property tax losses estimated using lost home values (foreclosed and impacted homes as described above) and using an effective tax reduction rate of 0.61% taken from the U.S. Census and Tax Foundation.

<sup>14</sup> *Id* at 4. Cost per foreclosure of \$19,229 based on U.S. Joint Economic Committee report using estimates from Homeownership Preservation Foundation, *The Municipal Cost of Foreclosures: A Chicago Case Study*.

<sup>15</sup> NY CPLR 3408.

<sup>16</sup> State of NY Unified Court System, *2018 Report of the Chief Administrator of the Courts on the Status of Foreclosure Cases Pursuant to 507 of the Laws of 2019*, at 8.

<sup>17</sup> See Kingsley, G.Thomas, Smith, Robin E., Price, David, The Urban Institute, *The Impact of Foreclosures on Families and Communities: A Primer* (July 2009), available at: <https://www.urban.org/sites/default/files/publication/30431/411910-The-Impacts-of-Foreclosures-on-Families-and-Communities-A-Primer.PDF>.