

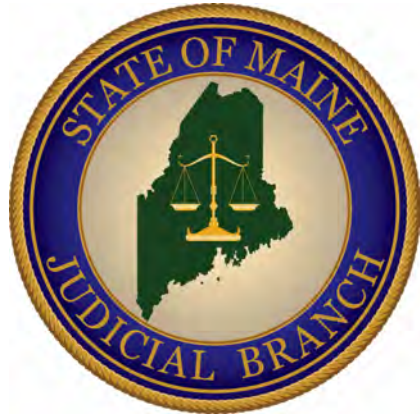
MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

**STATE OF MAINE
JUDICIAL BRANCH**



FORECLOSURE DIVERSION PROGRAM

Report to the Joint Standing Committee on
Health Coverage, Insurance and Financial Services and
the Joint Standing Committee on Judiciary

129th Legislature

February 14, 2020

Prepared by:
Laura S. Pearlman, Esq.
Maine Administrative Office of the Courts
P.O. Box 4820
Portland, ME 04112-4820
(207) 822-0706
fdmp@courts.maine.gov

**STATE OF MAINE
JUDICIAL BRANCH
FORECLOSURE DIVERSION PROGRAM**

**REPORT TO
THE JOINT STANDING COMMITTEE
ON HEALTH COVERAGE, INSURANCE AND FINANCIAL SERVICES
AND
THE JOINT STANDING COMMITTEE
ON JUDICIARY**

129TH LEGISLATURE

February 14, 2020

Executive Summary

At the height of the national foreclosure crisis in 2009, the Foreclosure Diversion Program (“FDP”) was established by the 124th Maine Legislature to provide foreclosure mediation in Maine courts.¹ Begun as a pilot program in 2009 in York County, the FDP was launched statewide January 1, 2010. The FDP provides parties in foreclosure cases the opportunity to meet at a courthouse to explore alternatives to foreclosure.

For ten years, FDP mediation has played an integral role in the resolution of foreclosure actions in Maine. It offers a valuable opportunity for parties to meet early in the foreclosure process to discuss and pursue paths to settlement of their cases.

The FDP has provided 16,574 mediation sessions in 9,861 foreclosure cases in its first ten years. Mediation in foreclosure cases has proven its effectiveness. Impartial, court-appointed mediators meet with lenders and homeowners together and help them explore their options for resolving the case. Mediators encourage and facilitate communication and trust, and they provide accountability for parties’ agreements in Mediator’s Reports to the court. The frequent results are mutually beneficial, party-driven resolutions. More than half of cases that enter the FDP are dismissed as a result of an agreement between the parties. The FDP continues to grow and improve its mediation services through education and recruitment of mediators, updating of court processes and forms, and welcoming feedback from mediation participants.

Annual Report

The Maine Judicial Branch submits this annual report on the performance of the Foreclosure Diversion Program (“FDP”) in 2019, as required by 14 M.R.S. § 6321-A(7)(B).

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

I. Structure of the Foreclosure Diversion Program

A. FDP Mediation Process

A foreclosure case may be filed in any District or Superior Court in Maine. To be eligible for FDP mediation, a case must involve an owner-occupied primary residence of no more than four units.² When the court clerk receives a homeowner's written request,³ the court clerk schedules the case for a 30-40 minute Information Session. At this preliminary court event, a judge explains the FDP mediation process to a group (generally 10-15) of homeowners. A HUD-certified housing counselor then explains a variety of loan workout possibilities and how homeowners can find free assistance.

Immediately following the Information Session, mediators call the cases one at a time for first mediation sessions. Participants at this private meeting include the homeowner, lender, attorney(s), and the mediator. The mediator facilitates exploration of potential settlement options and planning of next steps and timelines. After each session, the mediator submits a "Mediator's Report," creating a record of agreements and timelines. If issues or questions arise that require further mediation, additional mediation may be scheduled.

Mediation may resolve a case through a variety of settlement outcomes, including:

- Reinstatement of the loan through up-front payment of the arrearages;
- Repayment of arrearages over time by raising the monthly payment;
- Loan modification – use of various tools, including recapitalization, principal forbearance or forgiveness, change of interest rate, and/or extension of the term to modify the loan (this often reduces the monthly payment); and/or
- Liquidation options – sale and payoff, or transfer of the property to the lender.

To apply for most workout options, lenders require homeowners to submit personal financial documents, including, for example, bank statements, paystubs, and tax returns. To streamline identification of documents and deadlines for submission and review, the FDP developed the "Document Submission Worksheet" in 2013. This worksheet was updated in 2016 and is being further updated in 2020, in light of evolving needs for documentation.

B. FDP Staffing

FDP positions are funded by a fee imposed on each foreclosure case filed.⁴ 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.

² 14 M.R.S. § 6321-A(2).

³ 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).

⁴ P.L. 2009, ch. 402 § 26.

C. FDP Mediators

Mediators in the FDP are independent contractors experienced in the fields of mediation, real estate, law, and foreclosure. The roster of 25 mediators statewide is meeting the demand for mediation services at this time. Successful statewide recruitment efforts took place in 2009, 2013, and 2016. More recently, individual mediators have been added in targeted locations.

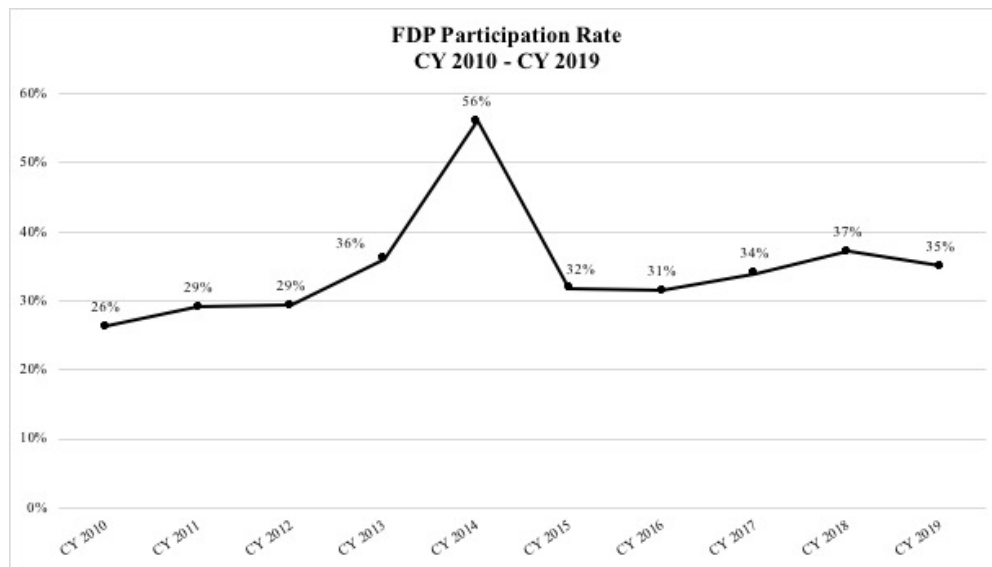
The FDP hosts periodic regional meetings and continuing education programs for the mediators to discuss mediation practice issues, foreclosure law, and mortgage servicer regulations. In 2019, the FDP presented a panel featuring attorneys for plaintiffs and defendants who discussed a variety of approaches to settlement, including loan modification options.

II. Performance of the Program

A. Foreclosure Filing Activity and Participation Rate in FDP

In 2019, a total of 1,664 new foreclosure cases were filed in Maine courts.⁵ Mediation was requested and scheduled in 582 of those cases, reflecting a 35% participation rate. (See chart below.)

	CY 2010	CY 2011	CY 2012	CY 2013	CY 2014	CY 2015	CY 2016	CY 2017	CY 2018	CY 2019
Participation Rate	26%	29%	29%	36%	56%	32%	31%	34%	37%	35%



The need for mediation remains strong, as is indicated by the consistent participation rate among eligible cases over the life of the FDP, and the high dismissal rate of mediated foreclosure cases. (See chart on page 5.)

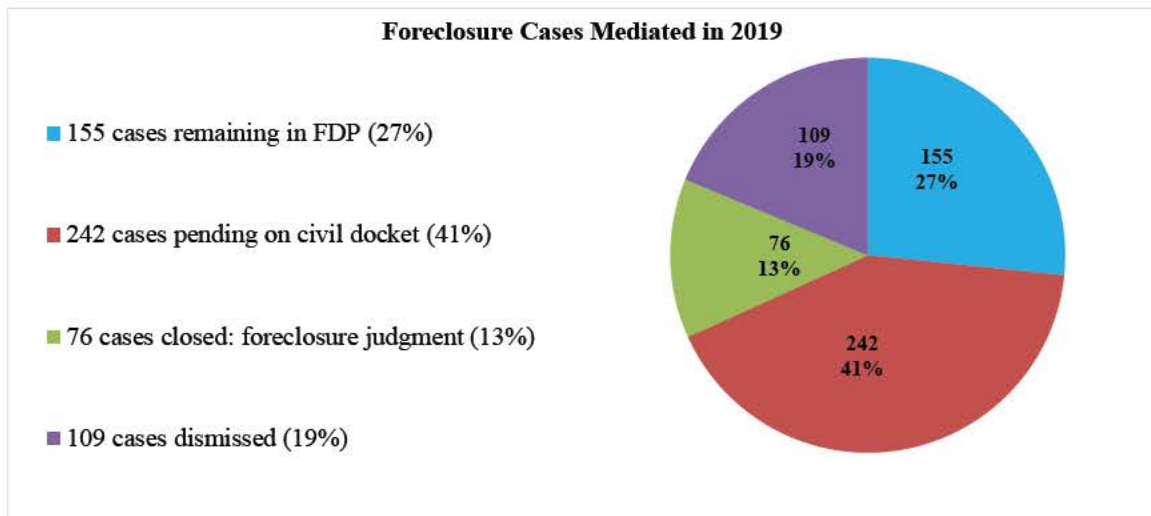
⁵ Since July, 2011, the FDP has tracked cases through an online database, the Alternative Dispute Resolution Information System (ADRIS), which enhances the ability of the FDP to collect and analyze data.

B. Volume of Mediation and Status of Mediated Cases

In 2019, FDP mediators conducted 823 mediation sessions in 582 cases⁶, for an average of 1.4 mediation sessions per case. Over the life of the FDP, the ratio is 1.7 sessions per case.

Foreclosure Diversion Program Cases	FDP Mediation in 2019	FDP Mediation from 2010 - 2019
Total Mediation Sessions Held	823	16,574
Total Cases Mediated	582	9,861
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. The current status of the 582 cases mediated in 2019 is shown below:

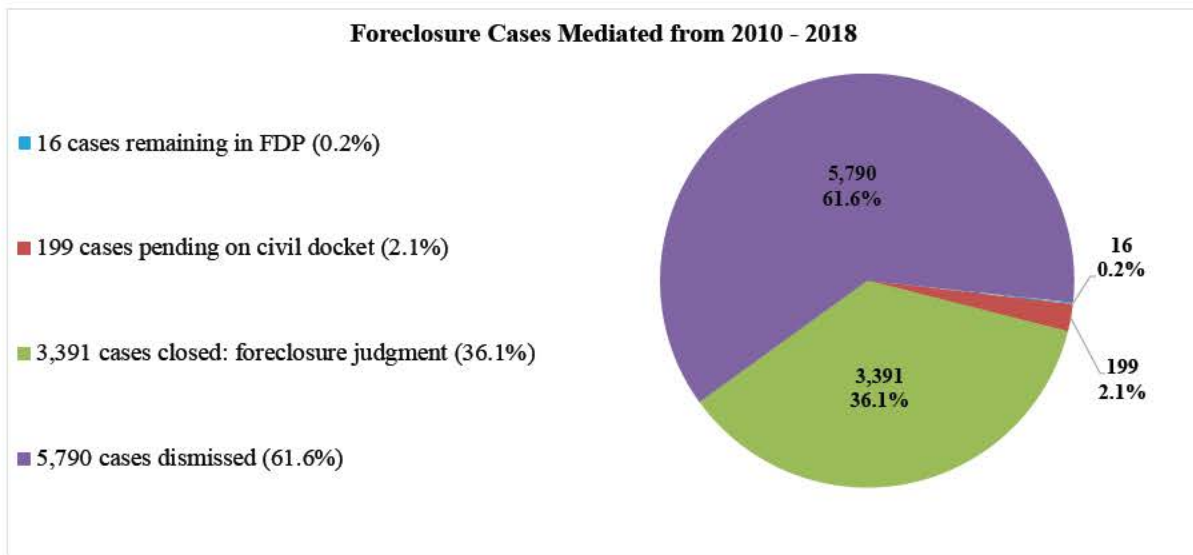


- 1) Cases Remaining in FDP: After the first mediation session, cases may require additional sessions to follow up on the parties' progress. Even when parties agree to settle, some agreements include a temporary trial period, during which cases generally stay in the FDP to allow access to mediation until the terms are finalized.
- 2) Cases Pending on the Civil Docket: When a case returns to the civil foreclosure docket after mediation, litigation progresses, but parties who have participated in mediation frequently continue to work together and settle their cases without trial.

⁶ The FDP mediation process has become more efficient through the first ten years. In addition to mediation statistics, the FDP is asked to report the number of homeowners who reported receiving legal advice. In 2019, homeowners reported having received legal advice regarding their foreclosure cases in 133 instances. They reported receiving assistance (either from an attorney, a housing counselor, or another professional) in completing forms in 225 mediation sessions.

- 3) Foreclosure Judgment Entered: Cases that are not settled and/or dismissed most frequently conclude with a judgment of foreclosure for the plaintiff.
- 4) Cases Dismissed: When a case is settled or closed without a judgment or trial, it is dismissed. 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 satisfied by sale or transfer of the property.

To gain the most accurate picture of case resolutions, it is helpful to consider cases mediated before 2019 because most of those cases have been completed. Of the 9,396 cases mediated in the FDP through 2018, nearly 62% have concluded in dismissal.



Underlying reasons for dismissals of mediated cases are presented in the chart below. The court does not currently have an electronic system to track reasons for dismissal of cases. However, based on detailed Mediator’s Reports, court pleadings, and clerk docketing, the FDP is able to report the reasons for dismissals in 68 (62.4%) of the 109 mediated cases dismissed in 2019. A majority of those 68 cases (57, or 84%) concluded in settlements that allowed homeowners to keep their homes through loan modification, reinstatement, or a repayment plan.

Type of Agreement	Cases Mediated and Dismissed in 2019	Total Cases Mediated and Dismissed from 2010 - 2018
Loan Modification	44 40.4%	1,428 24.7%
Reinstatement	11 10.1%	119 2.1%
Repayment/Forbearance Plan	2 1.8%	107 1.8%
Deed in Lieu of Foreclosure	1 0.9%	94 1.6%
Short Sale	5 4.6%	139 2.4%
Other	5 4.6%	521 9.0%
Unknown	41 37.6%	3,382 58.4%
TOTAL	109 100%	5,790 100%

C. FDP Facilitates Timely, Efficient Process

The FDP continually strives to minimize delay for parties in foreclosure, both in 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 and appropriate scheduling of follow-up mediation. The FDP Document Submission Worksheet facilitates accurate document submission and timely review. Both of these documents provide helpful reference points at subsequent mediation sessions. Predictable FDP dates for initial and follow-up mediation facilitate efficiency, both for scheduling and for performance of agreements.

III. Conclusion

After ten years, the benefits of foreclosure mediation in Maine have proven to be consistent and compelling. Mediation works to the benefit of both lenders and homeowners, and has resulted in the resolution of nearly 60% of the cases mediated over the past 10 years. Resolutions reached during and after mediation save time, resources, and strife involved in going to trial. The FDP will continue to provide high quality mediation services to help parties resolve their foreclosure cases to their mutual gain.

Respectfully Submitted,



Laura S. Pearlman
Manager, Foreclosure Diversion Program
Maine Administrative Office of the Courts

Date: February 14, 2020