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Thousands of New York Homeowners Denied Access to Foreclosure Settlement Conferences May Lose Their Homes

New Report Recommends Action by the Courts and Legislature to Eliminate the Shadow Docket and Force Banks to Negotiate in Good Faith

NEW YORK, May 18, 2012—Thousands of New Yorkers are prevented access to court mandated settlement conferences that could save their homes because their cases are stuck in a shadow docket or have been discontinued for no reason by loan servicers, according to a new report by MFY Legal Services, Inc., a non-profit agency that defends homeowners in foreclosure.

In *Justice Unsettled: How the Foreclosure Shadow Docket and Discontinuances Prevent New Yorkers from Saving Their Homes*, MFY re-examined foreclosure filings studied previously to find that 43% of cases filed in November 2010 and March 2011 in Brooklyn and Queens remained in the shadow docket, preventing homeowners from accessing a settlement conference where they can negotiate affordable loan modifications. In August 2011, when these cases were first examined, 87% were in the shadow docket.

The shadow docket mushroomed after the Court, in response to the robo-signing scandal, required attorneys to formally attest to the accuracy of the paperwork they filed. Loan servicers and banks filed the cases, causing fees and interest to accrue to the homeowner, but never filed the attestation and other documents needed to move the cases to the settlement part.

“We had hoped that after MFY exposed the shadow docket in our August 2011 report, and negative publicity forced the closure of New York’s largest foreclosure firm, we would see the shadow docket diminish. But when we looked at cases filed more recently in October 2011, we found that close to 75% are in the shadow docket today,” said MFY attorney Elizabeth Lynch, who authored the report.

MFY found another disturbing trend: 12% of residential foreclosure cases filed in November 2010 and March 2011 were discontinued with no reason given. Once discontinued, the homeowner must wait for the loan servicer to re-file the case in order for the court to oversee the loan modification application and evaluation process. While the homeowner waits, interest arrears and fees continue to build, making a future affordable loan modification more difficult. Homeowners who contact loan after their cases have been discontinued confront a dysfunctional system leaving them in limbo.

“It’s a perfect storm against homeowners,” said Lynch. “Homeowners need the courts and legislature to take immediate action to protect them and to prevent further damage to the state’s economy.”

MFY recommends that the courts move cases in the shadow docket to the settlement part even if attorneys have not filed the due diligence affirmation. To eliminate the shadow docket in the future, MFY recommends that the court require the due diligence affirmation to be filed along with the filing of summons and complaint. To provide more resources to the court to handle thousands of foreclosure cases that will be released from the shadow docket, MFY also recommends increases in filing fees and a prohibition against passing these fees along to the homeowners. To discourage unilateral discontinuances by loan servicers, MFY recommends that the court allow attorneys to appear for the limited purpose of opposing the discontinuance, and that the courts create a *pro se* opposition form that homeowners can file with the assistance of the court's *pro se* office.

MFY Legal Services, Inc. has provided free civil legal services to low-income New Yorkers for 49 years. Its Foreclosure Prevention Project provides free legal counsel and representation to homeowners in Queens, Brooklyn and Staten Island.