



JOSEPH R. BIDEN, III
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
TTY (302) 577-5783

August 18, 2014

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 –2nd Quarter 2014

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

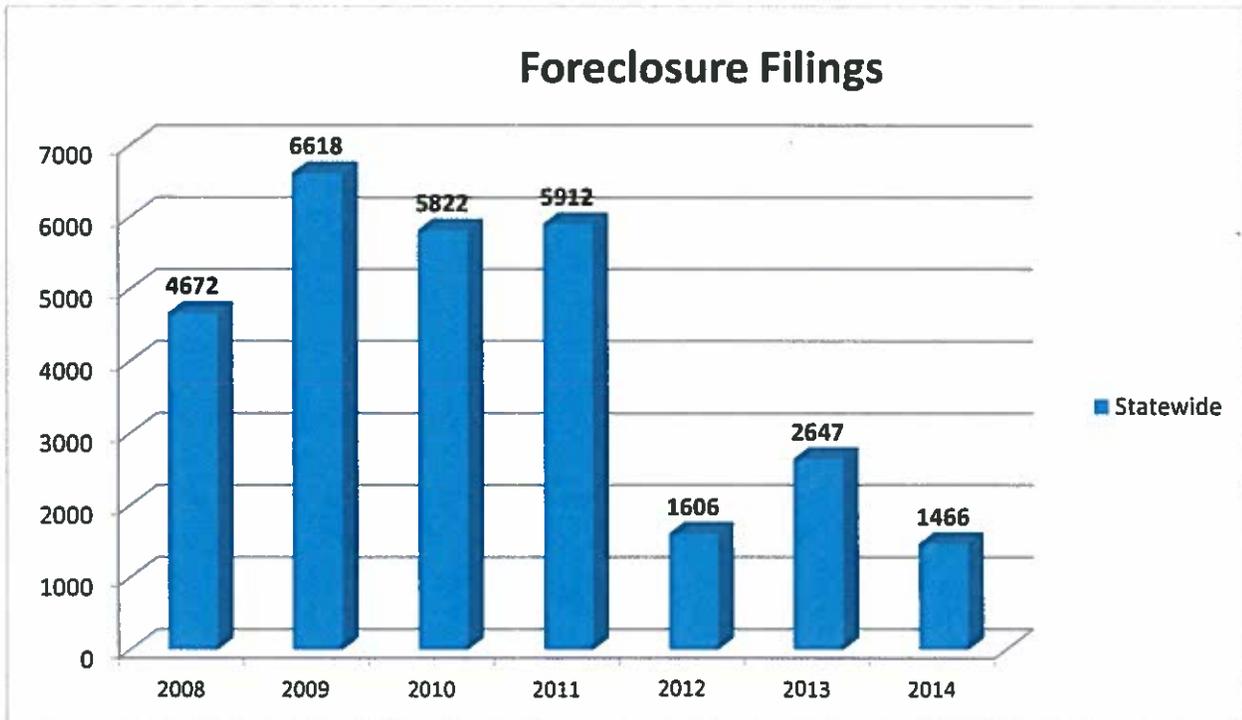
In 2011, in response to record numbers of foreclosures filed against Delaware homeowners, the General Assembly enacted a legislative package meant to afford Delawareans an opportunity to explore alternatives to foreclosure. That legislative initiative established the Automatic Residential Mortgage Foreclosure Mediation Program (the “Mediation Program”). In the 2013 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 Second Quarter Report for 2014.

1. Statistical Snap Shot

As of June 30, 2014, 3,176 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 actions¹ filed statewide in the calendar years indicated.



2. Foreclosure Filings Since Inception of the Mediation Program

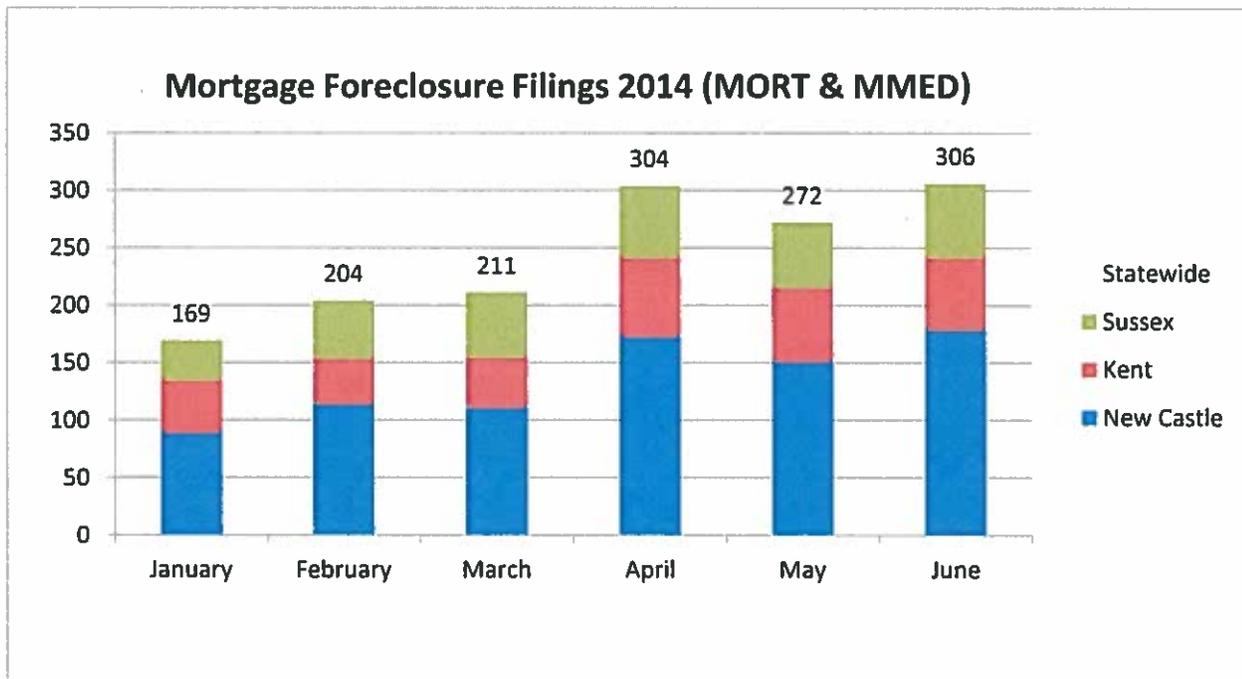
Between January 19, 2012 and June 30, 2014, there were a total of 5,408 foreclosure filings statewide with 3,176 of those cases, or 58.73%, eligible for the Mediation Program. Beginning in 2013 and continuing through the second quarter of 2014, there has been a noticeable increase in mediation-eligible cases commenced in the Superior Court.² Of the 879 foreclosure filings in the 2nd Quarter of 2014, 632 of those cases, or 71.90% are eligible for the mediation program.

¹ This data is compiled through June 30, 2014. 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>

²Historically, 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%; and Q1 2014 – 56.17%.

The following chart demonstrates the number of foreclosures filed in each county from January 1, 2014 through June 30, 2014.³ New Castle County remains the highest while Kent County and Sussex County have approximately the same number of filings.



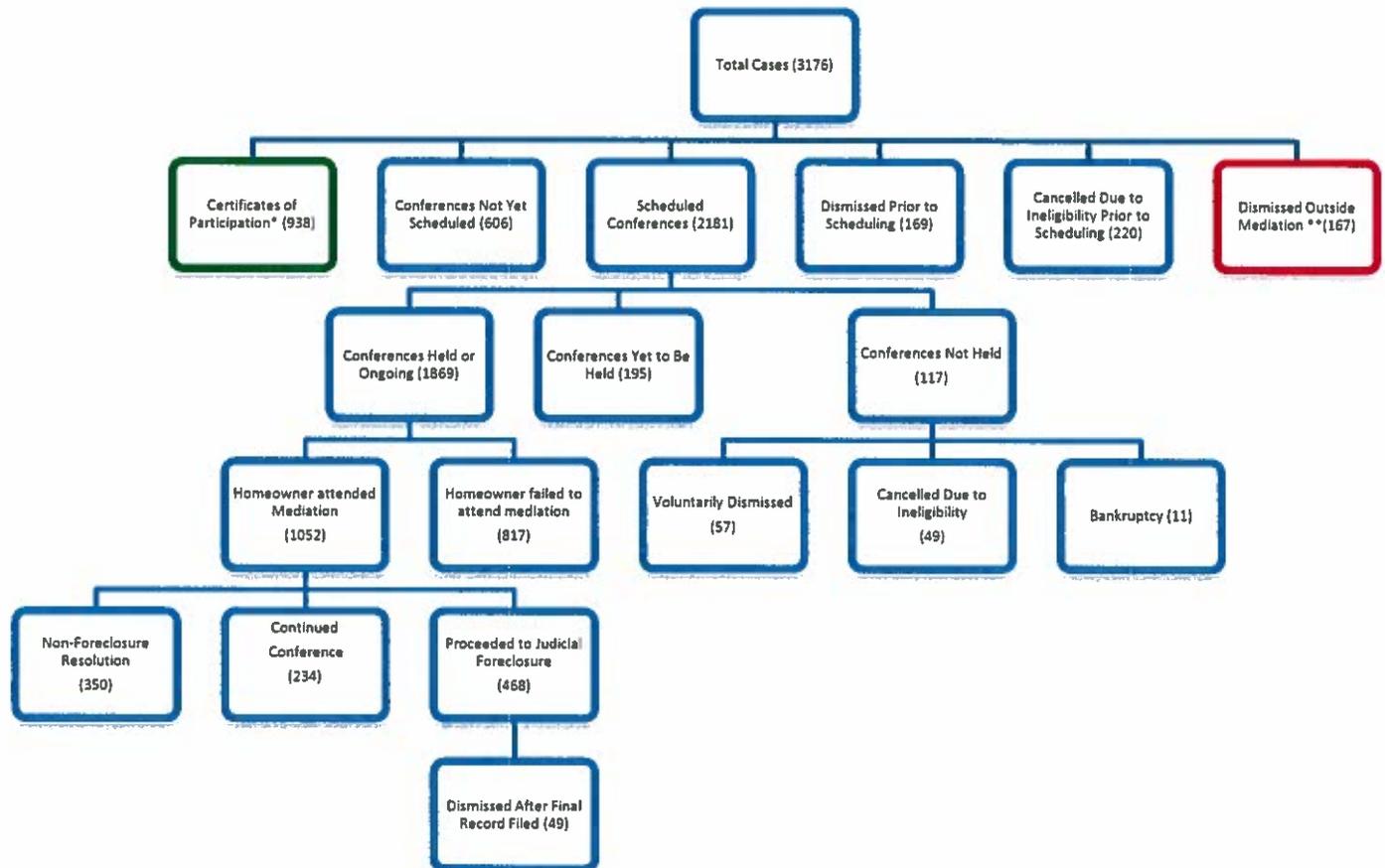
3. Mediation Conferences and Participation Data

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. New Castle County experiences the largest case volume with approximately 60-90 mediation cases scheduled 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. To accommodate the increase in filings in New Castle County during the 2nd Quarter, the Mediation Program is adding an additional mediation day for September 2014. Additional mediation days may be added later in the Quarter depending on case volume.

During the 1st Quarter of 2014, 340 Mediation Scheduling Notices and Scheduling Re-Notices were filed with the Superior Court, and 177 Certificates of Participation were also filed during this Quarter. The participation data displayed below gives a snapshot of the cases in the Mediation Program through June 30, 2014.

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

Delaware Automatic Residential Mortgage Foreclosure Mediation Program: Overall Program Participation as of 2nd Quarter 2014⁴



Overall, the Mediation Program has a **56.29% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **60.17% have either achieved a non-foreclosure resolution or remain in mediation and continue loss mitigation negotiations with their lender/servicer**. The remaining 39.83% 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

⁴ * 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 29 cases dismissed after cancellation and 138 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.

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 3rd Quarter 2013 report, we have adjusted 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. Those cases that have 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 mediation⁵.

For those 817 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. Delinquency Rates and Foreclosure Filings

We continue to see high delinquency rates and low foreclosure starts in Delaware.⁶ The buildup of the shadow inventory remains a concern in Delaware. The dramatic increase in MMED filings in the previous quarter 2014 should continue to reduce this inventory and shows that lenders/servicers are participating in the Mediation Program. Delaware reports an overall seriously delinquent rate of 5.81%, a foreclosure inventory of 2.95%, and total foreclosure starts of 0.53%.⁷ While the seriously delinquent rate is the lowest since the 2nd Quarter 2009, Delaware continues to rank high among other states in delinquency measures (11th in foreclosure inventory, 6th in foreclosure starts, and 12th in 90+ days delinquent).⁸

The build-up of a shadow inventory over the last two years may have negative effects for Delaware homeowners and communities. 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. Continued 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 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 but the case was subsequently dismissed and did not proceed to a sheriff's sale.

⁶ Mortgage Bankers Association, National Mortgage Delinquency Survey, Second Quarter 2014 (August 7, 2014). The "seriously delinquent rate" is defined to include mortgage loans which are 90+ days overdue together with those loans in foreclosure.

⁷ Id. at 4.

⁸ Id. at 3-4.

Hon. James T. Vaughn, Jr.
Hon. Patricia M. Blevins
Hon. Peter C. Schwartzkopf
August 18, 2014
Page 6

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. 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 work of the OFP 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 move into the middle of 2014, 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 Delaware homeowners from unnecessary foreclosures, increase the stability of our neighborhoods, and improve the housing market in Delaware.

Sincerely,



Matthew F. Mintner, 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. James T. Vaughn, Jr.
Hon. Patricia M. Blevins
Hon. Peter C. Schwartzkopf
August 18, 2014
Page 7

Hon. John C. Carney, Jr.
Sec. Ben Addi
Members of 147th General Assembly