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February 23, 2017

The Honorable Jan R. Jurden  
Superior Court  
500 N. King Street  
Wilmington, DE 19801

The Honorable David B. McBride  
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 – 4<sup>th</sup> Quarter 2016

Dear President Judge Jurden, President Pro Tempore McBride 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 2016.

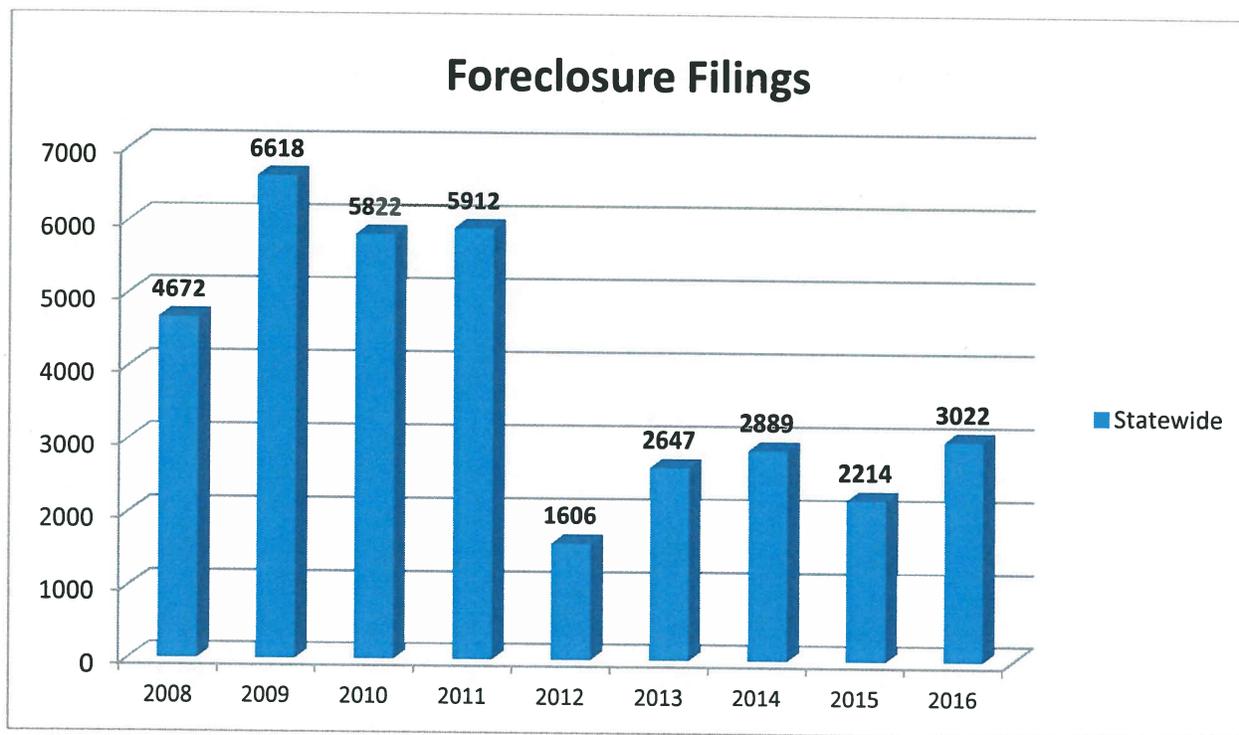
### **1. Statistical Snap Shot**

As of December 31, 2016, 7,998 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.

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<sup>1</sup> This data is compiled through December 31, 2016. 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>



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

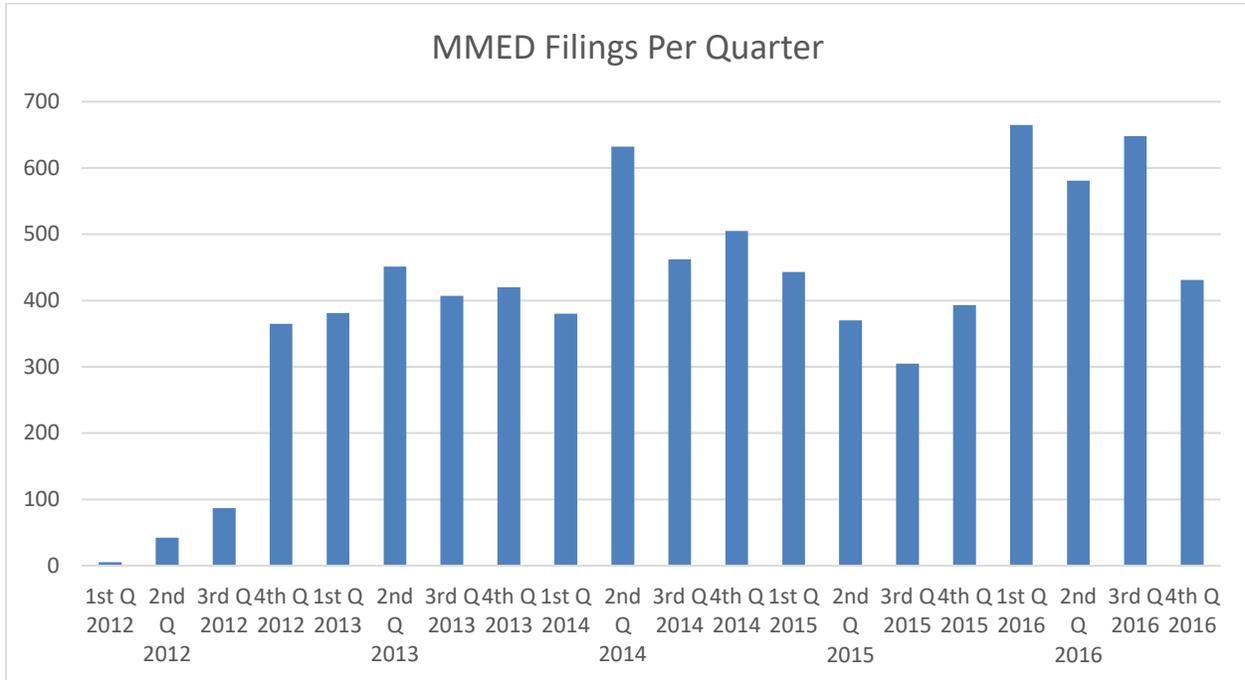
Between January 19, 2012 and December 31, 2016, there have been a total of 12,238 foreclosure filings statewide with 7,998 of those cases, or 65.35%, eligible for the Mediation Program.<sup>2</sup> Beginning in 2013 and continuing through third quarter 2014, there was a noticeable increase in mediation-eligible cases commenced in the Superior Court. In 2015, there were an average of 377 filings per quarter. 2016 saw a large increase in the number of filings with 665 mediation eligible filings in the first quarter. 2016 surpassed 2014 with the highest number of mediation eligible foreclosure filings since the inception of the program. There were 2,325 mediation-eligible filings in 2016.

The filing numbers for 2016 are markedly higher than any previous year. The major upheavals within the foreclosure law firms in Delaware beginning in second quarter 2015, most notably the sudden closure of Butler & Hosch and the retirement of Robert Aulgur, Esq. of

<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%; Q3 2015 – 65.73%; Q4 2015 – 60.37%; Q1 2016 – 61.43%; Q2 2016- 62.21%, and Q3 2016- 63.88%

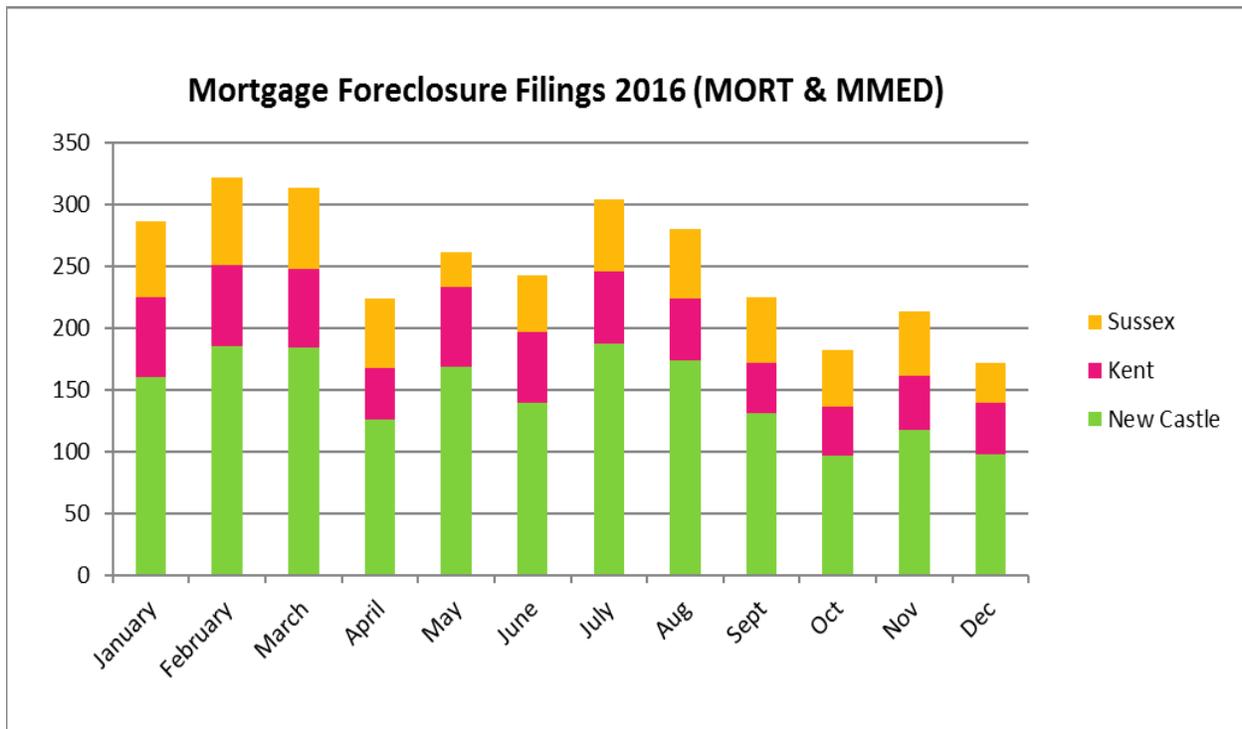
Whittington & Aulgur may have artificially reduced the number of filings for part of 2015 and partially led to the increased number of filings in 2016.

The below chart demonstrates the number of mediation eligible filings per quarter since 2012.



The following chart demonstrates the number of foreclosures filed in each county from January 1, 2016 through December 31, 2016.<sup>3</sup> New Castle County remains the highest while Kent County and Sussex County have approximately the same number of filings.

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



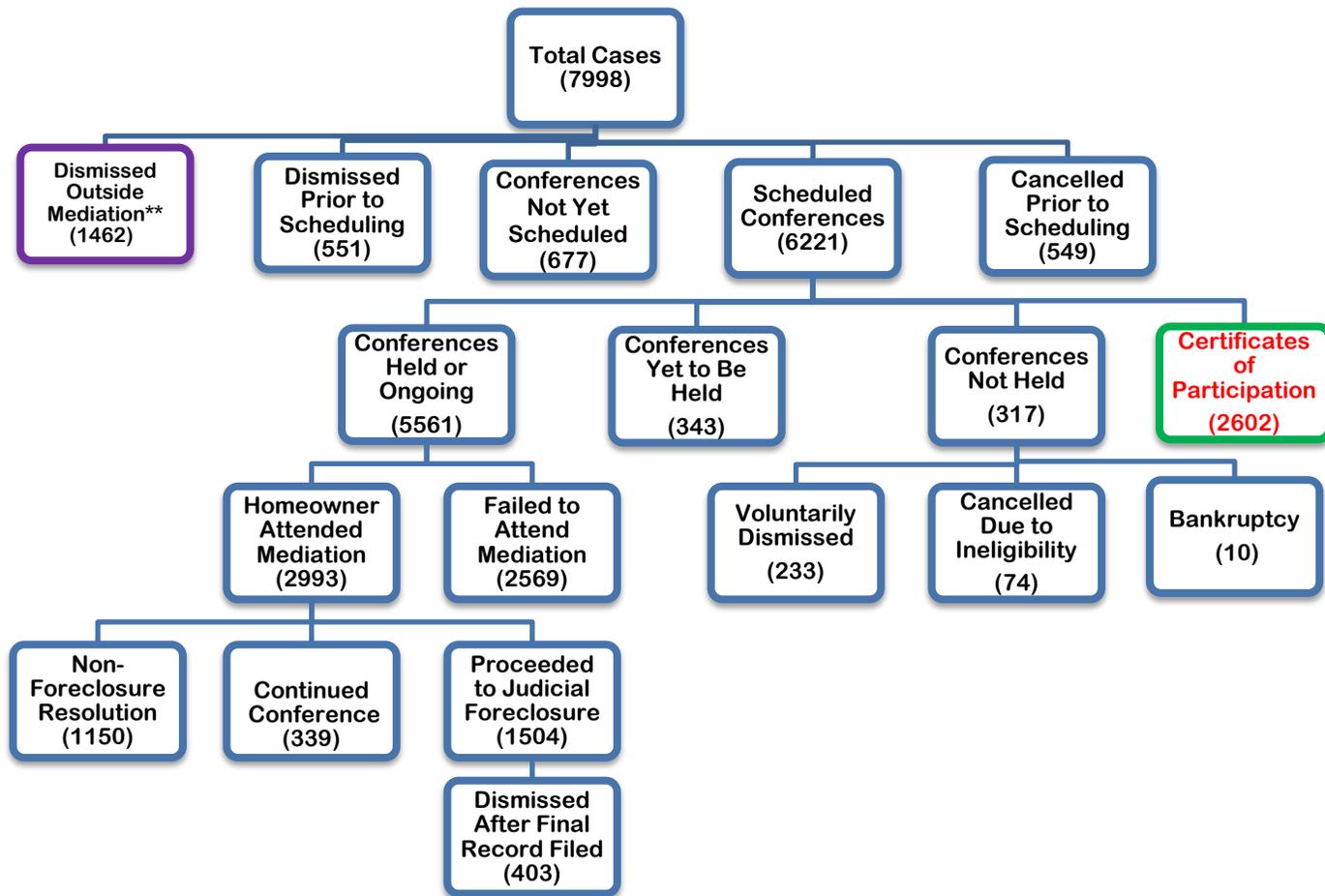
### **3. Mediation Conferences and Participation Data**

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 120 cases per conference day in each county, with each lender's counsel holding up to 45 conferences per day. New Castle County averages 95 mediations scheduled per conference day, Kent averages 71 mediations and Sussex averages 52 per conference day.<sup>4</sup> 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 two law firms with the heaviest volume have been sending two attorneys to conference days when there are a large number of conferences scheduled for those firms. With the additional attorneys, we do not expect the need to add any additional mediation days at this time.

During the Fourth Quarter of 2016, 492 Mediation Scheduling Notices were filed with the Superior Court, and 176 Certificates of Participation were also filed during this Quarter. Overall, the Mediation Program has a **53.82% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **63.21%** have either achieved a non-foreclosure resolution or remain in mediation and continue loss mitigation negotiations with their

<sup>4</sup> Average of mediations scheduled per day for the months of July 2016 through February 2017.

lender/servicer.<sup>5</sup> The remaining 36.79% 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 high success rate of the Mediation Program thus far owes a great deal to the support of knowledgeable HUD-approved housing counselors. The participation data provides a snapshot of the cases in the Mediation Program through December 31, 2016.

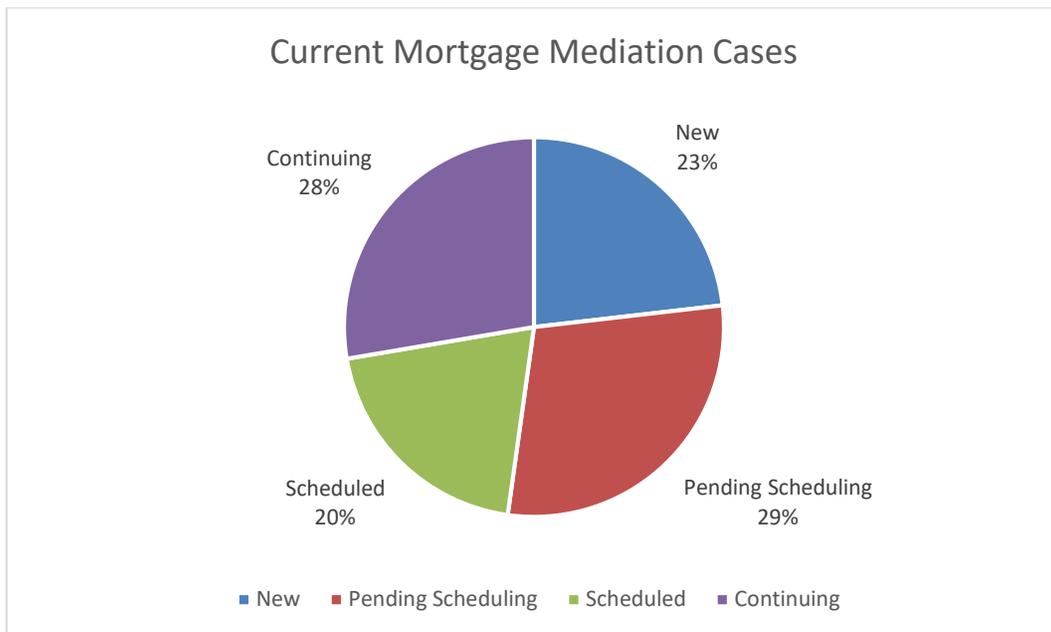


<sup>5</sup> “Successful mediation” is defined as any conference where the homeowner achieves a non-foreclosure resolution to avoid a Sheriff’s Sale of the property, or where the parties remain engaged in negotiations and the homeowner is granted a subsequent mediation conference date.

Our program participation overview chart captures 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 achieve a non-foreclosure resolution and those that remain in mediation are separated. Additionally, we have detailed those cases which have been dismissed outside of mediation.<sup>6</sup>

For those 2,569 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 if they no longer occupy the home.

1,243 cases are currently in the mediation pipeline awaiting scheduling, have an upcoming mediation conference, or are continuing in the mediation program.



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<sup>6</sup> Cases dismissed outside of mediation are any cases dismissed without a mediation conference being held, including those matters where a defendant failed to appear for mediation, the matter was cancelled as non-mediation eligible, and those cases were subsequently dismissed.

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

We continue to see high delinquency rates and foreclosure starts in Delaware.<sup>7</sup> The substantial increase in MMED filings beginning in the first quarter 2016 shows that the banks still have a large shadow inventory and also illustrates that lenders/servicers are participating in the Mediation Program. Delaware reports a 90+ Day Delinquency Rate of 2.04%, a foreclosure inventory of 2.21%, and total foreclosure starts of 0.35%.<sup>8</sup> While the seriously delinquent rate has continued to drop, Delaware continues to rank high among other states in delinquency measures (10th in percent of loans in foreclosure, 14th in foreclosure starts, and 9th 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 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.

A bill has been proposed to extend both the Automatic Residential Foreclosure Mediation Program and the Office of Foreclosure Prevention for an additional two years beyond the current January 2018 sunset date. Extension of both of these programs will allow more Delaware homeowners to receive education and assistance throughout the foreclosure process.

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.

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

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<sup>7</sup> Mortgage Bankers Association, National Mortgage Delinquency Survey, 4th Quarter 2016 (February 15, 2016).

<sup>8</sup> Id. at 13.

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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,



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

cc: Hon. John C. Carney, Jr.  
Hon. Thomas R. Carper  
Hon. Christopher A. Coons  
Hon. Lisa Blunt Rochester  
Sec. Anas Ben Addi