

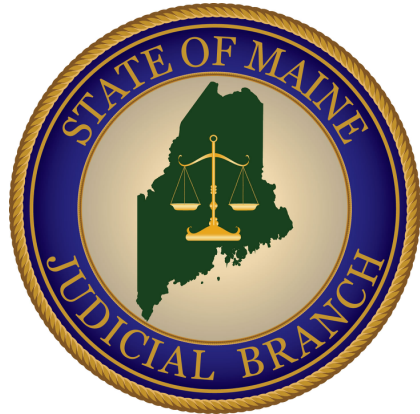
MAINE STATE LEGISLATURE

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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

129th Legislature

February 15, 2019

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JUDICIAL BRANCH
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THE JOINT STANDING COMMITTEE
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Executive Summary

The Foreclosure Diversion Program (“FDP”) was established by the 124th Maine Legislature in 2010. Operating in Maine courts across the state since that time, the FDP offers a valuable opportunity for parties to meet early in the foreclosure process to discuss possible settlement alternatives.

The FDP has provided 15,751 mediation sessions in 9,396 foreclosure cases since 2010. In 2018, the FDP provided 1,152 mediation sessions in 823 foreclosure cases.

The FDP has proven the value of mediation in foreclosure cases. Impartial, court appointed mediators help lenders and homeowners explore their options for resolution. Mediators facilitate enhanced communication, trust, and accountability for parties’ agreements. The frequent result is a mutually beneficial, party-driven resolution. More than half of cases that enter the FDP conclude by being dismissed as a result of an agreement between the parties.

To provide parties in foreclosure the best opportunity for mediation, the FDP continues to implement process improvements, and to offer educational events in mediation skills and the evolving landscape of mortgage servicing regulations.

Annual Report

The Maine Judicial Branch submits this yearly report on the performance of the Foreclosure Diversion Program (“FDP”) in 2018, as required by 14 M.R.S. § 6321-A (7)(B).

I. Introduction

At the height of the national foreclosure crisis in 2009, the 124th Maine Legislature established a foreclosure mediation program in the Maine courts.¹ After a 3-month pilot project in York County, the FDP was launched statewide on January 1, 2010. In mediation, homeowners and lenders meet to explore alternatives to foreclosure. To be eligible, a case must involve an owner-occupied primary residence of no more than four units. 14 M.R.S. § 6321-A (2).

II. Structure of the Foreclosure Diversion Program

A. FDP Mediation Process

A foreclosure case may be filed in any District or Superior Court in Maine. Cases are scheduled for mediation at the homeowner's written request to the court.² Upon receipt of a request, the court clerk schedules the case for the "First Call" docket at the courthouse. First Call starts with an Information Session at which a judge explains the FDP court mediation process to a group (generally 10-15) of homeowners. A HUD-certified housing counselor then talks about a variety of loan workout possibilities and how homeowners can find free assistance. The Information Session lasts 30-40 minutes.

Immediately following the Information Session, mediators call the cases one at a time for initial mediation sessions in private conference rooms. FDP mediation is an informal meeting including the homeowner, lender, attorney(s), and the mediator. In addition to exploring potential alternatives to foreclosure, parties agree to next steps and make a record of their plan in the written "Mediator's Report," which is submitted to the court following every mediation session.

Possible outcomes to mediation include the following kinds of workouts:

- Reinstatement of the loan through payment of the arrearages
- Repayment of arrearages over time (generally raising the monthly payment)
- Loan modification – use of various tools, including recapitalization, principal forbearance or forgiveness, lowering the interest rate and/or extending the term to modify the loan (generally reducing the monthly payment)
- Short Sale – lender approves sale of the home for less than is owed

To apply for most workout options, the lender requires the homeowner to submit a "complete financial package" for review, including bank statements, paystubs, and tax information, at a minimum. To streamline the process of identifying needed documents and establishing deadlines for submission and review, the FDP developed the "Document Submission Worksheet" in 2013. After the first mediation session, if issues or questions remain that require further mediation, additional mediation may be scheduled as needed.

¹ P.L. 2009, ch. 402. Governing authorities are: 14 M.R.S. § 6321-A and M.R.Civ. P. 93.

² Written requests for mediation may take the form of an answer to the complaint, appearance, or other request. 14 M.R.S. § 6321-A (6); M.R.Civ.P. 93(c)(1). Lenders must attach a form answer to the front of every complaint served in eligible actions. 14 M.R.S. § 6321-A (2).

B. FDP Staffing

FDP positions are funded by a fee imposed on each foreclosure case filed.³ Currently the FDP staff positions are: Program Manager, Administrative/Data Assistant, and three full-time foreclosure clerks in the courts. The FDP closely monitors staffing needs and remains prepared to make adjustments as appropriate, while continuing to provide timely, high quality service.

C. FDP Mediators

Mediators in the FDP are independent contractors experienced in the fields of mediation, real estate, law, and foreclosure. The current roster of 29 mediators statewide is meeting the current demand for mediation services. The FDP has conducted two successful statewide recruitment efforts (in 2013 and 2016) and has added individual mediators in targeted locations.

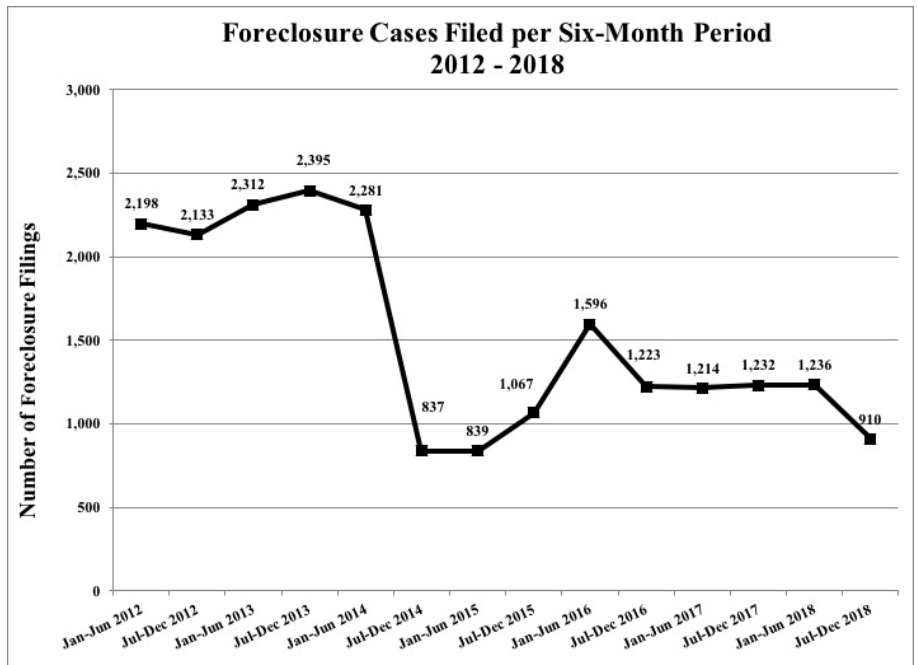
The FDP hosts periodic regional meetings and continuing education programs for the mediators to discuss mediation practice issues and foreclosure law. In 2018, the FDP provided two special events: a program about mediating in the context of power imbalance, and a community-wide presentation of the Consumer Financial Protection Bureau’s amendments to its mortgage servicing regulations. Counsel for both plaintiffs and defendants gave the presentation.

III. Performance of the Program

A. Foreclosure Filing Activity and Participation Rate in FDP

In 2018, a total of 2,146 new foreclosure cases were filed in Maine courts.⁴ Mediation was requested and scheduled in 797 of those cases, reflecting a 37% participation rate.

This graph also shows that, over the past six months, the volume of cases filed has decreased somewhat from the steady filing rate shown in the previous two years. The FDP will closely monitor filing activity and be prepared to take further cost-savings steps, including streamlining staff, as appropriate.



³ P.L. 2009, ch. 402, § 26.

⁴ Since July, 2011, the FDP has tracked cases through a custom online database, the Alternative Dispute Resolution Information System (ADRIIS), which enhances the ability of the FDP to collect and analyze data.

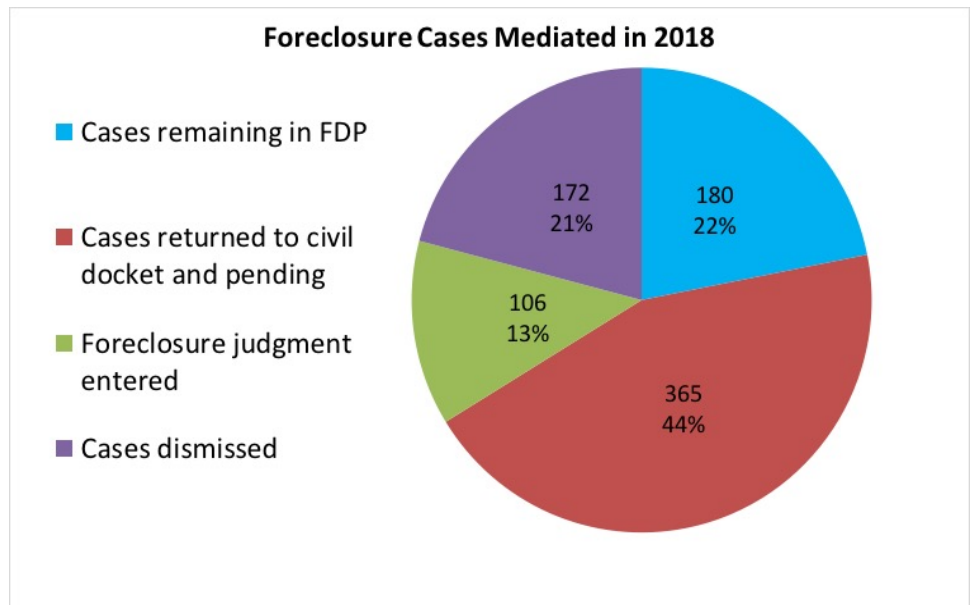
B. Volume of Mediation and Status of Mediated Cases

In 2018, FDP mediators conducted 1,152 mediation sessions in 823 cases,⁵ for an average of 1.4 mediation sessions per case.⁶ Over the life of the FDP, the ratio is 1.7 sessions per case.

Foreclosure Diversion Program Cases	FDP Mediation in 2018	FDP Mediation from 2010 - 2018
Total Mediation Sessions Held	1,152	15,751
Total Cases Mediated	823	9,396
Average mediation sessions per case	1.4	1.7

After mediation is complete, cases are either concluded or they remain active in court on the civil docket. Of the 823 cases mediated in 2018:

- 180 (22%) remain in mediation
- 365 (44%) returned to civil docket
- 106 (13%) concluded in judgment of foreclosure
- 172 (21%) have been dismissed



1) Cases Remaining in FDP:

After the first mediation session, cases may require additional sessions, because either a loan is under review for a possible workout, or additional issues remain to be mediated. While mediators aim to help parties complete mediation as soon as is reasonably possible, sometimes parties in mediation agree to temporary or trial plans that must be successfully completed before

⁵ In addition to mediation statistics, the FDP is asked to report the number of homeowners who reported receiving legal advice. In 2018, homeowners reported having received legal advice regarding their foreclosure cases in 204 instances. They reported receiving assistance (either from an attorney, a housing counselor, or another professional) in completing forms in 334 cases.

⁶ The average number of mediation sessions per case has generally decreased over time: 1.7 from 2010-2012; 1.5 from 2013-2014, 1.3 from 2015-2017, and 1.4 in 2018. The 2018 increase is due in part to the slight decrease in number of cases filed.

a case can be dismissed. Cases generally stay in the FDP through this period so that mediation is available if needed before the conditional agreement becomes permanent.

2) Cases Returned to the Civil Docket:

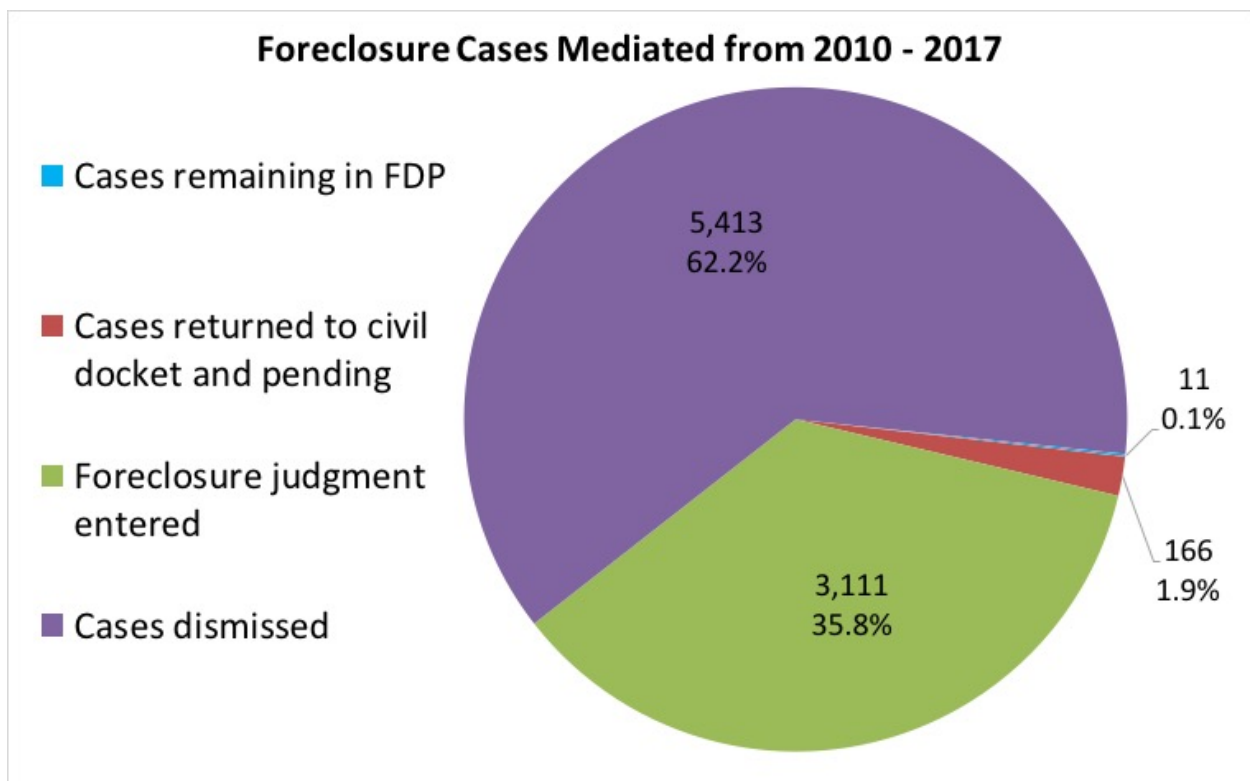
When a case returns to the civil foreclosure docket, litigation progresses, possibly leading to trial. The ultimate conclusion of these cases cannot be predicted; however, parties who complete mediation frequently continue to work together and settle their cases without trial.

3) Foreclosure Judgment Entered:

The natural conclusion of cases filed in court that are not settled and dismissed through mediation (or later in the court process) is entry of judgment after a trial.

4) 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 property. To gain the most accurate picture of case resolutions, it is helpful to consider cases mediated before 2018 because most of those cases have been completed. In cases mediated in the FDP through 2017, 62% have concluded in dismissal.



To the extent that the FDP has an ability to track them, the underlying reasons for dismissals are presented in the chart below. There is no systematic way for the FDP to determine reasons for dismissal in all cases, and for a time the FDP did not know most of the reasons with certainty. However, because of increased detail in Mediator’s Reports and court pleadings the FDP is now able to report the reasons for dismissals in 69% of the 172 cases mediated and dismissed in 2018. More than half of those cases (58%) concluded in settlements that allowed homeowners to remain in their homes through loan modification, repayment plans, or reinstatement of the loan.

Type of Agreement	Cases Mediated and Dismissed in 2018		Total Cases Mediated and Dismissed from 2010 - 2017	
	Count	Percentage	Count	Percentage
Loan Modification	86	50.0%	1,298	24.0%
Reinstatement	9	5.2%	106	2.0%
Repayment/Forbearance Plan	5	2.9%	101	1.9%
Deed in Lieu of Foreclosure	4	2.3%	88	1.6%
Short Sale	5	2.9%	130	2.4%
Other	10	5.8%	473	8.7%
Unknown	53	30.8%	3,217	59.4%
TOTAL	172	100%	5,413	100%

C. The FDP Facilitates Timely, Efficient Process

The FDP has taken several steps to minimize delay for parties in foreclosure, both in terms of the loan review process and court process. Communication between the parties and accountability for agreements and next steps are ensured through written Mediator’s Reports. The FDP Document Submission Worksheet facilitates document submission and review. Both of these documents provide helpful reference points at subsequent mediation. The FDP has also made continuing efforts to streamline court process in providing FDP mediation services.

The First Call system (described on page 2), implemented statewide in 2014, brings parties together to make a plan early in the court process. This system significantly reduced delays and confusion by allowing lenders, counsel, and housing counselors to provide direct guidance to homeowners. Previously, homeowners had to compile a financial package on their own and submit it to the court before being scheduled for mediation. In 2018, scheduling of follow-up mediation changed. Now all follow-up mediation is held on a predictable day each month in each FDP court. This increased predictability has reduced cancellations and made better use of mediator and court resources.

V. Conclusion

The peak number of foreclosure cases filed in Maine occurred at the height of the national foreclosure crisis in 2010, but the benefits of foreclosure mediation in Maine have been ongoing, consistent, and compelling. FDP mediation has proven to be an effective, efficient, and positive approach to resolution of foreclosure cases. FDP mediation provides the opportunity for productive conversations towards settlement, facilitated by neutral mediators. Mediator's Reports provide reminders of next steps and support accountability. Within the FDP, the diligent efforts of parties and their advisors have resulted in the resolution of thousands of foreclosure cases. Generally, these resolutions are "win-win" because all parties benefit when a troubled mortgage loan becomes a performing mortgage loan.

The FDP will continue to provide high quality mediation services to help lenders and homeowners in Maine resolve foreclosure cases through mutually beneficial agreements.

Respectfully Submitted,

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Date: February 15, 2019