IMPLEMENTATION OF ENHANCED PROTECTIONS FOR NEW YORK HOMEOWNERS IN FORECLOSURE: A WORK IN PROGRESS

A STATEWIDE SURVEY OF NEW YORK STATE COURTS' IMPLEMENTATION OF RECENT FORECLOSURE LAW CHANGES

NEW YORKERS FOR RESPONSIBLE LENDING MORTGAGE WORKING GROUP

WINTER 2017-2018

A Follow-Up to *Divergent Paths: The Need For More Uniform Standards and Practices in New York State's Residential Foreclosure Conference Process,* New Yorkers for Responsible Lending (Spring 2016).

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EXECUTIVE SUMMARY

- **New York responded to the residential foreclosure crisis by adopting a pioneering settlement conference law administered by the court system**, which promotes face-to-face negotiation of affordable foreclosure-avoiding solutions, **which has allowed thousands of New York families to save their homes**, while also sparing surrounding neighborhoods and communities the blight and declining real estate values and tax revenues that accompany avoidable foreclosures.

- **Following a 2016 Report issued by New Yorkers for Responsible Lending documenting the uneven implementation of New York's residential foreclosure settlement conference law,[1] the legislature enacted changes, which went into effect in late 2016, strengthening the law's consumer protections and clarifying the law's requirements.**

- This report follows a survey of settlement conference practices across New York State conducted in June and July of 2017, approximately six months *after* the effective date of the recent changes in the law, and observes that, **while many courts are implementing the changes, some were not and were therefore undermining the legislature's efforts to make the settlement conference law a more effective foreclosure-prevention tool**. This report recommends that *all* courts implement the changes to the settlement conference law, recommends more vigorous enforcement of portions of the settlement conference law that were designed to ensure efficient, less time-consuming and more productive conferences, and recommends adoption of some of the "best practices" that several courts have embraced to promote effective settlement conferences and to avert foreclosures statewide.

I. INTRODUCTION

With a law that was passed in 2016, at the end of December 2016 several important changes in New York's residential foreclosure settlement conference law went into effect.

One major change was to clarify the types of foreclosure-avoiding solutions to be considered at settlement conferences. While the settlement conference law's preferred outcome has always been affordable loan modifications that preserve homeownership, for some homeowners who can no longer afford homeownership other solutions, such as "short sales" or "deeds in lieu of foreclosure," are preferred outcomes.[2] Because some courts did not allow homeowners to negotiate non-modification solutions in settlement conferences, the legislature changed the law to make clear that homeowners who are seeking other solutions—and not just loan modifications—are entitled to settlement conferences.[3]

Since the settlement conference law's enactment, banks have regularly appeared at settlement conferences without required information or the necessary authority to resolve cases, even though the law already required that they do so. This has been a persistent challenge and source of frustration to borrowers.[4] The 2016 amendments strengthened the statute's language about the duty to appear at settlement conferences with required "authority" to resolve cases and added further detail regarding the information and documents that both parties are required to bring to settlement conferences in order to have a meaningful negotiation.[5]

The changes also provided more clarity about the settlement conference law's requirement of good-faith negotiation, both defining the good-faith standard and detailing procedures and required remedies when the parties violate that good-faith negotiation standard.[6]

Another impediment to an effective settlement conference process has been a lack of records memorializing each settlement conference. Some courts kept a record of what transpired at the conferences and issued orders or directives, including deadlines for submission of applications, responding to applications, or requesting follow-up documentation, thus promoting accountability and reducing delays. In contrast, other courts did not maintain records, which allowed for repetitive demands for documents, a lack of accountability and protracted delays.

To address this problem, in early 2017 the court system introduced uniform statewide forms for use at settlement conferences, including a specialized form for collecting information at the first appearance[7] and forms used to document activity and deadlines set at subsequent conferences[8].

The most important change mandated by the recent amendments to the law was to provide clearer information to homeowners navigating the complicated judicial foreclosure process, and to provide them a second chance to preserve their rights and defenses. This was needed because many homeowners, lacking counsel, unwittingly waived key defenses despite spending months participating in settlement conferences and believing they were doing what was needed to try to save their homes from foreclosure.[9] Accordingly, **the law now requires the courts to provide homeowners appearing for their first settlement conference with crucial information explaining the foreclosure process and also gives homeowners an additional 30 days from the first settlement conference to "answer" the foreclosure complaint so that important legal defenses and claims are not lost.**[10] The law now also requires the courts to provide homeowners with a "**Consumer Bill of Rights**" at the first conference appearance, which details the rights and responsibilities of the parties in foreclosure cases.[11]

Finally, even more recent changes were enacted to address the drastic rise in foreclosures on reverse mortgage loans affecting New York seniors.[12] Those loans were previously excluded from the definition of loans covered by the settlement conference law, but legislation signed into law on April 20, 2017 extended the protections of the settlement conference process to most reverse mortgage foreclosure actions.[13]

While foreclosure filings have begun to decline from the unprecedented levels seen with the start of the recession in 2007, the reverberations of the foreclosure crisis are still felt today, with foreclosures still representing 21% of the statewide Supreme Court civil inventory for the period October 11, 2016 to October 9, 2017, and with nearly 50,000 foreclosure cases pending statewide during that period.[14] With foreclosures still accounting for so much of the civil case inventory, with the impact of foreclosures so devastating to both the individual families and their surrounding communities, and because foreclosures disproportionally impact low-

and-moderate-income communities of color whose recovery from the recession has been slow, **the courts should implement the recent settlement conference law amendments vigorously and consistently in order to give every struggling New York homeowner a fighting chance to save their home.**

II. NYRL AND THE SURVEY METHODOLOGY

New Yorkers for Responsible Lending (NYRL) is a coalition of approximately 170 organizations from all regions of the state. Founded in 2000, NYRL members include community-based and affordable housing groups; advocates for seniors and consumers; civil rights, labor, community reinvestment, civil legal services and foreclosure prevention organizations; and community development financial institutions.

For years, NYRL members have seen first-hand the devastation that predatory financial practices and abusive mortgage servicing have caused to families and entire New York neighborhoods, and many of them are on the front lines working with distressed homeowners navigating New York's judicial foreclosure process.

In the summer of 2017, NYRL's Mortgage Working Group conducted a statewide survey of residential foreclosure settlement conference practices and procedures in every county in New York State (except for New York County, for which data was not available) to measure implementation of several key components of the recent amendments to the residential foreclosure settlement conference law, as well as implementation of even more recent amendments providing settlement conferences for most reverse mortgage foreclosure cases (which were previously excluded from the definition of foreclosures involving a "home loan").

The survey reveals that as of June-July 2017, when the survey was conducted, many courts were complying with the amended law, but that it is not applied uniformly, with significant variations in practices from one county to the

next. This lack of uniformity harms New York's struggling homeowners by preventing some homeowners from accessing meaningful, productive, efficiently administered settlement conferences that were designed to increase their chances of saving their homes.

In June 2017, after the new laws had been in effect for nearly a half year, a NYRL Mortgage Working Group subcommittee developed and distributed a survey tool to "county coordinators" for each of the 62 counties in New York State, to assess implementation of specific changes to New York foreclosure law that went into effect at the end of 2016.[15] Upon receipt of completed responses at the end of July 2017, members of the NYRL subcommittee analyzed the data collected. This report summarizes those findings.

III. FINDINGS

The NYRL survey assessed several key aspects of the recent changes affecting settlement conferences across the state, including:

- Scheduling of separate "first-time-on" settlement conference calendars, where homeowners appearing for their first settlement conference are given required information about their rights.
- Use of the recently issued forms to document settlement conference activity and obligations of the parties;
- Provision of required information for homeowners at their first settlement conferences to both unrepresented homeowners and those represented by counsel as the law requires;
- Provision of translations to litigants with limited English proficiency ("LEP");
- Provision of the Consumer Bill of Rights;
- Provision of information about local legal services providers who can assist with preparing answers to complaints in foreclosure cases;
- Provision of a form answer and instruction booklet for preparation of answers to foreclosure complaints without an attorney ("*pro se* answers");
- Availability of lawyers in the settlement conference court room to assist homeowners or schedule follow-up appointments;

- Enforcement of the legal obligation to appear at settlement conferences with required information and authority.

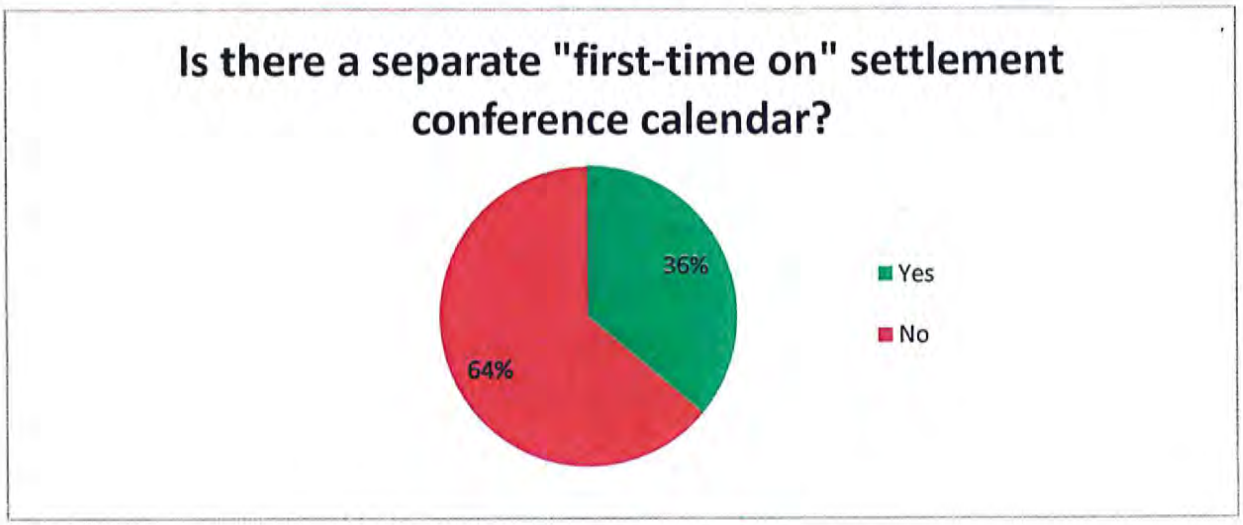
> ***The survey found tremendous variation in key aspects of settlement conference practices, and these differences have a significant impact on settlement conference outcomes.***

Survey results also identified some best practices that would improve the settlement conference process if adopted statewide. This section will summarize several key observations derived from this survey.

(A) Separate "First-Time On" Calendar

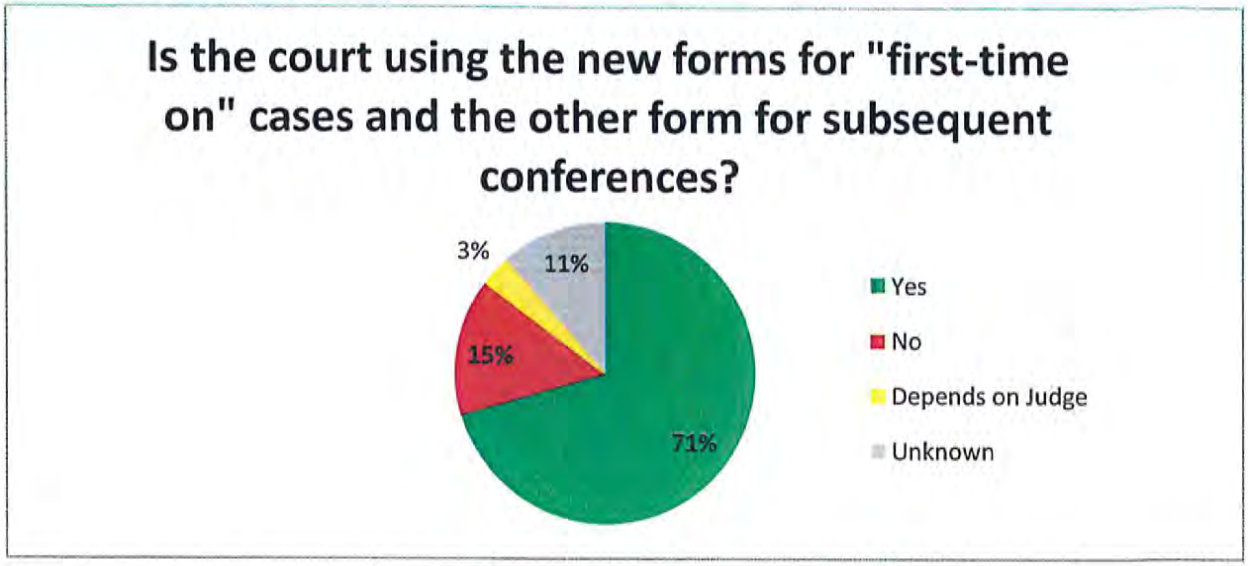
One of the recognized best practices for administering settlement conferences is the existence of separate, "first-time-on" settlement conference calendars, where the process can be explained to homeowners appearing for the first time, the new right to serve an answer to the complaint within 30 days of the first conference is explained, and where homeowners can be directed to local resources who can assist with the preparation of answers to foreclosure complaints. These separate calendars can also help speed up settlement conferences in other, non-"first-time-on" cases because those subsequent conferences can proceed without getting bogged down with explanations provided to those who are new to the process.

Yet the survey revealed that only 36% of the county courts *are* using some form of "first-time-on" calendar, and the 64% of counties in which no such calendar is employed include some of those with high volumes of foreclosure cases that would benefit from them.[16]



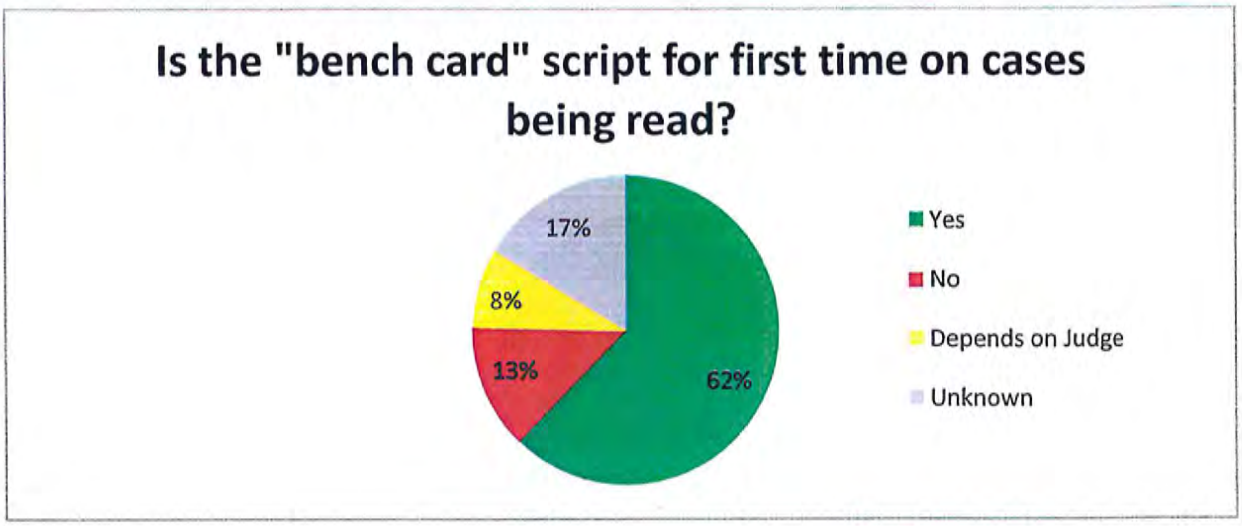
(B) Use of Court-Mandated Forms

In early, 2017 the Office of Court Administration promulgated uniform forms for statewide use at settlement conferences, in order to maintain a record of settlement conference activity so as to promote accountability and avoid disputes concerning the Court's instructions to the parties. It issued an "intake form" designed to collect information and record the results of the first settlement conference in each foreclosure case,[17] and a status form designed to record activity and Court directives at subsequent settlement conferences.[18] Advocates had encouraged the courts to adopt such uniform forms for many years, and were encouraged when the judiciary adopted these forms for statewide use, but the survey resuls showed that as of the June-July 2017 period, **in 15% of the surveyed counties, these forms were not being used.**[19]

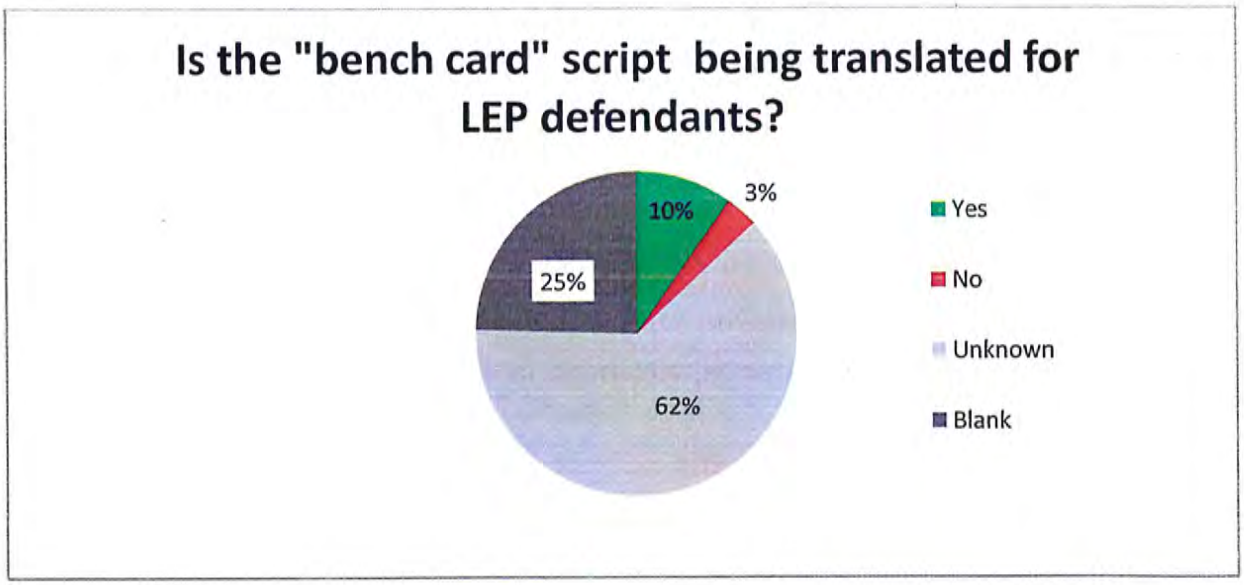


(C) Providing Required Information/Assistance with *Pro Se* Answers/Availability of Legal Services

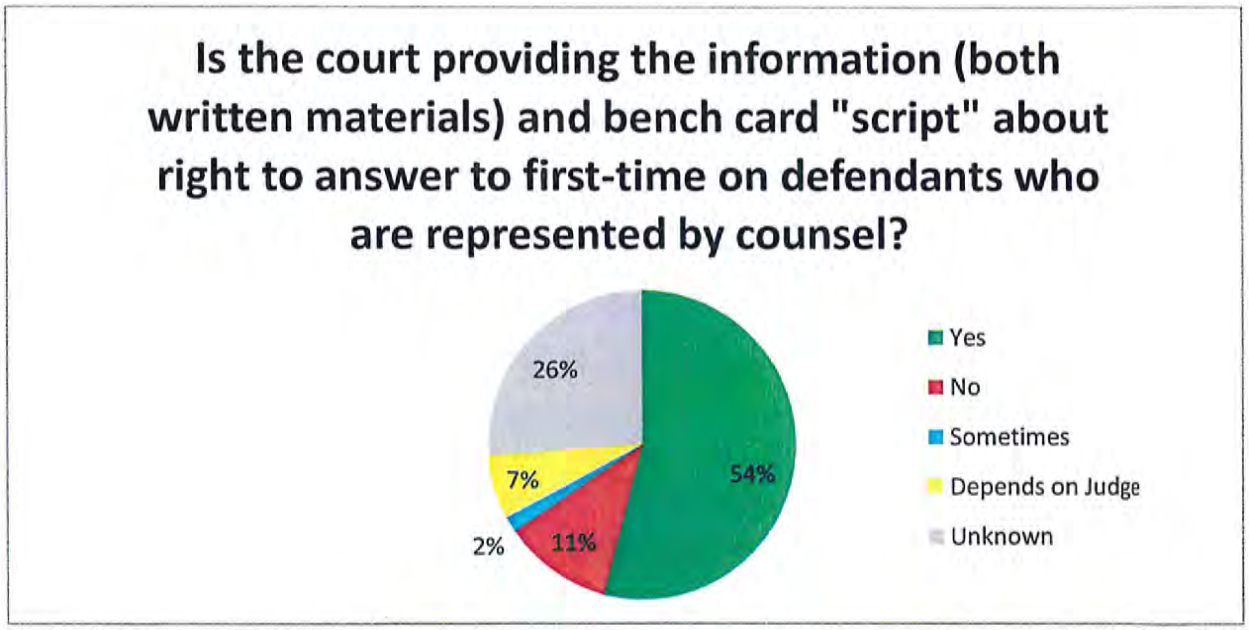
In order to comply with the new legal requirements to explain the settlement conference process and the second chance to answer the complaint within 30 days of the first foreclosure settlement conference,[20] the court system devised a "bench card" script for court personnel administering settlement conferences across the state, so that the required information is conveyed uniformly in every courthouse in which foreclosure settlement conferences take place. The survey revealed, however, that in 13%of the surveyed counties the "bench card" script was ***not*** being used[21], and that in another 18% of counties it depended on the particular judge or referee[22]. In other words, in those counties homeowners appearing for their first settlement conference were not advised of their new right to answer the complaint after the first appearance, which would preserve their ability to defend their cases.



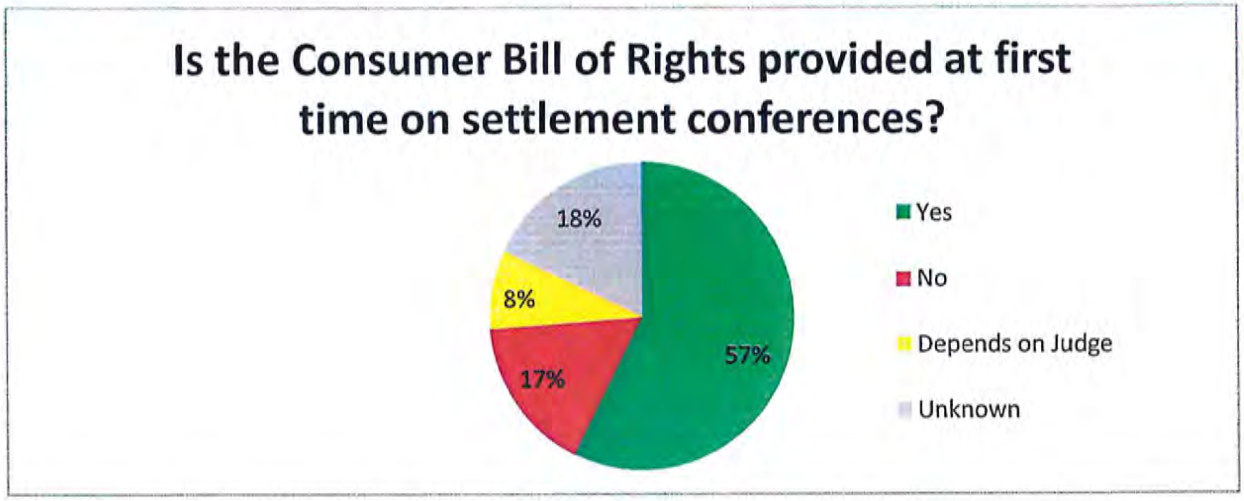
Under New York law, the courts are obligated to provide translation services to those who are of limited English proficiency ("LEP"), both in court proceedings and in clerk's offices,[23] but respondents were able to confirm that the "bench card" script read to homeowners attending their first settlement conferences was translated for LEP defendants in only 10% of the surveyed counties.[24]



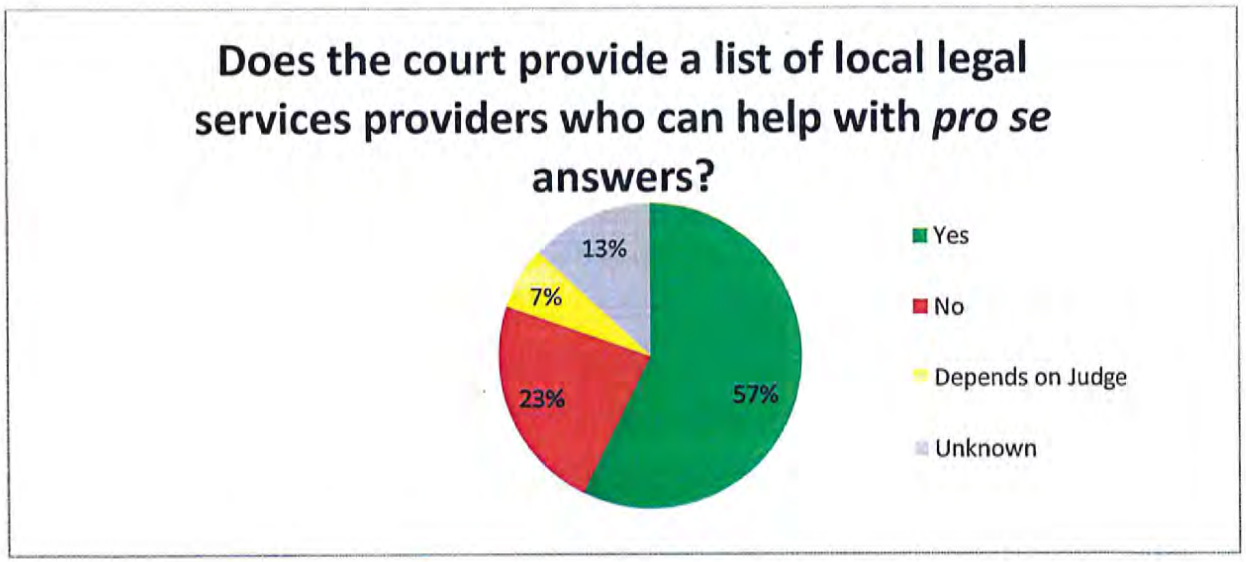
Some courts were also not complying with the law's requirement that the required information about answering the complaint be provided to *all* defendants who had not "answered" the complaint or filed a pre-answer motion to dismiss before their appearance at their first settlement conference, withholding that information if a homeowner appears at the first conference with an attorney.[25] The law makes no exception to the courts' obligation to provide this information to represented parties, and because some homeowners are represented by practitioners who are not foreclosure defense experts, and because this "second chance" to answer represented a change in the law, not providing this information to homeowners represented by counsel at their first settlement conference can result in this "second chance" to answer being lost.



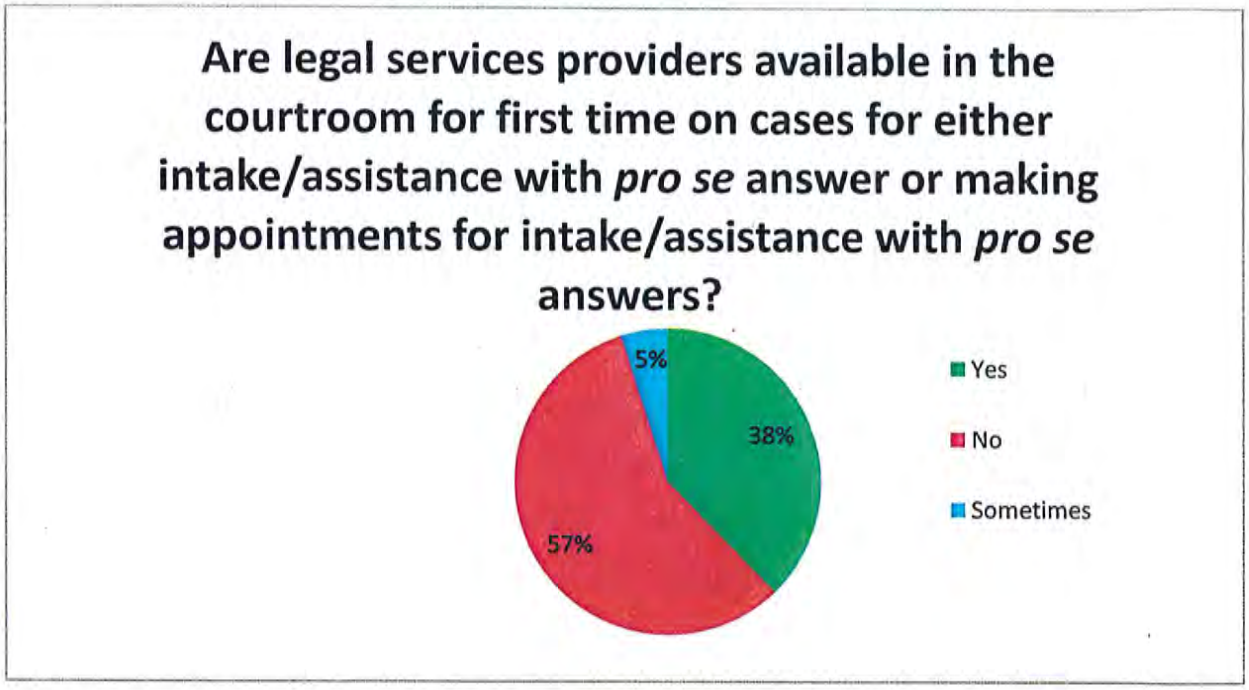
Additionally, although the law requiring the courts to distribute the Consumer Bill of Rights to homeowners appearing at their first conference is clear, the data collected revealed that, as of June-July 2017, not all courts were complying with this requirement, with 17% of county courts reported not providing the Consumer Bill of Rights, and another 8% reporting that compliance with this requirement varied depending on the judge, referee or judicial hearing officer.[26]



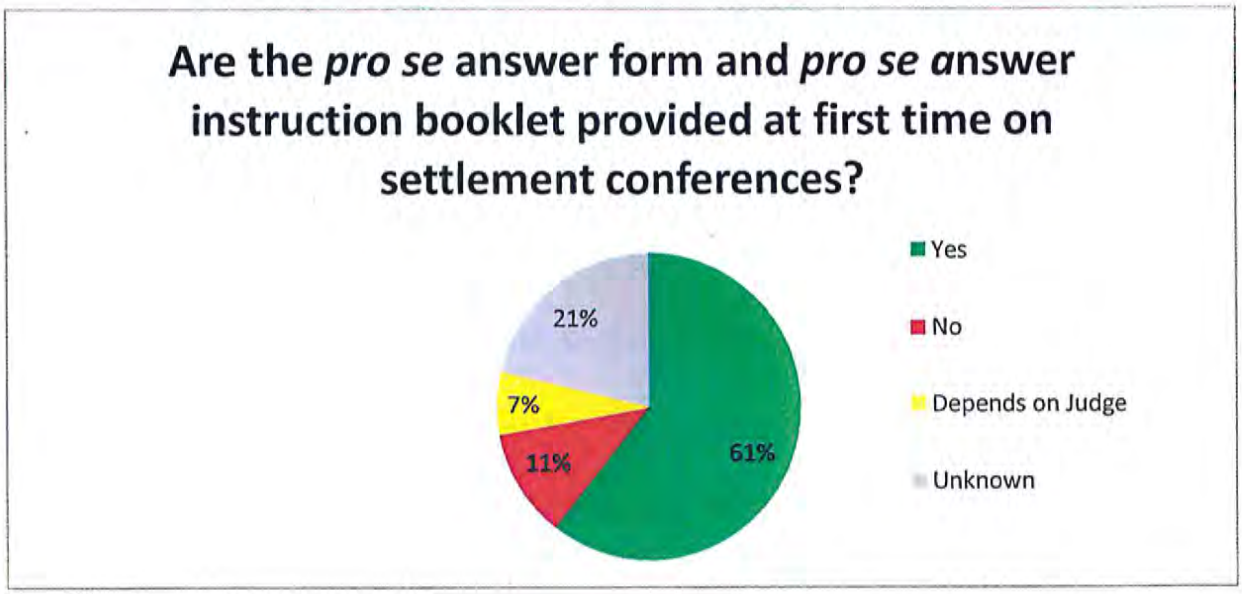
New York State has a robust network of legal services providers providing free foreclosure prevention services to distressed homeowners, with many operating court-based clinics providing a range of services to homeowners, including assistance to unrepresented homeowners preparing answers to foreclosure complaints. Yet in 23% of the courthouses, the court was not, as of June-July 2017, providing homeowners appearing at their first settlement conference with information about local legal services agencies that provide these services, and in another 7% of the counties, whether such information was provided depended on which judge, referee or judicial hearing officer was presiding.[27]



Indeed, in some courts, legal services providers are available in or near the court room where settlement conferences are held, so that homeowners can consult attorneys immediately after their first settlement conference to obtain assistance in answering the complaints, or make appointments to do so. This assures that the homeowner does not lose her or his right to answer within 30 days of the first appearance. This best practice was reportedly in use in 38% of the counties as of June-July 2017, but regrettably was reportedly not in use in 57% of the reporting county courts. [28]



In addition to the availability of legal services providers who can help unrepresented homeowners prepare answers to foreclosure complaints, the statewide network of non-profit civil legal services providers has developed a fill-in-the-blank "*pro se*" form answer, along with a detailed instruction booklet explaining the use of the form and the various possible legal defenses and counterclaims, both of which have been furnished to the judiciary for distribution to unrepresented homeowners.[29] While 61% of the responding counties reported that the form answer and instruction booklet are distributed to homeowners attending their first settlement conference, 11% of the county courts were reportedly *not* providing these materials, while in another 7% of the courts the distribution of these materials depends on the presiding judge, referee or judicial hearing officer.[30]



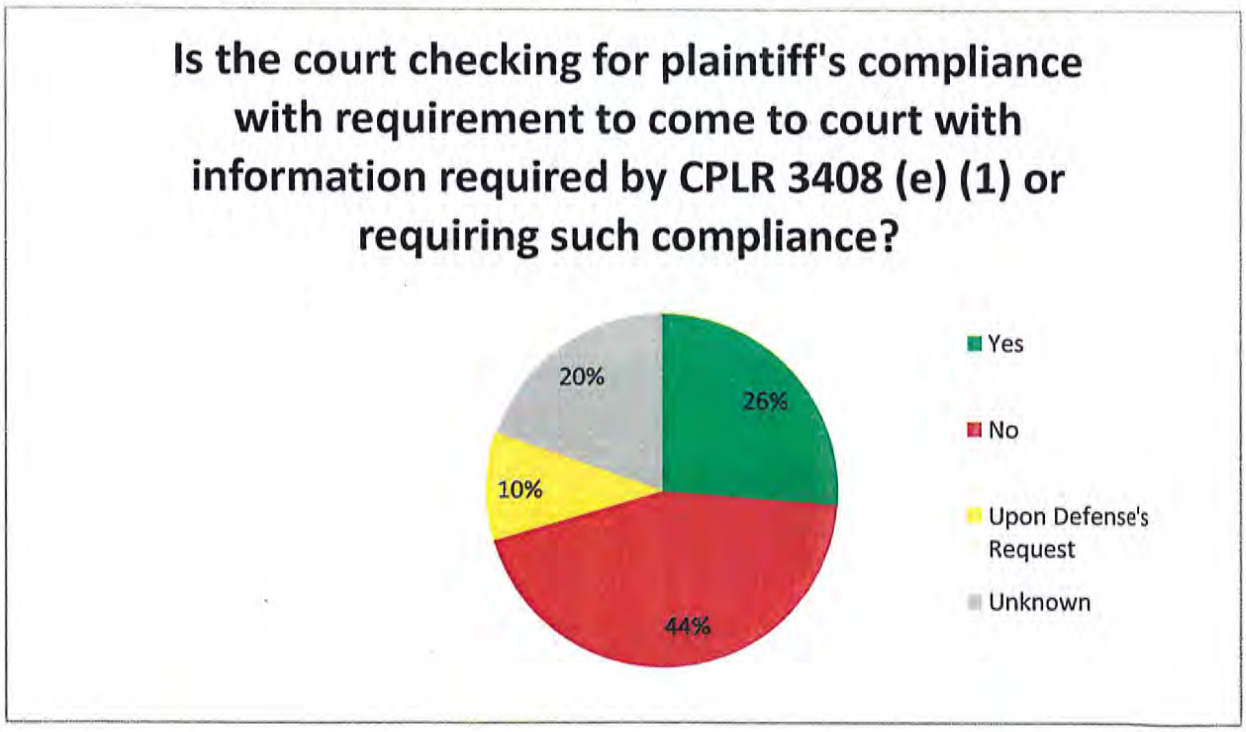
(D) Enforcing Requirements to Appear with Information and Settlement Authority

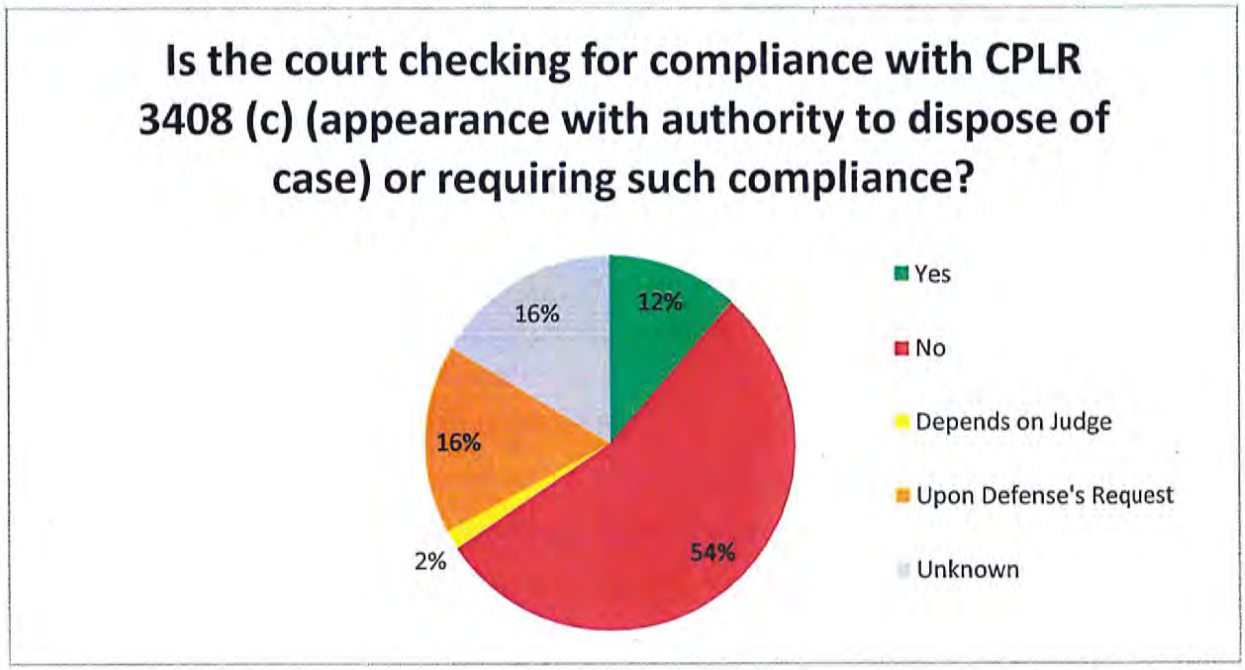
Since the inception of foreclosure settlement conferences the greatest challenge to an efficient and productive conference process has been the appearance of lenders and their counsel at settlement conferences with neither the specific information that the law requires them to bring nor the authority required to resolve cases at settlement conferences.[31]

While the law had already required plaintiffs to provide certain information (such as pay-off amounts) needed to engage in meaningful settlement negotiations, and had imposed a requirement that the person appearing for plaintiffs have authority to resolve the case, the courts rarely enforced these requirements or penalized banks who failed to comply with them. The 2016 amendments provided even greater detail about what both sides are required to bring to the conferences, obligating the lenders to provide, among other things, a payment history, an itemization of the amounts needed to cure the default, the mortgage and note, standard application forms and descriptions of loss mitigation options, specific information about the status of any pending loss mitigation applications (including any documents needed to complete the lender's evaluation of such applications) and, if an application had already been denied, a detailed explanation of the grounds for the denial and documents substantiating the grounds for the denial.[32]

The amendments also make clear that whether the bank appears at the conference through an attorney or a representative, whoever is appearing must be fully authorized to settle the case.[33] The amended law further codifies that one of the factors in determining whether a party has complied with the legal obligation to negotiate in good faith at settlement conferences (and whether a party should be penalized for violating the settlement conference law) is whether the party appeared at settlement conferences with full authority to dispose of the case.[34]

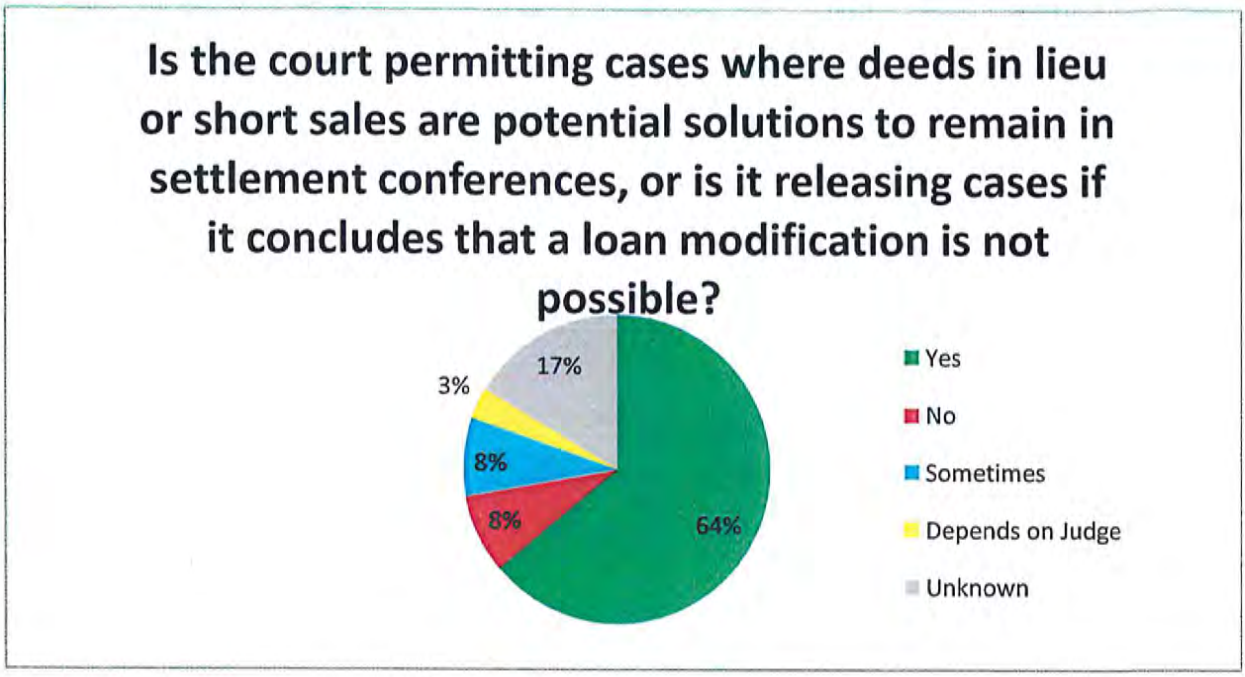
Vigorous enforcement of these enhanced requirements is perhaps the single most important step the courts can take to ensure that the settlement conference process is efficient and productive, and that court resources are not wasted. Unfortunately, the courts, even after these requirements have been strengthened, are not enforcing them uniformly. At least 44% of the responding counties reported that the court was *not* checking for the banks' compliance with the legal obligation to bring the required information to court,[35] and at least 54% of the courts were not enforcing the obligation to attend conferences with settlement authority.[36]



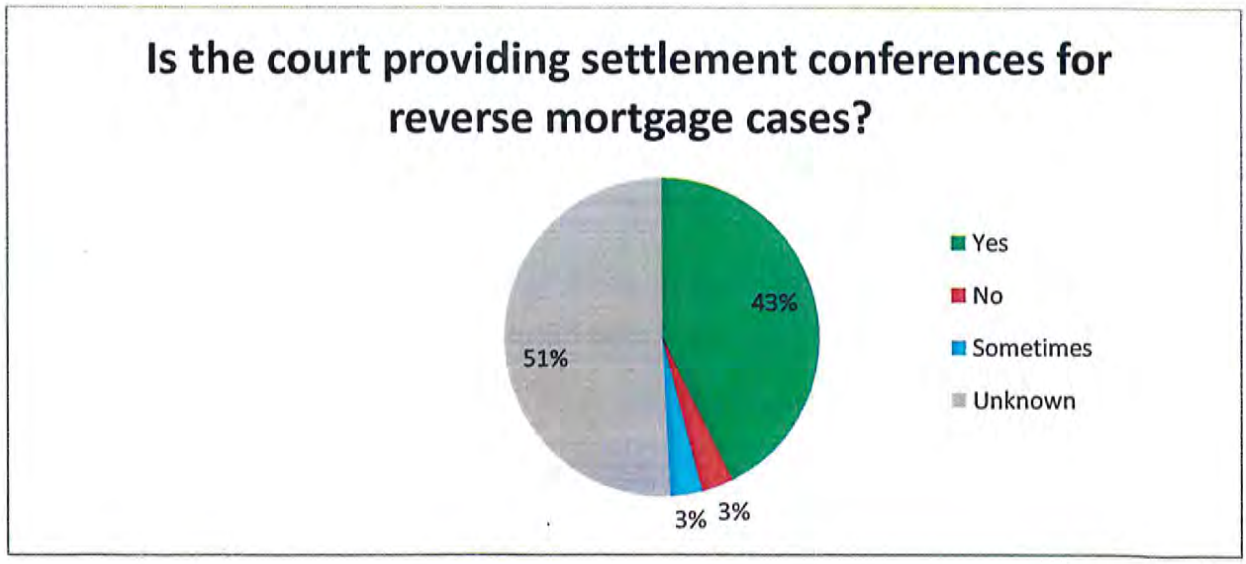


(E) Provision of Settlement Conferences for Non-Loan Modification Settlements and for Reverse Mortgage Foreclosure Cases

Although the 2016 amendments made clear that homeowners seeking foreclosure-avoiding settlements other than loan modifications, such as short sales or deeds in lieu of foreclosure, are entitled to settlement conferences, 8% *of the counties reported that the courts were still denying settlement conferences to homeowners if the court concluded that the homeowner would not be able to achieve a loan modification*, while in another 11% conferences were permitted only sometimes, depending on a variety of factors, such as which judge, referee or judicial hearing officer was presiding.[37]



Similarly, notwithstanding the recent changes extending settlement conferences to most reverse mortgage foreclosure cases, a small number of reporting counties (3%) reported that the courts were not granting settlement conferences in reverse mortgage cases, with another 3% reporting such conferences were sometimes granted for reverse mortgage cases, and with the majority of reporting counties (51%) reporting that it was unknown whether conferences were being provided.[38]



IV. RECOMMENDATIONS

New York's settlement conferences still represent the best opportunity for many struggling homeowners to achieve home-saving solutions and avoid foreclosure. Not only does this process benefit New York's hard-working families at risk of homelessness, it also allows mortgage loans to become performing assets and promotes neighborhood stabilization.

Considerable progress has been made in implementing recent changes to the settlement conference laws, but there is more the courts can and should be doing to ensure that the process is productive and not a needless drain on court resources.

In counties with high volumes of residential foreclosure cases, adoption of separate "first time on" settlement conference calendars can streamline the provision of the required information about answering the complaint and the second chance to do so. The "bench card" script can be read at the start of the calendar (and it should be translated, at a minimum, into Spanish) and should be repeated at the start of each individual conference. LEP homeowners should be advised that translation services are available, and the courts should ensure that translation services *are* provided.

The courts should collaborate with local legal services providers to ensure that homeowners are made aware of—and have access to—resources for assistance with the preparation of answers to foreclosure complaints at "first time on" settlement conference calendars and to ensure that homeowners can be evaluated for possible representation at settlement conferences by free legal services providers.

The judiciary should insist that at all "first time on" foreclosure defendants who have not answered the complaint, whether or not they are appear with counsel, are provided the information about the second chance to answer the complaint that the law now requires. Every courtroom in which "first time on" settlement conference calendars are conducted should be stocked with a listing of local legal services providers and their contact information, the Consumer Bill of Rights, and the *pro se* answer form with the accompanying instruction booklet. This information should be provided to each and every homeowner appearing for a "first

time on" settlement conference uniformly and without exception, in every county in the state.

The judiciary should insist on compliance with the obligation to appear at settlement conferences with required information and with settlement authority. Judges and other personnel presiding at settlement conferences should be required to monitor the parties' appearance with the required information and authority, and should record non-compliance on the court forms used to record settlement conference activity (and the forms should be modified to require the recording of such information).

The courts should use the authority already granted in the settlement conference law to toll interest and afford other relief when a plaintiff's failure to appear with authority or to provide required information leads to delays and additional unnecessary court appearances, and so that non-compliant lenders do not profit from violation of the settlement conference law by collecting interest and fees that accrue while cases are delayed.

Courts should not screen for loan modification eligibility before permitting homeowners to participate in settlement conferences, and should consistently provide settlement conferences to homeowners seeking foreclosure settlements other than loan modifications, such as short sales or deeds in lieu of foreclosure.

Steps should be taken to ensure that all eligible reverse mortgage foreclosure cases are automatically scheduled for settlement conferences in every county, and language should be added to the Request for Judicial Intervention Residential Foreclosure Addendum to clarify that settlement conferences are required in reverse mortgage foreclosures so that reverse mortgage cases are properly scheduled for settlement conference proceedings.

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[1] *"Divergent Paths: The Need for More Uniform Standards and Practices in New York State's Residential Foreclosure Conference Process,"* New Yorkers for Responsible Lending (Spring 2016) (available at http://www.legalservicesnyc.org//storage/PDFs/divergent%20paths.pdf).

[2] In a short sale, the lender agrees to accept whatever amount the borrower is able to realize through the sale of the property in satisfaction of the mortgage loan, and in a deed in lieu of foreclosure, the lender accepts the borrower's transfer of the property in satisfaction of the debt.

[3] NY CPLR 3408(a).

[4] The phenomenon of banks' failure to appear at settlement conferences with statutorily required settlement authority and required information was detailed in an April 2014 report, Stalled Settlement Conferences: Banks Frustrate New York's Foreclosure Settlement Conferences (JASA/Legal Services for the Elderly in Queens, Legal Services NYC, MFY Legal Services, Inc. (available at http://nylawyer.nylj.com/adgifs/decisions14/050214report.pdf).

[5] NY CPLR 3408 (c) and (e).

[6] NY CPLR 3408 (f), (i) (j) and (k).

[7] Foreclosure Settlement Conference Intake Form, available at http://www.nycourts.gov/admin/OPP/docs/pdfs/Forms%20and%20Documents/ForclosureIntake_Form_2017_2_23.pdf

[8] Foreclosure Settlement Conference Status Form, available at http://www.nycourts.gov/admin/OPP/docs/pdfs/Forms%20and%20Documents/FSC-StatusForm.pdf An additional form was also made available for recording additional information. See Foreclosure Settlement Conference Additional Information, available at http://www.nycourts.gov/admin/OPP/docs/pdfs/Forms%20and%20Documents/FSC%20Additional%20Information%20Form.pdf.

[9] *See generally* Lynn Armentrout, "*Foreclosed Homeowners Foreclosed From Telling Their Stories*," March 16, 2016, New York Law Journal, available at http://www.newyorklawjournal.com/id=1202752251907?keywords=Foreclosed+Homeowners+Foreclosed+From+Telling+Their+Stories+&publication=New+York+Law+Journa .

[10] NY CPLR 3408 (l)-(m).

[11] NY CPLR 3408 (L) and NY RPAPL 1303 (3)-a.

[12] Reverse mortgage loans are loans that allow homeowners aged 62 and older to tap into their home equity while remaining in their homes, and can be an important resource for seniors without sufficient income to cover their living expenses. Instead of making a payment each month to cover principal and interest, the interest accrues against the borrower's home equity and the loan is not due and payable until the borrower dies or no longer lives in the home as her primary residence. However, borrowers are responsible for payment of property taxes and insurance, known as property charges, and failure to pay such property charges, as well as non-compliance with other contractual requirements, can trigger a default and result in a foreclosure on the reverse mortgage.

[13] NYCPLR 3048(a)(2), enacted in Part FF, 2017 Sess. Laws of N.Y., Ch. 58 (S. 2008C) (McKinneys). The law provides that settlement conferences shall not be required in reverse mortgage foreclosures triggered by the last surviving borrower's death unless the last surviving borrower's spouse is a resident of the property or the last surviving borrower's successor (whether by bequest or through intestacy) owns or has a claim to the property and is a resident of the property at the time of the last surviving borrower's death.

[14] *See* 2017 Report of the Chief Administrator of the Civil Courts Pursuant to Chapter 507 of the Laws of 2009 at pp. 3-5 (available at http://www.nycourts.gov/publications/pdfs/ForeclosureAnnualReport2017.pdf ("OCA Report").

[15] County coordinators were either legal services or housing counseling staff at agencies working with homeowners in every county of the state, who were charged with answering twelve questions about settlement conference practices in their counties in order to provide the county-specific information requested by the survey. The only county for which no data was available for inclusion in this survey was New York County, although there were some counties in which the respondents were unable to answer some of the specific questions. The results of this survey do not include any information concerning foreclosure settlement conferences in New York County.

[16] The counties in which no separate "first-time-on" calendar was being used as of the date of the survey were Albany, Allegany, Bronx, Broome, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Oneida, Onondaga, Orange, Oswego, Queens, Saratoga, Schoharie, St. Lawrence, Steuben, Tioga, Tompkins, Ulster, Warren, Washington, Wyoming and Yates.

[17] http://nycourts.gov/rules/comments/orders/AO-Foreclosure%20Forms.pdf. After the initial promulgation of the Intake Form, in response to supplemental comments pointing out substantive errors in the form, an updated form was promulgated:

http://www.nycourts.gov/admin/OPP/docs/pdfs/Forms%20and%20Documents/ForclosureIntake_Form_2017_2_23.pdf.

[18] Status Form available at http://www.nycourts.gov/admin/OPP/docs/pdfs/Forms%20and%20Documents/FSC-StatusForm.pdf.

[19] The counties in which the forms were not being used, when the survey was conducted in June-July 2017, were Allegany, Bronx, Chemung, Monroe, Richmond, Schoharie, St. Lawrence, Steuben and Wyoming.

[20] NY CPLR 3408(l) provides that at the first settlement conference, if the defendant has not filed an answer or made a pre-answer motion to dismiss, the court shall:

> "1. advise the defendant of the requirement to answer the complaint;
> 2. explain what is required to answer a complaint in court;
> 3. advise that if an answer is not interposed the ability to contest the foreclosure action and assert defenses may be lost; and
> 4. provide information about available resources for foreclosure prevention assistance.
> At the first conference...the court shall also provide the defendant with a copy of the Consumer Bill of Rights provided for in section thirteen hundred three of the real property actions and proceedings law."

[21] The survey revealed that, as of June-July 2017, the "bench card" script was not being used in Jefferson, Lewis, Tioga, Wyoming, Genesee, Niagara, Schenectady and Wayne counties.

[22] Whether the "bench card" script was used depended on who was administering the conferences in Tompkins, Ulster and Suffolk counties.

[23] NYCRR Part 217.

[24] The counties in which translations were observed as being provided as of June-July 2017 were Oneida, Queens, Putnam, Richmond, Rockland and Sullivan, but 62% of the counties responded that it was unknown whether translations were provided and 25% of the respondents left that survey question blank.

[25] The courts were not providing this information to homeowners whose counsel appeared at "first-time-on" settlement conferences in Bronx, Chemung, Columbia, Genesee, Niagara, Orleans and Suffolk counties, while it depended on the individual judge in St. Lawrence, Tompkins, Erie and Ontario counties.

[26] The courts were reported as not providing the Consumer Bill of Rights in Cattaraugus, Chautauqua, Cayuga, Genesee, Leis, Nassau, Oswego, Suffolk, Tioga and Wyoming Counties, while compliance with this requirement varied depending on the individual judge in Erie, Schoharie, St. Lawrence, Tompkins and Ulster counties.

[27] Information about local legal services providers available to help with foreclosure complaint answers was not being provided in Genesee, Nassau, Niagara, Oswego, Otsego, Putnam, Schenectady, Steuben, Tompkins and Wyoming counties, and was dependent on the individual presiding in Erie, Schoharie, St. Lawrence and Ulster counties.

[28] Legal services providers were reported as available for first-time homeowners in Albany, Bronx, Cattaraugus, Columbia, Cortland, Erie, Genesee, Greene, Kings, Monroe, Nassau, Niagara, Queens, Onondaga, Orleans, Oswego, Otsego, Rensselaer, Rockland, Suffolk, Tioga, and Wyoming counties, and with Cayuga, Saratoga and Washington counties reporting that legal services were sometimes available.

[29] The "*pro se*" answer form is available on the judiciary's website, at http://www.nycourts.gov/courthelp/pdfs/forms/foreclosure_answer.pdf, but the accompanying instruction booklet has not been posted.

[30] The answer form and instruction booklet were reportedly not being provided in Genesee, Lewis, Nassau, Ontario, Tioga, Westchester and Yates counties, while in Erie, Schoharie, St. Lawrence or Ulster counties provision of those materials was dependent on the individual presiding at the conference.

[31] The phenomenon of banks' failure to appear at settlement conferences with statutorily required settlement authority and required information was detailed in an April 2014 report, *Stalled Settlement Conferences: Banks Frustrate New York's Foreclosure Settlement Conferences* (JASA/Legal Services for the Elderly in Queens, Legal Services NYC, MFY Legal Services, Inc.), available at http://nylawyer.nylj.com/adgifs/decisions14/050214report.pdf

[32] NY CPLR 3408(e)(1).

[33] NY CPLR 3408(c).

[34] NY CPLR 3408(f)(3).

[35] The courts were not checking for compliance with the legal requirement to appear at settlement conferences with required information in Albany, Allegany, Chemung, Clinton, Columbia, Cortland, Delaware, Erie, Essex, Fulton, Genesee, Greene, Hamilton, Montgomery, Nassau, Niagara, Putnam, Rockland, Schenectady, Schoharie, St. Lawrence, Steuben, Suffolk, Tioga, Tompkins and Ulster counties.

[36] The obligation to appear with the required settlement authority was reported as not being enforced in Bronx, Chautauqua, Chemung, Clinton, Columbia, Cortland, Delaware, Essex, Genesee, Greene, Jefferson, Kings, Lewis, Madison, Nassau, Niagara, Onondaga, Putnam, Queens, Rensselaer, Saratoga, Schenectady, St. Lawrence, Steuben, Suffolk, Tompkins, Ulster, Warren, Washington, Wyoming and Yates counties.

[37] Settlement conferences were reported as being denied altogether in Jefferson, Monroe, Suffolk, Tioga and Westchester counties, and whether they were denied depended on the judge presiding in Oneida and Ontario counties. Additionally, Herkimer, Nassau, Onondaga, Oswego and Schoharie counties reported that conferences were permitted in these circumstances only sometimes.

[38] As of the June-July 2017 survey period, Chemung and Suffolk counties were refusing settlement conferences in reverse mortgage cases, and they were being provided only sometimes in Erie and Westchester counties.

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