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March 2, 2016

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 – 4th Quarter 2015

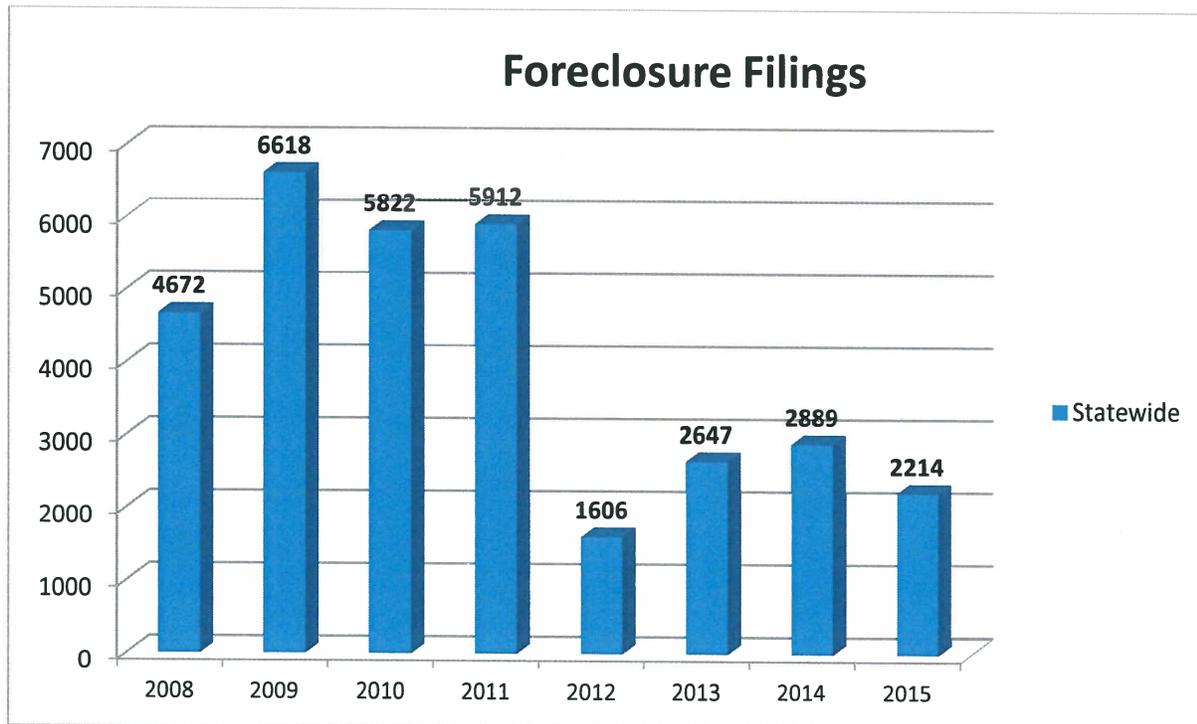
Dear President Judge Jurden, President Pro Tempore Blevins, and Speaker Schwartzkopf:

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 Fourth Quarter Report for 2015.

**1. Statistical Snap Shot**

As of December 31, 2015, 5,648 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 end of 2015, it appears the number of foreclosure filings has stabilized.



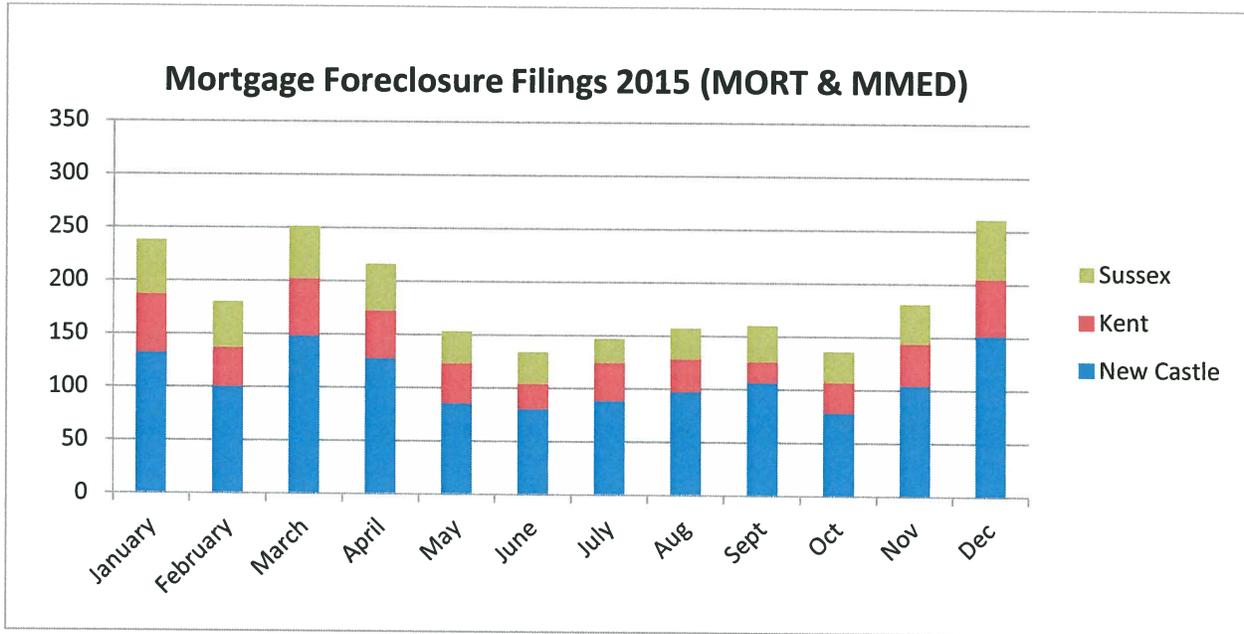
## **2. Foreclosure Filings Since Inception of the Mediation Program**

Between January 19, 2012 and December 31, 2015, there have been a total of 9,356 foreclosure filings statewide with 5,648 of those cases, or 60.37%, eligible for the Mediation Program. Beginning in 2013 and continuing through third quarter 2014, there was a noticeable increase in mediation-eligible cases commenced in the Superior Court.<sup>2</sup> There were 393 new cases filed in the fourth 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 beginning in second quarter 2015, most notably the sudden closure of Butler & Hosch, may have artificially reduced the number of filings for part of 2015.

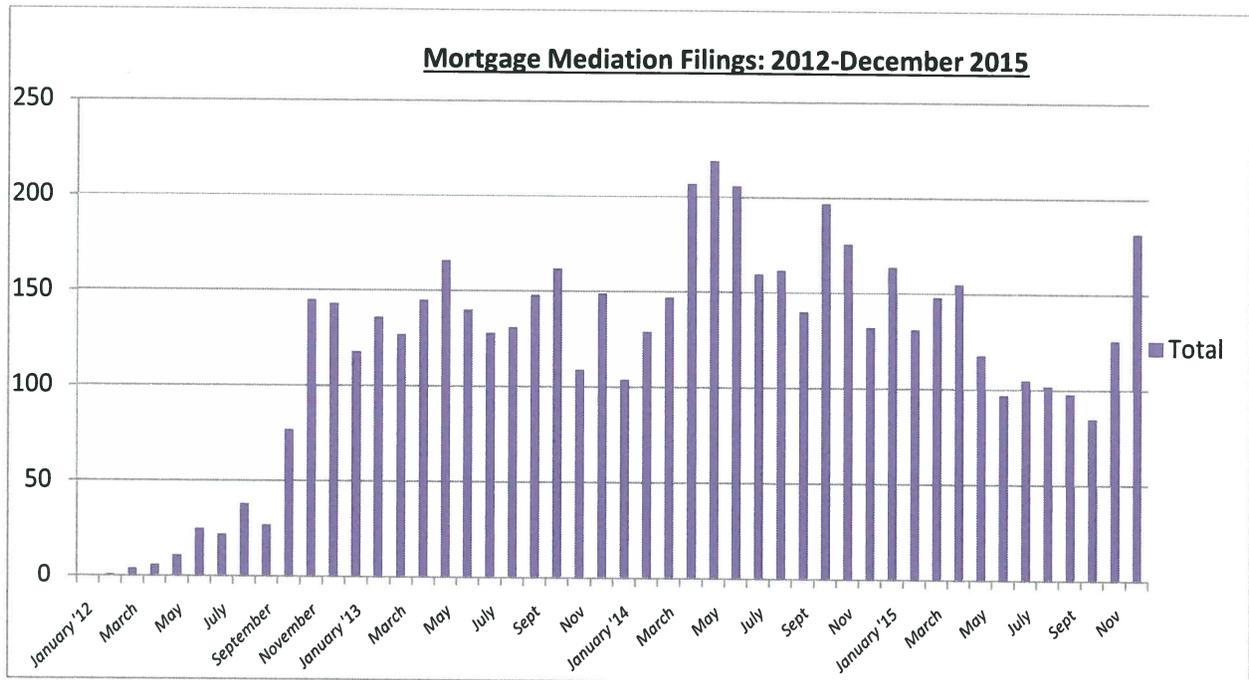
<sup>1</sup> This data is compiled through December 31, 2015. These figures include *scire facias* actions and, as of January 19, 2012, mediation-eligible *scire facias* actions. Additional information by county and case type is available on the Department of Justice's website: <http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>

<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%; Q2 2015 – 73.56%; and Q3 2015 – 65.73%.

The following chart demonstrates the number of foreclosures filed in each county from January 1, 2015 through December 31 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 second 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 Fourth Quarter of 2015, 261 Mediation Scheduling Notices were filed with the Superior Court, and 121 Certificates of Participation were also filed during this Quarter. Overall, the Mediation Program has a **53.75% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **59.12%** 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 40.88% have resumed court proceedings 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. 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 Third 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

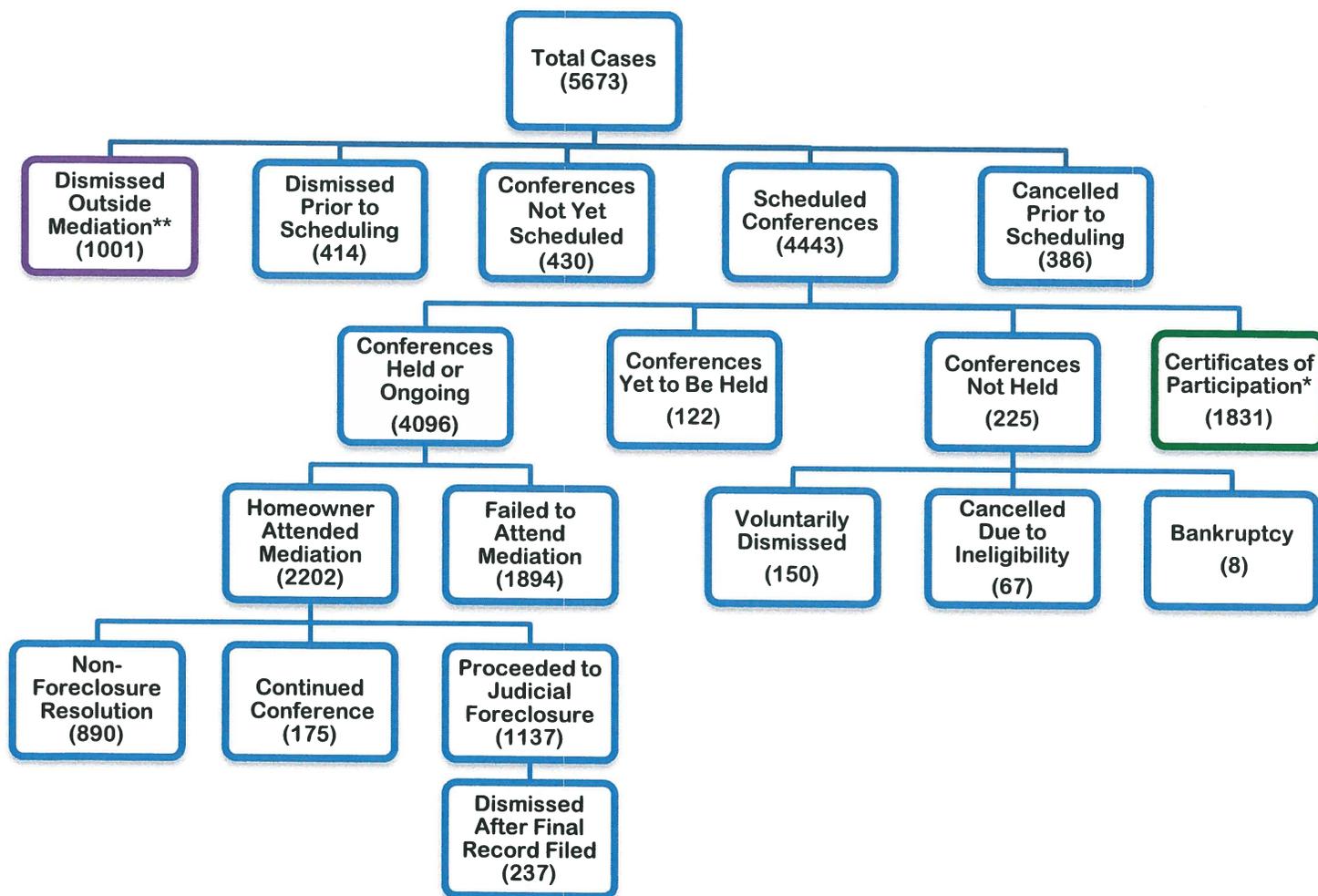
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<sup>4</sup> "Successful mediation" is defined as any conference where the homeowner achieves a non-foreclosure resolution to avoid a Sheriff's Sale of the property, or where the parties remain engaged in negotiations and the homeowner is granted a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

been separated. Additionally, we have also captured those cases which were dismissed outside of mediation.<sup>5</sup>

For those 1,894 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. Further, they would not be eligible for mediation.

The participation data displayed below provides a snapshot of the cases in the Mediation Program through December 31, 2015.



<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.

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

We continue to see high delinquency rates and foreclosure starts in Delaware.<sup>6</sup> The dramatic increase in MMED filings in the Second Quarter 2014 and continuing high number of filings through the Fourth Quarter 2015 shows that the banks have reduced their shadow inventory and also illustrates that lenders/servicers are participating in the Mediation Program. Delaware reports an overall seriously delinquent rate of 4.65%, a foreclosure inventory of 2.61%, and total foreclosure starts of 0.54%.<sup>7</sup> While the seriously delinquent rate has dropped every quarter since 2009, Delaware continues to rank high among other states in delinquency measures (8<sup>th</sup> in percent of loans in foreclosure, 2<sup>nd</sup> in foreclosure starts, and 12<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 recent 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 2015 comes to a close, and in the coming years, the Department of Justice is ready to meet the continuing demands from high foreclosure volumes and participation in the Mediation Program. When foreclosure cases are filed and served, homeowners are promptly scheduled for mediation dates throughout the State, and borrowers have the opportunity to have a meaningful conversation with their lender/servicer before the judicial foreclosure proceeds. Increasing

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<sup>6</sup> Mortgage Bankers Association, National Mortgage Delinquency Survey, Third Quarter 2015 (November 2015). The "seriously delinquent rate" is defined to include mortgage loans which are 90+ days overdue together with those loans in foreclosure.

<sup>7</sup> Id. at 4.

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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,



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. Anas Ben Addi  
Members of the 148<sup>th</sup> General Assembly