

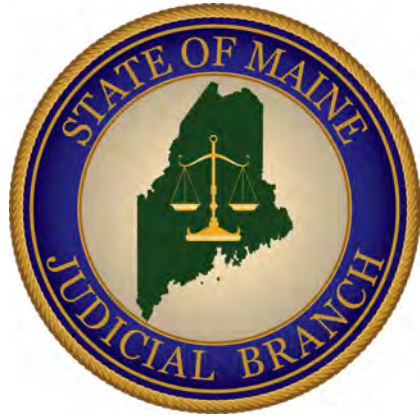
MAINE STATE LEGISLATURE

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**STATE OF MAINE
JUDICIAL BRANCH**



FORECLOSURE DIVERSION PROGRAM

Report to the Joint Standing Committee on
Insurance and Financial Affairs and
the Joint Standing Committee on Judiciary

127th Legislature

February 12, 2016

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Executive Summary

The Foreclosure Diversion Program (“FDP”) has successfully operated in the Maine courts statewide since 2010. The FDP affords a valuable opportunity for parties in foreclosure cases to meet and discuss possible alternatives to foreclosure.

More than half (59%) of the foreclosure cases participating in FDP mediation from 2010-2015 concluded in dismissal of the action, thereby saving homes from foreclosure.

In 2015 the FDP provided a total of 974 mediation sessions in 733 cases. The average was 1.3 mediation sessions per case. New foreclosure cases filed in Maine state courts in 2015 totaled 1,906, a decrease from 2014. In the second half of the year, 27% more foreclosure actions were filed than in the first half of the year. The rising volume of cases filed is expected to continue at approximately the same pace in 2016.

The FDP responded to a variety of changes and challenges in 2015, primarily related to a sharp decrease in foreclosure filing activity beginning in July, 2014. The immediate effect of a lower rate of case filing was a decrease in FDP revenue. After a short time, demand for mediation decreased also. The FDP responded to reduced revenue and reduced need for services by implementing several cost-saving measures. Late in 2015 the volume of new foreclosure cases increased significantly, and the FDP will face a corresponding increase in need for mediation again. The FDP continues to provide high quality mediation services in foreclosure actions in a fiscally responsible manner.

Annual Report

The Maine Judicial Branch submits this report on the performance of the Foreclosure Diversion Program (“FDP”) in 2015, as required by 14 M.R.S. § 6321-A (7)(B).

I. Introduction: Structure of the Program

In 2009, at the height of the national foreclosure crisis, the 124th Maine Legislature passed emergency legislation to establish a statewide foreclosure mediation program in the Maine state courts. The FDP is governed by 14 M.R.S. § 6321-A and Rule 93 of the Maine Rules of Civil Procedure. A pilot project begun in 2012 and implemented statewide in 2014 has streamlined the mediation process. Rather than scheduling mediation after homeowners have attempted to meet banks’ written requirements to apply for a workout, the FDP now brings the parties together as early in the court process as possible to identify goals and plan next steps.

This initial, brief mediation session takes place at the “First Call” docket. Early, direct interaction between the parties increases the chances of a complete and accurate document submission by the borrower and improves FDP efficiency. It reduces the frustration that may arise when homeowners submit documents without a conversation with their lenders as to what is needed. Further, the new system encourages good working relationships and communication between homeowners and lenders, and it facilitates the involvement of HUD-certified housing counselors, whose expertise in document submission is very helpful in FDP mediation. The detailed list of documents and timelines recorded in the Mediator’s Report to the court increases accountability for parties’ agreements made in mediation. The First Call system makes it possible for several cases to be mediated in a morning, increasing economy of travel for lenders and counsel with multiple cases.

A. Statewide Mediation Services

A foreclosure case may be filed in any District or Superior Court in Maine. Foreclosure mediation services are provided by the FDP at 11 “processing courts” across the eight judicial regions¹. To enter mediation, a homeowner must request mediation in writing². After receiving such a request, the clerk schedules the case for “First Call Day” at the courthouse. The day begins with an Informational Session for up to 16 cases, at which a judge explains the mediation process in court. A HUD-certified housing counselor also provides details about submitting documents to various lenders and how to find free assistance.

¹ Processing courts are established in each Judicial Region as follows: Region 1, Springvale; Region 2, Portland and Bridgton; Region 3, Lewiston and Farmington; Region 4, Augusta; Region 5, Bangor; Region 6, West Bath and Rockland; Region 7, Ellsworth; and Region 8, Caribou.

² Only foreclosure cases involving owner-occupied *primary* residences of no more than four units are eligible for mediation. 14 M.R.S. § 6321-A(2). Written requests for mediation may take the form of an answer, appearance, or other request. M.R.Civ.P. 93(c)(1).

Immediately following the Informational Session, mediators call the cases one at a time for preliminary mediation sessions in private mediation rooms. Plaintiffs, defendants, and counsel meet with the neutral mediators to explore alternatives to foreclosure and plan their next steps. In many cases, homeowners who wish to remain in their homes seek modification of their loans. For example, they might seek to lower the interest rate or extend the term to repay the debt. Another option is to seek approval to sell the home for less than is owed at a “short sale.” To apply for a workout, lenders require borrowers to submit a “complete financial package” for review. Frequently the first mediation session is focused on identifying and compiling a clear list of documents necessary to facilitate a timely review. The list includes such financial documents as tax returns, pay stubs, and bank statements. In addition, the parties agree to a timeline for submission and review, including a process for notification of deficiencies and opportunity to address them. Any agreements as to documents, timelines, next steps, and/or resolution are recorded in the “Mediator’s Report” of the mediation session, which is submitted to the court. Additional mediation is scheduled if needed. If there are no realistic alternatives to foreclosure to pursue, or if mediation concludes without resolution, the case returns to the civil docket for further court proceedings. A summary of the foreclosure process, including mediation, is shown in Chart 1 (see attached).

B. *FDP Staffing*

The governing legislation authorized the funding of FDP positions through a fee imposed on each foreclosure case filed. P.L. 2009, ch. 402, § 26. Current FDP positions include the Program Manager, Administrative/Data Assistant, and three full-time foreclosure clerks in the courts.

The FDP tracks foreclosure case activity to ensure that staffing remains at an appropriate level. In 2015, the reduction in volume of foreclosure cases filed resulted in a decrease in FDP revenue. Early in 2015, two part-time Judicial Branch clerk positions that were funded by the FDP became vacant and were not filled. In August the three foreclosure law clerks who had provided needed support in addressing motions for summary judgment completed their tenure. None of these five positions was filled as a result of the reductions in revenue and mediation activity. The FDP continues to monitor staffing needs for providing high quality mediation services in a fiscally responsible way.

C. *Mediators*

Mediators in the FDP are recruited from the fields of mediation, real estate, law, and foreclosure to be independent contractors to mediate foreclosure cases in the courts. Currently 33 mediators are active on the statewide roster. Although the need for mediation services declined overall subsequent to the decrease in cases filed, two new mediators were added to meet the need in 2015 in certain areas (Aroostook and Androscoggin Counties). Both new mediators worked with the FDP Manager to get “up to speed” as knowledgeable FDP mediators.

The FDP arranges regional meetings for mediators and continuing education programs on relevant mediation topics and foreclosure law. In addition, to ensure high

quality mediation services, the FDP Manager observes all mediators on the statewide roster annually and provides evaluative feedback on their performance.

II. Performance of the Program

A. Foreclosure Filing Activity and Participation in FDP

In 2015, 1,906 new foreclosure cases were filed. This represents a decrease from previous years. The drop in filing activity was abrupt and occurred in 2014. Filing rates in six-month increments are shown for the years 2012 through 2015 in Chart 2 (see attached).

From January, 2012 through June, 2014, the average number of foreclosure cases filed per six-month period was 2,264. In July, 2014, however, filing activity dropped; from July through December, 2014, 837 foreclosure cases were filed, representing a 63% decrease. The rate of cases filed remained relatively steady from January through June, 2015, as 839 cases were filed. Then, from July through December, 2015, 1,067 cases were filed, representing a 27% increase from the previous six months. Based on this trend, and reports from lenders' attorneys, the FDP anticipates that the volume of foreclosure cases filed in 2016 will continue to increase.

In 2015, initial FDP mediation was scheduled in 607 cases. This reflects an FDP participation rate of 32% of the foreclosure actions filed in 2015.

B. Volume of Mediation and Status of Mediated Cases

The FDP provided 974 mediation sessions in 733 cases in 2015.³ The average was 1.3 sessions per case.⁴ After mediation sessions are held, cases move into one of four categories: (1) dismissed, (2) foreclosure judgment entered, (3) remaining in the FDP, or (4) returned to the civil docket for litigation. The data for 2015 and cumulative FDP data on cases mediated from 2010 through 2015 are presented in Chart 3 (see attached).⁵

1) Cases Dismissed

When a case is dismissed, the case is closed without a foreclosure. Dismissal saves time and resources for parties and for the court. Dismissal suggests that the loan is performing again and the home has been retained, or the debt has been paid by sale of the

³ Homeowners reported having received legal advice regarding their foreclosure cases in 177 instances. They reported receiving assistance (either from an attorney, a housing counselor, or another professional) in completing forms in 343 cases.

⁴ Historically, the average has been: 2014: 1.5 sessions per case; 2013: 1.5 sessions per case; 2010-2012: 1.7 sessions per case.

⁵ Since July, 2011, the FDP has tracked cases through a custom online database, the Alternative Dispute Resolution Information System (ADRIIS), which enhanced FDP data collection and analysis.

property. As shown in Chart 3, over the life of the program, more than half (59%) of the cases participating in the FDP have been dismissed. Over time, as more cases reach conclusion, the number of dismissed cases increases. The dismissal rate is higher for cases mediated in earlier years. Of the cases mediated from 2010 to 2014, 62% have concluded in dismissal. So far, 219 of the 733 cases mediated in 2015 have been dismissed (30%). It is anticipated that more of these cases will conclude in dismissal as they move through the court process.

To the extent that FDP has an ability to track them, the underlying reasons for dismissals are presented in Chart 4 (see attached). Because cases are dismissed at various points in the process, many motions to dismiss are granted without a report to the FDP as to the reason.

2) Foreclosure Judgments Entered

A judgment means that the case ended with a foreclosure of the property. Like dismissals, the number of judgments increases over time as cases reach conclusion. Mediated cases have consistently concluded with more dismissals than judgments. Foreclosure judgment was entered in 33% of cases mediated since 2010. So far, judgment was entered in 94 cases (13%) of the cases mediated in 2015.

3) Cases Remaining in the FDP

Of the 733 cases mediated in 2015, 140 cases (19%) remain in the FDP. In general, mediators aim to complete mediation within three mediation sessions. Even if the parties agree to extend the time, the FDP's goal is to conclude mediation in a case within nine months. This is not always possible, and mediators must exercise both good judgment and common sense to respond to the needs of the particular parties and the case. A complicated case may require additional mediation, either because the parties need to address numerous or complex issues, or because there is a change of circumstance.

Sometimes cases are partially resolved but stay in the FDP to complete a temporary agreement or a trial payment plan (generally three months) on a loan modification that may lead to permanent loan modification agreements. This is an important protection. It assures the parties' continued communication until an agreement is completed or a loan modification becomes permanent, and it prevents any possibility that a loan servicer might impermissibly move a case toward both a foreclosure judgment and a loan modification at the same time ("dual tracking").

4) Cases Returned to the Civil Docket

In a case returned to the civil docket, further litigation takes place after mediation, possibly leading to trial. To date, 280 cases (38%) mediated in 2015 were returned to the civil docket following mediation. The ultimate conclusion of these cases cannot be predicted; parties who complete mediation frequently continue to work together, and their efforts may yet result in dismissal.

III. Challenges

A. Avoid Undue Delays

Delay in the workout process has hindered resolution of foreclosure disputes since the beginning of the national foreclosure crisis. Indeed, delay caused by failure to communicate effectively and lengthy document collection processes was a major impetus for establishment of foreclosure mediation programs nationwide. These delays hamper not only the process of mediation, but other court action as well. The FDP addresses potential delay by bringing parties together in mediation as quickly as possible. The FDP minimizes delay by: (1) using detailed forms to ensure key issues and documents are addressed at mediation; (2) including thorough, clear descriptions of agreements in the Mediator's Report; and (3) ensuring court oversight of the parties' agreements. The FDP's Document Submission Worksheet was designed to avoid confusion about what information is needed from whom and by when. Clarity at preliminary mediation sessions facilitates submission of "complete financial packages", encourages parties' continued communication, and promotes both accountability and timely review of loans. Mediators emphasize the importance of parties' ongoing communication and encourage homeowners to seek the assistance of HUD-certified housing counselors.

B. Address Fluctuation in Revenue and Demand for Mediation

Since the abrupt downturn in foreclosure cases filed in 2014, FDP revenue has fluctuated, as has the demand for mediation. The FDP has implemented several cost-savings measures, primarily through reducing payroll expenses. These reductions were appropriate responses to a decrease in demand for mediation. The downturn in foreclosure filing activity was not a result of market forces or an improving economy; rather, it reflected lenders' response to legal issues surrounding necessary documentation to support a foreclosure action. As those issues have been addressed, the rate of case filing has increased and continues to climb, and the FDP anticipates a corresponding increase in demand for mediation. The FDP is prepared to meet the need. The FDP provides clerk support to implement mediation services, and the FDP Manager monitors the need for mediators. The FDP closely tracks trends in filing and mediation to ensure that parties receive timely, high quality mediation services.

C. Provide Up-To-Date Information to Mediators

Mediators are required to know about the various mortgage assistance programs and principal loss mitigation and mortgage loan servicing guidelines and regulations pursuant to 14 M.R.S. 6321-A 7.A (3) and (5). As the foreclosure crisis has unfolded, mortgage assistance programs and servicing regulations and guidelines have continued to expand and evolve. The volume and rate of change in regulations and in programs available to homeowners in foreclosure creates an ongoing challenge in mediation, especially where foreclosure servicing law intersects with other areas of law, including bankruptcy and divorce.

The federal Bureau of Consumer Financial Protection (CFPB) issued federal regulations governing mortgage servicers, effective January 10, 2014. The FDP is closely tracking upcoming amendments to those regulations and planning a continuing education program in the spring of 2016 to coincide with the effective date of those amendments.

The FDP provides semi-annual regional meetings for FDP mediators to address current issues and regulations, and to provide an opportunity for discussion. At the regional meetings in the spring of 2015, the mediators heard a presentation from the local Chapter 13 Bankruptcy Trustee on the intersection of foreclosure law and bankruptcy. In addition the mediators heard a presentation on HAMP⁶ and other frequently encountered modification programs. In the fall of 2015, three regional meetings featured panel discussions including local lawyers for homeowners and lenders, housing counselors, and, in one case, a banker. Panelists discussed the CFPB regulations, the effect of additional liens on the property in foreclosure, and other current legal and financial issues relevant to FDP mediation.

IV. Conclusion

The FDP is effective in providing a vital opportunity for parties in foreclosure to communicate in a meaningful way and to find alternatives to foreclosure if possible. Well over half of the 7,181 cases mediated in the FDP since 2010 have concluded in dismissal.

The FDP continues to adjust and improve. Cases come to mediation earlier in the foreclosure process. Detailed forms allow for tailored discussions in each session and ensure that important issues are addressed in mediation. The roster of mediators has continued to gain expertise and skill in assisting parties to address important issues and pursue settlement alternatives and to achieve early resolution of their cases.

The FDP will continue to provide high quality mediation services to help lenders and homeowners in Maine settle their disputes early, through mutually beneficial agreements.

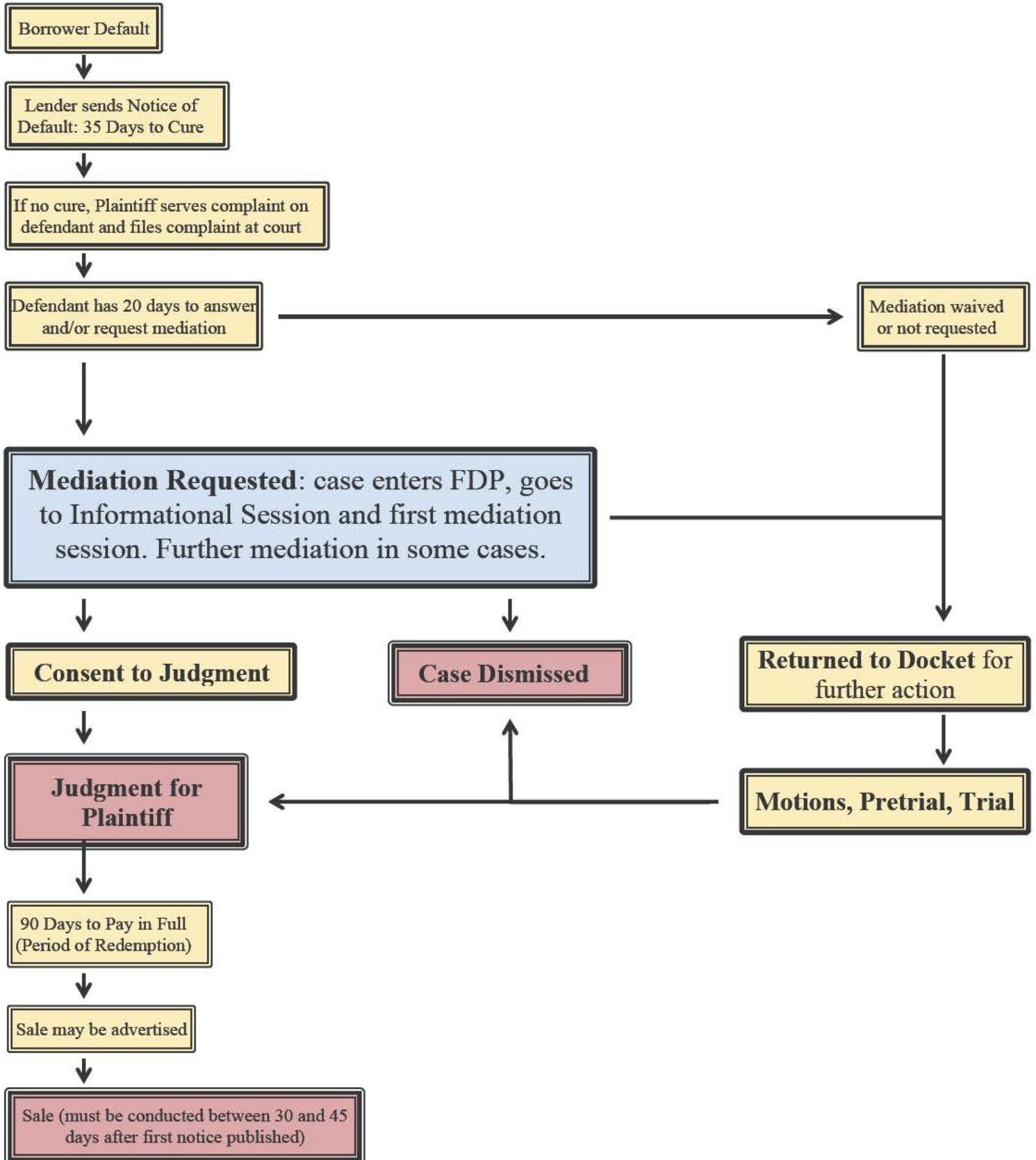
Respectfully Submitted,

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Date: February 12, 2016

⁶ Home Affordable Modification Program

Chart 1 - Maine Foreclosure Process



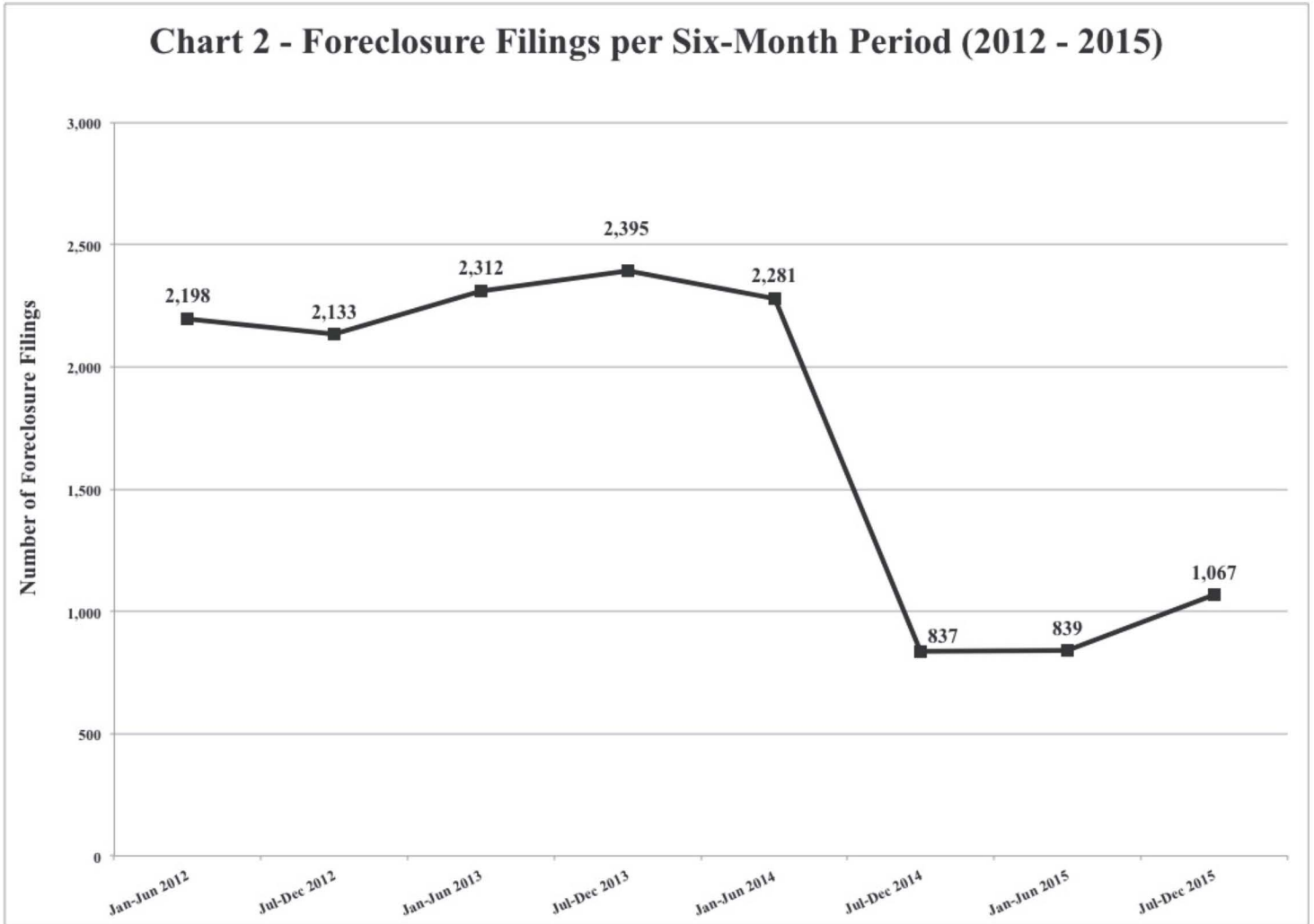


Chart 3 - Status of Mediated Cases

Foreclosure Diversion Program Cases	Cases Mediated in 2015	%	Cases Mediated from 2010-2015	%	
Total Mediation Sessions Held	974	-	12,339	-	
Total Cases Mediated	733	-	7,181	-	
Average mediation sessions per case	1.3	-	1.7	-	
	Current Status	%	Current Status	%	
	Cases dismissed	219	30%	4,235	59%
	Foreclosure judgment entered	94	13%	2,370	33%
	Cases remaining in FDP	140	19%	146	2%
	Cases returned to civil docket and pending	280	38%	430	6%
	TOTAL CASES MEDIATED	733	100%	7,181	100%

Chart 4 - Types of Dismissal Agreements Reached

Types of Agreement Reached in Dismissed Cases	Cases Mediated in 2015		Total Cases Mediated 2010-2015	
	Cases	%	Cases	%
Loan Modification	88	40%	917	22%
Reinstatement	5	2%	70	2%
Repayment/Forbearance Plan	7	3%	57	1%
Deed in Lieu of Foreclosure	7	3%	71	2%
Short Sale	5	2%	98	2%
Other	10	5%	320	8%
Unknown*	97	44%	2,702	64%
TOTAL	219	100%	4,235	100%

* In many cases, the FDP does not receive information about the arrangements that result in dismissals.