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December 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 – 3rd Quarter 2013**

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

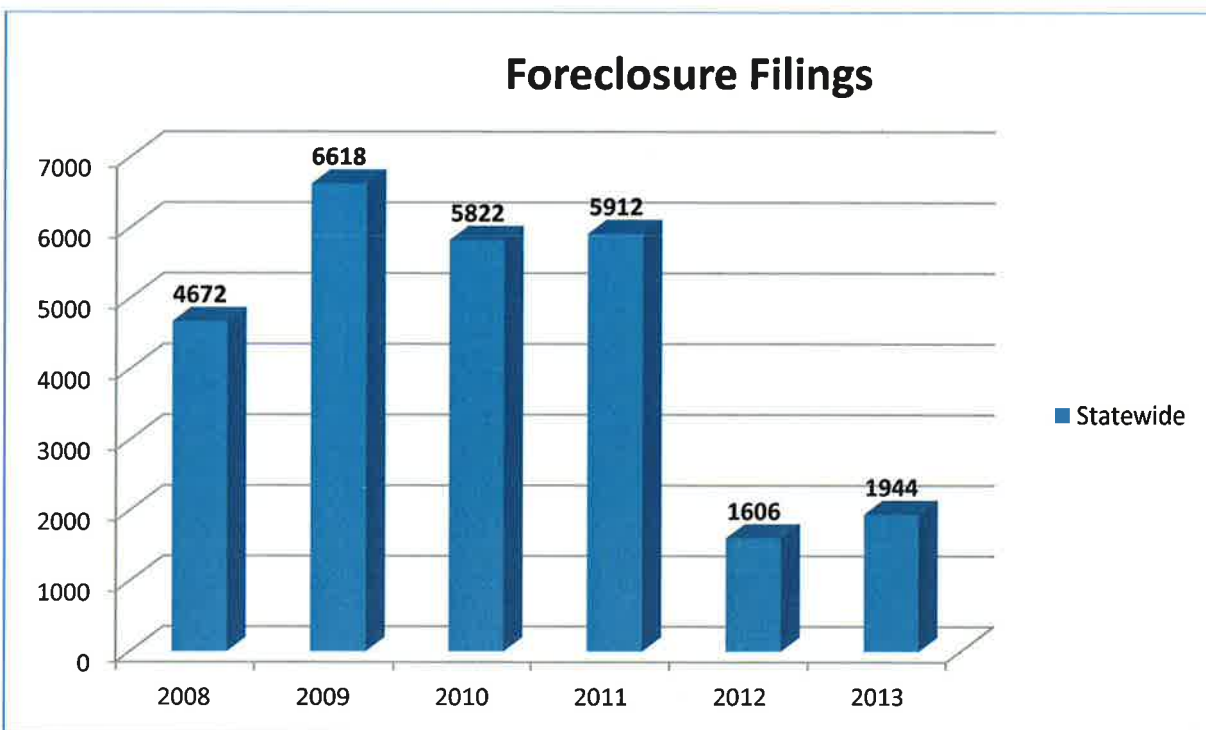
In 2011, in response to record numbers of foreclosures filed against Delaware homeowners, the General Assembly enacted a legislative package meant to afford Delawareans an opportunity to explore alternatives to foreclosure. That legislative initiative established the Automatic Residential Mortgage Foreclosure Mediation Program (the “Mediation Program”). In the most recent legislative session, House Bill No. 40 was passed, extending the Mediation Program through 2018 and making 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 Third 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 September 30, 2013, 1744 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://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.



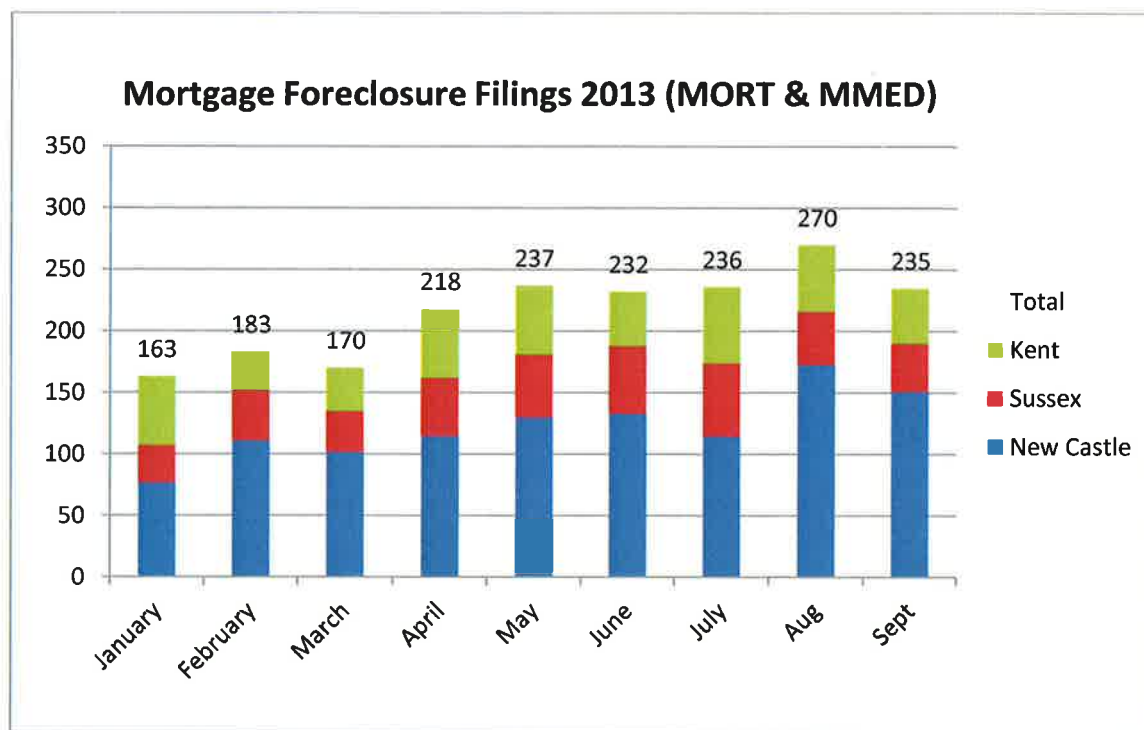
<sup>1</sup> This data is compiled through June 30, 2013. These figures include *scire facias* actions and, as of January 19, 2012, mediation-eligible *scire facias* actions. Additional information by county and case type is available on the Department of Justice's website:

<http://www.attorneygeneral.delaware.gov/consumers/protection/automediation.shtml>.

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

Between January 19, 2012 and September 30, 2013, there were a total of 3,242 foreclosure filings statewide with 1744 of those cases, or 53.79%, eligible for the Mediation Program. Over the last year there has been a noticeable increase in mediation-eligible cases commenced in the Superior Court.<sup>2</sup> Of the 1,944 foreclosure filings in 2013, 1242 of those cases, or 63.89%, are eligible for the Mediation Program.

The following chart demonstrates the number of foreclosures filed in each county from January 1, 2013 through September 30, 2013.<sup>3</sup> Kent County continues to see the lowest number of foreclosure filings while New Castle County remains the highest.



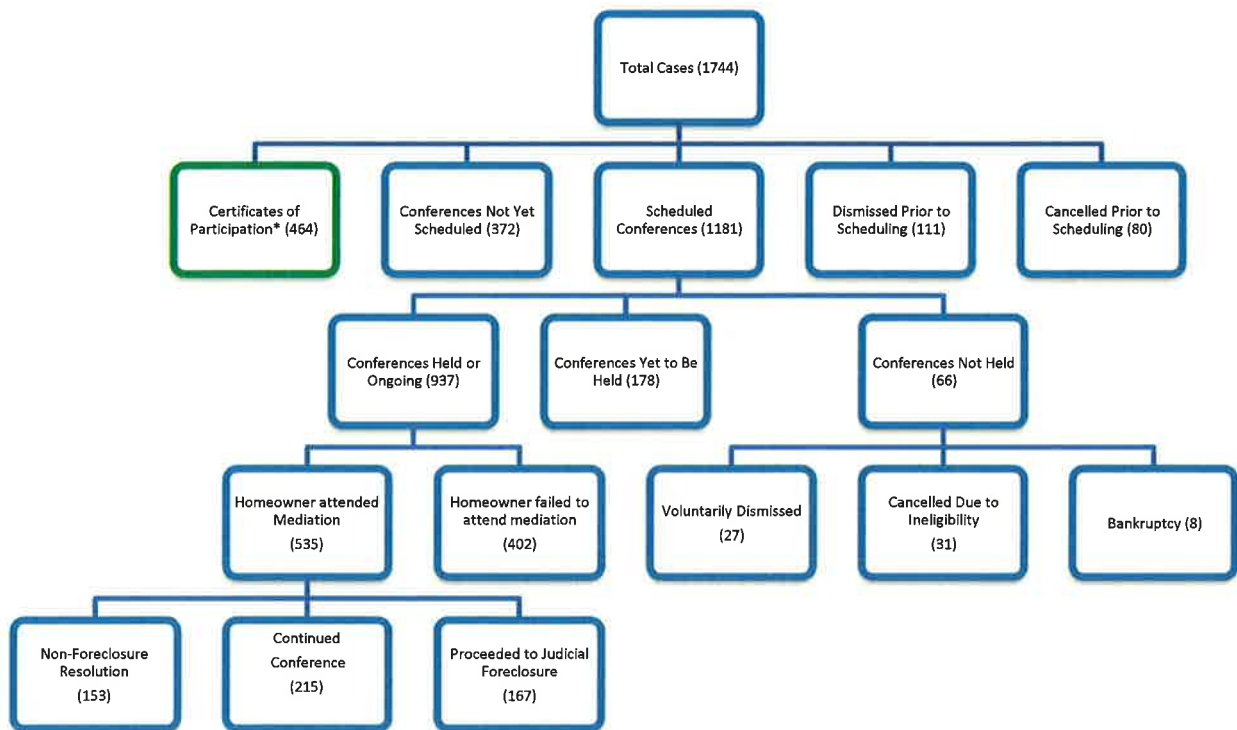
<sup>2</sup>Historically, the percentage of mediation-eligible foreclosure actions in Superior Court have been as follows: Q2 2012 – 16%; Q3 2012 – 24%; Q4 2012 – 38.6%; Q1 2013 – 63.3%, and Q2 69.24%.

<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 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 Castle County experiences the largest case volume with approximately 60-80 mediation cases 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 September 30, 2013.

#### Delaware Automatic Residential Mortgage Foreclosure Mediation Program: Overall Program Participation as of 3rd Quarter 2013



Overall, the Mediation Program has a **57.10% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **68.78% have either**

**achieved a non-foreclosure resolution or remain in mediation and continue negotiations with their lender/servicer.** The remaining 31.22% 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 the 3<sup>rd</sup> Quarter 2013, we have shifted our program participation overview chart to capture those matters which have been dismissed or cancelled prior to mediation and also those that have been dismissed or cancelled following the scheduling of mediation. Additionally, we have separated those cases that have achieved a non-foreclosure resolution and those remain in mediation.

For those 402 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.

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

The shadow inventory remains a going concern in Delaware. We continue to see high delinquency rates and low foreclosure starts.<sup>4</sup> Delaware reports an overall seriously delinquent rate of 6.48%, a foreclosure inventory of 3.28%, and total foreclosure starts of 0.69%.<sup>5</sup> While foreclosure filings have resumed since the inception of the Mediation program and have steadily increased in 2013, they have not yet returned to historical rates and delinquencies continue to accrue.

The build-up of a shadow inventory over the last twenty-one months 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

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<sup>4</sup> Mortgage Bankers Association, National Mortgage Delinquency Survey, Third Quarter 2013 (November 7, 2013). The "seriously delinquent rate" is defined to include mortgage loans which are 90+ days overdue together with those loans in foreclosure.

<sup>5</sup> *Id.* at 4.

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.

## **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. 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. With the enactment of House Bill No. 40, the OFP will be able to continue hosting outreach and education events throughout the State where struggling homeowners are given resources and information to assist them in avoiding and navigating the foreclosure process. The work of the OFP has served many Delaware homeowners who face this difficult life event and, in many cases, helped to avoid the filing of foreclosure actions against these homeowners.

As we move through 2013, 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, 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.

Hon. James T. Vaughn, Jr.  
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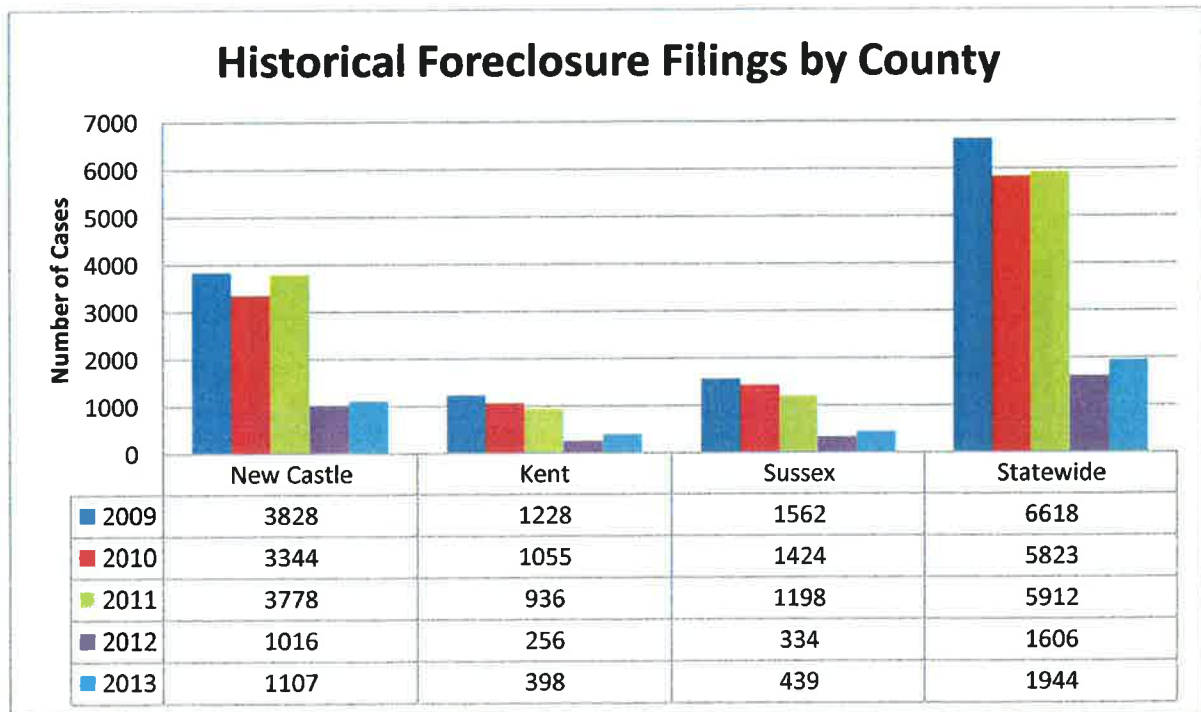
Sincerely,



Matthew Linner, Director  
Fraud and Consumer Protection Division  
Delaware Department of Justice

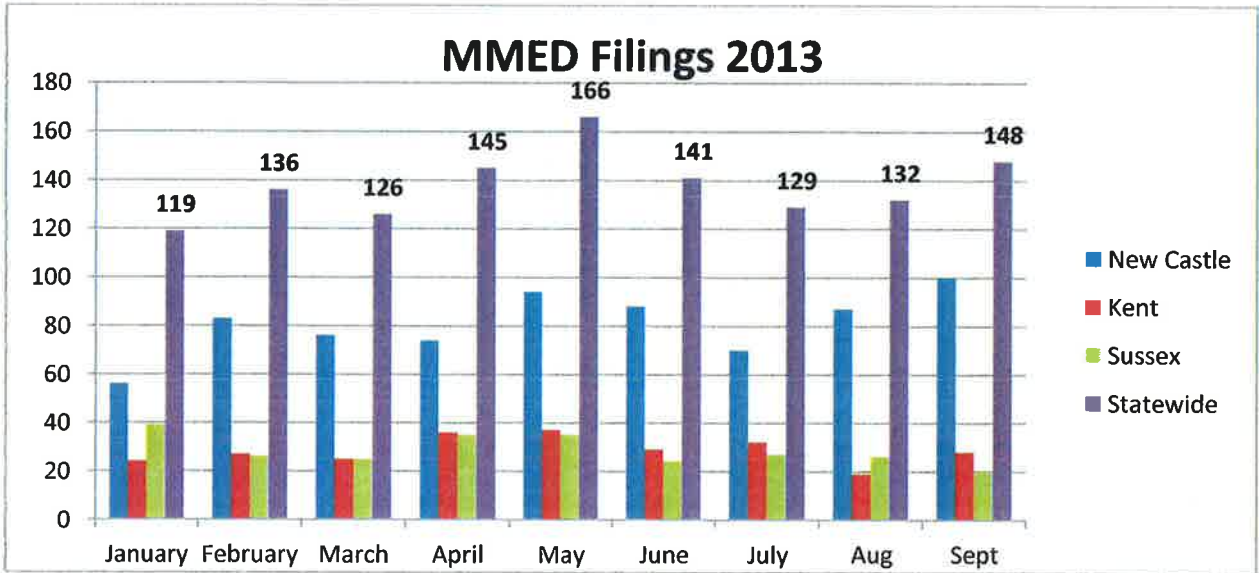
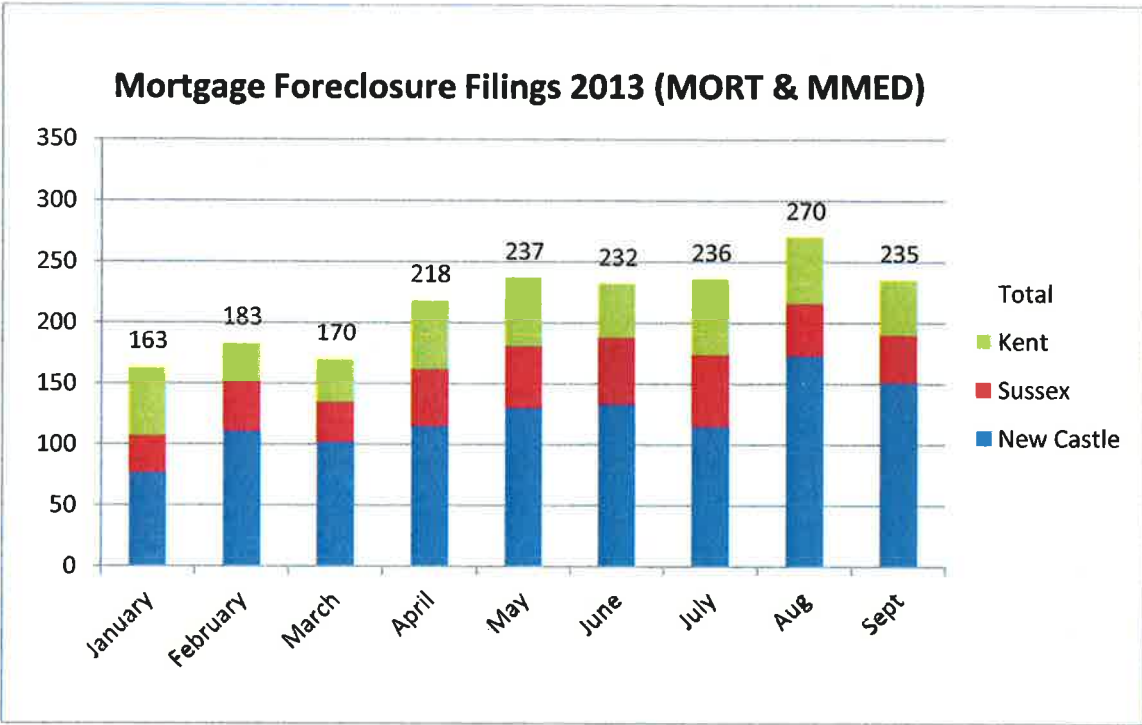
cc: Linda M. Carmichael, Esq. Chief Staff Attorney to the Superior Court  
Hon. Jack A. Markell  
Hon. Thomas R. Carper  
Hon. Christopher A. Coons  
Hon. John C. Carney, Jr.  
Members of 147<sup>th</sup> General Assembly

# Delaware Third Quarter Foreclosure Data : (2013)



All data is compiled as of September 30, 2013





\* MMED – Foreclosure actions eligible for the Automatic Residential Mortgage Foreclosure Mediation Program.

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