FORECLOSURES IN NEW YORK

What's Really Going On

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New Economy Project (formerly NEDAP) is a resource and advocacy center that promotes community economic justice in New York City.

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Summary

Four years into the mortgage meltdown, the home foreclosure crisis in New York State continues unabated, particularly in low income neighborhoods and communities of color.[1] Recent reports on foreclosures in New York cite a decline in foreclosure actions filed in New York courts. These reports, however, fail to include key information needed to understand the true foreclosure picture and formulate effective public policy.

According to NEDAP's analysis of new mortgage default and delinquency data, foreclosure risk remains disturbingly high in New York. NEDAP found that more than 345,000 mortgages were in default or delinquent in New York State, in 2011. This staggering number – based on *90-day pre-foreclosure notices* that New York now requires servicers to send to homeowners – indicates severe mortgage distress and risk of foreclosure and destabilization for huge numbers of families and communities throughout the state.[2]

The number of foreclosure actions (*lis pendens*) filed against New York homeowners has indeed dropped, notwithstanding the extremely high number of mortgage defaults and delinquencies. The decline in foreclosure filings, however, is largely attributable to banks' inability to produce documentation required to initiate foreclosure cases, as New York courts heighten their scrutiny of banks' foreclosure filings.[3] NEDAP found that 90-day pre-foreclosure notices in New York City, for example, outnumbered foreclosure actions filed in New York courts 14 to 1.[4]

Key Findings

NEDAP's analysis of 90-day pre-foreclosure notices reveals that, in 2011:

- **345,435 mortgages in New York State were at risk of foreclosure**.

- **More than 65% of 90-day pre-foreclosure notices were sent to homeowners in Long Island, New York City, Westchester County, Buffalo, Rochester, and Orange County.** *See* MAP 1. 90-Day Pre-Foreclosure Notices, New York State, 2011.

- In New York City, **94,890 mortgages were at risk of foreclosure**.

- **Southeastern Queens, Central and Eastern Brooklyn, and Staten Island had the highest number of 90-day pre-foreclosure notices in New York City,** with as many as 150 mortgages in distress for every 1,000 housing units in Southeastern Queens neighborhoods.

- **Two-thirds of the 90-day pre-foreclosure notices (66%) in New York City were sent to homeowners in communities of color**. *See* MAP 2. 90-Day Pre-Foreclosure Notices, New York City, 2011.

- In New York City, 90-day pre-foreclosure notices outnumbered foreclosure actions filed in the courts 14 to 1. During the first half of 2011, 53,216 pre-foreclosure notices were sent, compared to 4,211 foreclosure actions filed in the courts.

Table 1: 90-Day Pre-Foreclosure Notices by County

	County	Number of 90-Day Notices Sent
1.	Suffolk	52,378
2.	Queens	36,590
3.	Nassau	36,251
4.	Brooklyn	27,311
5.	Westchester	17,736
6.	Erie	16,424
7.	Monroe	15,489
8.	Orange	13,299
9.	Staten Island	12,122
10.	Bronx	11,951

Map 1: 90-Day Pre-Foreclosure Notices, New York State, 2011

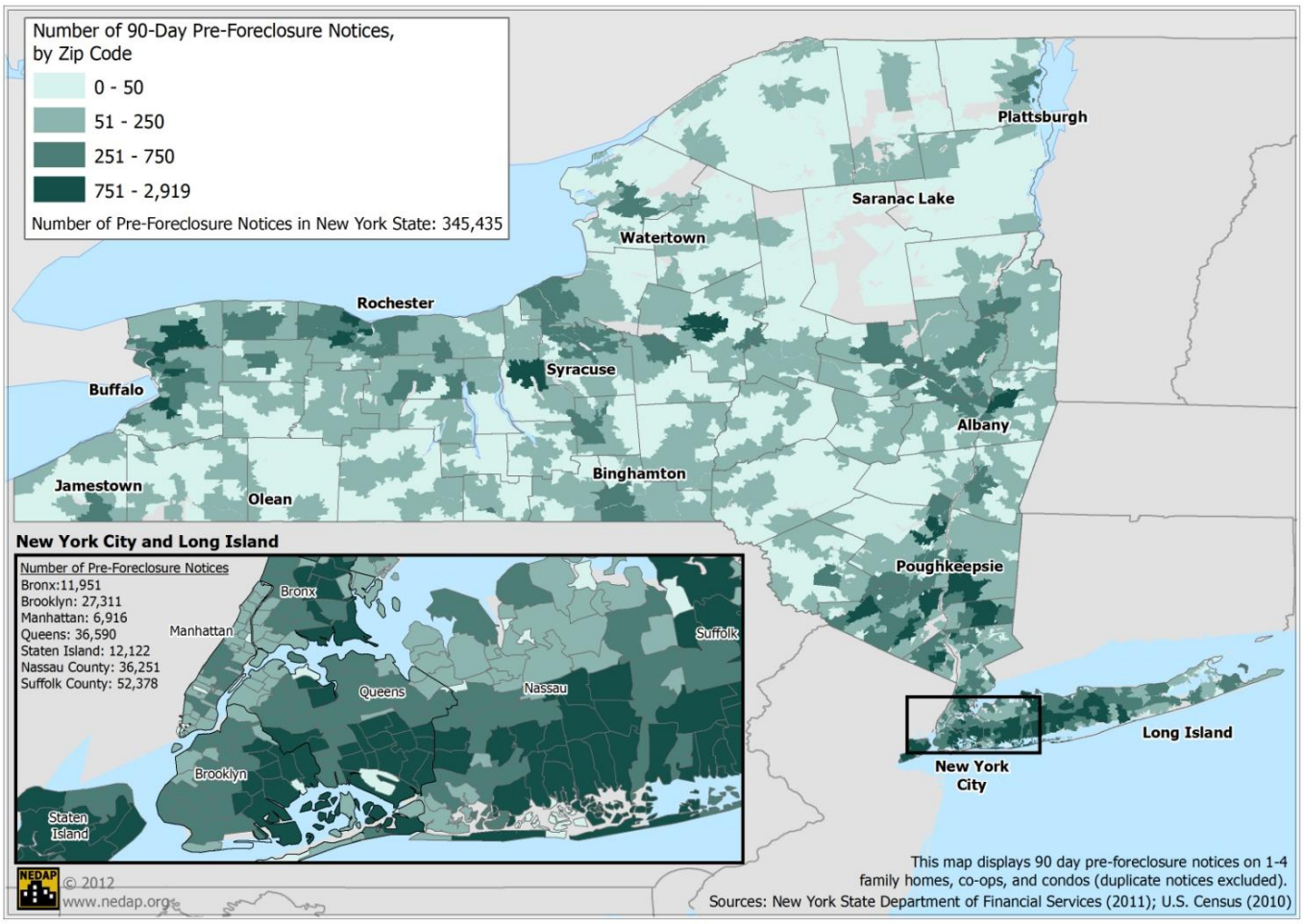
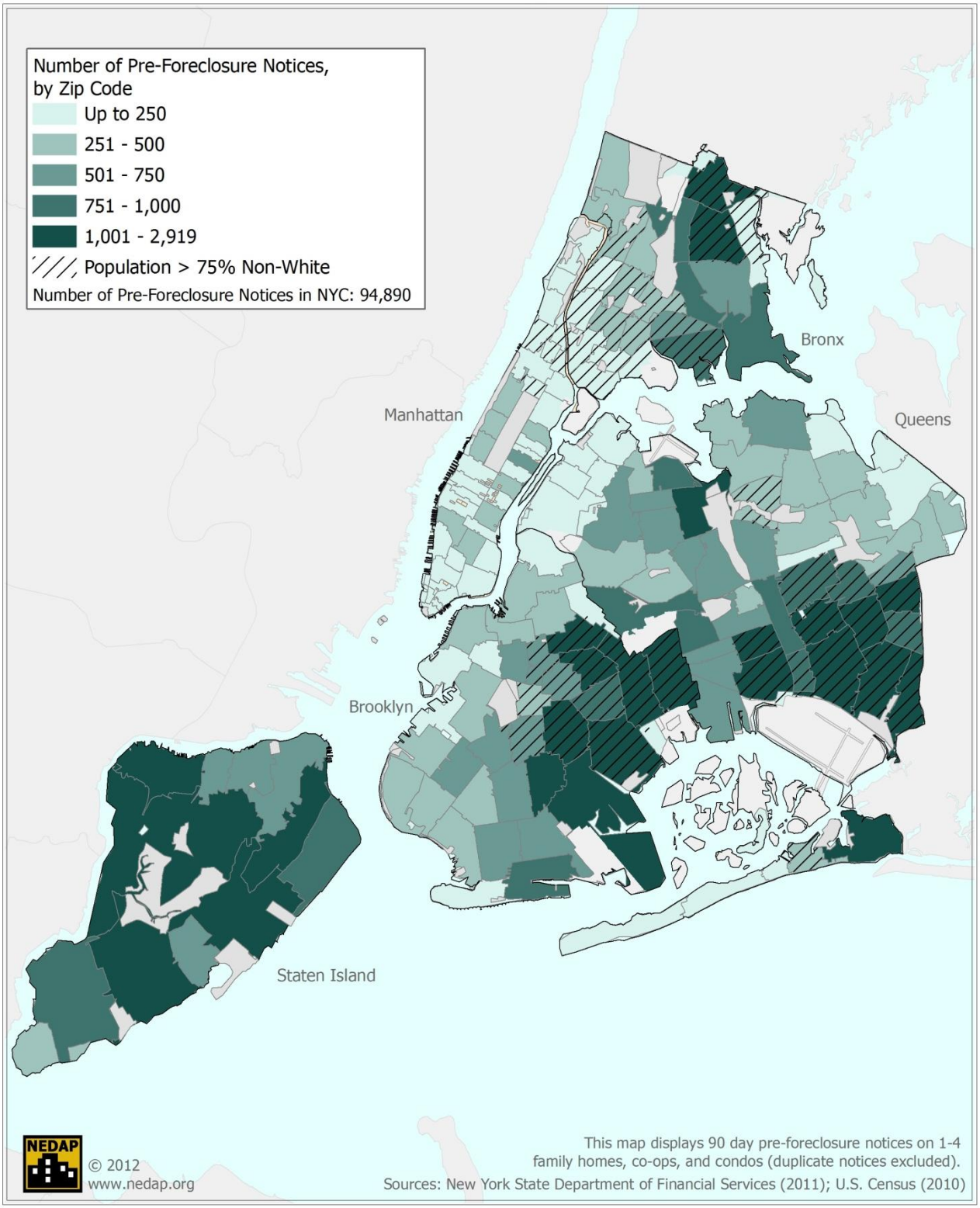


Table 2: 90-Day Pre-Foreclosure Notices by New York City Neighborhood (2011)

	Neighborhood	Number of Notices	Number of Notices Per 1,000 Housing Units
1.	Canarsie, Brooklyn (11236)	2,919	87.62
2.	Flatlands/Marine Park , Brooklyn (11234)	2,418	71.72
3.	Rochdale, Queens (11434)	2,048	94.46
4.	Bulls Head/New Springville, Staten Island (10314)	2,036	62.58
5.	Springfield Gardens, Queens (11413)	1,930	148.75
6.	Cypress Hills/East New York, Brooklyn (11208)	1,873	58.41
7.	St. Albans, Queens (11412)	1,769	153.48
8.	East New York, Brooklyn (11207)	1,761	51.49
9.	East Flatbush, Brooklyn (11203)	1,728	61.52
10.	Annadale, Staten Island (10312)	1,654	74.66

As Map 2 shows, New York City homeowners in communities of color received a disproportionately large share of 90-day pre-foreclosure notices. This disparity is perhaps starkest in neighborhoods of color like East New York, Brooklyn, where the percentage of people who own their homes is relatively low. By contrast, few homeowners received 90-day pre-foreclosure notices in predominantly white neighborhoods of Bayside or Floral Park, Queens, for example, where most people own their homes.[5]

Map 2: 90-Day Pre-Foreclosure Notices, New York City, 2011



Recommendations

New York State must hold banks accountable for their abusive mortgage lending, servicing, and foreclosure practices, and continue critical efforts to assist struggling homeowners. Without a doubt, New Yorkers will be living with the foreclosure crisis and its consequences for many years to come.

Structural economic change is needed to address the root causes of the crisis. In the short term, New York should, at a minimum:

- **Hold the industry accountable.** The NYS Attorney General must continue to aggressively investigate banks' mortgage securitization, servicing, and foreclosure practices and bring meaningful enforcement actions wherever warranted. The AG should seek strong remedies that prevent foreclosures, including the reform of loan modification practices, and principal reductions for New York homeowners who owe more than their homes are worth. The NYS Department of Financial Services must ensure that mortgage servicers comply with the strong guidelines laid out in the Department's Business Conduct Rules.

- **Prohibit lenders from filing wrongful foreclosure actions against New York homeowners.** The state legislature should pass S.697/A.629, which would require lenders at the beginning of a foreclosure case to establish their legal standing to file the case.

- **Allow New Yorkers to raise mortgage servicing abuses as a defense to foreclosure.** The NYS Department of Financial Services has strong regulations governing mortgage servicing conduct, but homeowners have little legal recourse if servicers violate these rules. The legislature should codify by statute the mortgage servicers' duties of good faith and fair dealing and of loss mitigation, along with other key aspects of the regulations. Enactment of such a law will allow homeowners in foreclosure to raise mortgage servicing abuses as a defense to foreclosure, helping hold servicers accountable and reducing foreclosures in New York.

- **Restore funding for foreclosure prevention legal services and counseling.** New Yorkers have a fighting chance to save their homes thanks to the strong and well-trained network of counselors and legal services attorneys throughout the state, who provide free, high quality foreclosure prevention assistance. This network has helped thousands of New Yorkers at risk of foreclosure to keep their homes, and owes its existence almost entirely to funding that the legislature provided through NYS Homes and Community Renewal. As of this report's publication, the state's 2012 budget includes $0 for these services. If the state does not restore this funding, many foreclosure prevention programs will be forced to close, which will have a devastating impact on struggling homeowners and communities throughout the state.

Data Notes

NEDAP analyzed 90-day pre-foreclosure notice data provided by the Department of Financial Services. The 90-day pre-foreclosure notice data used in the report include Step One filings on 1-4 family homes and cooperative and condominium apartments. NEDAP included in its calculations both first and second lien mortgages, and eliminated any duplicate entries for a single mortgage. Ninety-day pre-foreclosure notice data include notices mailed in 2011.

NEDAP analyzed foreclosure filing (*lis pendens*) data provided by First American CoreLogic. The data include *lis pendens* of mortgage default filings on 1-4 family homes and cooperative and condominium apartments. Foreclosure actions data span the first six months of 2011.

Non-white and communities of color are defined in this report as areas in which more than 50% of residents identified themselves as a race other than white, in the 2010 census. All population data are from the 2010 Census.

Endnotes

[1] A new national study of 27 million loans made between 2004 and 2008 shows that the U.S. is not even halfway through the foreclosure crisis. *Lost Ground 2011*, http://www.responsiblelending.org/mortgage-lending/research-analysis/lost-ground-2011.html

[2] Since 2009, mortgage services are required by New York State law to send pre-foreclosure notices to homeowners 90 days before commencing a foreclosure action in New York State courts. Since 2010, the state has required mortgage servicers to file key information pertaining to all 90-day pre-foreclosure notices with the NYS Banking Department (now the Department of Financial Services). The notices must be sent to owners of 1 to 4 family homes, coops, and condos and are typically filed when an owner is 30-90 days delinquent on a mortgage.

[3] New York recently issued new rules in response to the robo-signing scandals, which revealed widespread abuse and irregularities in banks' foreclosure filings in New York and around the country. To ensure that servicers in fact have the legal right to foreclose on New York homeowners, New York State's Chief Judge Jonathan Lippman issued a rule in October 2010 that requires attorneys representing banks to file affirmations certifying they have taken reasonable steps to verify that the documents filed in the case are accurate. The following month, foreclosure actions filed in New York City dropped more than 50%, and have yet to return to their pre-October 2010 levels.

[4] These numbers reflect filings in the first half of 2011.

[5] *See* map showing owner occupancy by neighborhood, in NYC.