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May 28, 2020

The Honorable Jan R. Jurden
Superior Court
500 N. King Street
Wilmington, DE 19801

The Honorable David B. McBride
Legislative Hall
P.O. Box 1401
Dover, DE 19903

The Honorable Peter C. Schwartzkopf
Legislative Hall
P.O. Box 1401
Dover, DE 19903

RE: Foreclosure Filing Data – First Quarter 2020

Dear President Judge Jurden, President Pro Tempore McBride and Speaker Schwartzkopf:

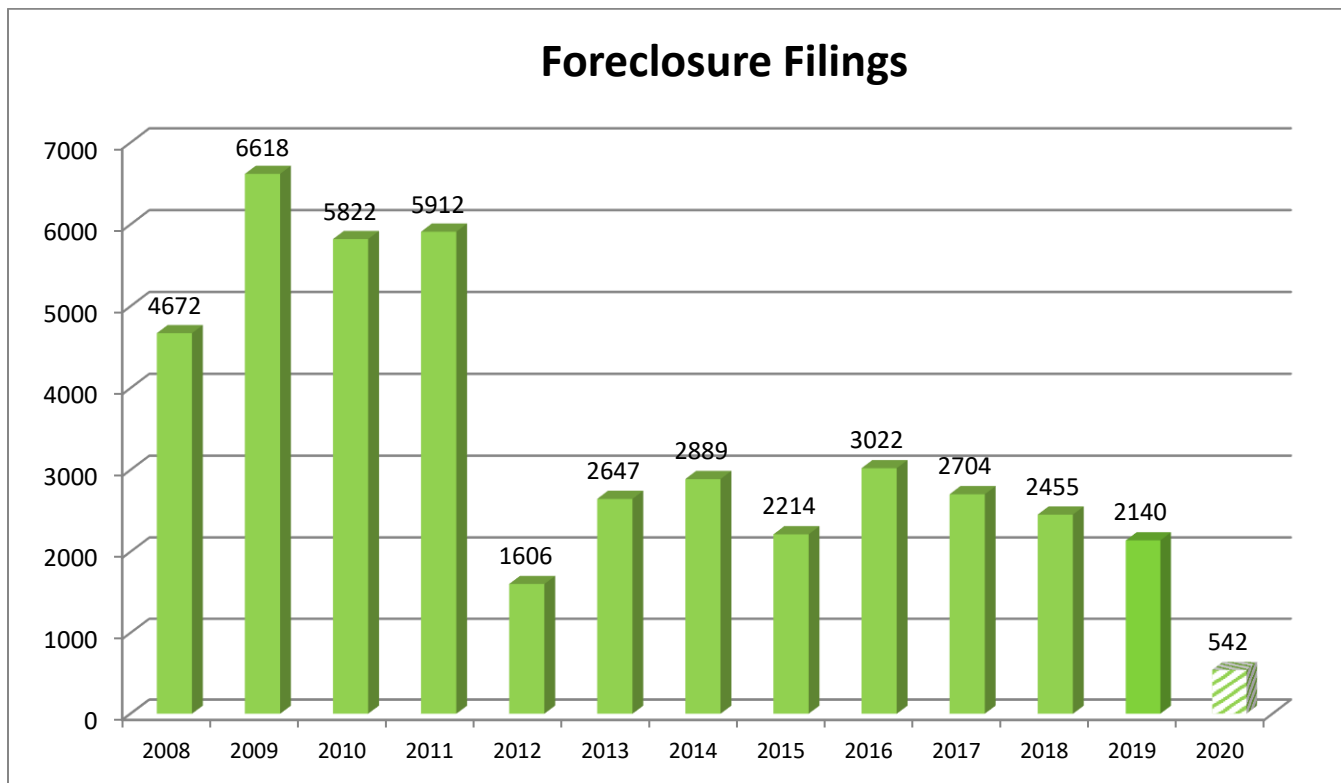
As the delegatee of the Superior Court under 10 *Del. C.* § 5062C(t), the Department of Justice is required to periodically report relevant statistics about the proceedings of the Mediation Program. This letter serves as the First Quarter Report for 2020. The Mediation Program has postponed all mediation conferences through June 13, 2020 and all residential foreclosure filings have been halted. During this Emergency, we continue to be available to assist homeowners and answer their questions regarding the foreclosure process and the options available to them.

1. Statistical Snap Shot

During the First Quarter of 2020, 299 Mediation Scheduling Notices and 120 Certificates of Participation were filed with the Superior Court. Cumulatively since 2012, 14,326 eligible foreclosure actions have been filed, with a **54.62% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **60.11%** have either achieved a non-foreclosure

resolution or remain in mediation and continue loss mitigation negotiations with their lender/servicer. A more detailed overview of foreclosure statistics may be found below, as well as on the Mediation Program website at: <http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>

The following chart demonstrates the number of foreclosure actions¹ filed statewide in the calendar years indicated.



2. Foreclosure Filings Since Inception of the Mediation Program

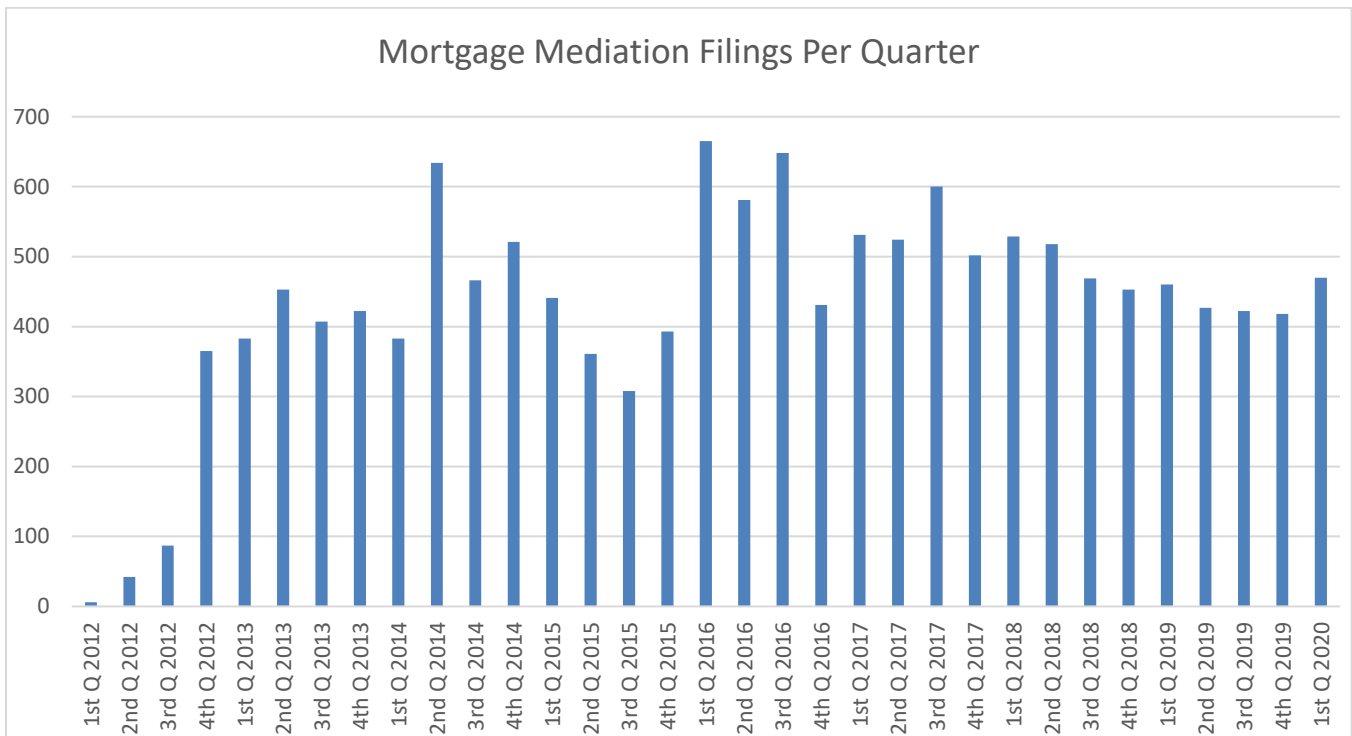
Between January 19, 2012 and March 31, 2020, there have been a total of 20,079 foreclosure filings statewide with 14,326 of those cases, or 71.35%, eligible for the Mediation Program.² Most

¹ This data is compiled through March 31, 2020. These figures include *scire facias* actions and, as of January 19, 2012, mediation-eligible *scire facias* actions. Additional information by county and case type is available on the Department of Justice's website: <http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>

² Historically, the percentage of mediation-eligible foreclosure actions in Superior Court have been as follows: Q2 2012 – 16%; Q3 2012 – 24%; Q4 2012 – 38.6%; Q1 2013 – 63.3%; Q2 2013 – 69.2%; Q3 2013 – 63.9%; Q4 2013 – 59.7%; Q1 2014 – 65.29%; Q2 2014 – 71.66%; Q3 2014 – 68.96%; Q4 2014 – 67.02%; Q1 2015 – 66.22%; Q2 2015 – 73.56%; Q3 2015 – 65.73%; Q4 2015 – 60.37%; Q1 2016 – 61.43%; Q2 2016- 62.21%, Q3 2016- 63.88%, Q4 2016- 65.35% , Q1 2017-

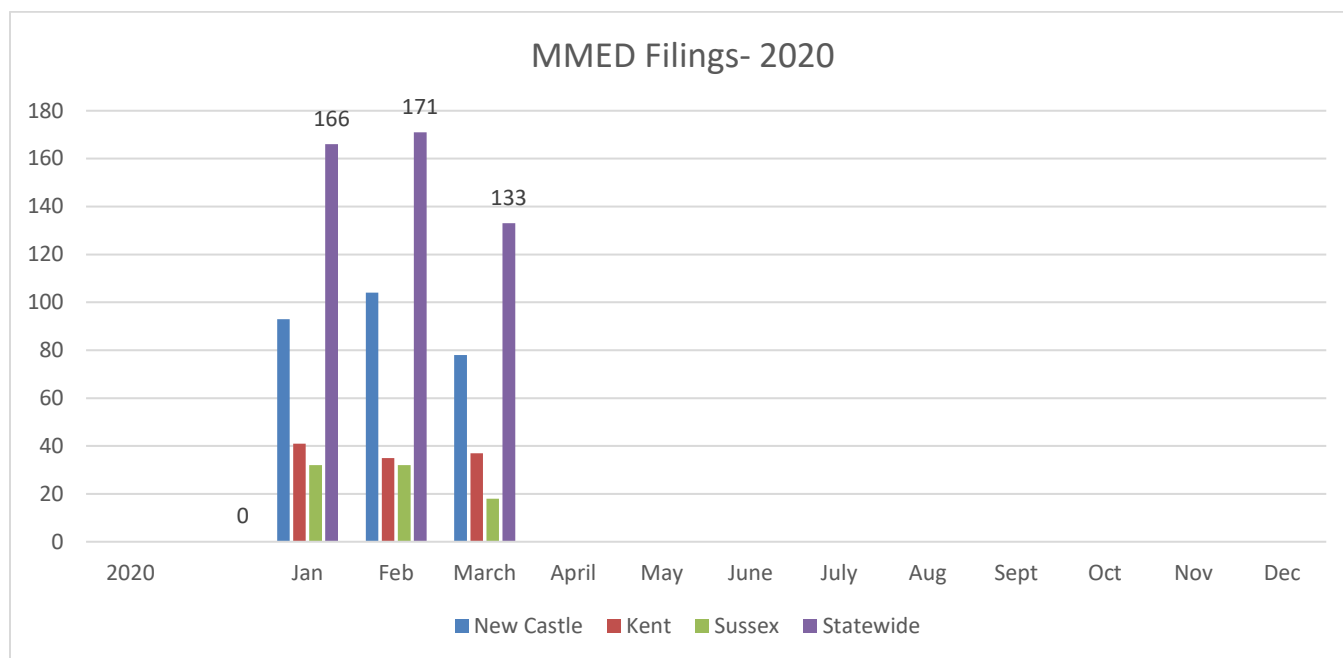
recently, in 2019, there were 1,727 eligible filings with an average of 432 filings per quarter. In the first quarter of 2020, there were 470 eligible filings. This compares with an average of 434 eligible filings per quarter since the Program’s inception in 2012.

The below chart demonstrates the number of mediation-eligible filings per quarter since 2012.



66.03%, Q2 2017- 66.62%, Q3 2017- 64.62%, Q4 2017- 67.96%, Q1 2018-68.47%, Q2 2018-68.81%, Q3 2018-69.25%, Q4 2018-69.69%, Q1 2019-70%, Q2-70.34%,Q3 2019-70.64% and Q4 2019-70.92%.

The following chart demonstrates the number of foreclosures filed in each county from January 1, 2020 through March 31, 2020.³ New Castle County continues to have the highest number of filings while Sussex County has slightly fewer than Kent County. The Governor’s Sixth Modification to the State of Emergency Order halted foreclosure filings for owner occupied 1 to 4 family primary residential property as of March 25, 2020.



3. Mediation Conferences and Participation Data

Through the Mediation Program, the Department of Justice administers and oversees conciliation-style mediations for each case in which the homeowner has been served with process. Previously, we were able to accommodate up to 120 cases per conference day in each county, with each lender’s counsel holding up to 50 conferences per day. New Castle County averaged 74 mediations per conference day, Kent averaged 48 mediations and Sussex averaged 42 mediations per conference day during the First Quarter of 2020.⁴ There were two conference days per month in New Castle County and one conference day per month in each of the other two counties. When the Emergency Declaration is lifted and mediations resume, we are prepared to limit the number of conferences scheduled per mediation time period to reduce the number of people in the mediation room and add additional times or days where needed. We will also make accommodations for telephonic or videoconferences where permitted.

³ These numbers include MORT (not eligible for mediation) foreclosure actions as well as MMED (mediation-eligible) foreclosure actions.

⁴ Average of mediations scheduled per day from January 2020 through March 9, 2020.

Hon. Jan R. Jurden
Hon. David B. McBride
Hon. Peter C. Schwartzkopf
May 28, 2020
Page 5 of 8

During the First Quarter of 2020, 299 Mediation Scheduling Notices and 120 Certificates of Participation were filed with the Superior Court. Overall, the Mediation Program has a **54.62% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **60.11%** have either achieved a non-foreclosure resolution or remain in mediation and continue loss mitigation negotiations with their lender/servicer.⁵ The remaining 39.89% have resumed court proceedings due to unemployment, severe delinquency, failure to participate in the Mediation Program, failure to reach an agreement on the terms of the loss mitigation offered by the lender/servicer, and/or a failure to work with a housing counselor.⁶ The high success rate of the Mediation Program thus far owes a great deal to the support of knowledgeable HUD-approved housing counselors.

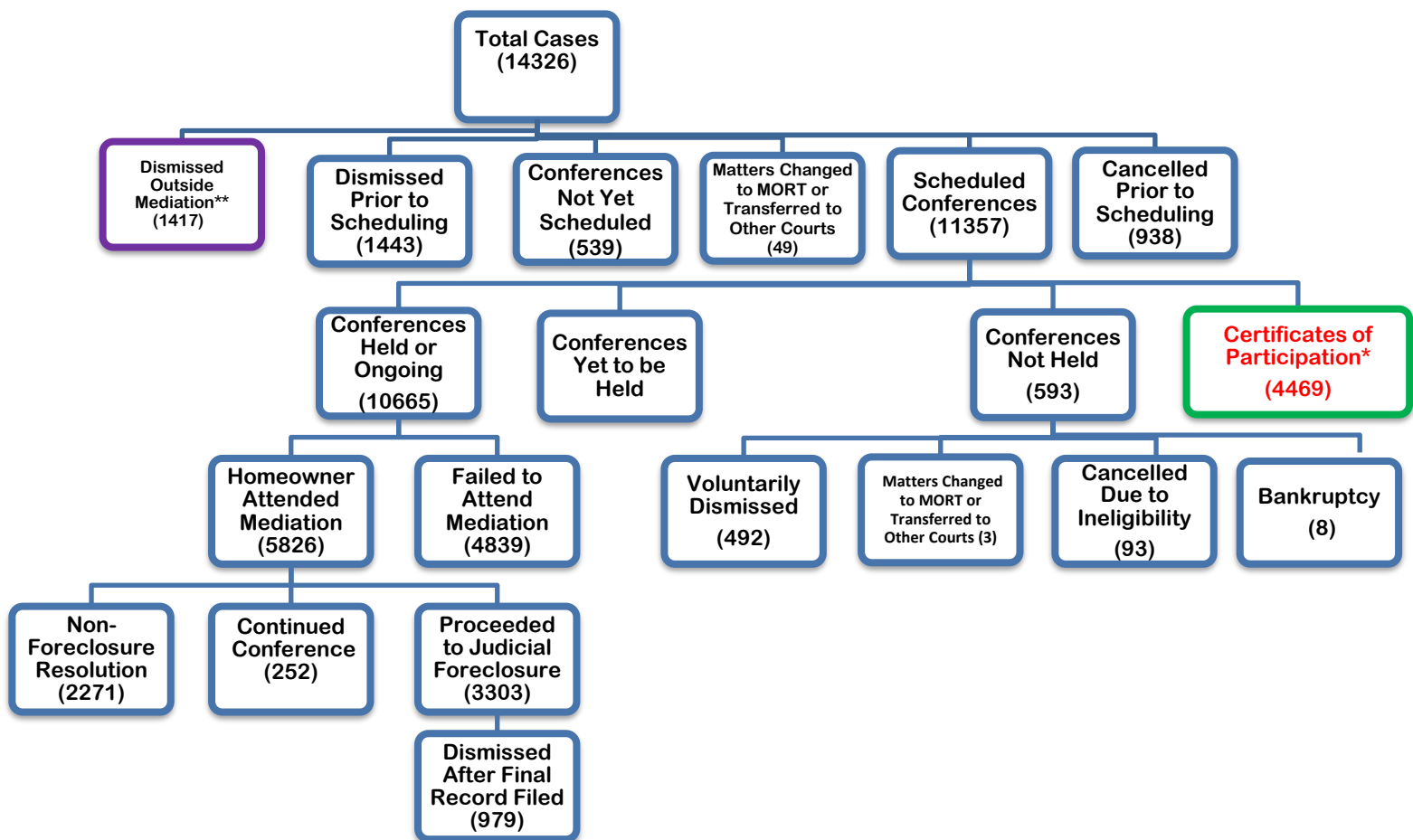
The participation data provides a snapshot of the cases in the Mediation Program through March 31, 2020. Our program participation overview chart captures those matters that were dismissed or cancelled prior to mediation and those that were dismissed or cancelled following the scheduling of mediation. Those cases that achieve a non-foreclosure resolution and those that remain in mediation are separated. Additionally, we detailed those cases which have been dismissed outside of mediation.⁷ Those matters where an amended complaint was filed changing the matter to a MORT case or where the matter was transferred to a different Court are also separated.

⁵ “Successful mediation” is defined as any conference where the homeowner achieves a non-foreclosure resolution to avoid a Sheriff’s Sale of the property, or where the parties remain engaged in negotiations and the homeowner is granted a subsequent mediation conference date.

⁶ For those 4,839 homeowners who failed to participate in the Mediation Program, our data indicate that they often have vacated their homes prior to the foreclosure case being filed in the Superior Court. Therefore, they may not receive the information about the Mediation Program which is sent by the Department of Justice. Further, they would not be eligible for mediation if they no longer occupy the home.

⁷ Cases dismissed outside of mediation are any cases dismissed without a mediation conference being held, including those matters where a defendant failed to appear for mediation or the matter was cancelled as non-mediation eligible, and the case was subsequently dismissed.

Mortgage Mediation Program: Cumulative Participation as of March 31, 2020



4. Delinquency Rates and Foreclosure Filings

Delaware’s delinquency rates and percentage of loans in foreclosure continue to remain above the national average in the 1st Quarter of 2020.⁸ As of May 12, 2020, the total percentage of loans past due for Delaware is 4.39% and the national past due rate is 4.00%.⁹ The steady number of MMED filings throughout 2019 and early 2020 illustrates that Delaware homeowners continue to struggle with mortgage payments and that lenders/servicers are participating in the Mediation Program.

⁸ Mortgage Bankers Association, National Delinquency Survey, Q1 2020(May 12, 2020).

⁹ Id. at 4. The seasonally adjusted national total past due rate is 4.36%.

Hon. Jan R. Jurden
Hon. David B. McBride
Hon. Peter C. Schwartzkopf
May 28, 2020
Page 7 of 8

As of May 12, 2020, Delaware had a seriously delinquent rate or 90+Day delinquency rate of 2.20%, a foreclosure inventory of 1.03%, and total foreclosure starts of 0.22%.¹⁰ The national non-seasonally adjusted foreclosure inventory is 0.73% and the national non-seasonally adjusted foreclosure starts is 0.19%.¹¹ For comparison, the national seriously delinquent rate or 90+ Day Delinquency Rate is 1.67%, over half a percentage point lower than Delaware's rate.¹² While the overall foreclosure rates have continued to decline, Delaware ranks relatively high among other states in delinquency measures (11th in percent of loans in foreclosure, 16th in foreclosure starts, and 11th in 90+ days delinquent).¹³

5. Going Forward

Although there have been no mediation eligible filings during the pendency of the Governor's emergency declaration in response to the COVID-19 pandemic, the threat of losing one's home remains a painful reality for many Delawareans. While the most recent quarterly numbers (which reflect pre-pandemic filings) demonstrate the continued need for the program, we anticipate that the current financial crisis caused by the COVID-19 pandemic will only increase the need for homeowners and lenders to find non-foreclosure resolutions to the inevitable rise in mortgage delinquencies. The Mediation Program will be ready and able to address this need when the current foreclosure moratorium is lifted by the Governor. As it has in the past, as the number of foreclosure filings increases, the Mediation Program will help avoid foreclosure for homeowners who work with a HUD-approved housing counselor and actively participate in their mediation conferences.

The Department of Justice's Office of Foreclosure Prevention and Financial Education (the "OFP") has been an important complement to the Mediation Program through its community outreach and education seminars, servicer events, and the day-to-day assistance provided to homeowners via the foreclosure hotline. Once the Emergency Order is lifted, OFP will resume hosting outreach and education events throughout the State where homeowners will be given resources and information to assist them in navigating the foreclosure process and avoiding unnecessary sheriff's sales. The OFP continues to monitor the media for forbearances, loan modifications and other alternatives to foreclosure that are being made available to Delawareans to ensure that the department is ready to handle any questions or complaints that may arise. The OFP's work has served many Delaware homeowners who face this difficult life event and, in many cases, helped to prevent the filing of foreclosure actions against these homeowners.

The Department of Justice is ready to meet the dramatic increase in demand we expect to occur upon the lifting of the foreclosure moratorium and the subsequent rise in participation in the Mediation

¹⁰ Id. at 4.

¹¹ Id.

¹² Id.

¹³ Mortgage Bankers Association, National Delinquency Survey Briefing Materials, Q1 2020(May 12, 2020) at 16-22.

Hon. Jan R. Jurden
Hon. David B. McBride
Hon. Peter C. Schwartzkopf
May 28, 2020
Page 8 of 8

Program. The current COVID-19 crisis and ensuing economic consequences have affected many Delaware homeowners. The Mediation Program and OFP are ready to assist all affected homeowners.

Having drafted the bill creating Delaware's Mediation Program early last decade, it is heartbreaking to now see our State on the brink of a new foreclosure crisis. But I am comforted by the fact that the Mediation Program is up to the task of preventing unnecessary foreclosures. When foreclosure mediations resume, homeowners will be promptly scheduled for mediation dates throughout the State, and borrowers will have the opportunity to have a meaningful conversation with their lender/servicer before the judicial foreclosure proceeds. Increasing participation and success rates of the Mediation Program will save many more Delaware homeowners from unnecessary foreclosures, increase the stability of our neighborhoods, and improve the housing market in Delaware.

Respectfully,

A handwritten signature in blue ink, appearing to read "Owen Lefkon". The signature is fluid and cursive, with a large initial "O" and "L".

Owen P. Lefkon, Director
Fraud and Consumer Protection Division
Delaware Department of Justice

cc: Hon. John C. Carney, Jr.
Hon. Thomas R. Carper
Hon. Christopher A. Coons
Hon. Lisa Blunt Rochester
Sec. Anas Ben Addi