

Office of the NEW YORK STATE

COMPTROLLER

Foreclosure Update: Signs of Progress



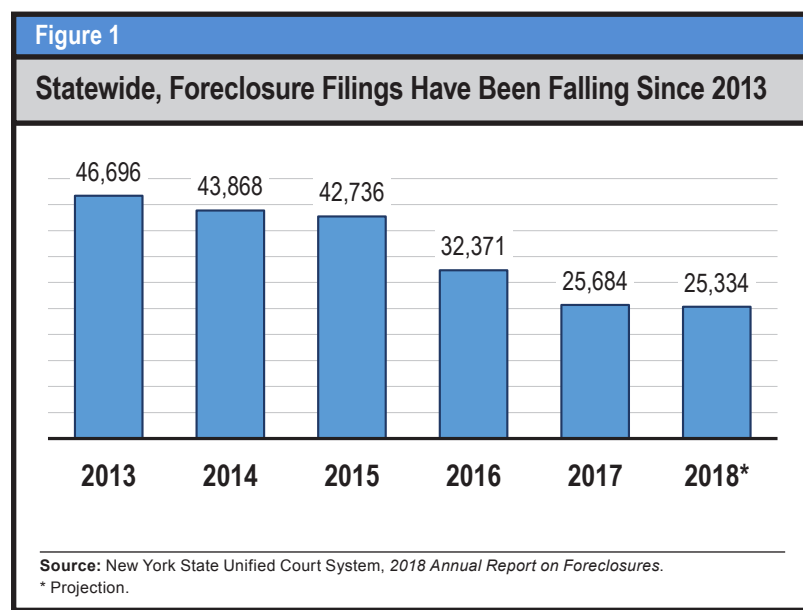
New York State Comptroller
THOMAS P. DiNAPOLI

MARCH 2019

Both New Foreclosure Filings and Pending Foreclosure Caseloads Have Fallen

Since the onset of the financial crisis of 2007-2009, the Office of the State Comptroller (OSC) has released several reports assessing mortgage foreclosure activity and its impact on local governments. OSC's last look at foreclosure caseloads in 2015 showed that most areas of the State continued to see high levels of activity nearly a decade after the housing bubble burst.¹ This report offers a brief analysis indicating that the situation has improved markedly since then. Foreclosure filings have been dropping, and as existing cases are resolved, the backlog of pending cases has declined as well. Steps taken by the New York Unified Court System (UCS) have helped speed the resolution of cases. Meanwhile, other stakeholders are expanding efforts to combat blight by returning vacant and abandoned "zombie" properties to productive use.

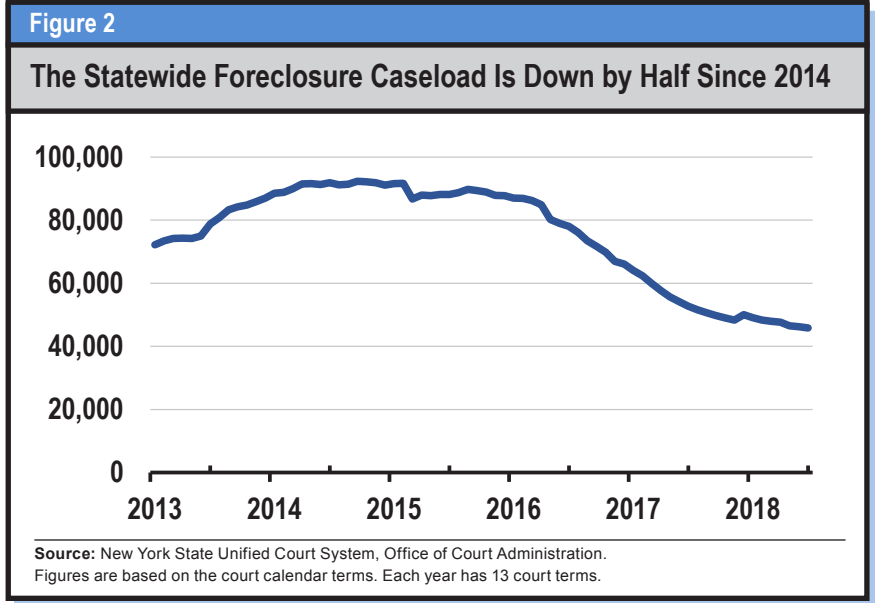
Statewide, new foreclosure filings have been on a downward trend since 2013.² The number of filings fell 46 percent from 2013 to 2018. (See Figure 1.)



Highlights

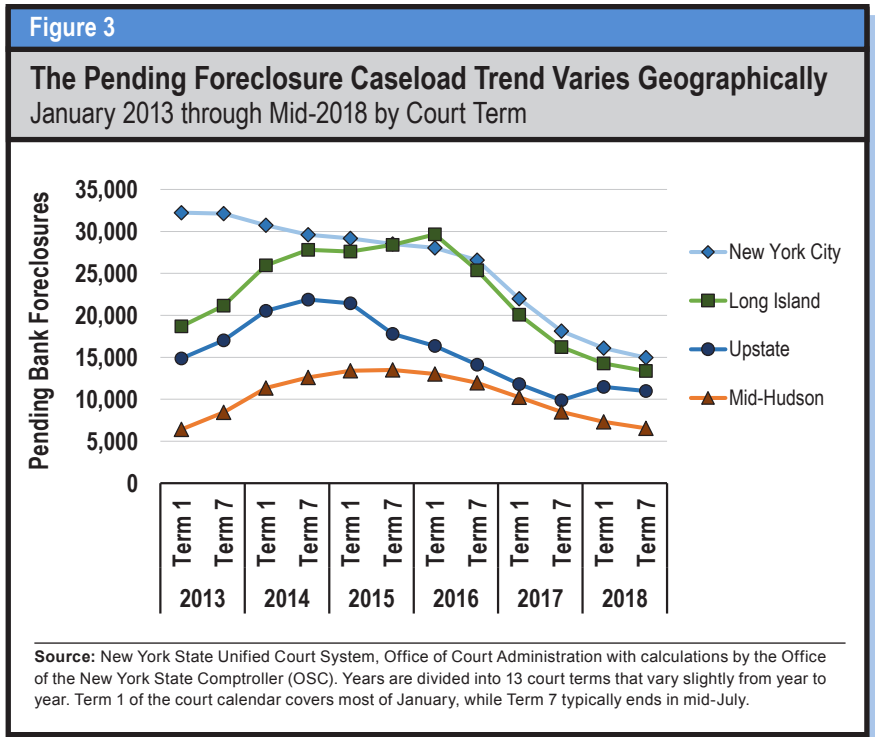
- Statewide, foreclosure filings fell by 46 percent between 2013 and 2018, from 46,696 to 25,334.
- The number of pending cases in the court system has fallen by half since reaching a high of over 92,000 in 2014.
- Changes to court system practices have improved efficiency, which has helped reduce the foreclosure caseload.
- The foreclosure rate (pending mortgage foreclosure cases as a percentage of housing units) has fallen in every part of the State.
- Relative to the rest of the State, foreclosure rates are highest in the Long Island and the Mid-Hudson regions.
- Only four counties—Clinton, Putnam, Rockland, and Suffolk—have a foreclosure rate over 1 percent.
- Other stakeholders are pursuing efforts to reduce harm to local governments and communities caused by vacant abandoned "zombie properties."

The pending foreclosure caseload, which includes older, existing cases, has followed a slightly different trajectory. From 2013 to 2014, it continued to rise even after new filings began to decrease. However, in 2014 growth leveled off, and since 2016 the caseload has been on a fairly steady decline. From its high of over 92,000 in 2014, it has fallen by half to under 46,000. (See Figure 2.)³



Geographic Trends

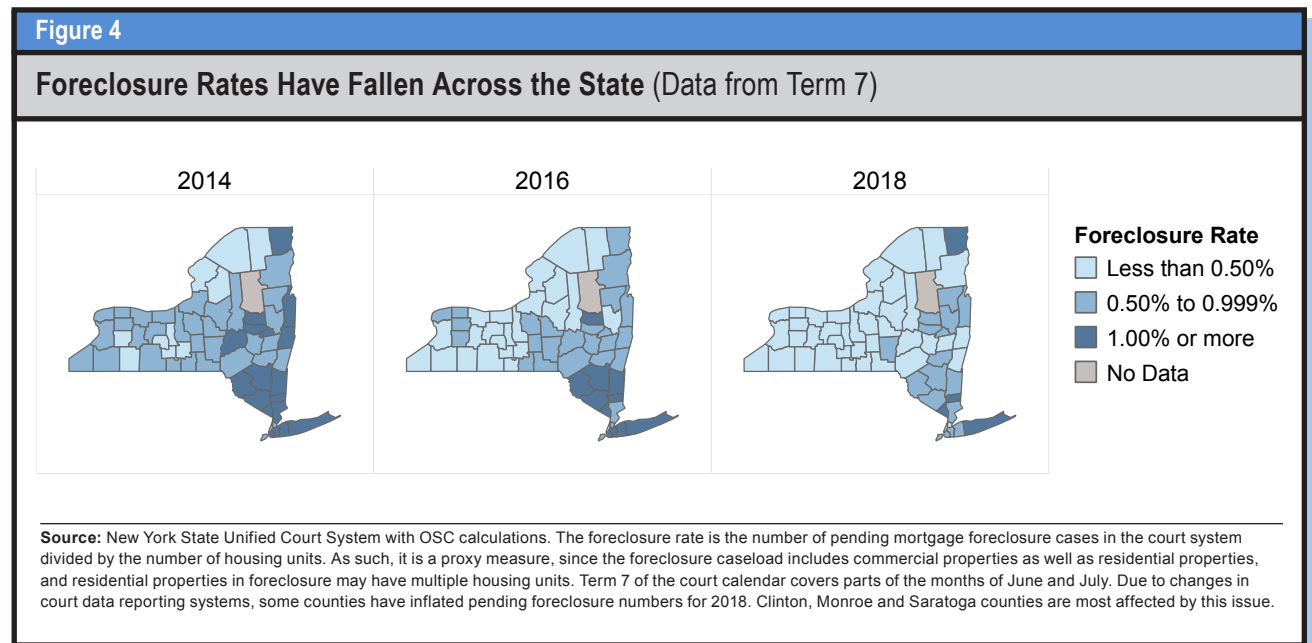
The caseload decline has followed different paths in different areas of the State. New York City has seen declines since 2013, but other areas took longer to turn the corner. On Long Island, the caseload reached its peak in early 2016 and declined sharply thereafter. Upstate, where the total number of cases was much lower, the peak came in 2014 and then declined through 2017, followed by a slight uptick in 2018. (See Figure 3. See the Appendix for trend data on the foreclosure caseload by county and region.)



Looking at foreclosures as a percentage of total housing units (or the “foreclosure rate”) allows for comparisons across counties and regions.⁴ When the statewide foreclosure caseload was near its peak in mid-2014, 18 counties had foreclosure rates greater than 1 percent, and four had a rate over 2 percent. All of the downstate counties outside of New York City had a foreclosure rate of 1 percent or more.⁵ Two of New York City’s boroughs, Brooklyn (Kings County) and Queens, had rates of 1.0 and 1.4 percent, respectively. Only two counties—Schuyler and Tompkins—plus the borough of Manhattan (New York County) had a foreclosure rate below 0.25 percent. In general, rates were lower in the western part of the State than elsewhere. (See Figure 4.)

Four years later, most areas of the State had experienced substantial improvement. Only four counties—Clinton, Putnam, Rockland and Suffolk—had rates over 1 percent, while 38 counties and three of New York City’s five boroughs had rates below 0.50 percent. The western part of the State continues to have generally lower rates than counties in the east.

Since at least 2013, Suffolk County has had the highest foreclosure rate in the State. Its rate peaked in 2016 at over 3 percent, before falling to 1.7 percent by mid-2018. Nassau County, which also had a high foreclosure rate, also saw a sharp drop, falling from 2.6 percent at the beginning of 2016 to 0.75 percent by the middle of 2017. Since then, however, Nassau’s rate has leveled off.



Mortgage Foreclosure Reforms in the Court System

Foreclosure cases make up a significant share of New York's Supreme Court civil caseload, although the share is falling as new filings drop and pending cases are resolved. In 2013, foreclosure cases represented a third of the civil caseload. By 2018, they made up fewer than one in five cases (18 percent).⁶ Part of the reduction in the foreclosure caseload could be due to changes in the housing market and the broader economy. Tighter lending standards have also decreased the likelihood of mortgage defaults, while increasing home values improve the likelihood that a homeowner can avoid foreclosure by selling the property.⁷

OSC's 2016 report on foreclosures explained how some of the reforms to the foreclosure process implemented in the wake of the mortgage crisis appeared to have drawn out the foreclosure process and even caused some cases to become stalled.⁸ A lengthy process can create problems for local governments, as properties fall into disrepair and depress the value of surrounding properties.⁹ More recent reforms, however, have aimed at managing foreclosure cases more efficiently and reducing the backlog of pending cases.¹⁰ These changes to court operations and policies include:

- **Creating specialized court “parts”** to respond to the foreclosure case backlog. The UCS establishes problem-solving courts to respond to the needs of litigants and the community, often referred to as “parts.” The UCS created Vacant and Abandoned Property parts to expedite judicial review in cases where it appears the property is vacant and/or abandoned.¹¹ Servicer parts were created to speed up the foreclosure settlement conference process by requiring lenders or loan servicers to send an authorized representative with knowledge of the case and the authority to enter into meaningful settlement negotiations.¹²
- **Standardizing court forms** used in the foreclosure process to ensure practices are clear and consistent across jurisdictions and improve case tracking.¹³
- **Changing court rules to improve foreclosure outcomes in cases involving divorce.** The Administrative Board of the Courts approved a court rule change requiring the transfer of titles, deeds and other mortgage documents as a condition of a divorce judgment. This ensures that the person who remains in the home will have the necessary documents to apply for a loan modification or other loss mitigation option.¹⁴
- **Establishing a short-term program to help reduce the case backlog in Suffolk County.** A temporary program allowed court attorneys who volunteered from across the State to prepare draft decisions for motions filed in Suffolk County foreclosure matters. This helped speed the resolution of cases in the county with the greatest pending caseload.¹⁵

- **Improving communication with homeowners.** State legislation enacted in 2016 expands the court’s responsibility concerning mandatory foreclosure settlement conferences by providing additional protections for homeowners facing foreclosure—primarily in the form of better and more consistent communication about the foreclosure process and homeowners’ rights and responsibilities. The UCS has created an information packet for homeowners, who may litigate without legal assistance, and provides “bench cards” with a script for court personnel to use during certain parts of the process to ensure that the required information is presented consistently across courthouses.¹⁶
- **Making reverse mortgage cases eligible for settlement conferences.** In 2017, the law was amended to add settlement conferences as a tool to resolve foreclosures on most reverse mortgages.¹⁷ Reverse mortgages typically require the homeowner to make home insurance and property tax payments, and allow for the mortgage to be foreclosed if the homeowner fails to make those payments.



A Brief Update on the Broader “Zombie Property” Problem

How Distressed Properties Become Zombies

Mortgage foreclosures do not invariably intensify blight. If the homeowners or renters continue to occupy the property while the foreclosure process plays out, and if the servicer or lender pays the taxes, communities suffer relatively little harm.¹⁸ It is when homeowners faced with foreclosure abandon their homes during the process that a home in foreclosure becomes a vacant, abandoned “zombie property.”

Properties without mortgages can also become “zombie properties” when a property owner dies and the estate remains unsettled, or if the owner abandons the property for some other reason. Such properties can fall into disrepair fairly quickly, depressing property values and signaling disinvestment in the neighborhood.¹⁹

Update on Efforts to Deal with Zombie Properties

The “zombie property” problem poses many challenges to local governments. They may initiate foreclosure actions against tax delinquent properties to acquire them and sell them to new owners. However, these “in rem” foreclosures take time and create work for local governments, and in cases where the properties are sold at auction, speculators interested in extracting value from properties rather than investing in neighborhoods sometimes outbid more responsible owners.²⁰ Such “unhealthy speculation” can involve cases where unprepared individuals walk away from purchases that require more investment than anticipated, or those where buyers acquire numerous low-value properties and wait for the real estate market to rebound instead of increasing the value of their properties by making needed repairs.²¹ Below is a short update on some of the efforts under way to help manage vacant, abandoned properties:

- **Land banks.** First authorized by New York State in 2011, these charitable not-for-profit corporations acquire distressed properties and return them to productive use.²² The State now has 25 land banks, and some of them have been around long enough to start to have an impact.²³ A 2017 report on the first ten land banks in the State found that they had acquired nearly 2,000 problem properties and returned \$28.4 million in assessed value to the tax rolls.²⁴ Legislation enacted in 2018 authorized the creation of an additional 10 land banks.²⁵
- **The Vacant and Abandoned Property Database.** State legislation enacted in 2016 requires lenders or servicers to report information about mortgage-delinquent vacant properties for inclusion in a statewide database.²⁶ Although the data is not available to the public, local governments may obtain information about properties in their jurisdictions.
- **Expedited foreclosure process for vacant and abandoned properties.** The 2016 law allows for a lender or servicer to apply for an expedited judgment of foreclosure and sale in cases where it can show that the property is vacant and abandoned.²⁷
- **New York State Community Restoration Fund.** The State is using a small amount of bank settlement money to buy distressed mortgages in high foreclosure areas. It can then either offer the homeowner a loan modification, or—if a modification is not feasible—carry out any necessary repairs in order to sell the home to an owner who can maintain it.²⁸

Conclusion: Continued Efforts and Resources Are Necessary

Although the foreclosure crisis appears to be abating, a number of communities across the State continue to struggle with relatively high foreclosure activity. Over time, rising interest rates, a loosening of lending standards or an economic downturn could lead to a rebound in foreclosures even as vacant abandoned zombie properties continue to plague our communities. Housing advocates have warned that proposed cuts in State funding for homeowner protection programs could—if implemented—also undermine or even reverse the progress made.²⁹ Many of the reforms instituted over the last decade to help homeowners avoid foreclosure are predicated on the availability of services currently provided by not-for-profit entities supported by State funding. Reductions in funding for these programs could reduce homeowners' access to housing counseling and legal services, which could in turn lengthen the foreclosure process and result in worse outcomes for homeowners.

The good news is that a wide range of stakeholders are committed to tackling the foreclosure and zombie property problems, and they are expanding the tools available to do so. Thoughtful process improvements along with mechanisms for clearing the foreclosure backlog appear to be having an impact. Improved communication among the many stakeholders and better data are making a difference as well. These efforts are yielding results, but the challenge is ongoing. Tackling the negative effects of abandoned properties requires sustained focus, coordination and resources by state and local stakeholders to achieve enduring progress.

Appendix

County-Level Foreclosure Data											
County	Pending Foreclosure Cases, Term 7 (July)						Percentage Change Since 2015	Pending Cases, 2013 to 2018, High and Low Marked	Foreclosure Rate 2018	Year-Over-Year Percentage Change in Foreclosure Rate (2014-2018)	Housing Units per Foreclosure Case, 2018
	2013	2014	2015	2016	2017	2018					
Capital District											
Albany	861	1,161	1,086	930	653	666	-39%		0.48%		208
Columbia	248	295	324	306	176	136	-58%		0.41%		242
Greene	194	280	277	199	160	157	-43%		0.54%		187
Rensselaer	677	908	614	564	378	344	-44%		0.48%		209
Saratoga	808	987	650	473	337	512	-21%		0.50%		199
Schenectady	1,057	1,302	1,040	606	406	406	-61%		0.59%		168
Warren	260	342	374	326	183	211	-44%		0.54%		185
Washington	326	432	305	247	181	225	-26%		0.78%		129
Capital District Total	4,431	5,707	4,670	3,651	2,474	2,657	-43%		0.52%		192
Central New York											
Cayuga	139	211	151	137	121	107	-29%		0.29%		340
Cortland	142	170	181	130	101	95	-48%		0.46%		216
Madison	188	257	259	226	148	90	-65%		0.28%		353
Onondaga	1,058	1,569	1,417	1,146	746	880	-38%		0.43%		232
Oswego	238	348	297	211	153	209	-30%		0.39%		257
Central New York Total	1,765	2,555	2,305	1,850	1,269	1,381	-40%		0.40%		251
Finger Lakes											
Genesee	155	196	164	140	111	92	-44%		0.36%		279
Livingston	148	205	174	124	81	94	-46%		0.34%		291
Monroe	1,800	2,347	1,369	799	672	1,317	-4%		0.41%		246
Ontario	199	294	210	172	121	130	-38%		0.26%		382
Orleans	182	173	133	125	77	80	-40%		0.43%		231
Seneca	59	73	61	64	31	41	-33%		0.25%		396
Wayne	245	325	239	177	125	137	-43%		0.33%		302
Wyoming	82	76	63	104	53	43	-32%		0.24%		420
Yates	44	57	45	43	29	34	-24%		0.25%		404
Finger Lakes Total	2,914	3,746	2,458	1,748	1,300	1,968	-20%		0.37%		272
Long Island											
Nassau	7,786	10,899	11,766	8,916	3,510	3,579	-70%		0.77%		131
Suffolk	13,375	16,905	16,633	16,441	12,711	9,783	-41%		1.71%		58
Long Island Total	21,161	27,804	28,399	25,357	16,221	13,362	-53%		1.29%		78
Mid-Hudson											
Dutchess	1,210	1,752	1,668	1,347	850	673	-60%		0.57%		177
Orange	1,233	1,998	2,551	2,282	1,480	1,099	-57%		0.79%		127
Putnam	460	814	844	795	637	588	-30%		1.53%		65
Rockland	1,424	2,172	2,425	2,350	1,874	1,363	-44%		1.30%		77
Sullivan	609	792	667	513	325	268	-60%		0.54%		185
Ulster	804	1,179	1,167	1,045	677	487	-58%		0.58%		172
Westchester	2,707	3,890	4,169	3,631	2,647	2,068	-50%		0.56%		179
Mid-Hudson Total	8,447	12,597	13,491	11,963	8,490	6,546	-51%		0.72%		138
Mohawk Valley											
Fulton	308	424	464	287	128	180	-61%		0.63%		159
Hamilton	NA	NA	NA	NA	NA	NA	NA		NA		NA
Herkimer	163	193	183	162	111	95	-48%		0.28%		351
Montgomery	312	433	379	224	102	155	-59%		0.67%		150
Oneida	557	738	555	457	366	362	-35%		0.35%		287
Schoharie	68	165	196	135	62	79	-60%		0.46%		218
Mohawk Valley Total	1,408	1,953	1,777	1,265	769	871	-51%		0.40%		247

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	2013	2014	2015	2016	2017	2018					
New York City											
Bronx	3,996	4,823	4,793	4,323	2,792	2,081	-57%		0.40%		251
Kings	13,247	10,697	11,572	11,443	7,815	6,544	-43%		0.64%		156
New York	822	952	756	583	444	457	-40%		0.05%		1,896
Queens	12,807	11,586	10,193	9,315	6,427	4,970	-51%		0.59%		170
Richmond	1,252	1,548	1,186	909	657	904	-24%		0.51%		198
New York City Total	32,124	29,606	28,500	26,573	18,135	14,956	-48%		0.44%		230
North Country											
Clinton	584	638	255	204	122	466	83%		1.30%		77
Essex	149	198	242	212	126	103	-57%		0.40%		250
Franklin	89	120	108	78	43	49	-55%		0.19%		517
Jefferson	196	242	213	240	167	191	-10%		0.33%		307
Lewis	33	56	41	44	32	44	7%		0.29%		347
Saint Lawrence	139	168	153	103	76	72	-53%		0.14%		726
North Country Total	1,190	1,422	1,012	881	566	925	-9%		0.43%		231
Southern Tier											
Broome	629	711	626	561	535	433	-31%		0.48%		208
Chemung	176	205	183	154	127	144	-21%		0.38%		266
Chenango	174	204	161	169	173	130	-19%		0.52%		191
Delaware	177	221	203	184	131	136	-33%		0.44%		229
Otsego	321	351	280	172	100	114	-59%		0.37%		269
Schuyler	21	22	25	22	30	24	-4%		0.25%		398
Steuben	195	248	193	159	148	122	-37%		0.25%		400
Tioga	139	155	108	111	74	75	-31%		0.34%		296
Tompkins	87	93	82	89	71	76	-7%		0.18%		554
Southern Tier Total	1,919	2,210	1,861	1,621	1,389	1,254	-33%		0.37%		269
Western New York											
Allegany	101	100	91	66	44	66	-27%		0.25%		394
Cattaraugus	262	324	171	150	105	137	-20%		0.33%		299
Chautauqua	496	549	334	300	208	185	-45%		0.28%		361
Erie	1,920	2,514	2,417	1,950	1,325	1,144	-53%		0.27%		368
Niagara	612	799	704	630	437	390	-45%		0.39%		254
Western New York Total	3,391	4,286	3,717	3,096	2,119	1,922	-48%		0.29%		340
Grand Total	78,750	91,886	88,190	78,005	52,732	45,842	-48%		0.56%		178

Source: New York State Unified Court System, United States Bureau of the Census, with OSC calculations. The figures for pending foreclosures are from Term 7 of the court calendar, which typically ends in mid-July. Foreclosure data is not available for Hamilton County. Census data on the number of housing units is from the American Community Survey (five-year estimates for the years ending in 2016). Foreclosure cases include both residential and nonresidential properties, and so the "foreclosure rate" and "housing units per foreclosure case" metrics are intended merely to convey an approximate sense of the relative prevalence of properties in foreclosure. Due to changes in court data reporting systems, some counties have inflated pending foreclosure numbers for 2018. Clinton, Monroe and Saratoga counties are most affected by this issue.

Notes

- ¹ Office of the New York State Comptroller (OSC), *The Foreclosure Predicament Persists* (August 2015). A subsequent report discussed how properties could get stuck in the foreclosure pipeline and how that can create problems for local governments, particularly when the properties become vacant, abandoned “zombie properties.” See OSC, *Foreclosure Update from a Local Government Perspective* (April 2016).
- ² State of New York Unified Court System (UCS), *2018 Report of the Chief Administrator of the Courts on the Status of Foreclosure Cases Pursuant to Chapter 507 of the Laws of 2009*, p. 4. (Cited hereafter as *2018 Annual Report on Foreclosures*; UCS foreclosure reports from prior years are cited the same way.) The annual reports are available at: http://ww2.nycourts.gov/admin/OPP/foreclosures_report.shtml.
- ³ This report relies on county-level data provided by UCS’s Office of Court Administration. The counts of foreclosure filings and pending cases include both residential and non-residential properties. A property may have more than one foreclosure case (if it has more than one loan).
- ⁴ For this report, the foreclosure rate is defined as the number of pending mortgage foreclosure cases expressed as a percentage of total housing units. The housing unit data is from the U.S. Bureau of the Census (American Community Survey, five-year estimates, with the most recent data from 2016). A single foreclosure case may involve properties with multiple housing units, and as noted, the foreclosure counts include both residential and non-residential properties. Consequently, the foreclosure rate used here is a proxy measure rather than a precise indicator. It is used in this report to provide an estimate of the relative scale of the foreclosure problem across different areas of the State. New York City is atypical because it has a much greater proportion of multifamily residential properties than other regions of the State.
- ⁵ Downstate counties outside of New York City include Long Island (Nassau and Suffolk counties), plus the Mid-Hudson region (Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster and Westchester counties).
- ⁶ UCS, *2018 Annual Report on Foreclosures*, p. 2.
- ⁷ For a discussion of trends in household debt, including the shift toward tighter lending standards, see the Board of Governors of the Federal Reserve Board, *Financial Stability Report* (November 2018). For annual median home sale prices in New York State (excluding New York City), see New York State Department of Taxation and Finance, “Statewide Residential Median Sale Price,” at www.tax.ny.gov/research/property/assess/sales/stmedprice.htm. Between 2009 and 2016, the statewide median home price in New York State (excluding New York City) grew from \$175,550 to \$228,000.
- ⁸ OSC, *Foreclosure Update from a Local Government Perspective* (April 2016), *op. cit.*, pp. 3-6.
- ⁹ *Ibid.*, p. 10.
- ¹⁰ The UCS has established a Statewide Foreclosure Committee with representatives from judicial districts across the State, who work to standardize foreclosure-related business processes, increase efficiency and share information about best practices. See UCS, *2018 Annual Report on Foreclosures*, p. 7. The UCS’s annual reports on the status of foreclosure settlement conferences, mandated by State law, describe some of the reforms the courts have made to improve the foreclosure process.
- ¹¹ UCS, *2015 Annual Report on Foreclosures*, p. 7.
- ¹² UCS, *2017 Annual Report on Foreclosures*, p. 10.
- ¹³ For information on the standardized settlement conference forms, see UCS, *2016 Annual Report on Foreclosures*, p. 3. For information on Uniform Motion Templates, see UCS, *2017 Annual Report on Foreclosures*, p. 4.

Notes

¹⁴ UCS, *2018 Annual Report on Foreclosures*, p. 6.

¹⁵ UCS, *2016 Annual Report on Foreclosures*, p. 4.

¹⁶ *Ibid.*, p. 5.

¹⁷ UCS, *2018 Annual Report on Foreclosures*, p. 6. See also Chapter 58 of the Laws of 2017, Part HH.

¹⁸ The local government continues to receive property tax revenues and the property is less subject to vandalism, broken pipes or other damage that would dramatically reduce its value. Research shows that both substandard housing and vacant abandoned homes harm local communities in many ways. See Erwin de Leon and Joseph Schilling, *Urban Blight and Public Health: Addressing the Impact of Substandard Housing, Abandoned Buildings, and Vacant Lots* (April 2017), The Urban Institute, p. 7.

¹⁹ See OSC, *Foreclosure Update from a Local Government Perspective*, *op. cit.*

²⁰ For a discussion of how speculators “milk” distressed properties, see Alan Mallach, *The Divided City: Poverty and Prosperity in Urban America* (Washington, D.C.: Island Press), p. 136.

²¹ Mallach, *The Divided City*, *op. cit.*, pp. 134-140.

²² Land banks are also included in the definition of local authorities under the Public Authorities Law, Section 2. For background on land banks in New York State, see OSC, *Land Banks Enter the Fight Against Blight* (October 2016).

²³ For a list of New York’s land banks and links to many of their websites, see the New York Land Bank Association’s website: <http://nylandbanks.org/ny-land-banks/>.

²⁴ Center for Community Progress and the New York Land Bank Association, *New York State Land Banks* (April 2017), p. 21.

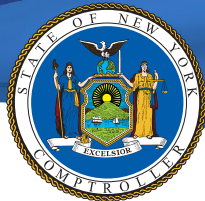
²⁵ Not-For-Profit Corporation Law, Section 1603, as amended by the Laws of 2018, Chapter 508.

²⁶ Chapter 73 of the Laws of 2016, Part Q. The Department of Financial Services’ (DFS) “Zombie Property Database Home Page” has information about the data collected. Available at: www.dfs.ny.gov/banking/zombie_prop_database.htm. Lenders or servicers must report information about mortgage-delinquent vacant properties within three days after mailing the 90-day pre-foreclosure notice. They must follow up by filing notice that the property is subject to foreclosure and file additional information with DFS. Lenders and servicers must also report to DFS after entry of the Judgment of Foreclosure and Sale (at the end of the foreclosure process). The database includes only 1-to-4-family residential properties with a mortgage.

²⁷ Real Property Actions and Proceedings Laws, Section 1309.

²⁸ The State of New York Mortgage Agency (SONYMA) Community Restoration Fund program is administered by the New York State Office of Homes and Community Renewal. See the program’s website: www.nyshcr.org/Topics/Home/Owners/crf/.

²⁹ See, for example, testimony from the Empire Justice Center before the Assembly Standing Committee on Housing on December 20, 2018. The testimony is available at: <https://empirejustice.org/2018/12/20/8860/>, or through the Assembly’s website at: <https://assembly.state.ny.us/comm/?id=22&sec=hearings>.

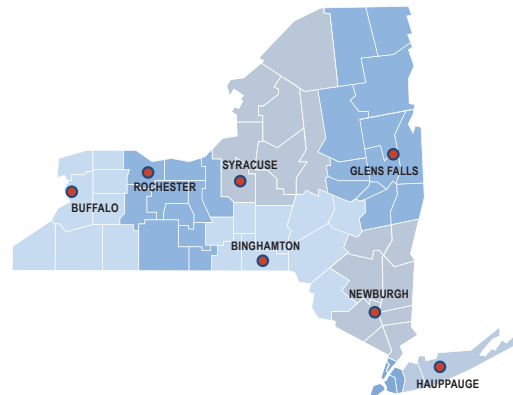


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