

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: Senator Geoffrey M. Gratwick, Chair
Representative Sharon Anglin Treat, Chair
Joint Standing Committee on Insurance and Financial Services**

**Senator Dawn Hill, Chair
Representative Margaret Rotundo, Chair
Joint Standing Committee on Appropriations and Financial
Affairs**

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

**Re: Thirteenth Periodic Report on the Bureau's Foreclosure
Diversion Program, and Semi-annual Report on the Program's
Finances**

Date: January 29, 2013

INTRODUCTION

Title 14 M.R.S. § 6111(3-B) requires the Bureau of Consumer Credit Protection to report quarterly to the Insurance & Financial Services Committee on the numbers of Maine homeowners who received pre-foreclosure ("right to cure default") notices, as well as other foreclosure-related data. In addition, 14 M.R.S. § 6112(5) calls for the Bureau to report every 6 months to the Appropriations Committee on the financial aspects of the foreclosure diversion program, including expenses incurred, financial orders submitted, and revenues to the program. This consolidated report integrates those two requirements.

EXECUTIVE SUMMARY

The number of notices from lenders preparing to send the "notice of deficiency and right to cure letters" mandated by Title 14 M.R.S. § 6111 remains high, averaging more than 3,200 per month. In fact, November of 2012 saw the highest one-month total of names of homeowners at risk for foreclosure (3,880) received by the Bureau in the history of the program.



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Maine courts reported 2,112 new foreclosure filings from June, 2012 through December, 2012, down only slightly from the 2,219 reported for the first 6 months of 2012. Those involved in the court process attribute the sustained high number of court cases on the backlog created more than a year ago when lenders across the country stopped most of their foreclosure activity in order to deal with the so-called “robo-signing” scandal which called into question the integrity of many cases then being pursued through the courts.

The Bureau’s foreclosure diversion staff, and counselors under contract with the Bureau, report experiencing frustrating problems with loan servicers that make errors in processing loan modification applications, fail to properly apply payments received and claim to have lost documentation memorializing loan modification agreements. This is often the result of a lender or investor “changing servicers in mid-stream,” and the newly-hired servicer claiming not to have proof of any deals or agreements made by the prior servicer.

Lastly, Maine is beginning to see cases of a phenomenon known nationally as “zombie titles,” which occurs when homeowners leave their house in response to civil foreclosure actions, but then the lenders inexplicably stop the foreclosure process and even dismiss the civil action in court. The houses, now abandoned, are subject to weather damage and vandalism, and the consumers remain legally responsible for all ongoing costs, including property taxes.

HOW DOES THE FORECLOSURE DIVERSION PROGRAM OPERATE?

The Foreclosure Diversion Program was established in 2009 through enactment of Title 14 M.R.S. § 6112. At the same time, Title 14 M.R.S. § 6111 was amended to require that lenders beginning the foreclosure process on residential mortgages send out so-called “Notice of Default and Right to Cure” letters, simultaneously notify the Bureau of Consumer Credit Protection of such action. The Bureau, upon receipt of the names and addresses of Maine homeowners in default, is required to send information to the homeowners in default advising them of their rights and available resources, such as the availability of HUD-certified counselors, and the existence of the Bureau’s foreclosure diversion hotline (1-888-NO-4-CLÖZ or 1-888-664-2569), as well as describing the foreclosure process and informing the consumer of mediation available if the matter proceeds to the civil court foreclosure process. The majority of funds provided to the program through a real estate transfer tax on foreclosure auctions and deeds-in-lieu of foreclosure are expended on 12 contracts with employers of HUD-certified counselor located all around the state, from Aroostook, Washington and Hancock counties to Western Maine, the Mid-coast, and Central and Southern Maine. Consumers contact the Bureau, and office staff conducts a 30-minute interview, screening cases to determine whether immediate action is required (some homeowners wait until an auction is scheduled before contact the state), and to obtain basic information so as to be able to make an appropriate referral. Counselors are assigned to each case, and those counselors help the homeowners prepare loan modification applications, or make other plans depending on the needs and income of the consumer. Counselors report back to the Bureau every month on the numbers of cases handled and their dispositions.

PART I. QUARTERLY REPORTING MANDATED BY TITLE 14 M.R.S. §6111

The Bureau is required to report quarterly on the number of default notices lenders have mailed to Maine homeowners, and the number of foreclosure filings made in Maine courts. The following chart shows the numbers of homeowners who received default notices from their lenders in each Maine county, from January through December, 2012:

County	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12
Androscoggin	225	260	314	272	215	258	292	273	248	257	334	247
Aroostook	101	114	113	98	103	104	116	108	128	104	179	140
Cumberland	480	578	587	543	559	517	566	572	479	626	677	577
Franklin	78	95	79	61	76	62	73	53	72	57	76	63
Hancock	93	130	105	71	106	128	91	89	81	94	96	91
Kennebec	334	341	279	322	288	304	331	299	325	305	404	308
Knox	77	101	85	104	107	128	80	122	202	96	115	82
Lincoln	112	116	131	99	103	146	107	137	107	113	127	97
Oxford	139	166	181	141	152	172	155	155	144	163	192	147
Penobscot	290	360	330	307	337	360	443	377	363	383	456	345
Piscataquis	45	58	43	38	38	57	33	38	46	47	71	54
Sagadahoc	127	105	140	131	115	129	156	138	178	129	149	90
Somerset	88	147	127	118	108	133	131	144	122	138	140	105
Waldo	90	107	86	63	108	99	113	106	95	101	145	103
Washington	71	105	91	87	85	85	77	75	88	119	91	63
York	519	488	506	495	553	479	574	579	466	508	628	557
Total:	2869	3271	3197	2950	3053	3161	3338	3265	3144	3240	3880	3069

The Bureau received the names of 10,189 homeowners in default on their mortgages in the 4th quarter of 2012, compared to 9,747 in the 3rd quarter. The 4th-quarter figures were greater than for any other quarter in CY 2012, and the number of consumers who received default notices in the month of November (3,880) constituted the highest total for any one month period in the history of the program.

The following chart shows the total number of names of consumers in default on their mortgages received by the Bureau each month since the inception of the program:

Homeowners Newly in Default	Years				Grand Total
Month	2009	2010	2011	2012	
Jan		1717	3793	2869	8379
Feb		1844	3655	3271	8770
Mar		2474	3485	3197	9156
Apr		3068	2851	2950	8869
May		2521	3463	3053	9037
Jun		2980	3578	3161	9719
Jul		3175	3429	3338	9942
Aug		3329	3830	3265	10424
Sep		2961	3789	3144	9894
Oct	1094	2265	3425	3240	10024
Nov	2128	3807	3045	3880	12860
Dec	1586	3854	3119	3069	11628
Grand Total	4808	33995	41462	38437	118702

Filings of foreclosure actions in courts in Maine were also up in the 4th quarter. There were 1,096 new foreclosure cases filed, up from 1,016 in the 3rd quarter. For the year, 4,331 foreclosure cases were filed in Maine's courts. The following chart shows filings by quarter, by county and by court:

Region/Court	1st Qtr Jan- Mar 2012	2nd Qtr Apr-Jun 2012	3rd Qtr Jul-Sep 2012	4th Qtr Oct-Dec 2012	CY 2012 TOTAL
Alfred Superior Court	57	64	48	39	208
York District Court	41	27	19	24	111
Biddeford District Court	42	45	50	57	194
Springvale District Court	64	52	60	76	252
Region 1 Subtotal	204	188	177	196	765
Portland Superior Court	41	35	38	38	152
Bridgton District Court	43	56	53	42	194
Portland District Court	96	130	100	106	432
Region 2 Subtotal	180	221	191	186	778
South Paris Superior Court	28	19	18	14	79
Auburn Superior Court	36	44	41	24	145
Farmington Superior Court	9	14	8	4	35
Lewiston District Court	79	54	64	81	278
Farmington District Court	17	18	14	15	64
Rumford District Court	12	9	14	11	46
Livermore Falls District Court	0	0	0	0	0
South Paris District Court	23	24	15	19	81
Region 3 Subtotal	204	182	174	168	728
Skowhegan Superior Court	13	17	12	16	58
Augusta Superior Court	26	21	19	13	79
Skowhegan District Court	38	34	27	30	129
Waterville District Court	16	25	33	34	108
Augusta District Court	34	59	36	53	182
Region 4 Subtotal	127	156	127	146	556
Dover Foxcroft Superior Court	3	4	8	3	18
Bangor Superior Court	51	56	34	24	165
Millinocket District Court	0	0	0	0	0
Dover Foxcroft District Court	9	6	11	12	38
Lincoln District Court	19	20	12	18	69
Newport District Court	18	14	17	29	78
Bangor District Court	40	42	54	65	201
Region 5 Subtotal	140	142	136	151	569
Wiscasset Superior Court	9	8	7	7	31
Bath Superior Court	12	5	4	7	28
Rockland Superior Court	8	12	5	11	36
Belfast Superior Court	10	14	6	5	35
Belfast District Court	26	23	20	27	96
Wiscasset District Court	18	22	18	28	86
West Bath District Court	39	39	28	44	150
Rockland District Court	21	19	18	21	79
Region 6 Subtotal	143	142	106	150	541
Machias Superior Court	4	11	7	4	26
Ellsworth Superior Court	15	4	11	8	38
Bar Harbor District Court	0	0	0	0	0
Machias District Court	7	13	18	11	49
Calais District Court	5	7	7	5	24
Ellsworth District Court	26	30	25	27	108
Region 7 Subtotal	57	65	68	55	245
Houlton Superior Court	4	2	2	2	10
Caribou Superior Court	10	11	10	11	42
Caribou District Court	5	7	5	4	21
Houlton District Court	3	6	7	12	28
Madawaska District Court	0	0	0	0	0
Fort Kent District Court	3	4	7	3	17
Presque Isle District Court	7	6	6	11	30
Region 8 Subtotal	32	36	37	43	148
STATEWIDE TOTAL	1087	1132	1016	1095	4331

Information provided to Bureau staff by attorneys handling foreclosure cases for lenders indicate that the increased foreclosure activity is due to built-up demand following an informal moratorium imposed by larger lenders and government-sponsored entities during 2011, following disclosure of the “robo-signing” scandal in which lenders’ agents were found to be signing court documents and affidavits without having reviewed the case files. Resolution of the Attorneys General settlement with Bank of America, Wells Fargo, JP Morgan Chase, Citibank and GMAC in early 2012 established guidelines for lenders and servicers to follow in dealing with mortgages in default, guidance which had been awaited before foreclosures were re-commenced. Lenders are now pursuing cases delayed by that self-imposed moratorium, and the courts are handling the backlog of mortgages, some of which were in default for a year or more without the lender taking action either to foreclose or to actively pursue loan modifications.

PART II. SEMI-ANNUAL REPORTING REGARDING FUNDING PURSUANT TO TITLE 14 M.R.S. §6112

Revenues received by the Bureau from a transfer tax imposed on foreclosure sales pursuant to Title 14 M.R.S. § 6112 and Title 36 M.R.S. § 4641-B(6) totaled \$276,364 for the period July 1, 2012 through December 31, 2012, an average of \$46,061.00 per month. Revenues from this source continue to run lower than budgeted projections. This reduction from expectations is the result, at least in part, of servicers bringing foreclosure actions in their name and then assigning their rights as winning bidder at foreclosure auctions to the actual owners or investors of the loan. The deed does not then run from the foreclosing party to itself (which is the triggering mechanism in the statute), and the transfer tax is avoided.

Contracted costs for counseling services for the past 6 months were \$447,006.50, of which \$404,083.25 was disbursed by 12/31/2012. Other expenditures for the program for the last 6 months were as follows:

Temporary Clerical	\$ 6,116.25
Printing	\$ 3,277.77
Postage	\$ 7,790.50
Photocopying	\$ 322.04
Personal Services - State	\$105,003.86

The Bureau has made plans to take into account the reduced projections for program revenues, and has reduced the program’s budget in FY 14 and FY 15. Specifically, starting in FY 14, contracts to HUD-certified counselors will be reduced by 30%, and by an additional 10% for FY 15. Within the bureau’s own staff, positions will be transferred out of the program such that the currently-allocated staff of 4 FTEs (full-time equivalents) will be reduced to 2 FTEs. A vacant Office Specialist II position will be eliminated, and the percentages of several other employees’ time will be reallocated out of the program and into other bureau activities, including anti-predatory lending efforts and investigative functions. A concomitant portion of the consumer assistance resources for responding to homeowners will be integrated into the other consumer response functions performed by the bureau.

PROGRAM RESULTS

The Bureau made 246 direct referrals to counselors resulting from calls to the agency's homeowner hotline in the 4th quarter of 2012. Counselors under contract to the Bureau reported that another 210 homeowners contacted them directly after receiving the Bureau's informational mailings. The counselors obtained results during this 90-day period allowing 140 families facing foreclosure and eviction to remain in their homes. By category, counselors reported the following results:

Obtained loan modifications:	107 households
Brought mortgages current:	23
Obtained refinance/reverse mortgages:	2
Received forbearance/repayment plans:	7
Received 2 nd mortgages	1

Counselors also helped 11 homeowners sell their properties by short sale once lender permission was obtained. Four more families obtained relief through deeds-in-lieu of foreclosure. At any given time, counselors under contract with the Bureau have a total of more than 1,000 open cases in various stages of negotiation, seeking a variety of outcomes.

NEWS AND TRENDS

RealtyTrac, a provider of information about foreclosures nationwide, reported in January, 2013 that foreclosure activity had increased in 25 states in 2012 over 2011. The article indicated that RealtyTrac expected to continue to see increased activity in judicial foreclosure states (including Maine) during the early months of CY 2013.

A developing situation reported in late 2012, both nationwide and in Maine, involves so-called "zombie" titles. This scenario occurs when homeowners are served with foreclosure documents or auction documents, and they leave their homes, providing notice to the lender. For reasons that differ in each case, the lender chooses not to pursue the final steps of the foreclosure process or the auction, and sometimes dismisses the case entirely. Since the consumer has moved out of the home, that consumer likely does not receive notice of the court action dismissing the foreclosure case. They assume the lender has continued with and completed the foreclosure action that led them to leave the home, and are therefore surprised to receive collection calls or see unpaid debts on their credit reports resulting from unpaid taxes or city assessments. Further inquiry reveals the mortgage is still in their names and in default. In extreme cases (such as one that occurred in Downeast Maine), the homeowner discovers that the home was never winterized and has been vandalized, such that the costs of repair exceed the full amount of the mortgage or the value of the house. The Bureau has had reports of two such cases in Maine to date, leading to the interesting legal question whether a lender is under any level of obligation to use good faith and fair dealings, even in the case of a defaulting consumer.

Another disappointing trend involves lenders and servicers refusing to honor modification agreements. Bureau staff has seen two categories of this situation:

1) A lender reaches an agreement on a modification with the homeowners and sends the homeowners documents to sign to memorialize the modification. The homeowners sign and return the documents, and begin paying in conformity with the terms of the agreement. Several months later the homeowners receive a notice from the lender alleging the homeowners are in default on their mortgage's original terms, and demanding payment of all the arrearages. When the lender is contacted regarding the fact that a modification agreement was executed, the homeowner is told "We (the lender) never signed the agreement so it was never effective." The lender then points to the terms of the modification agreement which does state that it is not effective until signed by the lender. The lender takes this position even though they have never communicated non-acceptance to the homeowner, have accepted the homeowner's lower payments for a number of months and had sent a letter to the homeowner with the modification agreement which said that the modification agreement would be effective upon signing and return by the homeowner and receipt of the homeowner's first payment under the modification agreement.

2) The second category involves lenders changing loan servicers in mid-stream. A lender often retains "loan servicers" to handle mortgages. The lenders change loan servicers for a variety of reasons, primarily financial reasons in an effort to keep costs as low as possible. A homeowner may be negotiating with a servicer on a modification. After several attempts, the homeowner and servicer agree that the homeowner has submitted all necessary documentation to be considered for a modification and a decision will be forthcoming. The next correspondence the homeowner receives is notice that lender has hired a new servicer to handle the loan. The new servicer then denies possessing any information regarding the pending loan modification, and requires the homeowner to begin the process all over again. In some cases, new servicers have refused to honor modifications agreed to by prior servicers.

In some cases the servicer changes in the midst of the Judicial System's mediation process, after a foreclosure action has been filed in court. Counselors and staff have seen cases in which servicers claim not to be bound by agreements reached in mediation sessions that occurred prior to the change of servicers, or that orders issued in mediation earlier are not binding upon them. The Bureau will urge the parties to seek the guidance of the courts in these cases, since the result frustrates the purpose and intent of the mediation process.

COUNSELOR EXPERIENCES

Counselors under contract with the Bureau have provided staff with information on cases which have been particularly challenging or particularly rewarding, and sometimes both. For example, one Maine counselor reported finally obtaining a loan modification for a homeowner after dealing with the issue for two and one half years, in a case in which the delays were the result of a long deliberation by the lender, not delays occasioned by the consumer.

Success stories include:

1) An elderly couple whose furnace had quit and who were living in their kitchen, using their stove for heat. Their mortgage payments were more than 75% of their net income. The HUD counselor was able to obtain a HAMP modification for the couple, and they now also have a new furnace.

2) A woman wrote to her counselor: “My husband and I just received the modification for our home mortgage. Our payment went from \$1160 to \$795. If it wasn’t for programs like yours we would not have been able to do this or get through it. The process of a modification and the fear of foreclosure are the scariest things. The thought of losing our home was killing us. You’re forever on our minds and we will always be grateful.”

Under the “problem case” category are ones like the following:

1) An elderly veteran applied for a loan modification but was turned down because of insufficient income. He received approval for a reverse mortgage, but the investor refused to approve the transaction even though the lender would have received the entire principal owed, plus \$5,000 of its fees and interest and a secured note for the balance. Through the efforts of legal services provided following a Bureau referral, the case was dismissed. Although it can be filed in court again, the lawyer for the lender is advising his client to accept the reverse mortgage proposal, since the lender could lose as much as \$100,000 if the court case is pursued and results in a foreclosure auction.

2) A homeowner received a permanent loan modification and made payments for the following 13 months. The lender dismissed a pending foreclosure action after the first 2 payments were made. After the 13th payment, the lender refused to accept further payments and told the homeowner they had no proof that any deal had been made or that past payments had been received. The homeowner has provided proof of the payments and a copy of the agreement prepared by the lender but not signed by the lender. This case is ongoing.

3) A homeowner went through a special forbearance plan on a government-guaranteed loan. He made his payments (which were double the normal amount) by selling his truck and other household items. After he completed the payment schedule, the homeowner received approval for a modification in which the payments would be affordable, but also a requirement that the consumer must pay an upfront fee of \$1,000. His legal services attorney sent the modification agreement and certified check via FedEx. The lender refused to accept the modified payments when they were due, alleging they never received the \$1,000 (the lender did, however, acknowledge receiving the loan modification agreement, which was in the same envelope). The lender now states the homeowner must start the modification process over again. This case, like the one above, is ongoing.

CONCLUSION

Rather than gradually reducing in volume, mortgage foreclosure activity is remaining at its steady high rate or even increasing in many states, including Maine. As the examples discussed in this report indicate, the modification process is often not one which an unsophisticated homeowner can navigate on his or her own. The examples also demonstrate the importance and value of dedicated, hard-working and persistent HUD-certified counselors. The assistance and guidance of those counselors are invaluable to Maine homeowners at risk of foreclosure.