



SUPPORT EXTENSION OF MANDATORY FORECLOSURE SETTLEMENT CONFERENCES

A.9354 (Weinstein)/S.7119 (Klein)

MFY Legal Services, Inc. (“MFY”) strongly supports A.9354/S.7119, which would provide a five-year extension for provisions of chapter 507 of the laws of 2009 relating to mandatory settlement conferences in foreclosure proceedings and notice requirements to be given to homeowners and tenants during the foreclosure process.

In 2008, the NYS Legislature passed a law which established **mandatory settlement conferences** in all foreclosure cases involving subprime and nontraditional home loans. In 2009, the Legislature extended the law to apply to foreclosures involving any residential home loan. Within 60 days of the filing of key court documents, the court has to hold a settlement conference for the purpose of seeing whether the parties can reach a mutually agreeable solution, including a loan modification. The parties are required to bring necessary documents to the conferences, appear with authority to settle and negotiate in good faith. This law went into effect in February 2010 and has a sunset date of February 2015. A.9354/S.7119 ensures the continuation of these essential settlement conferences for another five years.

Chapter 507 of the Laws of 2009 also included key **notice provisions** that are also due to sunset in February 2015. The most significant notice is the 90 day pre-foreclosure filing notice that must be sent to homeowners in default at least 90 days prior to a lender filing a foreclosure and attaching a list of at least 5 state-designated non-profit housing counseling agencies referring the homeowner for early intervention. The other key notice is one that must be given to tenants living in a property on which a foreclosure has been filed. In addition to extending mandatory settlement conferences, A.9354/S.7119 extends all of these crucial notice provisions for another five years.

Unfortunately, New York is not nearly through the foreclosure crisis. The Office of Court Administration estimated over 44,000 new foreclosure filings in 2013, a level on par with New York’s worst years (2008-2010). It is estimated that there are nearly 60,000 more foreclosure filings to come by the end of 2015. Both the notices and the settlement conferences have a proven track record of success and must be extended to address the ongoing foreclosure crisis in New York.

1. Settlement conferences help to save peoples’ homes and preserve the integrity of judicial process.

While not every homeowner who appears in court will be able to save his home, there is no question that more homeowners save their homes as a result of the conferences than they would otherwise. Following the 2009 and 2010 legislation, the default rate dropped significantly. Prior to the conferences, the Office of Court Administration (“OCA”) reported that over 90% of foreclosure cases ended in a default judgment against the homeowner. In its

November 2011 report to the NYS Legislature, OCA reported that only 10% of homeowner-defendants did not appear for the first conference. The conferences have proven to be a meaningful way for homeowners to have their proverbial “day in court.”

2. Settlement conferences ensure transparency and accountability for all parties.

Servicers are required under the current law to negotiate in good faith and come prepared to make decisions at conferences. The parties are required to exchange important information that helps the parties in the negotiation. Without these conferences, homeowners are often unable to access this type of information.

3. Settlement conferences are the key way a homeowner in distress will receive outside assistance.

The 2012 OCA report to the NYS Legislature on settlement conferences describes homeowners facing foreclosure as among those in greatest need of counsel. Courts statewide work closely with non-profit, state-funded housing counselors and legal services groups providing assistance to homeowners. In response to a survey, courts almost unanimously reported they routinely refer pro se homeowners for these services. Many courts have housing counseling and legal service providers present at the courthouse on settlement conference days to directly refer homeowners who appear without attorneys.

4. The notice provisions are key consumer protections that alert homeowners and tenants to what is happening in the foreclosure process.

The 90 day pre-foreclosure filing notice has been a key way that homeowners have learned that they are at risk of foreclosure and reached out to housing counselors and legal service providers for early intervention. There is no other easy way for homeowners to know about these state-funded services and they have proven to be very effective. The notice has also prevented many homeowners from falling prey to loan modification scammers.

The tenant notice has also been incredibly effective in preventing tenants from being taken by surprise when a property they live in is foreclosed and they are forced to move after it has been sold on short notice. It provides them with information of what is happening to the property they also call home.

The Chapter 507 provisions have proven to be a highly effective process that provides immeasurable benefits to homeowners and New York communities. It is vital that these provisions be extended so that New York homeowners have the best opportunity to preserve homeownership and prevent community blight.

For the above reasons, MFY strongly supports the passage of A.9354/S.7119.

For more information, please contact: Elise Brown, Deputy Director, (212) 417-3753, or Linda Jun, Staff Attorney, (212) 417-3703.