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MFY's Reports Paved the Way for Passage of Bill to End the Abusive "Shadow Docket" of Foreclosure Cases

Lenders' Lawyers Must Now File Papers Certifying Legitimacy of Foreclosure Filings

NEW YORK, NY—MFY Legal Services joined housing advocates throughout New York State in calling upon Governor Andrew Cuomo to quickly sign a law passed by the New York State Legislature that will end the "shadow docket" (A5582/S4530) in foreclosure cases by requiring lenders' attorneys to certify the legitimacy of their cases when they first file foreclosure papers.

"This requirement imposes no additional burden on the banks. They already must prove ownership of the note and mortgage in order to complete a foreclosure, and this legislation only changes the point at which they have to do that," said Elise Brown, supervising attorney of MFY's Foreclosure Prevention Project.

Lenders had capitalized upon a technical loophole that permitted them to file foreclosure actions before their paperwork was in order but then opt not to move the actions forward, to the detriment of New York homeowners. "Thousands of foreclosure cases have languished in the shadow docket," said Elizabeth M. Lynch, a staff attorney at MFY Legal Services, which first exposed the practice in a July 2011 white paper entitled *Justice Deceived*. "This was the biggest scandal since robo-signing. If there is anything we have learned these past few years - from the repeated settlements these mortgage banks have entered into for their abusive practices to the new allegations that employees were incentivized to foreclose - is that if homeowners are to save their homes, they need the protections of the court."

"Keeping these cases out of court not only means that interest and fees unnecessarily accumulate, making a mortgage modification less likely, but it also means that homeowners are not connected to the free legal services and housing counseling agencies that the NYS Legislature and NYS Attorney General have put in place to assist them," said Linda Jun, a staff attorney at MFY.

In *Justice Deceived*, 87% of the cases studied were found to be stuck in the shadow docket. Ten months later, in its follow-up report *Justice Unsettled*, MFY looked at the problem again. MFY found that in newly-filed cases 75% were in the shadow docket.

This joint program bill was proposed by the Office of the Attorney General and the Office of Court Administration. It was sponsored in the Assembly by Judiciary Committee Chair, Helene Weinstein, and in the Senate by Senate Co-Leader and Independent Democratic Conference Leader, Jeff Klein. Homeowner advocates throughout the state joined with Attorney General Schneiderman, OCA, Assemblymember Weinstein and Senator Klein to advocate for the enactment of legislation to close

the loophole that permitted the shadow docket to balloon to approximately 25,000 foreclosure actions filed but not prosecuted in New York State. On May 22, the bill passed by a vote of 51 to 12 in the Senate. It was passed in the Assembly on May 22nd by a vote of 111 to 26.