

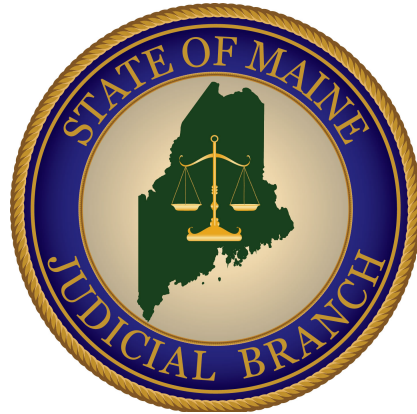
MAINE STATE LEGISLATURE

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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 15, 2022

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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 and to pursue paths to settlement of their cases. FDP mediation has played an integral role in the resolution of foreclosure actions in Maine.

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 through dialogue and exploration of options and provide accountability for promises made through detailed Mediator’s Reports, including agreements made and parties’ next steps, submitted to the court. Frequently, the result is a mutually beneficial, party-driven resolution. 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 was asked to remain at home, resulted in the suspension of foreclosure proceedings including FDP mediation from March 2020, through June 2021. From the time FDP mediation resumed in July 2021(both in-person and by videoconference) and December 31, 2021, 148 FDP mediation sessions were conducted statewide. With the COVID-19 infection and hospitalization rates continuously in the “red” zone, courts have provided mediation in different formats both to maximize access to mediation and to facilitate clear communication.

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 2021, 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. Requests must be in writing and submitted to the court. Homeowners may use the form notice or other written request, answer, or appearance in the case. 14 M.R.S. § 6321-A(6); M.R.Civ.P. 93(c)(1).

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. It creates 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 – change of loan terms by, for example, recapitalization, principal forbearance, change of interest rate, and/or term extension; and

² 14 M.R.S. § 6321-A(2).

³ A small number of foreclosure cases filed in the United States District Court for the District of Maine have participated in FDP mediation based on that court’s decisions categorizing FDP mediation as a substantive right in eligible cases, under 14 M.R.S. § 6321-A.

- 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 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 that may change in response to need, with the lifting of pandemic-related filing restrictions and an anticipated increase in requests for mediation.

E. FDP Mediators

Mediators in the FDP are independent contractors experienced in the fields of mediation, real estate, law, and foreclosure. The roster of 18 mediators has continued to hone mediating skills and to learn and improve use of technology required for remote mediation. With the COVID-19 infection rate returning to high levels in the fall of 2021, FDP mediation resumed on a remote platform, by videoconference or telephone, in many courts. Some courts with adequate space and ventilation provided mediation in person at the courthouse. Litigants unable to access mediation remotely may ask for in-person mediation, and those unable to come to court may ask for remote mediation.

The FDP offers presentations on a regular basis to help mediators stay up to date on foreclosure law, mortgage servicing regulations, and loss mitigation options for loans in foreclosure. In March 2021, the FDP provided a four-day symposium featuring presentations on all of the above topics given by attorney foreclosure practitioners for plaintiffs and defendants, and a nationally recognized mortgage servicing regulation trainer. In the fall of 2021, FDP mediators participated in a program on how to mediate on Zoom. The FDP Manager conducted well-attended Zoom mediation practice sessions from the fall of 2020 through the winter of 2021 and continues to provide tutorials upon request.

Four new mediators took part in a two-day FDP orientation in October. The orientation provided introductory material on foreclosure law and procedure, housing counseling services, mediation and the FDP process, and mortgage servicing regulations and loss mitigation options in FDP mediation. Following orientation, new mediators must meet program requirements of observation and co-mediation before they join the FDP mediator roster.

II. Performance of the Program

A. Effect of Global Pandemic on Data and Analysis

⁴ P.L. 2009, ch. 402 § 26.

With the diminished COVID-19 infection rate in the late spring of 2021, and expiration of Maine’s COVID-19 state of emergency as of June 30, 2021, the FDP was able to resume mediation in most courts in the summer and fall of 2021. All federal prohibitions on filing foreclosures expired December 31, 2021. With the expiration of pandemic-related filing restrictions an increase in foreclosure filing volume is anticipated.

Because the FDP has resumed operations in courts at different times beginning in August, 2021, statewide data for 2021 doesn’t compare to pre-pandemic data. For example, in the 12 months preceding the pandemic (April 2019 through March 2020) an average of 134 cases were filed each month. For the next 12-month period (April 2020 through March 2021) the average monthly filing volume was 29 cases, and through the past nine months the monthly filing volume has gradually risen from 41 to 77, with a monthly average of 48 cases. The changes in filing volume make sense in the context of the pandemic and federal foreclosure moratoria, and it will take some time for FDP data to be comparable to pre-pandemic data.

B. Foreclosure Filing Activity and Participation Rate in FDP

In 2021, a total of 532 new foreclosure cases were filed in Maine courts.⁵ Mediation has been requested in 52 of those cases, reflecting a 10% participation rate. As noted, the filing rate is expected to rise in 2022. The FDP is prepared to meet an increasing need for foreclosure mediation by working to provide mediation in both remote and in-person formats. Courts may offer in-person mediation, depending on the size and ventilation of mediation rooms, but mediators are also skilled at providing mediation remotely, and in either format the option to attend by telephone is available.

C. Volume of Mediation and Legal Advice Provided

In 2021, FDP mediators conducted 148 mediation sessions in 122 cases, for an average of 1.2 mediation sessions per case. After mediation is complete, cases may be concluded by an agreed-upon judgment or dismissal or may remain active on the civil docket.

In 2021, homeowners reported having received legal advice regarding their foreclosure cases in 23 instances. They reported receiving assistance in completing forms for mediation, either from an attorney, a housing counselor, or another professional, in 38 mediation sessions.

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

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

mediation. The FDP has resumed court events by videoconference and in person in appropriate courts.

Videoconferencing technology allows parties to attend foreclosure mediation without the challenges and risks involved in travelling to a courthouse and sitting in close quarters talking with others. This format has been welcomed by many litigants, attorneys, and mediators. On the other hand, in-person mediation is the best format for litigants who have poor internet access or difficulty with videoconference technology. In courts where the mediation space in the courthouse is large enough and adequately ventilated, mediating in person facilitates full engagement of all parties. Attending by telephone is generally possible in either format, but presents its own challenges, including making sure the telephone participant remains engaged, is heard, and understands the information shared and agreements made. The FDP remains committed to providing excellent foreclosure mediation service in whatever format works best for the participants, the mediators, and the court.

III. Conclusion

Foreclosure mediation in Maine has consistently proven itself a valuable settlement tool in foreclosure cases. Resolutions reached during and after mediation save time and resources, and avoid the 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,

/s/ Laura S. Pearlman

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