

MAINE STATE LEGISLATURE

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**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

130th Legislature

February 12, 2021

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JUDICIAL BRANCH
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THE JOINT STANDING COMMITTEE
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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 to explore alternatives to foreclosure.

Since 2010, 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.

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, trust, and accountability through dialogue, exploration of options, and Mediator’s Reports with details of agreements submitted to the court. The frequent results are mutually beneficial, party-driven resolutions. More than half of cases that enter the FDP have been dismissed as a result of an agreement between the parties.

Federal and State responses to the hardships facing many homeowners as a result of COVID-19, and efforts to stabilize housing while the population has been asked to remain at home, have resulted in the suspension of foreclosure proceedings including FDP mediation. No FDP mediation has been scheduled or held since March 13, 2020. From its inception in 2010 to that point, however, the FDP had provided 16,720 mediation sessions in 9,954 foreclosure cases. The FDP is currently preparing to provide remote mediation by videoconference to ensure safety and facilitate access without requiring parties to travel to mediation in a courthouse.

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

Annual Report

The Maine Judicial Branch submits this annual report on the performance of the Foreclosure Diversion Program (“FDP”) in 2020, as required by 14 M.R.S. § 6321-A(7)(B).

I. Structure of the Foreclosure Diversion Program

A. Eligibility and Starting the 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 To provide notice of the opportunity for mediation and to facilitate homeowner response, lenders must attach a form notice and answer to the front of the complaint in all eligible cases. M.R.S. § 6321-A(2). Upon a homeowner’s request,³ the case enters the FDP.

B. The Information Session

The first court event in the FDP is the Information Session. At this preliminary court event, a judge explains the FDP mediation process. A HUD-certified housing counselor then gives information about different types of loans, a variety of loan workout possibilities, and how homeowners can find free assistance. Lenders may attend but are not required to do so.

C. Mediation

After the homeowners have attended an Information Session, mediation is the next step. Participants at this private meeting include the homeowner, lender, attorney(s), and the mediator. The mediator facilitates parties’ exploration of potential options and planning of next steps. After each session, the mediator submits a “Mediator’s Report” to the court with copies to parties, creating a record of agreements and timelines. Additional mediation may be scheduled if further discussion or follow-up is needed.

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.

² 14 M.R.S. § 6321-A(2).

³ Requests must be in writing submitted to the court. Homeowners may use the form served with the complaint or may otherwise request mediation, answer, or appear in the case. 14 M.R.S. § 6321-A(6); M.R.Civ.P. 93(c)(1).

To apply for most workout options, lenders require homeowners to submit personal financial documents such as bank statements, paystubs, and tax returns. The process of document submission and review is critical to settlement, and is carefully tracked in mediation.

D. FDP Staffing

FDP positions are funded by a fee imposed on each foreclosure case filed.⁴ The designated FDP staff positions are: Program Manager, Administrative/Data Assistant, and three full-time foreclosure clerks in the courts. Currently the FDP is operating with a reduced staff, but anticipates filling positions as needed when foreclosure activity resumes in court.

E. FDP Mediators

Mediators in the FDP are independent contractors experienced in the fields of mediation, real estate, law, and foreclosure. The roster of 22 mediators statewide is preparing to resume mediation at some point after February 28, 2021. The FDP offers presentations on a regular basis to help mediators stay up-to-date on regulations and loss mitigation options for loans in foreclosure. In May, 2020, a webinar on new relief measures available to homeowners suffering hardships due to COVID-19 was provided. A four-day symposium of presentations related to foreclosure, mediation, mortgage servicing, and loss mitigation is planned for March, 2021. Mediators have been working steadily throughout the year with the FDP Manager to hone their skills and become fluent users of remote technology in preparation for remote online mediation.

II. Performance of the Program

A. Effect of Global Pandemic on Data and Analysis

With the advent of COVID-19, in-court FDP proceedings ceased. Under the Phased Management Plan of the Supreme Judicial Court, foreclosure proceedings, including mediation, will be among the last case-types to resume activity, at some point after February 28, 2021. Mediation volume for 2020 is actually mediation volume for January through March, 2020.

The volume of foreclosure cases filed has been significantly affected by the pandemic and relief efforts to support housing stability by minimizing foreclosure and keep people in their homes. Federal agencies implemented moratoria on commencement, continuation, and conclusion of foreclosure actions, and on foreclosure-related eviction. The federal CARES Act⁵ codified the moratoria for “federally backed” mortgages, which have been extended by the agencies through March 31, 2021. In addition, the Governor⁶ and the Superintendent of the Maine Bureau of Consumer Credit Protection,⁷ requested that lenders suspend foreclosure activity to stabilize housing during the pandemic. It is in the context of the pandemic and

⁴ P.L. 2009, ch. 402 § 26.

⁵ Coronavirus Aid, Relief, and Economic Security (CARES) Act, 15 U.S.C. §§ 9056-9058

⁶ Letter to the Maine Credit Union League dated April 16, 2020.

⁷ Letter to Servicers of mortgages secured by Maine residences, dated April 16, 2020 and posted to the Bureau’s website.

targeted relief measures that foreclosure filing volume averaged 26 cases per month from April through December, 2020, as compared with an average of 139 cases per month during 2019.

In addition to the foreclosure moratoria on foreclosure activity, homeowners with federally-backed mortgages who suffer a COVID-19-related hardship have been able to receive a forbearance, allowing them to stay in the home without making a mortgage payment for a designated period of time. Looking to the future, when the federal foreclosure moratoria expire, forbearance plans that are in place and set to expire at different times are anticipated to “soften” the anticipated increase in foreclosure filing activity.

B. Foreclosure Filing Activity and Participation Rate in FDP

In 2020, a total of 582 new foreclosure cases were filed in Maine courts.⁸ Mediation has been requested in 255 of those cases, reflecting a 44% participation rate, which is significantly higher than the 35% average of the past ten years. This suggests that even while it is necessary to wait for the FDP to resume activity, homeowners in foreclosure value the opportunity to work with their lenders in mediation, perhaps now more than ever.

C. Volume of Mediation and Status of Mediated Cases

In 2020, FDP mediators conducted 146 mediation sessions in 142 cases⁹, for an average of one mediation session per case. The average since the FDP began is 1.7 sessions per case. After mediation is complete, cases may be concluded or remain active on the civil docket.

- 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 are conditional upon a trial payment plan, during which cases generally stay in the FDP to allow access to mediation until the terms are finalized. Currently 58 (41%) of the 142 cases mediated in 2020 remain in the FDP.
- 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. Currently 45 (32%) of the cases mediated in 2020 have returned to the civil docket.
- 3) Foreclosure Judgment Entered: Cases that are not settled and/or dismissed most frequently conclude with a judgment of foreclosure for the plaintiff. At this point 6 (4%) of the cases mediated in 2020 have concluded in foreclosure judgments. Of the 9,954 total cases mediated in the FDP, 3,506 (35%) have concluded in judgments.

⁸ 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.

⁹ In addition to mediation statistics, the FDP is asked to report the number of homeowners who reported receiving legal advice. In 2020, homeowners reported having received legal advice regarding their foreclosure cases in 39 instances. They reported receiving assistance (either from an attorney, a housing counselor, or another professional) in completing forms in 51 mediation sessions.

- 4) Cases Dismissed: When a case is closed without a judgment, 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. Over time, as more cases conclude, the percentage of cases dismissed grows. While only 33 (23%) of the cases mediated in 2020 have already concluded with dismissal, over the life of the FDP, 6,077 (61%) of the 9,954 cases mediated have concluded in dismissal. The reasons for dismissal are rarely included in court pleadings, and are most frequently beyond the ability of the court to report. However, through details included in Mediator's Reports and clerk docketing, the FDP has been able to glean that of the total 6,077 dismissed cases, at least 24.4% concluded with loan modifications and home retention.

D. FDP Facilitates Timely, Efficient Process and Access to Mediation

The FDP continually strives to minimize delay and maximize opportunities for settlement agreements 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 is preparing for resuming its court events by videoconference. This technology will allow parties to attend foreclosure mediation without the challenges and risks involved in travelling to a courthouse and attending mediation in person.

III. Conclusion

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 61% of the cases mediated over the life of the program. Resolutions reached during and after mediation save time, resources, and stress 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,

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