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November 21, 2014

Linda Carmichael, Esq.  
Superior Court  
500 N. King Street  
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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 2014

Dear Ms. Carmichael, 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 Third Quarter Report for 2014.

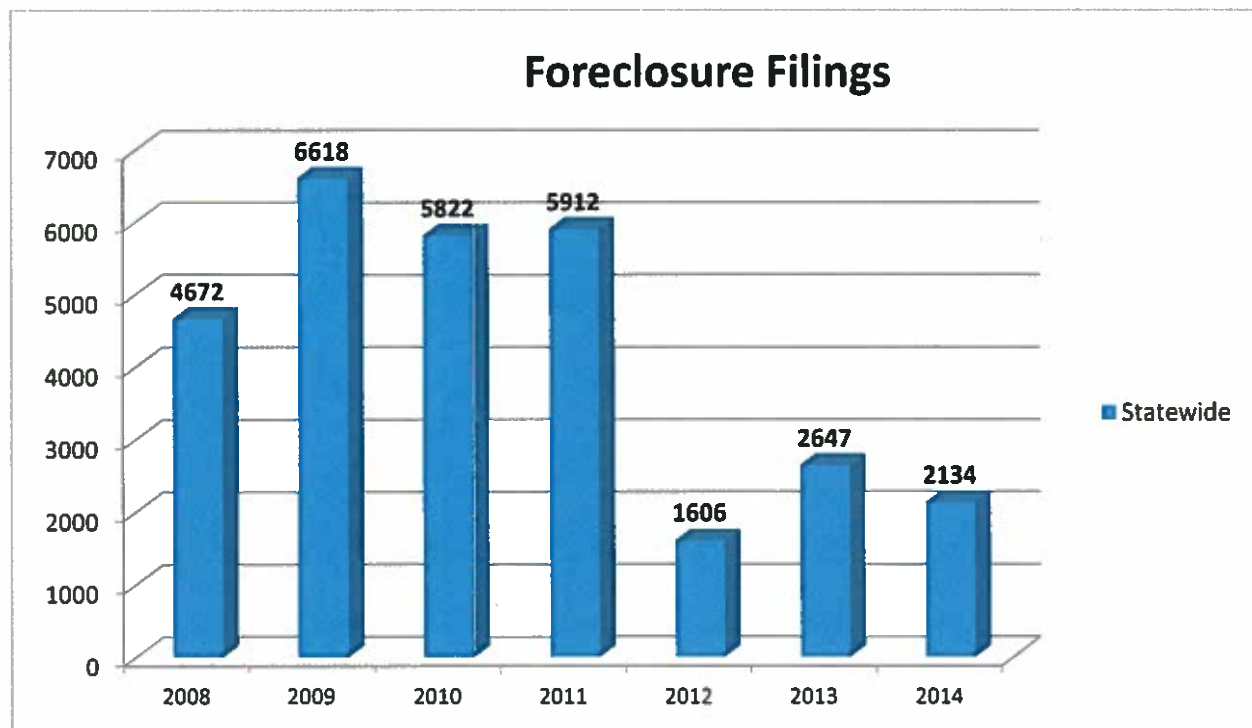
### 1. Statistical Snap Shot

As of September 30, 2014, 3,632 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. In 2014, we expect the number of foreclosure filings to meet or exceed the number of filings in 2013.

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<sup>1</sup> This data is compiled through September 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>



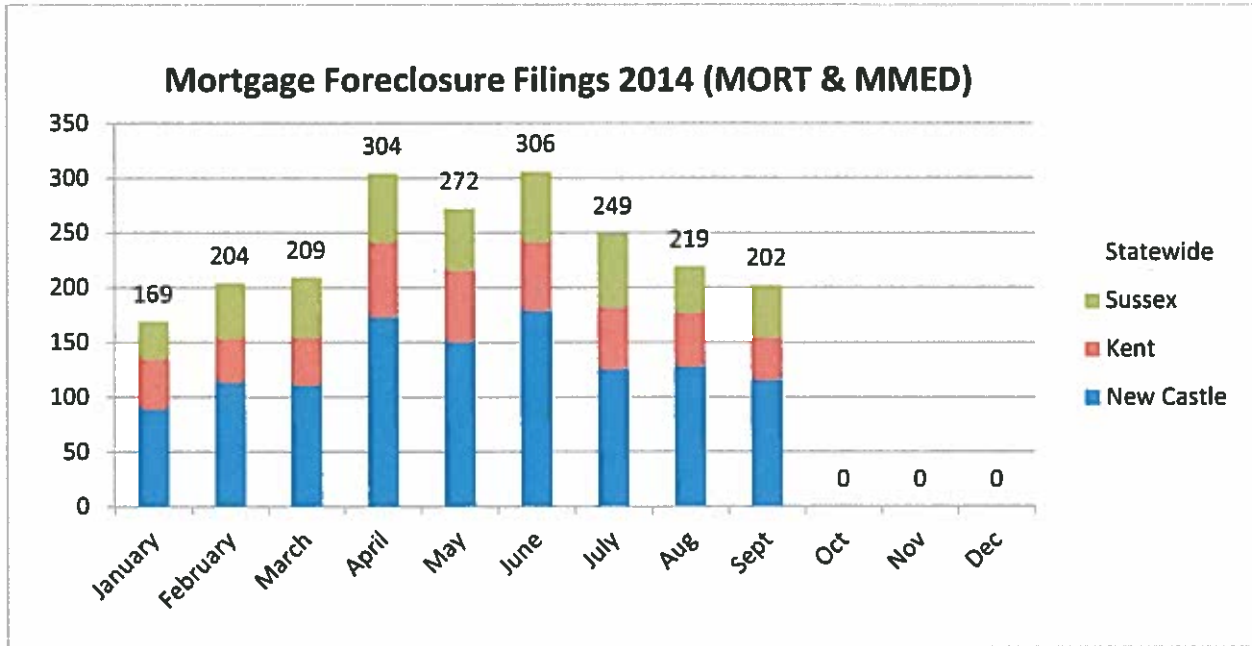
## **2. Foreclosure Filings Since Inception of the Mediation Program**

Between January 19, 2012 and September 30, 2014, there have been a total of 6,078 foreclosure filings statewide with 3,632 of those cases, or 59.77%, 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.<sup>2</sup> In the third quarter of 2014, the number of filings was 462, the second highest amount per quarter since the beginning of the program.

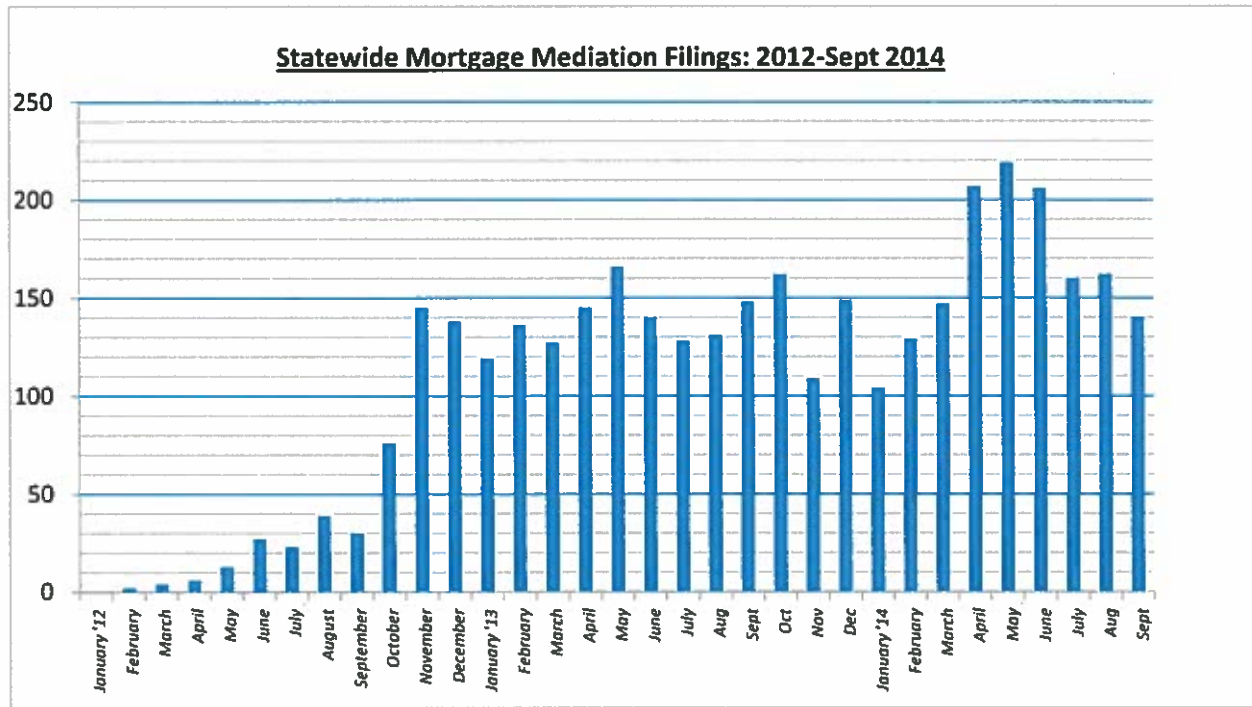
The following chart demonstrates the number of foreclosures filed in each county from January 1, 2014 through September 30, 2014.<sup>3</sup> New Castle County remains the highest while Kent County and Sussex County have approximately the same number of filings.

<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 – 56.17%; and Q2 2014 – 58.73%.

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



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



### **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 currently three 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 September 2014. We expect to continue to require this additional day through early 2015, based on the current case volume.

During the 3rd Quarter of 2014, 511 Mediation Scheduling Notices and Scheduling Re-Notices were filed with the Superior Court, and 180 Certificates of Participation were also filed during this Quarter. Overall, the Mediation Program has a **55.39% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **61.35%** 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 38.65% 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. 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 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 mediation<sup>5</sup>.

For those 1,004 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.

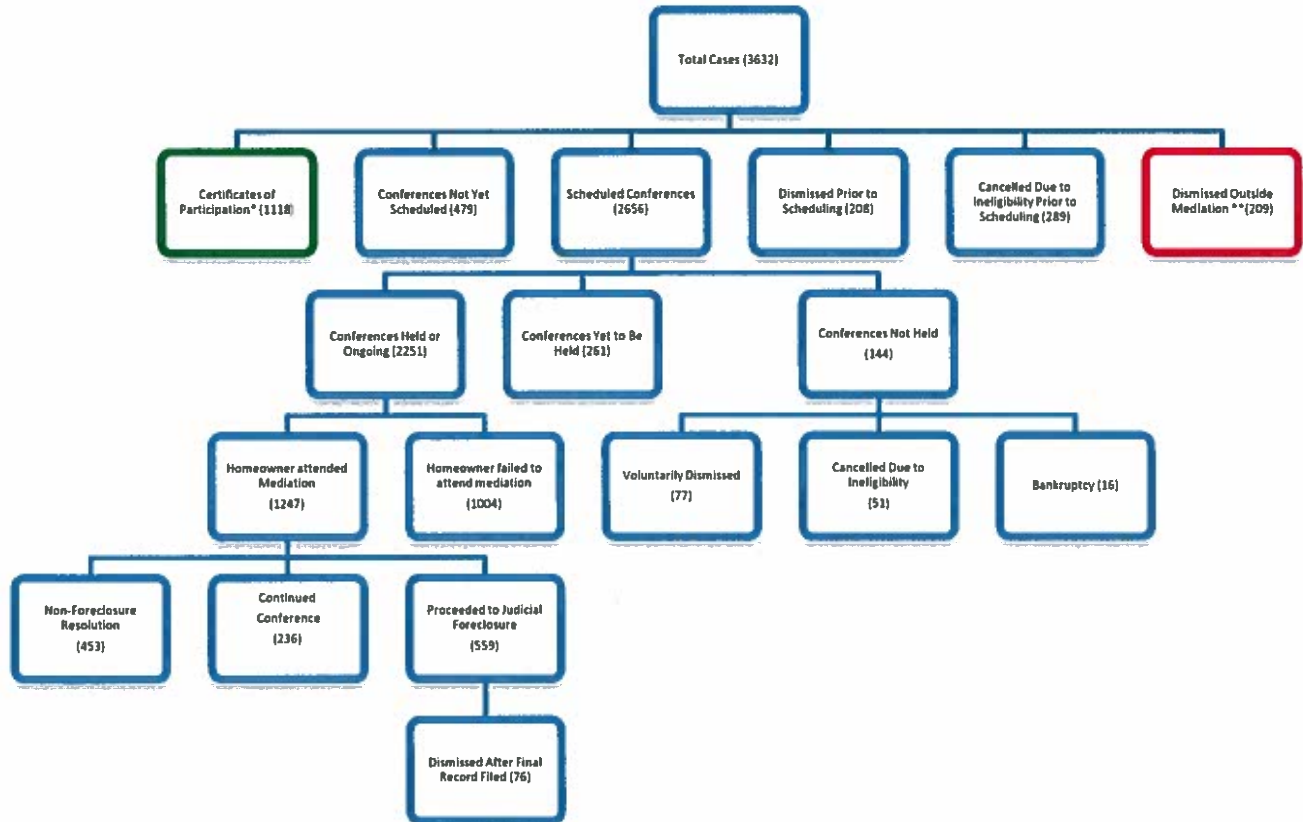
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<sup>4</sup> "Successful mediation" is defined as any conference where the homeowner achieves a non-foreclosure resolution to avoid a Sheriff's Sale of the property, or where the parties remain engaged in negotiations and the homeowner is granted a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

The participation data displayed below gives a snapshot of the cases in the Mediation Program through September 30, 2014.

**Delaware Automatic Residential Mortgage Foreclosure Mediation Program:  
 Overall Program Participation as of 3<sup>rd</sup> Quarter 2014<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 31 cases dismissed after cancellation and 178 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 low foreclosure starts in Delaware.<sup>7</sup> The dramatic increase in MMED filings in the Second Quarter 2014 and continuing high number of filings in the Third Quarter 2014 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 5.81%, a foreclosure inventory of 2.95%, and total foreclosure starts of 0.53%.<sup>8</sup> While the seriously delinquent rate is the lowest since the 2<sup>nd</sup> Quarter 2009, Delaware continues to rank high among other states in delinquency measures (11<sup>th</sup> in foreclosure inventory, 6<sup>th</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. 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 end 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

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<sup>7</sup> 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.

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

Linda Carmichael, Esq.  
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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. Ben Addi  
Members of the 148<sup>th</sup> Assembly