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**Testimony by Access Justice Brooklyn
SFY 2024-25 New York State Legislature Joint Budget Hearing on Housing**

February 14, 2024

My name is Peter White, and I am the Supervising Attorney of Access Justice Brooklyn’s homeowner assistance program. I 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 and legal services agencies which provide foreclosure prevention and homeownership preservation services for New York’s struggling low and moderate income (“LMI”) homeowners. **The Governor’s proposed budget eliminates all funding for HOPP, even though the services this network provides are more crucial than ever.**

Access Justice Brooklyn is a nonprofit civil legal organization that has provided free, high-quality legal services to the Brooklyn community for over 33 years, with the mission of creating a more accessible legal system and equitable Brooklyn. Our dedicated staff and pro bono volunteers provide direct civil legal services to low-income Brooklyn residents, borough-wide, who need help related to consumer debt advocacy and litigation; Chapter 7 bankruptcy; advanced planning and senior assistance; homeowner protection; and family law. Through direct services, education, and outreach, we work to resolve individual legal issues for low-income individuals and families while dismantling systemic barriers to justice, furthering our vision of a fairer legal system. In the last year, our services benefitted over 12,200 individuals and families, made possible through the support of more than 200 compassionate pro bono attorneys and other volunteers.

Across New York State, the HOPP network comprises 89 non-profit housing counseling and legal services providers who help New York homeowners, coop owners and condo owners avert homelessness and displacement by preventing avoidable mortgage and tax lien foreclosures, who combating mortgage fraud, deed theft, loan modification and partition scams, and who challenge 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, 2024, and the Governor’s budget proposes to de-fund this program even though the need for these services is more acute than ever before. A total of \$40 million is needed to ensure that the existing HOPP network is able to meet the existing need in light of the unprecedented homeowner distress across New York State, which dwarfs the rates of default seen during the last foreclosure crisis.¹

As recently as November 14, 2023, Governor Hochul signed important legislation making improvements to various aspects of the law that will benefit homeowners who have already been victimized by deed theft scams. At a bill signing ceremony at Brooklyn Law School that day, Governor

¹ The HOPP grantees contract years are not aligned with the State fiscal year, so funding in this year’s budget is required for the network to be able to continue after current contracts end on July 15, 2024. The executive budget includes re-appropriation language that will permit last year’s allocation to be used after March 31, 2024 for the existing contracts, which are not paid until after the end of the contract term, but last year’s allocation will have been exhausted upon the conclusion of the current contract year on July 15, 2024.



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Hochul spoke compellingly about how central homeownership is to the American dream. Sitting beside her as she signed that legislation, along with Attorney General Letitia James, were Joseph Clarke and Jacqueline Knight, who were victims of a pernicious deed theft scam and clients of a HOPP grantee legal services agency who had successfully pursued protracted litigation that restored the title to their home. Governor Hochul praised the HOPP agency's efforts over years of litigation to restore the couple's home, but less than two months later her proposed budget would eliminate funding for the very program whose advocates restored Mr. Clarke and Ms. Knight's home after they fell prey to a deed theft scam. The recent legislation, as well as additional provisions contemplated in the proposed budget, are important protections, but without the HOPP network distressed homeowners will have nowhere to turn but to the scammers looking to prey on them, and the provisions meant to provide protections for deed theft and partition scam victims (including those contemplated in the Governor's proposed budget) will be of no use if the HOPP-funded programs representing homeowners seeking to vindicate their rights under those initiatives are eliminated.

We are thankful for the Legislature's consistent support for HOPP and we recognize that without the restoration of funding for this program every year when funding for it was excluded from the executive budget proposals, New York would have long ago lost its investment in the country's most robust foreclosure prevention network. The executive budget's exclusion of any funding for the HOPP network—New York's only program focused on preserving existing homeownership, largely in communities of color and affecting the elderly—threatens the termination of this vital program just when it is most needed:

- New York is continuing to see high delinquency rates, especially in communities of color. According to U.S. Census Household Pulse Survey data, as of fall 2023, an average 8% of New York homeowners were delinquent on their mortgage loans, with an average of 306,587 New York families at risk of losing their homes. These numbers show a significant increase in mortgage distress since the prior year, when the number of families at risk was 288,261. This delinquency rate dwarfs the rate of 2.2% in January 2020, right before the COVID pandemic started, and exceeds the high of 3.8% in January 2009, during the height of the financial crisis and Great Recession. Court filings are also rising, with New York State Unified Court System data showing nearly 11,000 new foreclosure case filings in the first eight months of calendar year 2023, and nearly 21,000 pending foreclosure cases across the State.
- 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. % of non-Hispanic white homeowners, as reflected in the US Census Pulse Survey data available in the fall of 2023.
- A complicated patchwork of federal and state programs has evolved in the aftermath of the pandemic that homeowners cannot navigate on their own. FHA, Fannie Mae, Freddie Mac, and conventional lenders launched different forbearance plans and loss mitigation options for



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distressed borrowers, and New York State 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 they can access relief and they need advocates to make sure lenders are complying with applicable federal or NY laws and regulations. New York's Homeowner Assistance Fund, which has made federal funding available to assist distressed New York homeowners in a program administered by NY Homes and Community Renewal ("HCR"), which is now winding down, has reached a small portion of New York's distressed homeowners, and it has been dependent on the HOPP network to assist homeowners in accessing the program.

- 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.

Without the restoration of the funding proposed to be eliminated by the Governor's proposed budget, many of those not-for-profit housing counseling agencies and legal services providers will be ending their homeownership retention services when current contracts expire on July 15, 2024 and will be forced to turn away homeowners needing their assistance. The loss of HOPP funding will leave New York's struggling homeowners more vulnerable to scammers peddling foreclosure rescue deed theft schemes and distressed property consultants, whose ranks have been multiplying as real estate values are increasing in many regions of the state.

Indeed, even now, with the Governor's proposed elimination of the program causing uncertainty about the continuation of the program after the current contract year (as it does every year) case acceptance at HOPP-funded agencies is inhibited, because agencies cannot in good conscience accept new cases that have no prospect of resolution prior to July 15, 2024 with the continuation of the program after that date in question. This uncertainty is also damaging to HOPP staff morale, many of whom are lost every year when the program's continuation is thrown into question by the Governor's proposal to de-fund HOPP. Not only will New York families suffer and face displacement; employees across almost 90 organizations are in danger of losing their jobs, and their expertise, along with the associated infrastructure in place that supports this network, which represents a substantial investment by the State of New York, will be discarded.² The costs of four Access Justice Brooklyn staff positions

² In the contract year that ran from July 16, 2021 through June 15, 2022, the HOPP network of housing counseling agencies and legal services providers served 9,501 clients, with a total staff count of 473 (203.53 FTE). In the following contract year (running from July 16, 2022 through July 15, 2023), the network served 20,564 clients (more than double the number served in the prior year), and it increased its staffing levels, with the total staff count increasing to 637 (289.67 FTE) (thanks to the increased funding of \$35 million allocated in the FY 2022 budget). In the current contract year, for which the FY 2023 budget allocated \$40 million, which runs through July 15, 2024, the HOPP network's staffing has further increased to 667 (FTE 316.47) as groups across the State continued to ramp up capacity to meet the increased need for services, and we expect the number of clients served to exceed that of the prior contract year. At the conclusion of the current contract year on July 15, 2024 the current allocation will



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are predominantly underwritten by HOPP funding. The loss of HOPP funding would not only jeopardize these positions, but would also mean the loss of this expertise and valuable legal assistance across HOPP-funded organizations – reducing the overall availability of high quality legal support for homeowners in Brooklyn and state-wide.

There are also a number of laws and programs in New York State that depend on HOPP network services; HOPP service providers are embedded in New York’s consumer protections enacted after the foreclosure crisis, which are 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. Access Justice Brooklyn participates in several court-based programs for homeowners appearing in Kings County Supreme Court and offers representation through the entire foreclosure process, including foreclosure motion practice, good faith hearings, foreclosure defense litigation, and settlement conferences. As part of the Brooklyn Foreclosure Advocates, Access Justice Brooklyn participates in the Friend of the Court program in Kings County Supreme Court to assist unrepresented litigants in foreclosure cases, currently operating every other week. We also participate biweekly in the Foreclosure Legal Assistance Group (FLAG) clinic and staff the weekly Friday foreclosure clinic, both of which are also located in Kings County Supreme Court. At these clinics we provide individual advice and information to homeowners and help prepare pro se answers in response to foreclosure summonses.

The homeowners receiving help from HOPP agencies are working, LMI families, New Yorkers of color who were targeted for predatory loans, seniors battling a wave of foreclosures on reverse mortgages and tax and water liens, and families who have experienced illness or deaths that have landed them in financial distress. The network mitigates displacement from foreclosures, scams and mortgage distress and its advocates challenge abusive mortgage servicing by financial institutions and discriminatory lending practices such as reverse redlining, in which vulnerable communities were targeted for the most toxic of loan products. Of late, the HOPP network has been tackling the epidemic of “zombie second lien” foreclosures, pursued by debt buyers who purchased for pennies on the dollar long-abandoned second mortgages, which were marketed during the heyday of predatory lending as toxic “80/20” loans targeted to communities of color. The originating lenders abandoned those underwater loans years ago, but with appreciating real property values, speculators and private equity

have been exhausted, given the significant ramp up in hiring to meet the increased demand for services. These numbers are derived from HOPP grantees’ data reporting to the two Anchor Partners who work with the Office of the Attorney General to administer the HOPP grants, Empire Justice Center and the Center for New York City Neighborhoods. This is consistent with industry reports showing that foreclosure starts in the first half of 2023 increased by 15 percent compared to the same period in the previous year. Indeed, New York is among the states with the most foreclosure starts, along with California, Florida, Texas, and Illinois. See Attom, Midyear 2023 U.S. Foreclosure Report, available at <https://www.attomdata.com/hnr/midyear-2023-u-s-foreclosure-report/>.



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are now attempting to foreclose on homes saddled with these second liens, even though the claims are largely barred by statutes of limitations.

In addition to “zombie” mortgages, we have seen a rise in foreclosures related to reverse mortgages, which by law are only available to senior homeowners. These foreclosure cases are often commenced earlier or with less merit than in the past. For instance, we have seen reverse mortgage foreclosures filed because a homeowner failed to file an annual certificate of occupancy, or for a nominal amount of tax or insurance arrear. We also investigate potential deed theft and title issues that we continue to see among many of our clients, and have joined other HOPP advocates in establishing stronger protections for homeowners affected by these scams. As interest rates have made common workout options, such as loan modifications, less affordable for most homeowner clients in default or facing foreclosure, we have also engaged in more extensive consultation and litigation in many cases to either help homeowners remain in their homes or obtain additional time to find other housing. Over the last year we have worked to increase our outreach in the neighborhoods where many of our homeowner clients reside, along with our in-person, court-based foreclosure clinics, to improve early intervention, and the likelihood of positive outcomes, for Brooklyn homeowners at risk of foreclosure.

We urge the New York State Legislature to restore \$40 million in funding for HOPP in this year’s budget so the HOPP network can continue its great work combating urgent housing issues and continuing to help homeowners in distress and foreclosure.

Thank you to the Senate Finance Committee and the Assembly Ways and Means Committee for your attention to this matter. For more information, please contact Peter White at peter@accessjusticebk.org.

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