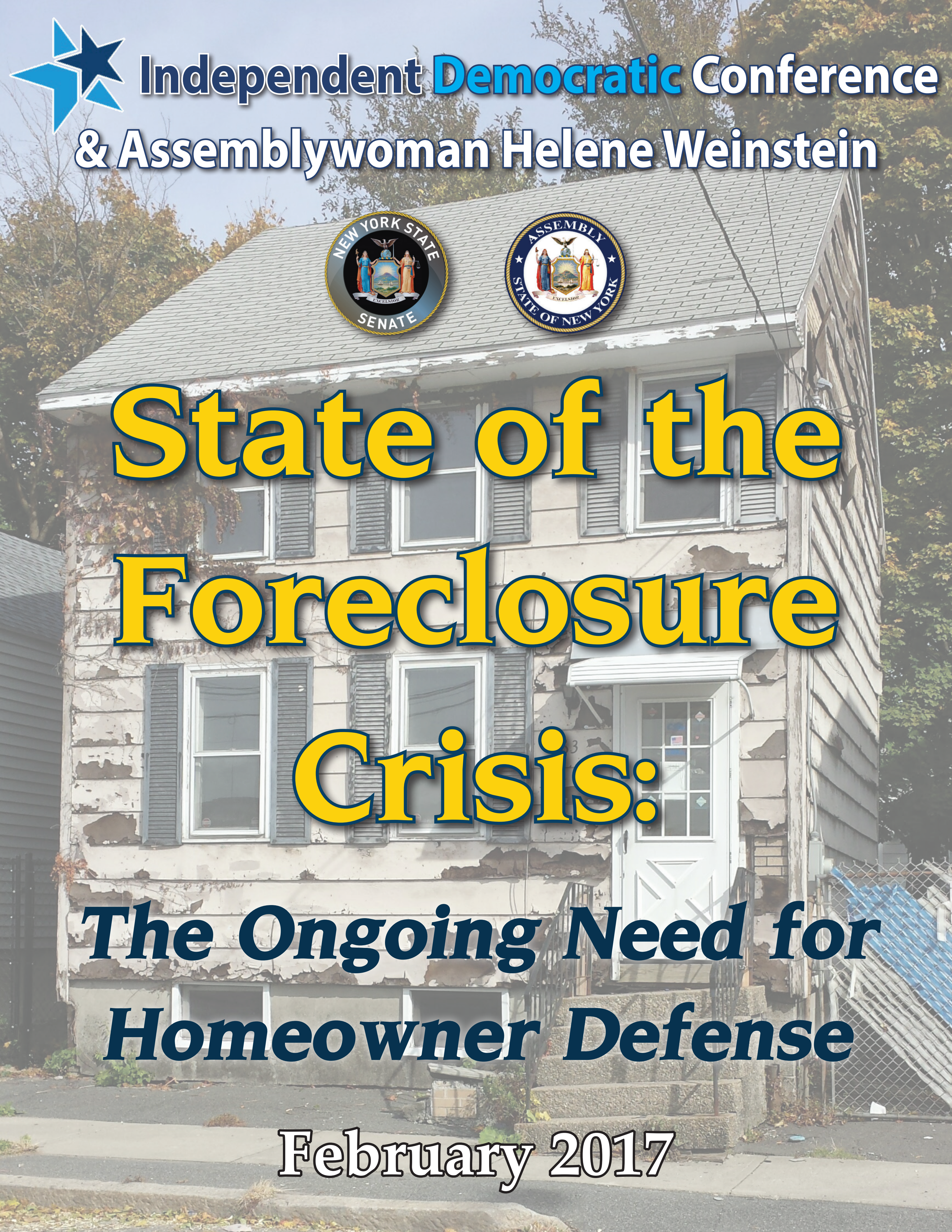


Independent Democratic Conference
& Assemblywoman Helene Weinstein

State of the Foreclosure Crisis:

The Ongoing Need for Homeowner Defense

February 2017

History of New York's Foreclosure Crisis

New York's foreclosure crisis began in 2007 when the housing markets collapsed due to the actions of criminally irresponsible actors in the banking industry who sold and securitized bad mortgages, flooding the markets with toxic assets while simultaneously obscuring exactly how bad the assets were. The foreclosure crisis ravaged communities across the entire nation, resulting in abandoned properties, homeless families, and blighted communities. No state was spared, but the effects of the crisis hit New York particularly hard.

The crisis began in 2007 when signs of trouble materialized in the subprime mortgage markets (markets that trade in securitized mortgages issued to those with low credit scores) and exploded in 2008 following the collapse of Lehman Brothers. Many of the toxic securitized mortgage assets were sold to quasi-governmental agencies Fannie Mae and Freddie Mac, creating a moral hazard by suggesting to financial actors that there was an implicit guarantee behind the mortgages by the federal government.

Ultimately, the federal government acted to bail out financial institutions and stop large banks from collapsing, but little relief came to New York's homeowners who shouldered most of the burden of the collapse. Home values declined, wages collapsed, and jobs disappeared—some families could no longer afford the homes they purchased because of their job situation; other families couldn't have been expected to afford the mortgages they were sold in the first place, by banks that knew their credit scores, assets, and incomes were inadequate.

By 2009, the full and catastrophic effects of the crisis were on display in the courts: foreclosure filings had gone from 26,706 in 2006 to 47,664 in 2009, a 78% increase in only 3 years. In conjunction with the big bank bailouts, the answer from the federal government was The Dodd–Frank Wall Street Reform and Consumer Protection Act, legislation that would prevent banks from engaging in ultra-risky speculative behavior with toxic assets. But ultimately, neither Dodd-Frank or the bank bailouts would help consumers ravaged by the economic crash. New York's legislators knew that they had to step in after the federal government made a decision to bail out big banks but not New York's working families.

In 2009, Senator Jeffrey Klein and Assemblywoman Weinstein provided relief where Dodd-Frank did not: legislation for historic protections for homeowners threatened by foreclosure. That legislation will remain in effect until 2020, and limits lenders' abilities to take families' homes.

Senator Klein's and Assemblywoman Weinstein's Comprehensive Foreclosure Legislation

- Mandating settlement conferences during the foreclosure process.
- Requiring a 90-day pre-foreclosure notice for all homes (in order to allow homeowners to work with their lenders to find an affordable solution).
- Requiring lenders to file with the Department of Financial Services and the Division of Housing and Community Renewal (DHCR) to provide targeted assistance to distressed homeowners during the critical pre-foreclosure timeframe and to closely monitor foreclosure statistics.
- Expand protections for tenants in foreclosed properties by requiring that they receive written notice of the change in ownership of the property and be permitted to remain in the home for the remainder of their lease term or 90 days, whichever is longer.
- Require plaintiffs in a foreclosure action who obtain a foreclosure to maintain the property.
- Strengthening New York's anti-predatory lending "high-cost" and "subprime" lending laws.
- Strengthening New York's Distressed Property Consultant law which prohibits loan modification scammers from acting any upfront payments before providing services.

Last year, continuing on previous efforts to protect New York's consumers and communities, Senator Klein, Assemblywoman Weinstein, and the Independent Democratic Conference (IDC) worked together to pass landmark legislation addressing the crisis by enhancing mandatory settlement conferences, establishing a Consumer Bill of Rights, and creating the Community Restoration Fund (CRF) to buy and restructure distressed mortgages and vacant and abandoned properties. The legislation also combats blight in New York's neighborhoods by imposing a pre-foreclosure duty on banks and servicers to maintain zombie homes, creating an electronic registry of abandoned properties, and expediting foreclosure for vacant and abandoned properties to get them back on the market.

In addition to the problems created for New York's families, the foreclosure crisis contributed to blight in New York's neighborhoods. Many homes became vacant and abandoned following or in the process of foreclosure. Abandoned homes in New York's neighborhoods are not only unsightly, they can contribute to increases in crime and further economic disruption. "One study of Pittsburgh showed that… if a property becomes *vacant* after foreclosure, the rate of violent crime within 250 feet of the property is 15 percent higher than the rate in the area between 250 and 353 feet from the property." In Philadelphia, a study showed a correlation between vacant properties and the risk of assault. Vacancy was the strongest predictor of violent assaults.

These homes tend to result in lower home values for adjacent properties and make it more difficult for families to sell their homes and for the housing market to operate properly. The loss in property value is so significant that it results to home value losses of about $70,000 in a neighborhood.

By requiring maintenance by banks and providing state entities with the tools to repurpose and resell these homes for efficient purposes, this legislation is helping to heal the foreclosure crisis. However, even with the 2009 and 2016 legislation, the foreclosure crisis continues. Foreclosures are still high, and families need assistance now more than ever to ensure they can stay in their homes so New York's housing market and overall economy can continue healing.

Current Foreclosure Crisis Statistics

Foreclosure Statistics Key Facts

- There are 72,000 pending foreclosure cases in New York State's courts.
- There are currently 111,789 properties across NYS in pre-foreclosure status.
- Last year (October, 2015 to October, 2016), there were 34,000 foreclosure filings across New York State.
- 200,788 delinquency filings were made to DFS in 2016.
- Foreclosures account for 26% of the Supreme Court's entire civil docket.
- Between 2013 and 2015, pending cases saw a 63% increase in the downstate region outside New York City and a 47% increase in the rest of upstate.
- 26,000 families have received loan modifications through services provided by the foreclosure prevention network in New York State.
- New York State has saved over $1 billion in direct costs from avoided foreclosures since 2012, due to the efforts of the foreclosure prevention network.
- Loan modifications save families around $5,000 annually.

According to the 2016 report from the State of New York Unified Court System to the New York State Legislature regarding the settlement conferences, there are 72,000 pending foreclosure cases still in New York courts. This accounted for 34,000 filings between October, 2015 and October, 2016 (the last full year of data available), and still far exceeds the pre-crisis foreclosure level of 26,706 foreclosures (a full 27% higher). Alarmingly, foreclosures account for over one-quarter (26%) of the Supreme Court's entire civil docket. The Court noted in its 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."

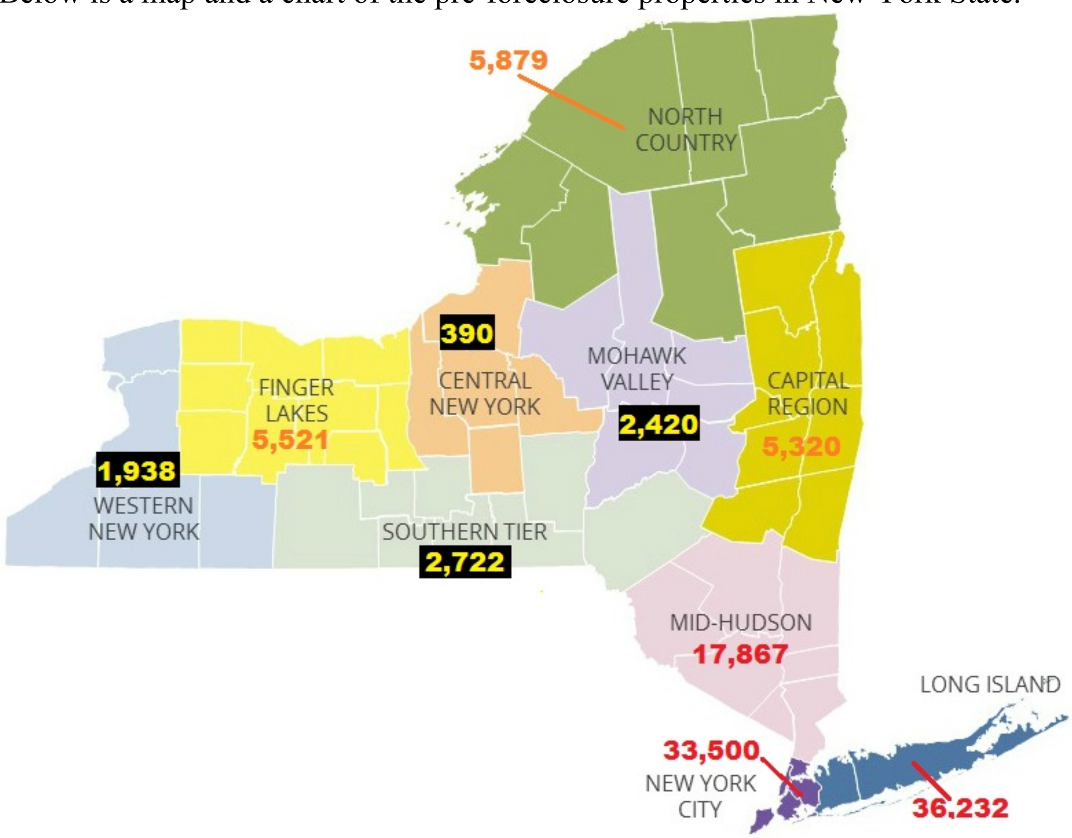
Senator Klein and Assemblywoman Weinstein's legislation has led to robust reporting to and from the Department of Financial Services (DFS) that has allowed New York to comprehensively monitor and understand the current state of the foreclosure crisis from a banking and economic perspective. Delinquency numbers reported by DFS are alarming, and are far higher than actual foreclosure numbers. In 2016, 200,788 delinquency filings were made to DFS. These numbers come from the ninety-day pre-foreclosure notice filings. In total, 2016 demonstrated 16,000 delinquency filings per month.

Numbers have not changed significantly since 2015, when the State Comptroller noted in a report about the crisis that "Trends in both new foreclosure filings and the total number of pending foreclosure cases indicate that the problem is far from resolved." In that report, the comptroller also noted that between the period of 2013 to 2015, the number of pending foreclosures had skyrocketed from around 72,000 to over 92,000. While numbers of pending foreclosures remained mostly stagnant during this period (New York's property values and economy have seen a relatively strong recovery), pending cases saw an increase of 63% in the downstate area near New York City (Long Island and the Mid-Hudson region) and 47% in the rest of upstate.

Staff collected raw pre-foreclosure numbers from RealtyTrac, which maintains and makes data about the New York housing market available to the public; staff conducted analysis of this data by combining county-level data into New York's regional economic development council areas to determine which regions of the state had the most properties in distress. Pre-foreclosure properties are properties that are in the early stages of being repossessed due to a homeowner's inability to pay an outstanding mortgage obligation. Properties are placed into this status when the lender files a pre-foreclosure notice with the Department of Financial Services and sends the homeowner the 90-day pre-foreclosure notice required by the legislation. If homeowners cannot afford to pay the amount owed to the lender, the home moves into foreclosure status and the lender attempts to recapture the property and remove the homeowner from the home.

The analysis revealed, alarmingly, that across New York State, ***111,789 properties*** are currently in pre-foreclosure status, with the lender preparing to file for foreclosure. This number far eclipses the 34,000 foreclosure filings across the state last year, and demonstrates that while foreclosure numbers remain high, the number of properties *currently at risk of foreclosure* in 2017 is drastically higher.

Below is a map and a chart of the pre-foreclosure properties in New York State.



Pre-Foreclosure Numbers by New York State Economic Development Region

Region	Number of Pre-Foreclosures (February 2017)
Long Island	36232
New York City	33500
Hudson Valley	17867
North Country	5879
Finger Lakes	5521
Capital District	5320
Southern Tier	2722
Mohawk Valley	2420
Western New York	1938
Central New York	390

These raw numbers illustrate the sheer number of pre-foreclosures across the state. Foreclosure trends indicate that 1 property per 1,739 in New York State has currently passed the pre-foreclosure stage and has entered foreclosure. But this ratio is far worse in certain counties. The top five counties for foreclosure actions relative to housing units are as follows:

County	Foreclosure Actions Relative to Housing Units	Total Pre-Foreclosures
Orange	1/467	3,744
Putnam	1/641	1,222
Montgomery	1/831	262
Rensselaer	1/831	1,115
Rockland	1/853	3,066

Three of the five worst counties in New York State by foreclosure ratio are located in the Hudson Valley outside of New York City, where pre-foreclosure levels are critical at 17,867. Combined, these top five counties by ratio have a total of 9,409 pre-foreclosures; ultimately, almost 10,000 homeowners and working families in these five counties alone risk losing their homes. Compounded with the potential for these families to enter homelessness is the risk of blight, increased crime, lower home values, and a decreased tax base in the affected communities.

With almost 112,000 properties in pre-foreclosure status and over 200,000 delinquency notices filed to the Department of Financial Services last year, it is clear that hundreds of thousands of New York's working families are still experiencing the effects of the foreclosure crisis, and are at risk of losing their homes. Many of these families will not be able to come up with the large sums of money they need to prevent a foreclosure filing by their lender. In the event that a foreclosure is filed by a lender, these homeowners will need legal representation, counseling, and financial planning services in order to properly avert foreclosure and become current on their mortgages. The reality, however, is that unlike in the criminal defense system, homeowners are not entitled to a lawyer in a foreclosure action; private attorneys are expensive, and many of these families, who cannot afford their mortgages, have no hope of coming up with several thousands of dollars to pay for a lawyer, housing counseling, or financial planning services. That's where the foreclosure prevention network comes to the rescue to keep these families in their homes, ensure New York's housing market remains stable, and protects our communities from the blight of vacant and abandoned homes.

The Foreclosure Prevention Network

Working in conjunction with Senator Klein's and Assemblywoman Weinstein's foreclosure reforms is a comprehensive foreclosure prevention program created by the New York State Attorney General: the Homeowner Protection Program (HOPP). HOPP launched in October, 2012 and was funded with a three-year commitment of $60 million secured through the National Mortgage Settlement, an agreement between 49 state attorneys general and the nation's five largest mortgage services.

At this time, HOPP funds over 90 organizations that offer free, high-quality housing counseling and legal services to families in need—those struggling to avoid foreclosure and to remain in their homes and communities. The foreclosure prevention network funded by HOPP uses the notice requirements and settlement conferences mandated by the legislation to represent families in foreclosure actions and prevent them from losing their homes while simultaneously providing advice and education to families who might fall victim to the foreclosure system. Counselors and lawyers in the network provide vital services that can mean the difference between a refinanced mortgage and homelessness.

In 2015, recognizing the ongoing need for foreclosure prevention services, the Attorney General committed an additional $40 million to extend HOPP until mid-2017. This decision was based upon concrete figures and analysis that demonstrate the effectiveness of the network and its legal services providers. Last year alone, the network served 27,000 families. Since 2012, 72,000 families have received services from the network's providers. Out of these 72,000 families, 26,000 have successfully received loan modifications on their mortgages. The average monthly savings resulting from these modifications have been $410, or $4,920 annually. The large disparity between delinquency filings and foreclosure filings (200,788 vs. 34,000) is likely due to the fact that families get in to see housing counselors early enough in the delinquency process (after receiving the notice required by Senator Klein's and Assemblywoman Weinstein's legislation) that foreclosure counselors in the network funded by HOPP are able to work through and resolve the delinquency issue before it results in an actual foreclosure. The strong emphasis on consumer education within the network and early-intervention efforts are working to prevent foreclosure filings from climbing even higher.

Every county in New York State has foreclosure prevention services available through the network. Homeowners come to network providers through referrals from local government agencies, elected officials' offices, other non-profit organizations, word-of-mouth referrals, and referrals from the court as a result of the ninety-day pre-foreclosure filing notice.

In addition, the program has funded a statewide homeowner hotline which has received 32,000 calls since 2013. Homeowners who call are forwarded to the appropriate legal services provider in their area. These providers are non-profits that are well-established and well-known in their communities. Homeowners often rely upon them after attempts to work directly with their mortgage lenders fail. Housing counselors work in conjunction with legal services providers in homeowners' communities, using efficient and effective systems to provide resources and affordable housing options to homeowners who cannot continue to live in their homes, and to provide representation to those who can. These agencies assess homeowners for continued homeownership viability, provide budget counseling, collect documents, and compile loss-mitigation applications, negotiate with mortgage services to obtain loan modifications, and represent homeowners in mandated foreclosure settlement conferences.

The effects of the network's work are easily quantifiable: according to the October, 2016 report by the Office of Court Administration, 62% of all homeowners in New York are represented in settlement conferences. As a point of reference, prior to 2008, more than 90% of foreclosure cases resulted in a default judgment against the homeowner (in these default cases, the homeowner is unrepresented and does not appear to work with the servicer to come to a resolution, so the court rules by default in favor of the servicer). HOPP began in 2012; in 2011, 67% of foreclosure defendants were unrepresented. By 2016, that number had virtually flipped thanks to the efforts of the foreclosure prevention network. Without representation, homeowners' chances of prevailing in court or obtaining a modification are bleak: this is a complicated area of law with complex rules and procedural requirements; lenders have experienced attorneys who know how to navigate the courts with stunning efficiency and use them as a weapon against homeowners to seek speedy foreclosures.

The economic impact of this representation has been profound. Every foreclosure avoided saves the state on average $41,134 in direct costs (if indirect costs are included, this average economic savings is around $186,695). Using direct costs alone, based upon the 26,351 modifications achieved by the network's efforts, foreclosure prevention services have saved New York State $1.084 billion since 2012.

Analysis by the Center for New York City Neighborhoods (CNYCN) indicates that for every foreclosure averted, approximately $260,000 in equity is preserved for all homes within 750 feet of the property in question. These economic ripple effects vary by region:

- New York City: $740,000
- Long Island: $280,000
- Capital Region: $34,000

A commonly-used benchmark of the cost of a vacant property to local governments is $27,000. However, an official in Schenectady, NY recently estimated that these properties each cost the city around $65,000 per year. Preventing foreclosures maintains the property tax base, the payment of utilities, and keeping the home in good repair (maintain sidewalks, driveways, yards, etc.).

Loss of HOPP Funding

HOPP funding is set to expire in 2017. Without direct support from the state budget, the network will be forced to eliminate its services to New York's families and communities. These effects could be catastrophic—for working families attempting to avoid foreclosure; for fragile communities on tenuous economic footing that cannot afford a collapse in their housing markets or the ravages of blight due to vacant and abandoned homes resulting from foreclosures; and for courts, which would experience slowdowns and bottlenecks.

Analysis indicates that courts would experience an 89% increase in court staff time assisting pro se homeowners, 88% slower foreclosure proceedings, 87% of evidence not properly presented to the courts, and 61% negative impacts in the court's ability to ensure equal justice to unrepresented New York homeowners.

Homeowners subject to foreclosure proceedings would experience increased costs of $4,920 per year, inability to keep their homes, more exposure to foreclosure rescue scams (which steal between $2,500 to $5,000 per homeowner), and a decline in credit scores that leads to decreased access to credit and economic activity. Social impacts would result in disruption for children, community ties, and support networks as children are displaced; potential homelessness for families who are foreclosed upon and cannot find affordable rent (a particularly pronounced problem downstate); and increased costs to the health system resulting from emotional problems due to families' loss of their homes and resultant housing instability.

Developments at the federal level in 2016 have also resulted in increased foreclosure risks for homeowners in the absence of the foreclosure prevention network. The primary federal modification that streamlined loss mitigation efforts, the Home Affordable Modification Program (HAMP), ended in December, 2016. Homeowners must now navigate each lender's individual modification process, and these processes can be complicated. Without guidance, homeowners are at risk. In addition to this, the Trump Administration has indicated hostility toward the Consumer Financial Protection Bureau (CFPB), consumer protection measures, and regulations in general. Emboldened by President Trump's hostility to the CFPB and his signing of executive orders to undermine the Dodd-Frank Act, Congressional Republicans have already begun to take steps toward introducing legislation to repeal Dodd-Frank altogether, which would put the housing market and homeowners back in the grasp of predatory lending practices. An attack on federal consumer protection regulations and the CFPB would leave only the foreclosure prevention network as a bulwark to protect seniors from predatory and abusive services and foreclosures.

A loss of the services provided by the network would result in deleterious effects on New York's consumer protection legislation in the area of foreclosures as well as other established programs to help New York's homeowners and communities. The 90-day pre-foreclosure filing notices currently require mortgage services to attach a list of local housing counseling agency referrals maintained by DFS, and this requirement would become null and void without the housing counseling agencies. The Mortgage Assistance Program (MAP) provides zero percent interest rate loans and is a lifeline to homeowners to cure tax arrears and get loan modifications, but MAP depends on the screening and application process established through the network. The Community Restoration Fund (CRF) established through legislation by the IDC depends on the network to provide determinations (and notices related to) whether properties are vacant and abandoned. Under New York State's Abandoned Properties law, cities and towns must partner with housing counselors and legal services to ensure that at-risk homeowners have access to services. Additionally, courts are required to refer *pro se* (self-represented) homeowners to local legal and housing counseling services as part of the legislative reforms passed in June, 2016.

Finally, the network supports 545 jobs across the state. There is no other funding for these services, and a loss of funding will not only mean a loss in services, it will mean significant job loss in communities across New York State. Providers in the network have highly specialized skills—with housing counselors requiring certification through a training program provided by NeighborWorks America, as well as monthly webinars, conference calls, and listservs to stay up to date on the latest information and skillsets. Lawyers in the network receive ongoing training in foreclosure prevention, as they practice in a very complicated area of law with constantly evolving rules, best practices, and programs.

Advocating to Preserve the Foreclosure Prevention Network While Improving Foreclosure Regulations

Senator Klein and the IDC in the Senate will join Assemblywoman Weinstein and a number of her colleagues in the Assembly to advocate for $10 million to continue the network's services for the second half of 2017. The lawmakers in both houses will also advocate for an additional $20 million to continue services through the end of 2018. **This represents a total commitment of $30 million that will continue funding for network services at the current level, protecting New York's working families, communities, municipalities, and court system.**

In addition, noting that the foreclosure prevention network has experienced an alarming uptick of reverse mortgage foreclosures targeted against senior homeowners, the IDC will join Assemblywoman Helene Weinstein to introduce a package of reverse mortgage legislation to make reverse mortgage products in New York safer for economically vulnerable seniors. The package will include five bills:

1. Adding reverse mortgages to mandated settlement conferences (S1992 / A1266).
2. Requiring all reverse mortgage lenders to provide a reverse mortgage summary sheet to seniors prior to closing on reverse mortgages to inform seniors of the costs of reverse mortgages, their rights, and available resources and services to obtain education about the products, as well as legal services (foreclosure prevention network organizations) available in the event of a default.
3. Regulating marketing, issuing, and management of reverse mortgages. This bill would ban certain deceptive marketing practices, require lenders to inform seniors when their life expectancy set aside is running out, require lenders to include information sheets with all solicitations to New York addresses, bans fees for property visits, etc.
4. Regulating the default and foreclosure process by providing additional consumer protection, mandating loss mitigation procedures, banning lenders from making advance tax payments on behalf of the senior, etc.
5. Creating a comparison website, to be run by the Department of Financial Services, to allow seniors to compare reverse mortgages/terms/pricing so they will have access to a buyer's market where they have all the relevant information necessary and can reach out to lenders of their choice.