

Foreclosure Prevention Funding

**Testimony Submitted by
Lisa A. Frisch, Executive Director
The Legal Project**

to

2017-2018 Joint Legislative Budget Hearing on Housing

Hearing Room B, Legislative Office Building, Albany

February 17, 2017

The Legal Project was created over 21 years ago by the Capital District Women's Bar Association as an independent non-profit with the mission to provide civil legal services to domestic violence victims and the working poor in the Capital Region, filling a gap of services not provided by other programs in the area. Over the years we have developed other programs in response to identified needs in our community, while specifically avoiding duplicating services. It remains our mission to identify gaps in available legal services and attempt to create programs designed to close those gaps. In 2016, we served over 3600 residents of the Capital Region through our team of nine staff attorneys and over 200 pro bono attorneys, and 17 non-attorney staff.

History and Coordination of Services

Since 2008, with initial funding from NYS Homes and Community Renewal (then called the NYS Division of Housing and Community Renewal), The Legal Project has been part of New York's Network of Foreclosure Prevention Services, comprised of 94 non-profit service providers providing no-cost legal services to homeowners in varying stages of the foreclosure process. Locally, The Legal Project has been a member of a coalition in the Capital Region, HOMESAVE, which includes housing counselors, legal services providers, and other local organizations working together to ensure the most effective and streamlined response to homeowners in need of foreclosure assistance. HOMESAVE meets monthly to discuss current foreclosure filings, trends with lenders, scams affecting homeowners, and also to strategize challenging case issues. HOMESAVE and the collaboration with all of the members have not only been invaluable but absolutely essential in providing foreclosure assistance, and significantly increase the number of homeowners we have been able to assist.

The Legal Project's Foreclosure Program

In 2012, The Legal Project received funding through a competitive grant process administered by the Office of the Attorney General, after the agency was provided funds in the National Mortgage Settlement. This funding allowed The Legal Project to hire a Supervising Foreclosure Staff Attorney who oversees the program as well as carries a full caseload, three staff attorneys, a paralegal and an administrative assistant. The majority of clients served through our current foreclosure program have had an unexpected event in their life that caused major financial disaster including illness, job loss, and loss of income. The clients are essentially the "new poor"; those who have not had to reach out for legal services in the past and who often now are facing a multitude of legal issues in addition to the foreclosure. We are in our fifth year of this critical funding, which is coming to an end on September 30, 2017. As you know, there are no future settlement funds being allocated to the Office of the Attorney General due to the change in state rules which now requires all funds be directed to the state budget. Without core funding again placed in the state budget specifically for foreclosure prevention, these critical legal services will most certainly end and the excellent, statewide infrastructure of foreclosure prevention services would be lost.

Homeowners learn about our services through varying sources including our HOMESAVE partners, word-of-mouth referrals, the statewide homeowner hotline, and the courts. Recently, we have been contacted by several courts in our area to have our attorneys present during their

settlement conference days in an effort to reach out and provide services homeowners who are need of legal assistance. Homeowners who are represented by legal counsel leads to quicker resolution of these cases and less time spent in the state court system.

In providing foreclosure prevention services for the past 7 years, it has become evident that it is absolutely essential for homeowners to have legal representation when going through a foreclosure action. Lenders are always represented by legal counsel and a homeowner who does not have legal representation is at a great disadvantage. Lender's attorneys often rely on the homeowner's lack of knowledge of their rights and options available to them. For example, a homeowner we are currently representing attended 2 settlement conferences without legal representation and was told that her only options were to agree to a Short Sale or a Deed-in-Lieu- and was never told her that she was eligible to apply for a loan modification. She had owned her home for 40 years, was afraid, and agreed to the Deed-in-Lieu, which would transfer ownership of her home to the bank. She had no idea that she was eligible to apply for a loan modification. Fortunately, she was referred to The Legal Project prior to completing the Deed-in-Lieu. At the first settlement conference our staff attorney asked that the homeowner be provided time to apply for a loan modification to which the lender's attorney adamantly refused, stating that she would not be eligible due to her income. After very contentious negotiations the homeowner was able to apply for a loan modification, was ultimately granted a temporary loan modification, and is currently making her trial payments. Had she not had legal representation, she would have signed the papers for a Deed-in-Lieu and walked away from her home of 40 years instead of being on her way to a successful permanent loan modification. The Legal Project has example after example of situations like this where without legal representation the homeowners would have unnecessarily lost their home.

Since the inception of our foreclosure program, we have provided pro bono legal assistance to over 2,750 homeowners and have prevented 217 foreclosures. Our foreclosure program works in tandem with our local housing programs and other legal services programs and we have developed an incredibly effective system to triage cases and ensure that homeowners are receiving the services they need without "falling through the cracks". The Legal Project has nearly daily contact with local housing counselors and have established a referral system to ensure that homeowners receive the one-on-one assistance they need in a timely manner-which is critical in a potential foreclosure proceeding. Working within the Foreclosure Prevention Services Network has provided homeowners the ability to receive services from housing counselors and legal services early in the foreclosure process which greatly increases the likelihood of saving their home. *Early intervention is critical in a foreclosure case.*

Currently, we have over 200 active cases; most of which we anticipate will be on-going in September when this current funding ends. This area of law is incredibly specialized with rules and regulations constantly changing which would make it extremely difficult for pro bono attorneys or members of the private bar to pick up any of these cases should we have to discontinue this program. These are complicated and extremely time-consuming cases, with many lasting several years before there is a resolution. Having staff attorneys who have this specialized and on-going training for staff is critical in providing effective legal representation to homeowners.

Continuing Need

There have been some reports suggesting that the foreclosure crisis is abating, however we have experienced just the opposite as evidenced by the increased number of homeowners contacting The Legal Project for assistance. Since the inception of our foreclosure program in 2010 we have seen an astonishing 900 percent increase in the number of homeowners seeking our assistance. According to a recent article by the New York State Comptroller in 2015, despite the improvements that have been made to the judicial process, the number of pending foreclosure cases upstate increased by 47%; the number of days for a typical foreclosure proceeding has increased from 1,339 to 1,498 days, an increase of almost 12%; and the average length of time from foreclosure filing to sale of the property is 900 days-almost double the nationwide average. Additionally, a report released by New Yorker's for Responsible Lending (NYRL) that revealed wide variations in the implementation of foreclosure settlement conference rules and calls for more uniform standards and practices in New York State's residential foreclosure conference process. According to this report these variations have the potential to leave tens of thousands of New Yorkers at a heightened risk of losing their homes and reveals that a lack of strong statewide guidance has resulted in procedures that vary significantly based on where homeowners live. Additionally, despite banking regulations and protections in place to protect homeowners, many lenders refuse to comply with these regulations and even go so far as to say that they do not *have* to comply with them. We anticipate that this could get even worse if federal protections continue to be removed.

An emerging trend we have seen is a significant rise in the number of homeowners reaching out for assistance with tax-related foreclosures for which there are no legal services available in our region. Each county in New York State handles tax lien foreclosures in different ways and a streamlined process does not exist. Recently, there have been municipalities in the counties we are proposing to serve that conduct tax-related foreclosure "sweeps", causing an onslaught of calls to our office. Unfortunately, there are very limited resources, if any, for these individuals. We have used the Mortgage Assistance Program (MAP) which provides 0% interest rate loans up to \$40,000 and is listed as a lien on the property until the home is sold. These loans have proved invaluable to pay past due property taxes, as well as help the homeowner with loan modifications and pay off arrears. There is no other funding that provides a homeowner with this type of assistance. Currently MAP is being funded by an \$80 million Goldman Sachs settlement to be paid out over the next 3 years. As a legal services provider, we provide screening for eligibility and have staff persons trained on submitting MAP applications. Without having trained staff to assist homeowners, it is unclear how effective MAP would be in distributing the funds to those who are truly in need.

In December 2016, the federal protection program, the Home Affordable Modification Program (HAMP) ended which negatively impacts homeowners across New York State. Without HAMP, homeowners, housing counselors, and attorney now have to navigate each lender's loan modification process. Applying for a loan modification is incredibly frustrating process but HAMP had at least provided a streamlined loss mitigation process. It is even more critical now that homeowners have the assistance of trained housing counselors and legal counsel to navigate this process.

The Governor recognized the problem of reverse mortgage foreclosures, which places vulnerable seniors at risk of losing the homes that they may have lived in for years. The plan is to bring reverse mortgage foreclosures into the settlement conferences; however, without representation for the homeowners in these conferences, the protections will not be meaningful.

Critical Need for State Support

Foreclosure prevention has been a priority for New York State since 2008, when the then NYS Division of Housing and Community Renewal administered programs across the state to respond to this growing crisis. Just in the past year, our trained and experienced network of providers provided assistance in *every* county and borough in New York State. Statewide, we have helped more than 26,000 homeowners at the very reasonable cost of \$770 per family. Currently, there are 72,000 pending foreclosure cases in our courts right now and nearly 34,000 new filings in 2016, with an impressive 62% of these homeowners represented by counsel as the result of our funded programs. It is vital that this network of experienced attorneys and housing counselors be maintained to avoid a disaster in our courts and in our communities. We are respectfully requesting that the NYS Homes and Community Renewal (HCR) again be tasked to administer this very successful program, with an allocation of \$10 million for the 2017-18 Fiscal Year and \$20 million for the 2018-19 Fiscal Year, to allow for continuity of services.

New York State has long been in the forefront, setting a national standard for foreclosure prevention. It is vital that we continue to be there for our neighbors in need, not only to help avoid the loss of homes but also to avoid the plague of empty, Zombie properties that can foster crime and impact property values and local economies. This investment into our existing network of services is absolutely invaluable to our citizens and our communities. Thank you for your attention and consideration.