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ATTORNEY GENERAL

DEPARTMENT OF JUSTICE  
NEW CASTLE COUNTY  
820 NORTH FRENCH STREET  
WILMINGTON, DELAWARE 19801

June 4, 2013

The Honorable James T. Vaughn, Jr.  
Superior Court  
500 N. King Street  
Wilmington, DE 19801

The Honorable Patricia M. Blevins  
Legislative Hall  
P.O. Box 1401  
Dover, DE 19903

The Honorable Peter C. Schwartzkopf  
Legislative Hall  
P.O. Box 1401  
Dover, DE 19903

RE: Foreclosure Filing Data - 1<sup>st</sup> Quarter 2013

Dear President Judge Vaughn, President Pro Tempore Blevins, and Speaker Schwartzkopf:

In 2011, in response to record numbers of foreclosures filed against Delaware homeowners, the General Assembly enacted a legislative package meant to afford Delawareans an opportunity to explore alternatives to foreclosure. That legislative initiative established the Automatic Residential Mortgage Foreclosure Mediation Program (the "Mediation Program"). In the most recent legislative session, House Bill No. 40 was passed, extending the Mediation Program through 2018, together with other technical changes to the administration of the Mediation Program. As the delegatee of the Superior Court under 10 *Del. C.* § 5062C(t), the Department of Justice is required to periodically report relevant statistics about the implementation of the Mediation Program. This letter serves as the First Quarter Report for 2013.

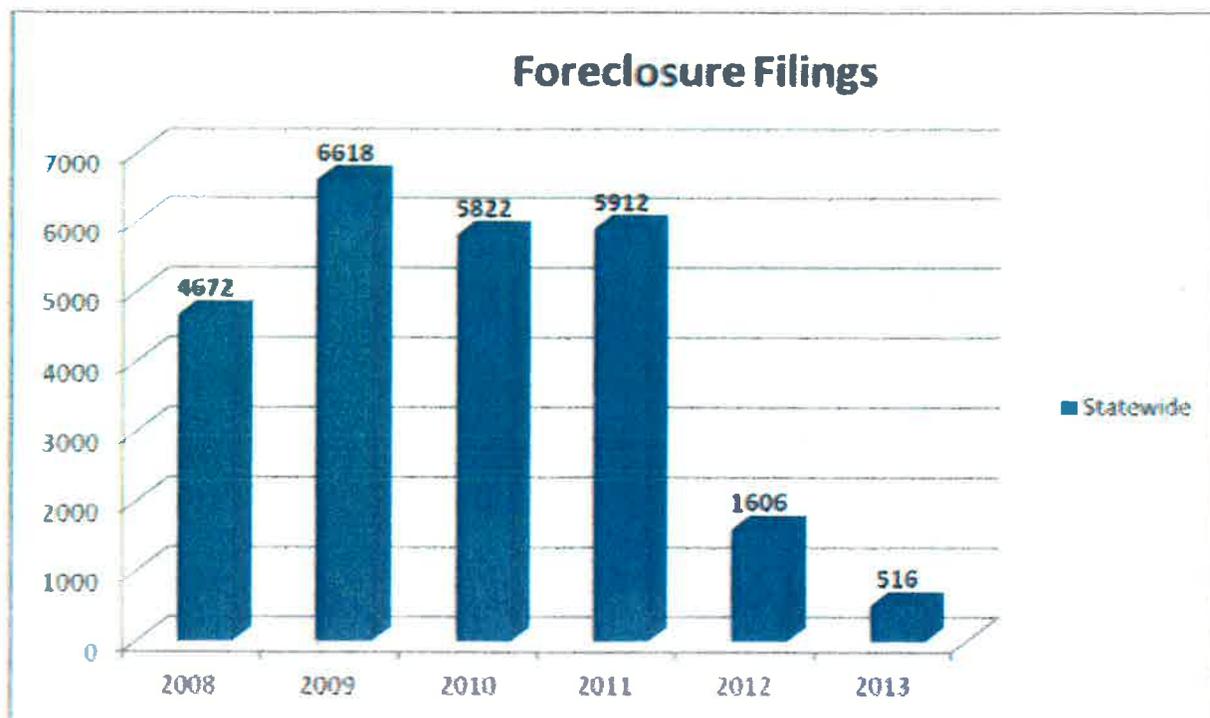
### **1. Statistical Snap Shot**

While the Mediation Program saw an initial slow start and a dramatically decreased number of eligible foreclosure filings, the case volume of the Mediation Program has steadily increased since September 2012. As of March 31, 2013, 884 eligible foreclosure actions have been filed since the Mediation Program went into effect on January 19, 2012. A more detailed

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overview of foreclosure statistics can be found below, as well as on the Mediation Program website at: <http://www.attorneygeneral.delaware.gov/consumers/protection/automediation.shtml>.

The following chart demonstrates the number of foreclosure actions<sup>1</sup> filed statewide in the calendar years indicated.



## **2. Foreclosure Filings Since Effective Date of the Mediation Program**

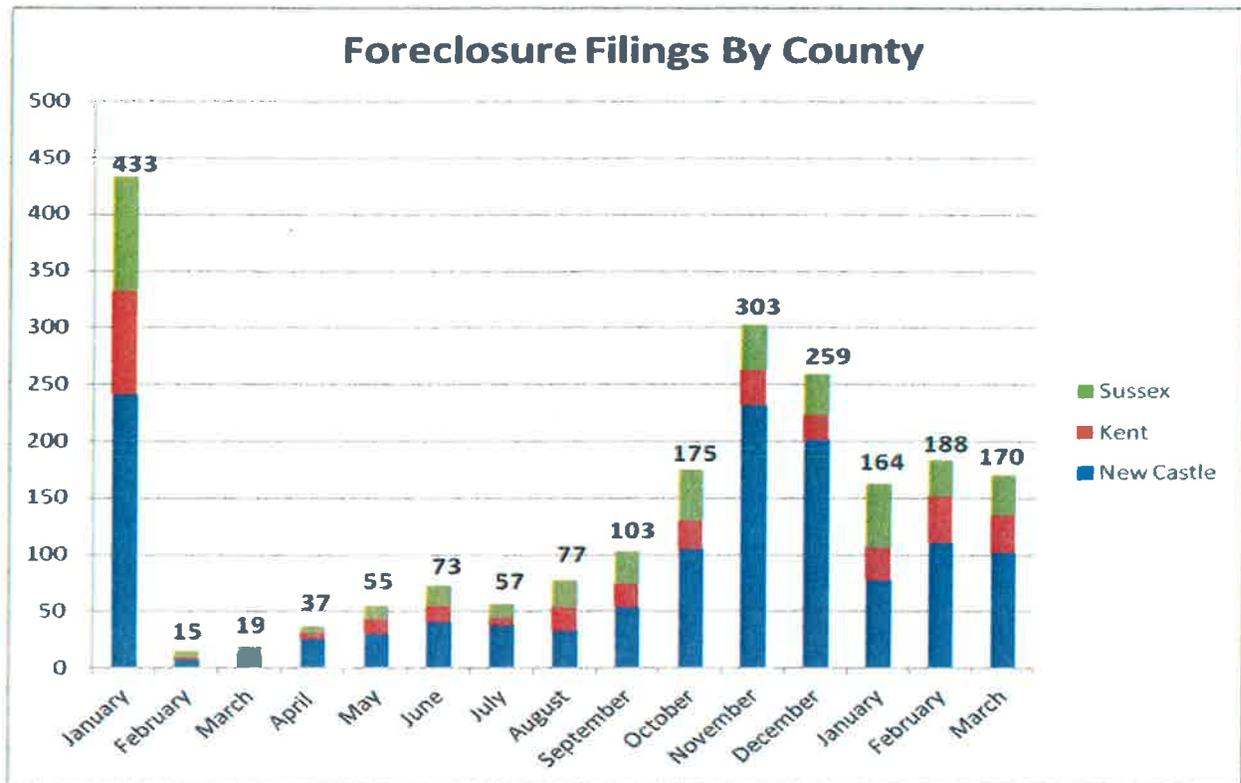
Between January 19, 2012 and March 31, 2013, there were a total of 1,395 foreclosure filings statewide with 884 of those cases, or 63.3%, eligible for the Mediation Program. As of the first quarter of 2013, the majority of foreclosure filings were commenced as mediation-

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<sup>1</sup> This data is compiled through March 31, 2013. These figures include *scire facias* actions and, as of January 19, 2012, mediation-eligible *scire facias* actions. Additional information by county and case type is available on the Department of Justice's website: <http://www.attorneygeneral.delaware.gov/consumers/protection/automediation.shtml>.

eligible cases, a marked difference from the trend in 2012, which saw only a minority of foreclosure cases commenced in Superior Court as mediation-eligible matters.<sup>2</sup>

The following chart demonstrates the number of foreclosures filed in each county from January 1, 2012 through March 31, 2013.<sup>3</sup> Kent County continues to see the lowest number of foreclosure filings while New Castle County has the highest.



### 3. Mediation Conferences and Participation Data

Under the Mediation Program, the Department of Justice conducts and oversees conciliation-style mediations for each case in which the homeowner has been served with process. We are able to accommodate up to 100 cases per conference day in each county. New

<sup>2</sup> In Q2 2012, 16% of foreclosure actions were mediation-eligible. In Q3 2012, that number increased to 24%, and in Q4 2012, 38.6% of foreclosure actions were commenced as mediation-eligible matters.

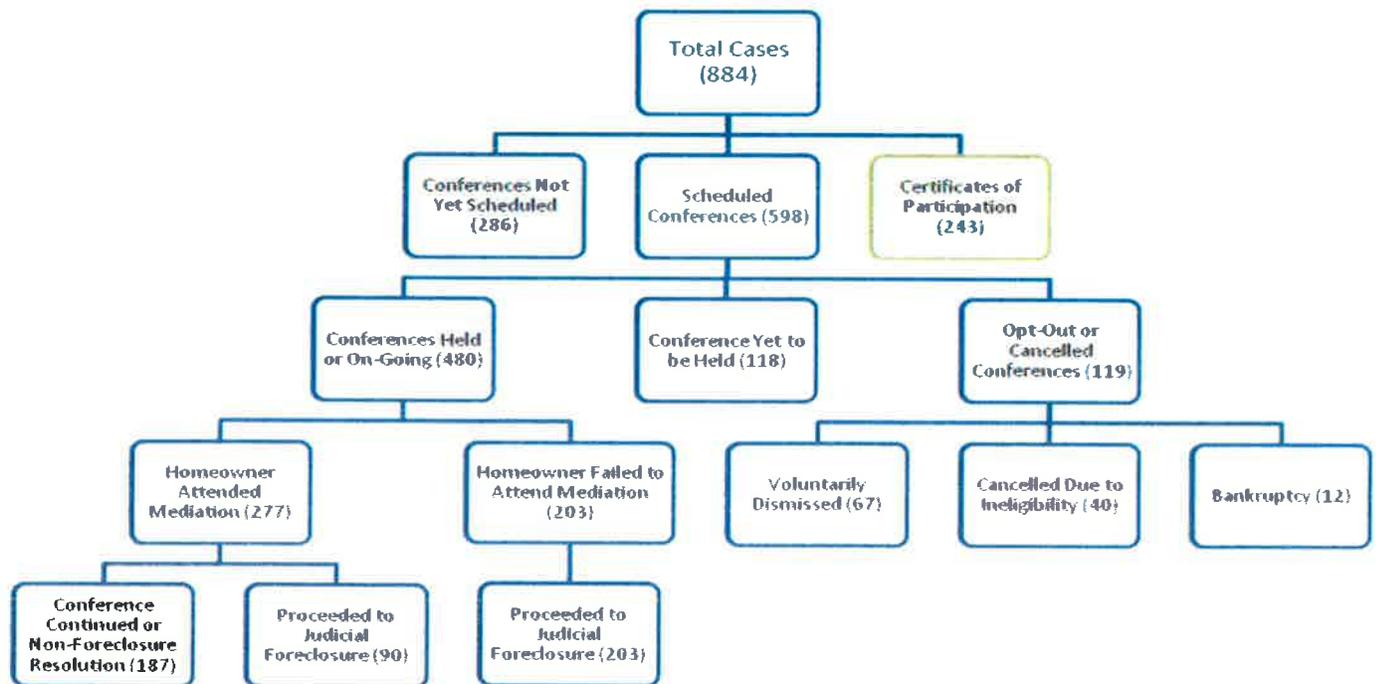
<sup>3</sup> These numbers include MORT foreclosure actions as well as MMED case types.

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Castle County experiences the largest case volume with approximately 60-80 mediation cases held per conference day. There are two conference days per month in New Castle County and one conference day per month in each of the other two counties.

The participation data displayed below gives a snapshot of the cases in the Mediation Program through March 31, 2013.

## Mediation Program: Overall Participation Data as of First Quarter 2013



Overall, the Mediation Program has a **57.71% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **67.51% have either**

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**achieved a non-foreclosure resolution or remain in mediation and continue negotiations with their lender/servicer.** The remaining 32.49% have been unable to avoid foreclosure due to unemployment, severe delinquency, failure to reach an agreement on the terms of the loss mitigation offered by the lender/servicer, and/or a failure to work with a housing counselor. The overwhelming success rate of the Mediation Program thus far owes a great deal to the support of knowledgeable HUD-approved housing counselors.

For those 203 homeowners who failed to participate in the Mediation Program, our data indicates that they often have vacated their homes prior to the foreclosure case being filed in the Superior Court. Therefore, they do not receive the information about the Mediation Program which is sent by the Department of Justice.

#### **4. The Shadow Inventory**

The shadow inventory of seriously delinquent mortgages in Delaware has been cause for concern. The foreclosure filing data suggests that lenders/servicers have started to work through this shadow inventory as the number of foreclosure filings have increased since the inception of the Mediation Program. In particular, there was a significant uptick in filings in the fourth quarter of 2012. While foreclosure filings have slowly resumed, they have not yet returned to historical rates and delinquencies continue to accrue. National Delinquency Survey numbers for the first quarter of 2013 published by the Delaware State Housing Authority (the "DSHA") show that the percentage of seriously delinquent loans in Delaware remains historically high, at 7.08%.

The build-up of a shadow inventory over the last year may have negative effects for Delaware homeowners and communities. First, while severe delinquency over a longer period of time may serve to delay homeowners' eviction from their properties, it also reduces the chance that homeowners will be able to take advantage of loan modifications and other alternatives to foreclosure due to such deep delinquency. Second, a deluge of looming foreclosure filings has the potential to flood the judicial system, straining the resources of the Superior Court. House Bill No. 40's recent extension of the Mediation Program will serve to alleviate this strain on the Court and continue to efficiently facilitate non-foreclosure resolutions for Delaware's homeowners.

Full participation by lenders/servicers in the Mediation Program will allow the shadow inventory to be reduced, give homeowners the benefit of a conciliatory conference with their lender/servicer, and permit lenders/servicers the opportunity to explore options aside from the public auction of the property at sheriff's sale.

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## **5. Going Forward**

The threat of losing one's home remains a painful reality for many Delawareans. As the number of foreclosure filings begins to creep back up, the Mediation Program has demonstrated a comparatively high rate of success at avoiding foreclosure for homeowners who work with a HUD-approved housing counselor and actively participate in their mediation conferences. The recent quarterly numbers indicate that a majority of the lenders/servicers have resumed filing foreclosure actions. We anticipate this trend will continue in light of backlog due to the severe drop-off in filings seen in the first three quarters of 2012.

Additionally, the Department of Justice's Office of Foreclosure Prevention and Financial Education (the "OFP") has been an important complement to the Mediation Program through its community outreach and education seminars, servicer events, and the day-to-day assistance provided to homeowners via the foreclosure hotline. With the enactment of House Bill No. 40, the OFP will be able to continue hosting outreach and education events throughout the State where homeowners are given resources and information to assist them in navigating the foreclosure process and avoiding unnecessary sheriff's sales. The work of the OFP has served many Delaware homeowners who face this difficult life event and, in many cases, prevent the filing of foreclosure actions against these homeowners.

As we move through 2013, and in the coming years, Department of Justice is ready to meet the increasing demands from higher foreclosure volumes and greater participation in the Mediation Program. When foreclosure cases are filed, homeowners will be promptly scheduled for mediation dates throughout the State, and borrowers will have the opportunity to have a meaningful conversation with their lender/servicer before the judicial foreclosure proceeds. Increasing participation and success rates of the Mediation Program will save many more Delaware homeowners from unnecessary foreclosures, increase the stability of our neighborhoods, and improve the housing market in Delaware.

Sincerely,



Joseph R. Biden, III

cc: Linda M. Carmichael, Esq. Chief Staff Attorney to the Superior Court  
Hon. Jack A. Markell  
Hon. Thomas R. Carper  
Hon. Christopher A. Coons  
Hon. John C. Carney, Jr.  
Members of 147<sup>th</sup> General Assembly