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New York State Legislature
2020 Joint Budget Hearing
Housing

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Our names are C. Kenneth Perri, the executive director of Legal Assistance of Western New York, Inc., and Amaris Elliott-Engel, supervising attorney and the foreclosure practice group convener of Legal Assistance of Western New York, Inc. We submit this testimony in support of continued funding for New York's Home Ownership Protection Program ("HOPP"), which is the sole source of funding for the statewide network of housing counseling agencies and legal services agencies providing foreclosure prevention services for New York's struggling low and moderate income homeowners.

Legal Assistance of Western New York, Inc. (LawNY) is a 501(c)(3) not-for-profit corporation whose mission is to increase access to justice through excellent legal representation, advocacy and service. We serve a 10,000-square mile area comprised of 14 counties - Allegany, Cattaraugus, Chautauqua, Chemung, Livingston, Monroe, Ontario, Schuyler, Seneca, Steuben, Tioga, Tompkins, Wayne and Yates. We provide extended representation, limited action legal services, legal information and community outreach and education throughout our 14-county service area. We do so through seven fully staffed service offices located in Bath, Elmira, Geneva, Ithaca, Jamestown, Olean and Rochester and two staffed satellite offices located in Lakeville and Lyons. Nine attorneys and two paralegals provide foreclosure related assistance through our HOPP project as part of their work.

Our homeowner stabilization services are provided in the 13 rural counties in the Southern Tier region - all of the counties except Monroe. As a result of this extensive community presence, we have a deep knowledge of the legal issues of concern in our communities and firsthand knowledge of how the foreclosure crisis has impacted homeowners and families in the 13 rural counties that we serve with HOPP funds. The 13 counties in which we provide homeowner stabilization services are mostly rural, with ten small cities interspersed throughout them. Our clients are almost exclusively owners of single-family homes and they tend to default on their mortgages as a result of household economic conditions caused by a job loss, health issues or the breakup of a family.



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LawNY has a particular focus on serving homeowners facing tax foreclosure because these are families and households that tend to be on fixed Social Security or disability income. We represent these homeowners in Chapter 13 bankruptcy proceedings to protect their homeownership. LawNY achieved an important result for homeowners who miss the firm deadline to redeem in a tax foreclosure and then seek, under bankruptcy protection, to have the transfer to the taxing authority voided as a constructively fraudulent transfer. Following an adversary proceeding trial in two companion cases in 12/2019 in the U.S. Bankruptcy Court for the Western District, the Court held that the county did not provide reasonably equivalent value for foreclosing on two homes when the county kept \$22,000 after a post-seizure auction for a tax lien of \$1,290 and \$27,000 after another post-seizure auction for a tax lien of \$5,158. Although currently on appeal, if the judge's ruling is affirmed, it means that other low-income taxpayers can file for bankruptcy to address their tax foreclosures even if they miss the deadline to redeem.

Across New York State, the HOPP network comprises 88 non-profit housing counseling and legal services agencies that help New York homeowners, coop owners and condo owners avert homelessness and displacement by preventing avoidable foreclosures, combating mortgage fraud, deed theft, loan modification and partition scams, and challenging predatory and discriminatory lending and abusive mortgage servicing practices that disproportionately impact New York's most vulnerable communities—seniors and people of color. The network serves every county in New York State and all five boroughs of New York City, but current grants funding this vital network end on July 15, 2021, and at present no funding has been provided in the Governor's executive budget to continue this program even though the need for these services is more acute than ever before.

- According to a study by Construction coverage, 1.9 percent of New York homeowners are late in paying their mortgages, **the highest percentage among the 50 states**. Once foreclosure stays and moratoriums on new filings end during the spring, we expect a flood of new foreclosure filings that will drastically increase our already voluminous caseloads.
- HOPP preserves homeownership in communities of color. Statewide, 43% of clients served by our network providers are homeowners of color; in NYC, the number exceeds 75%. The foreclosure crisis following the great recession disproportionately impacted New York's communities of color, who were targeted for the predatory lending that precipitated that crisis. The COVID-19 pandemic has been no different, with the health impacts and the economic pain felt more acutely amongst black and brown New Yorkers. On average, 15.72% of black homeowners in NY are delinquent compared to 7.53% of white homeowners since September 2020. (US Census Pulse Survey data)
- A complicated patchwork of federal and state programs has been developed which homeowners cannot navigate on their own. No uniform program has been established; FHA,

Fannie Mae, Freddie Mac and conventional lenders are developing independent programs to work with homeowners behind in their mortgages because of COVID. NYS enacted its own law on forbearance programs for New York-regulated lenders and mortgage servicers. Accessing relief requires understanding the details of these various interventions and knowing who owns the loan in question and what program a homeowner may be eligible for. Homeowners need help to ensure that they can access relief and they need advocates to make sure lenders are complying with applicable federal and NY laws and regulations.

- For more than a decade, this network has been helping families in every county across New York State, and in each of the five boroughs of New York City, navigate complex housing challenges -- including mortgage fraud, scams, displacement, discriminatory lending and mortgage servicing -- and it has helped thousands of families to keep their homes and allowed them to stay in their communities. It has helped not just the individual families affected by foreclosures but the communities at large, by preventing displacement and by preventing the increased crime and reduced property values that accompany waves of foreclosure, which, in turn, adversely affect the local community tax base.

If funding for the Homeowner Protection Program (HOPP) is allowed to lapse, the majority of the state's existing foreclosure prevention program capacity will disappear overnight, leaving some regions with no service providers. HOPP has been the only dedicated source of funding for foreclosure prevention services, including for LawNY as the primary legal aid provider in our 13 rural counties. One strength of the HOPP funding is that it does not have any restrictions on the income levels or the asset levels of the homeowners we serve as our other generalized funding does; this means that, without limitations, we can serve middle-class families in financial distress who cannot afford a private attorney. If we lose HOPP funding our agency would have to shift staff onto other grants and drastically reduce the services we can provide to homeowners.

There are also a number of laws and programs in New York State that depend on our services; HOPP service providers are embedded in New York's consumer protections enacted after the foreclosure crisis and now a permanent part of our foreclosure process, such as:

- Lenders are required by law to send pre-foreclosure notices specifically identifying counseling agencies serving the homeowners' county—the very agencies that will be no longer funded to do foreclosure prevention work if funding lapses.
- Network providers are integral to NY's pioneering foreclosure settlement conference process, where we partner with the courts to staff clinics and conferences, and have been instrumental in drastically increasing the numbers of homeowners with representation at settlement conferences and in increasing the numbers of homeowners answering foreclosure complaints and preventing default judgments. LawNY provides legal information presentations to homeowners appearing at their first settlement

conferences, particularly in the six counties that we serve in the Seventh Judicial District where a new foreclosure settlement conference part has been instituted. LawNY also represents homeowners at the required settlement conferences and ensures that lenders negotiate in good faith, particularly for homeowners in hardship because of COVID-19. For example, in December 2016, homeowners with reverse mortgages in foreclosure became eligible for settlement conferences for the first time. A LawNY supervising attorney won a case that was the first to interpret that statutory amendment. In *Reverse Mortgage Solutions, Inc. v. Curren*, 56 Misc.3d 1164 (Sup. Ct., Chemung County 2017), the law had changed to require mandatory settlement conferences for reverse mortgages between when the summons and complaint was filed on 6/8/16 and when the plaintiff filed a motion for an order of reference on 5/30/17. The Court ruled that the failure to hold a mandatory settlement conference in the reverse mortgage foreclosure precluded granting an order of reference and that conferences needed to be held first.

Since 2012, the network has already helped 150,000 NY homeowners. Those receiving this assistance are working, low and moderate-income families, New Yorkers of color who were targeted for predatory loans, and seniors battling a wave of foreclosures on reverse mortgages. The network mitigates displacements from foreclosures, scams or mortgage distress and challenges abusive mortgage servicing by financial institutions and discriminatory lending practices such as reverse redlining, in which vulnerable communities are targeted for the most toxic of loan products. Most importantly, it levels the playing field, giving distressed homeowners, condo owners and coop owners an advocate in court and in negotiations with large financial organizations.

We work to allow residents to remain in their homes and foster revitalized communities such as our collaborations with the City of Geneva's zombie property task force and the City of Elmira's Anti-Displacement Learning Network team. We also conduct community workshops and outreach events to provide homeowners with legal information about their rights and responsibilities and information about the services available to them from LawNY and our housing counseling agency partners. We also collaborate with housing counseling partners such as the Housing Council at Pathstone, Keuka Housing, Chautauqua Opportunities, Catholic Charities of Chemung & Schuyler Counties and Arbor Housing & Development to serve homeowners. We also have developed statewide legal information resources such as a legal informational article *What to Do If You're Facing Foreclosure or Falling Behind on Your Mortgage in the COVID-19 Era* and *pro se* tools such as the Office of Court Administration's do-it-yourself foreclosure A2J answer created in partnership with LawNY and Legal Services NYC.

We URGE the New York State Legislature to include level funding of \$20 million in this year's budget so that the HOPP network can continue its great work combating urgent housing issues and continuing to help homeowners in distress and foreclosure. **The foreclosure moratorium is in place through April which means the flood of foreclosure filings will begin**

this summer, just at the time current contracts with the New York State Office of the Attorney General end on July 15, 2021. If we are not here, scammers will flood into New York to take our place, throwing homeownership issues across our state into a whole new crisis, and resulting in thousands more homeowners losing homes that could have been saved.

For more information, please contact Amaris Elliott-Engel at 315-781-1465 X1031 or at aelliott-engel@lawny.org.