

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF CONSUMER CREDIT PROTECTION
35 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0035

Paul R. LePage
GOVERNOR

William N. Lund
SUPERINTENDENT

To: Joint Standing Committee on Insurance and Financial Services

**From: William N. Lund, Superintendent,
Bureau of Consumer Credit Protection**

**Re: Nineteenth Periodic Report on the Bureau's
Foreclosure Diversion Program**

Date: December 8, 2014

MANDATE

Title 14 M.R.S. § 6111 requires mortgage lenders or servicers to send a document called a “notice of right to cure default” to any homeowner who is in arrears, prior to the lender or servicer commencing a civil foreclosure action in court. The section further requires the lender or servicer to notify the Maine Bureau of Consumer Credit Protection of the name and address of each Maine resident to whom such a notice is sent. The Bureau, in turn, mails an informational letter to the homeowner, inviting the homeowner either to contact the Bureau staff to enter the state’s no-cost counseling program, or to reach out directly to counselors whose names are listed in the information provided.

Title 14 M.R.S. § 6111(3-B) requires the Bureau to report to the Joint Standing Committee on Insurance and Financial Services based on the following statutory language:

***3-B. Report.** On a quarterly basis, the Department of Professional and Financial Regulation, Bureau of Consumer Credit Protection shall report to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters on the number of notices [of homeowners in default] received pursuant to subsection 3-A. To the extent information is available, the report must also include information on the number of foreclosure filings based on data collected from the courts and the Department of Professional and Financial Regulation, Bureau of Financial Institutions and on the types of lenders that are filing foreclosures.*



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NOTICES RECEIVED

The Bureau of Consumer Credit Protection received notification from lenders during July, August and September of 2014 reporting lenders had sent 8,598 notices of default and right to cure to homeowners in Maine. For comparative purposes, the following data indicates the number of notices received during the same three-month period in prior years.

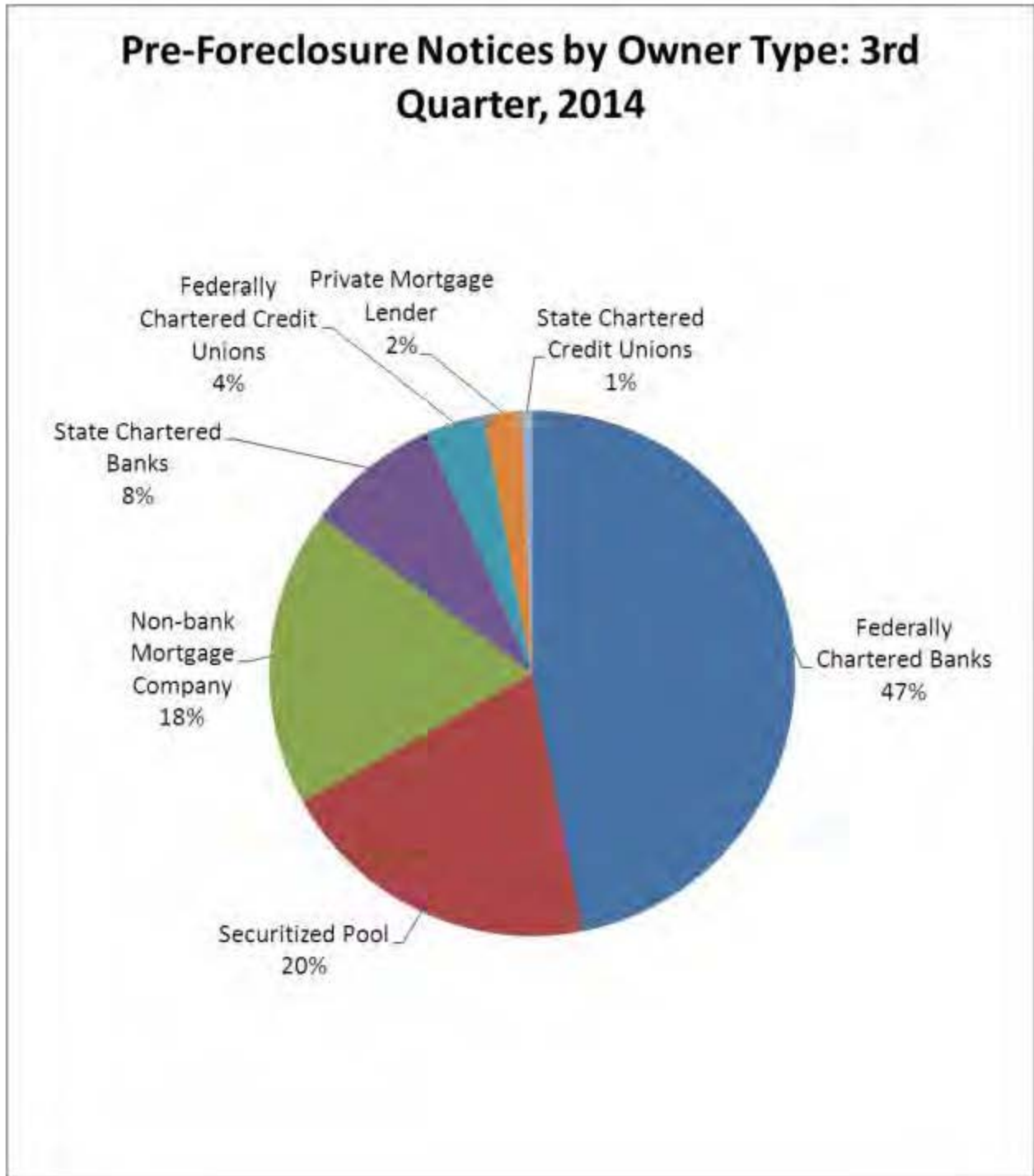
2009.....	3,664
2010.....	10,579
2011.....	8,320
2012.....	9,799
2013.....	12,269
2014.....	8,598

TYPES OF ENTITIES SENDING DEFAULT NOTICES

The types of entities sending notices of default as the final step required before commencing foreclosure remained consistent compared to previous quarters. The following chart illustrates the numbers of notices received and the types of entities filing such notices.

Type	Jul-14	Aug-14	Sep-14
Federally Chartered Banks	1521	1309	1205
Securitized Pool	672	530	514
Non-bank Mortgage Company	585	530	453
State Chartered Banks	212	251	251
Private Mortgage Lender	89	32	83
Federally Chartered Credit Unions	115	97	95
State Chartered Credit Unions	23	9	22
Total:	3217	2758	2623

The following chart shows the percentages of notices sent to Maine homeowners by entity type.



FORECLOSURE ACTIONS FILED IN COURT

The following chart provided by the State Court system details the numbers of foreclosure cases filed in courts in Maine in the third quarter of 2014 and for the three preceding quarters.

Region/Court	4th Qtr Oct - Dec 2013	1st Qtr Jan - Mar 2014	2nd Qtr Apr - Jun 2014	3rd Qtr Jul - Sep 2014	12-Month TOTAL
STATEWIDE TOTAL	1315	1136	1145	460	4056
Alfred Superior Court	36	40	31	19	126
York District Court	32	23	34	9	98
Biddeford District Court	77	51	56	21	205
Springvale District Court	112	82	74	18	286
Region 1 Subtotal	257	196	195	67	715
Portland Superior Court	77	67	131	50	325
Bridgton District Court	61	56	63	16	196
Portland District Court	89	50	0	0	139
Region 2 Subtotal	227	173	194	66	660
South Paris Superior Court	12	12	20	10	54
Auburn Superior Court	30	55	41	14	140
Farmington Superior Court	8	4	11	6	29
Lewiston District Court	82	77	77	24	260
Farmington District Court	19	20	16	6	61
Rumford District Court	24	14	35	10	83
Livermore Falls District Court	0	0	0	0	0
South Paris District Court	18	26	18	13	75
Region 3 Subtotal	193	208	218	83	702
Skowhegan Superior Court	15	5	2	4	26
Augusta Superior Court	23	16	8	13	60
Skowhegan District Court	47	46	39	14	146
Waterville District Court	49	40	33	12	134
Augusta District Court	58	65	54	17	194
Region 4 Subtotal	192	172	136	60	560
Dover Foxcroft Superior Court	1	5	2	2	10
Bangor Superior Court	52	41	24	11	128
Millinocket District Court	0	0	0	0	0
Dover Foxcroft District Court	23	23	19	8	73
Lincoln District Court	14	8	19	6	47
Newport District Court	23	26	28	14	91
Bangor District Court	74	64	59	18	215
Region 5 Subtotal	187	167	151	59	564

Region/Court	4th Qtr Oct - Dec 2013	1st Qtr Jan - Mar 2014	2nd Qtr Apr - Jun 2014	3rd Qtr Jul - Sep 2014	12-Month TOTAL
Wiscasset Superior Court	8	6	9	6	29
Bath Superior Court	7	8	7	5	27
Rockland Superior Court	5	5	8	2	20
Belfast Superior Court	6	9	7	6	28
Belfast District Court	43	28	23	11	105
Wiscasset District Court	28	19	16	7	70
West Bath District Court	45	34	45	13	137
Rockland District Court	13	25	27	16	81
Region 6 Subtotal	155	134	142	66	497
Machias Superior Court	5	7	4	8	24
Ellsworth Superior Court	3	4	12	4	23
Bar Harbor District Court	0	0	0	0	0
Machias District Court	16	7	10	6	39
Calais District Court	11	3	8	4	26
Ellsworth District Court	27	26	29	10	92
Region 7 Subtotal	62	47	63	32	204
Houlton Superior Court	6	4	6	3	19
Caribou Superior Court	11	16	24	19	70
Caribou District Court	7	8	8	2	25
Houlton District Court	6	5	8	0	19
Madawaska District Court	0	0	0	0	0
Fort Kent District Court	3	2	0	1	6
Presque Isle District Court	9	4	0	2	15
Region 8 Subtotal	42	39	46	27	154

The steep downturn in filings in court for the most recent quarter appears to be the direct result of a decision by the Law Court (Maine Supreme Court) in a case captioned Bank of America v. Greenleaf, 2014 ME 189, (2014), decided on July 3, 2014. In that case, the Law Court called into question the validity of assignment of mortgages and notes by MERS, an entity that was created to simplify recordkeeping and the transfer of notes and mortgages in the current electronic marketplace. The Court held that since the mortgages originally granted to MERS indicated MERS was the assignee of the actual mortgage holder *only* for the purpose of recording the mortgage, MERS could not validly execute an assignment of a mortgage because it did not possess that authority.

Many mortgages in existence in Maine today contain an assignment from MERS at some point in their chains of title. The effect is that the current holder of a mortgage and note with an

assignment from MERS in the chain of title can't foreclose the mortgage unless they can obtain an assignment from the mortgage holder for which MERS purported to act.

A second holding of Greenleaf was that the notices of default and right to cure under Title 14 M.R.S. §6111 being sent by many lenders did not meet the statutory requirement of specifying an amount which the homeowner had to pay within 35 days to reinstate his or her mortgage. Lenders and servicers had been specifying an amount owing as of the date of the notice, but then adding a sentence instructing the homeowners to contact the lenders or their attorneys to get exact figures based on accrual of additional interest and expenses at the time the homeowner intended to reinstate. The Court held that such a notice lacked the specificity required by 14 M.R.S. §6111, stating instead that the lender must determine the amount owed at the time it sends the notice and permit the consumer to cure the default if the consumer pays that amount.

Requiring the homeowner to call to get a figure could lead to a variety of problems, while requiring the lender to accept the amount owed at the time the notice was sent would ordinarily result in small differences, based on the small amount of interest that would accrue during the 35-day cure period. The lender is not prevented from seeking payment of those amounts, but under the court's decision is required to reset the foreclosure clock if the amount set out in the notice of deficiency and right to cure is paid within the 35 days.

The final holding in Greenleaf involved the admissibility of business records at trial, specifically to prove an arrearage (amounts owed by a homeowner). In the modern investment marketplace, it is common for a mortgage loan to have passed through a number of lenders and/or servicers during the life of the loan. Each lender and servicer has its own system of keeping records and is responsible for all recordkeeping on the loan while owning or servicing the loan.

The problem arises when the last lender or servicer in the chain of title of the mortgage attempts to foreclose. How can that servicer verify the validity or accuracy of the records of prior servicers? The standard procedure has been for the foreclosing lender or servicer to produce a "litigation specialist," an employee of the lender or servicer who has been trained in the processes used by the entity to import account information from prior lenders or servicers and update the information as payments are received and expenses are paid. The Court in essence held that while such a witness might be able to qualify to enter the business records of his or her employer into evidence, such a witness could not verify the business practices of *prior* lenders or servicers. Without verification of those records, there is no way to determine whether the information obtained by the foreclosing lender or servicer when it first obtained the loan accurately reflected the state of the account, and therefore insufficient evidence was being presented to determine whether the loan was actually in default and what unpaid balance was owed.

In light of the uncertainty raised by the Greenleaf decision, some local attorneys advised their clients not to file new foreclosure actions, and in fact to dismiss some pending actions without prejudice, until the full implications of Greenleaf are sorted out. The Greenleaf decision means, at a minimum, that attorneys representing foreclosing lenders and servicers will be required to devise new means to get business records into evidence or to obtain verification of default and amounts owed.

FORECLOSURE FILINGS BY STATE-CHARTERED FINANCIAL INSTITUTIONS

In its quarterly report issued on November 14, 2014, the Bureau of Financial Institutions reported foreclosures initiated by state-chartered banks and credit unions to be at a 6-year low. The Bureau reported that such institutions initiated 34 foreclosures in the 3rd quarter of 2014 compared to 60 in the previous quarter and 58 in the same quarter in 2013.

The Bureau of Financial Institutions reported that there are 31 banks and/or credit unions chartered by the State of Maine and that such institutions hold a total of 65,000 first-lien mortgages on Maine properties. Of those, a total of 223 representing 0.34% of all outstanding first lien mortgages, were in foreclosure as of the date of the report.

As a comparison, Corelogic, a global property information and analytics company, reported in their “National Foreclosure Report” for September, 2014 that 2.7% of homes in Maine with a first lien mortgage were in the process of foreclosure. The Corelogic report includes all lenders and servicers, not just state chartered banks and credit unions.