



**MATTHEW P. DENN**  
ATTORNEY GENERAL

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

CIVIL DIVISION (302) 577-8400  
FAX (302) 577-6630  
CRIMINAL DIVISION (302) 577-8500  
FAX (302) 577-2496  
FRAUD DIVISION (302) 577-8600  
FAX (302) 577-6499

August 18, 2015

The Honorable Jan R. Jurden  
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 – 2nd Quarter 2015

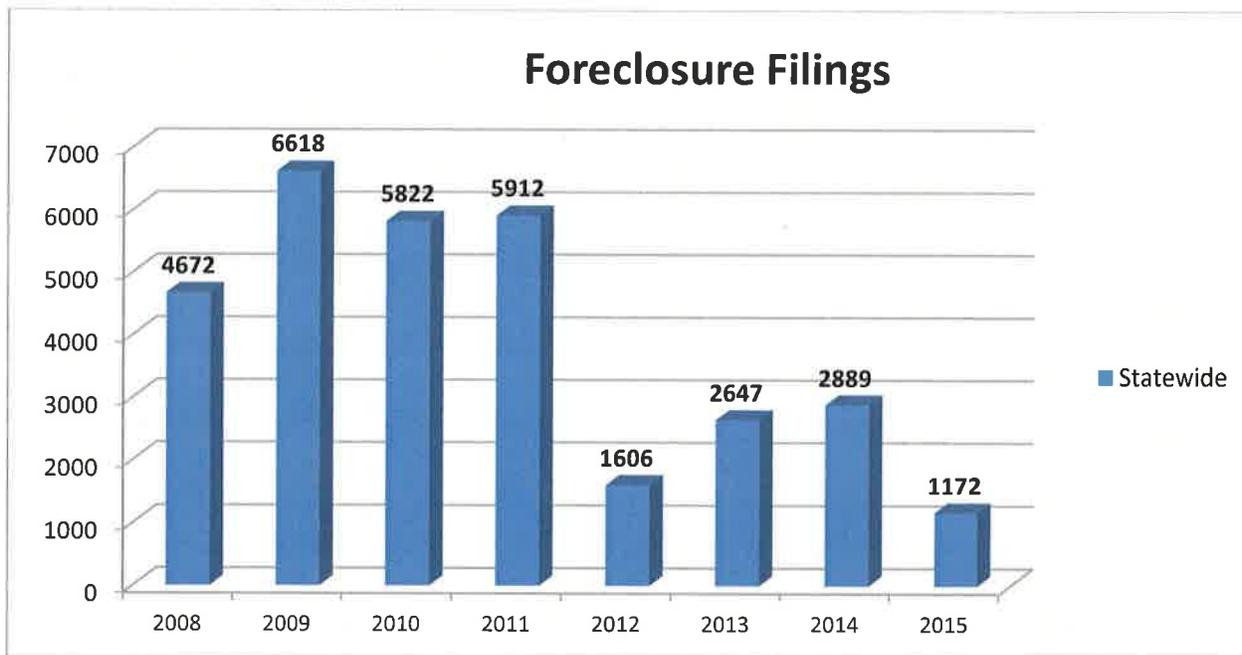
Dear President Judge Jurden, President Pro Tempore Blevins, and Speaker Schwartzkopf:

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 proceedings of the Mediation Program. This letter serves as the Second Quarter Report for 2015.

**1. Statistical Snap Shot**

As of June 30, 2015, 4,971 eligible foreclosure actions have been filed since the Mediation Program went into effect on January 19, 2012. A more detailed overview of foreclosure statistics can be found below, as well as on the Mediation Program website at: <http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>

The following chart demonstrates the number of foreclosure actions<sup>1</sup> filed statewide in the calendar years indicated. The number of foreclosure filings in 2014 exceeded the number of filings in 2013. As of the year's mid-point, we expect to see similar volume in 2015.



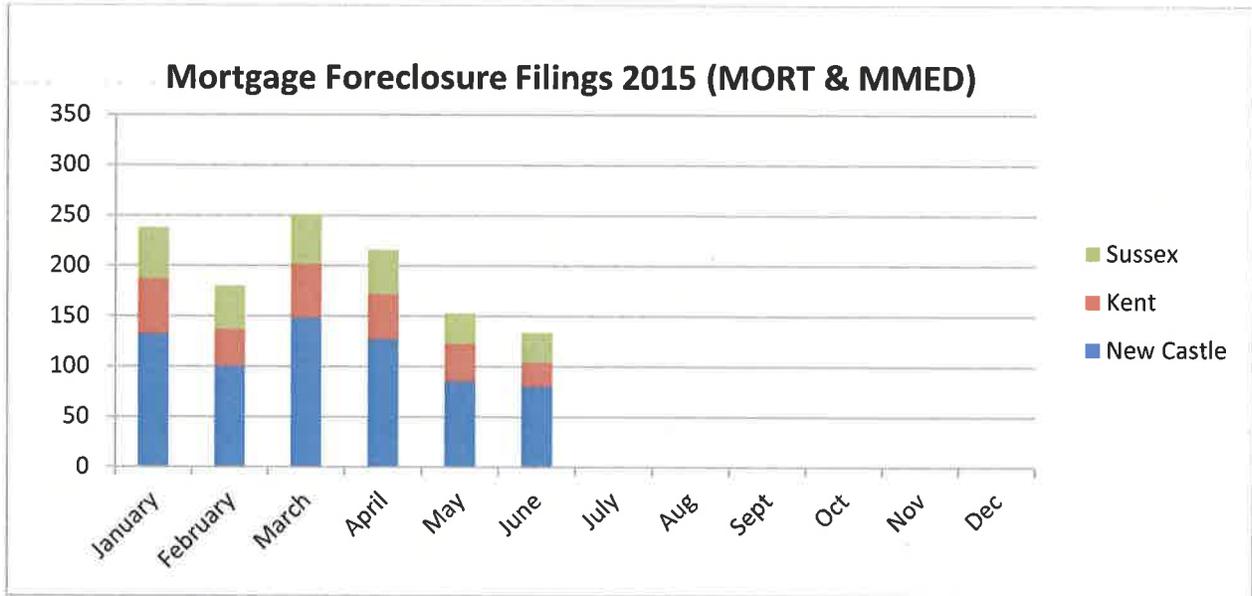
## **2. Foreclosure Filings Since Inception of the Mediation Program**

Between January 19, 2012 and June 30, 2015, there have been a total of 8,314 foreclosure filings statewide with 4,971 of those cases, or 59.79%, eligible for the Mediation Program. Beginning in 2013 and continuing through second quarter 2015, there has been a noticeable increase in mediation-eligible cases commenced in the Superior Court.<sup>2</sup> There were 370 new cases filed in the second quarter of 2015. This continues the steady decline in quarterly filings since the height in second quarter 2014 of 632 new filings. It is important to note, however, that major upheavals within the foreclosure law firms in Delaware this quarter, most notably the sudden closure of Butler & Hosch, may have artificially reduced the number of filings.

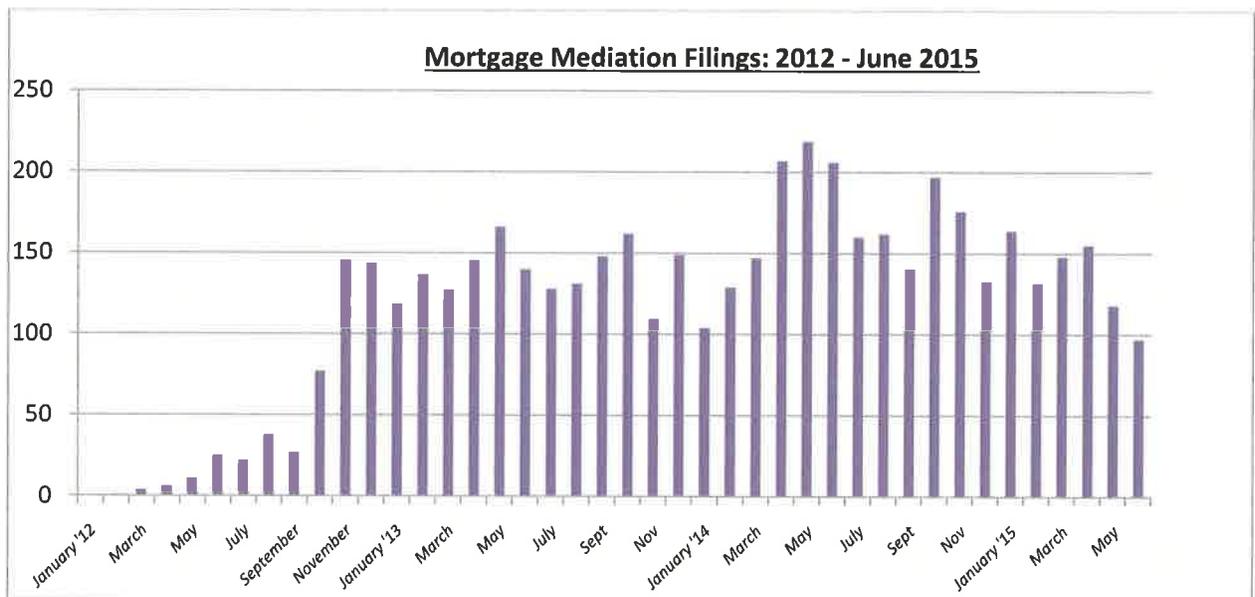
<sup>1</sup> This data is compiled through March 31, 2015. These figures include *scire facias* actions and, as of January 19, 2012, mediation-eligible *scire facias* actions. Additional information by county and case type is available on the Department of Justice's website: <http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>

<sup>2</sup> Historically, the percentage of mediation-eligible foreclosure actions in Superior Court have been as follows: Q2 2012 – 16%; Q3 2012 – 24%; Q4 2012 – 38.6%; Q1 2013 – 63.3%; Q2 2013 – 69.2%; Q3 2013 – 63.9%; Q4 2013 – 59.7%; Q1 2014 – 65.29%; Q2 2014 – 71.66%; Q3 2014 – 68.96%; Q4 2014 – 67.02%; Q1 2015 – 66.22%; and Q2 2015 – 73.56%.

The following chart demonstrates the number of foreclosures filed in each county from January 1, 2015 through June 30, 2015.<sup>3</sup> New Castle County remains the highest while Kent County and Sussex County have approximately the same number of filings.



The below chart demonstrates the number of MMED filings each month since the inception of the Mediation Program in January 2012.



<sup>3</sup> These numbers include MORT (not eligible for mediation) foreclosure actions as well as MMED (mediation-eligible) foreclosure actions.

### **3. Mediation Conferences and Participation Data**

Under the Mediation Program, the Department of Justice administers 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, with each lender's counsel holding up to 20 conferences per day. New Castle County experiences the largest case volume with approximately 60-90 mediation cases scheduled per conference day. Initially there were two conference days per month in New Castle County and one conference day per month in each of the other two counties. To accommodate the increase in filings in New Castle County during the 2nd Quarter 2014, we began adding an additional mediation day in New Castle County in September 2014. Although, we expected to continue to require this additional day through early 2015, the law firm with the heaviest volume began sending two attorneys to each conference, which eliminated the need for the additional New Castle County mediation day. We also added an additional day in Kent County in February 2015, which we expect was a one-time need.

During the 2nd Quarter of 2015, 461 Mediation Scheduling Notices were filed with the Superior Court, and 130 Certificates of Participation were also filed during this Quarter. Overall, the Mediation Program has a **53.69% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **51.04%** have either achieved a non-foreclosure resolution or remain in mediation and continue loss mitigation negotiations with their lender/servicer.<sup>4</sup> The remaining 48.96% have been unable to avoid foreclosure due to unemployment, severe delinquency, failure to participate in the Mediation Program, 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. An additional 158 cases, or 8.5% of actively participating homeowners, have had their cases dismissed due to continued loss mitigation efforts outside the program after mediation was finished. The overwhelming success rate of the Mediation Program thus far owes a great deal to the support of knowledgeable HUD-approved housing counselors.

Beginning with the 3rd Quarter 2013 report, we have adjusted our program participation overview chart to capture those matters that were dismissed or cancelled prior to mediation and those that were dismissed or cancelled following the scheduling of mediation. Those cases that achieved a non-foreclosure resolution and those that remain in mediation have been separated. Additionally, we have also captured those cases which were dismissed outside of mediation.<sup>5</sup>

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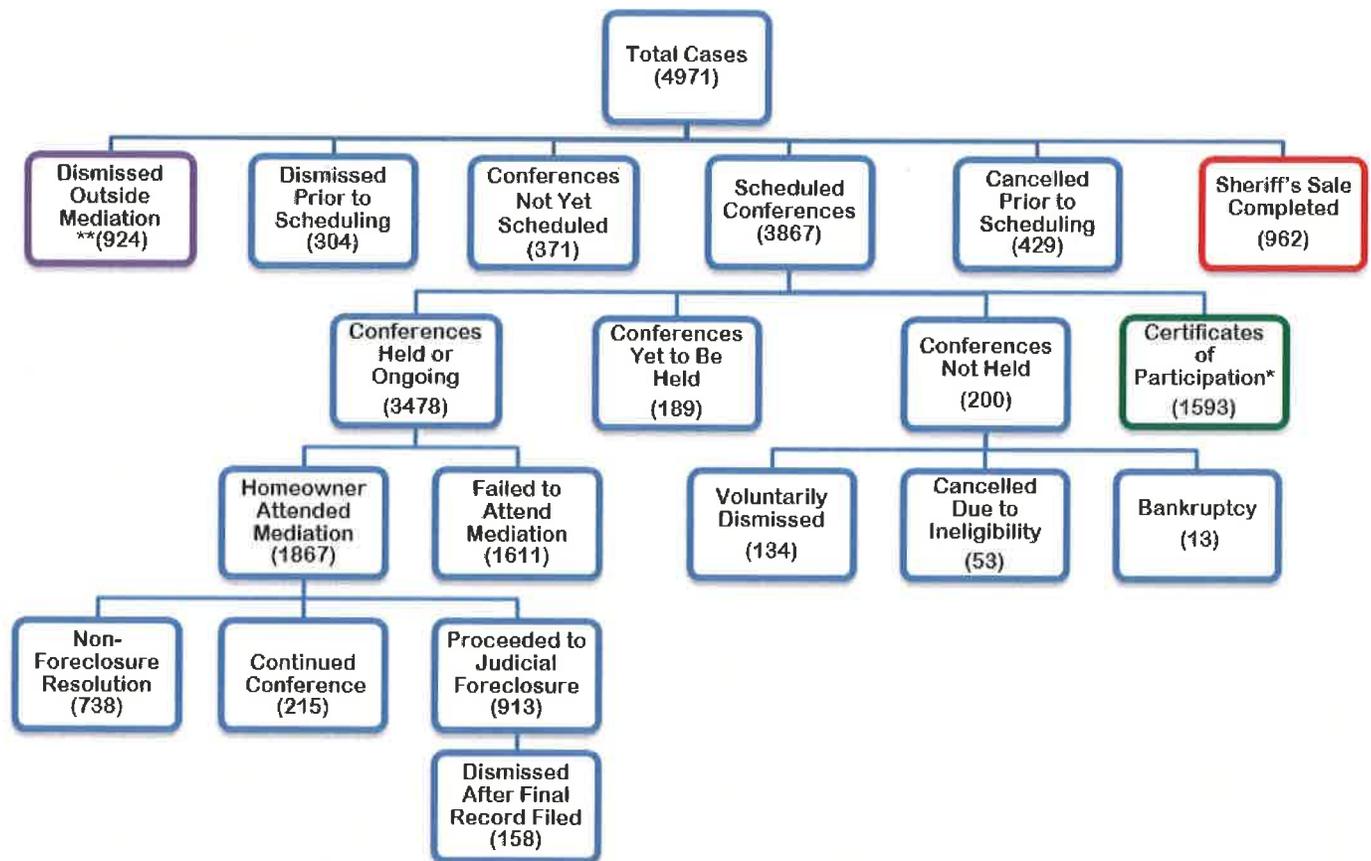
<sup>4</sup> "Successful mediation" is defined as any conference where the homeowner achieves a non-foreclosure resolution to avoid a Sheriff's Sale of the property, or where the parties remain engaged in negotiations and the homeowner is granted a subsequent mediation conference date.

<sup>5</sup> Cases dismissed outside of mediation include those matters where a defendant failed to appear for mediation, the matter was cancelled as non-mediation eligible, or where mediation was unsuccessful and those cases were subsequently dismissed, and did not proceed to a sheriff's sale.

For those 1,611 homeowners who failed to participate in the Mediation Program, our data indicate that they often have vacated their homes prior to the foreclosure case being filed in the Superior Court. Therefore, they may not receive the information about the Mediation Program which is sent by the Department of Justice.

The participation data displayed below gives a snapshot of the cases in the Mediation Program through June 30, 2015.

**Delaware Automatic Residential Mortgage Foreclosure Mediation Program:  
 Overall Program Participation as of 2<sup>nd</sup> Quarter 2015<sup>6</sup>**



<sup>6</sup> \* Certificates of Participation are often filed prior to the mediation conference date in most cases. Therefore, the number of Certificates of Participation does not directly correlate with actual participation in the Mediation Program.

\*\*Those cases dismissed outside mediation include 51 cases dismissed after cancellation and 280 cases dismissed after homeowner failed to attend mediation. Cancelled cases are those matters where a cancellation request is filed by the Plaintiff because the home is not owner occupied or where the homeowner submits a Certificate of Participation electing not to participate in mediation and opting out of the mediation program.

#### **4. Delinquency Rates and Foreclosure Filings**

We continue to see high delinquency rates and foreclosure starts in Delaware.<sup>7</sup> The dramatic increase in MMED filings in the Second Quarter 2014 and continuing high number of filings through the Second Quarter 2015 shows that the banks are continuing to reduce their shadow inventory and also illustrates that lenders/servicers are participating in the Mediation Program. Delaware reports an overall seriously delinquent rate of 5.04%, a foreclosure inventory of 2.73%, and total foreclosure starts of 0.57%.<sup>8</sup> While the seriously delinquent rate has dropped every quarter since 2009, Delaware continues to rank high among other states in delinquency measures (11<sup>th</sup> in foreclosure inventory, 4<sup>th</sup> in foreclosure starts, and 13<sup>th</sup> in 90+ days delinquent).

#### **5. Going Forward**

The threat of losing one's home remains a painful reality for many Delawareans. As the number of foreclosure filings has increased, 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. It is clear from the most recently quarterly numbers that the number of foreclosure filings in Delaware, and accordingly the need for the program, remains and is projected to remain high for the foreseeable future. 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 the current backlog.

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. OFP will 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 OFP's work has served many Delaware homeowners who face this difficult life event and, in many cases, helped to prevent the filing of foreclosure actions against these homeowners.

As we progress through 2015, and in the coming years, the 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 and served, 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

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<sup>7</sup> Mortgage Bankers Association, National Mortgage Delinquency Survey, Second Quarter 2015 (August 2015). The "seriously delinquent rate" is defined to include mortgage loans which are 90+ days overdue together with those loans in foreclosure.

<sup>8</sup> *Id.* at 4.

Hon. Jan R. Jurden  
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Delaware homeowners from unnecessary foreclosures, increase the stability of our neighborhoods,  
and improve the housing market in Delaware.

Sincerely,



Matthew F. Lintner, Director  
Fraud and Consumer Protection Division  
Delaware Department of Justice

cc: Hon. Jack A. Markell  
Hon. Thomas R. Carper  
Hon. Christopher A. Coons  
Hon. John C. Carney, Jr.  
Sec. Ben Addi  
Members of the 148<sup>th</sup> General Assembly