

KATHLEEN JENNINGS
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
NEW CASTLE COUNTY
820 NORTH FRENCH STREET
WILMINGTON, DELAWARE 19801

CIVIL DIVISION (302) 577-8400
FAX (302) 577-6630
CRIMINAL DIVISION (302) 577-8500
FAX (302) 577-2496
FRAUD DIVISION (302) 577-8600
FAX (302) 577-6499

January 25, 2021

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

The Honorable David P. Sokola
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 – Third Quarter 2020

Dear President Judge Jurden, President Pro Tempore Sokola 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 Third Quarter Report for 2020. The Mediation Program continued all mediation conferences from March 16, 2020 through August 23, 2020 and all residential foreclosure filings were halted through July 1, 2020. The Mediation Program resumed conferences virtually on August 24, 2020. We continue to conduct all conferences virtually while the COVID-19 Emergency continues. Throughout this Emergency, we have been available to assist homeowners and answer their questions regarding the foreclosure process and the options available to them.

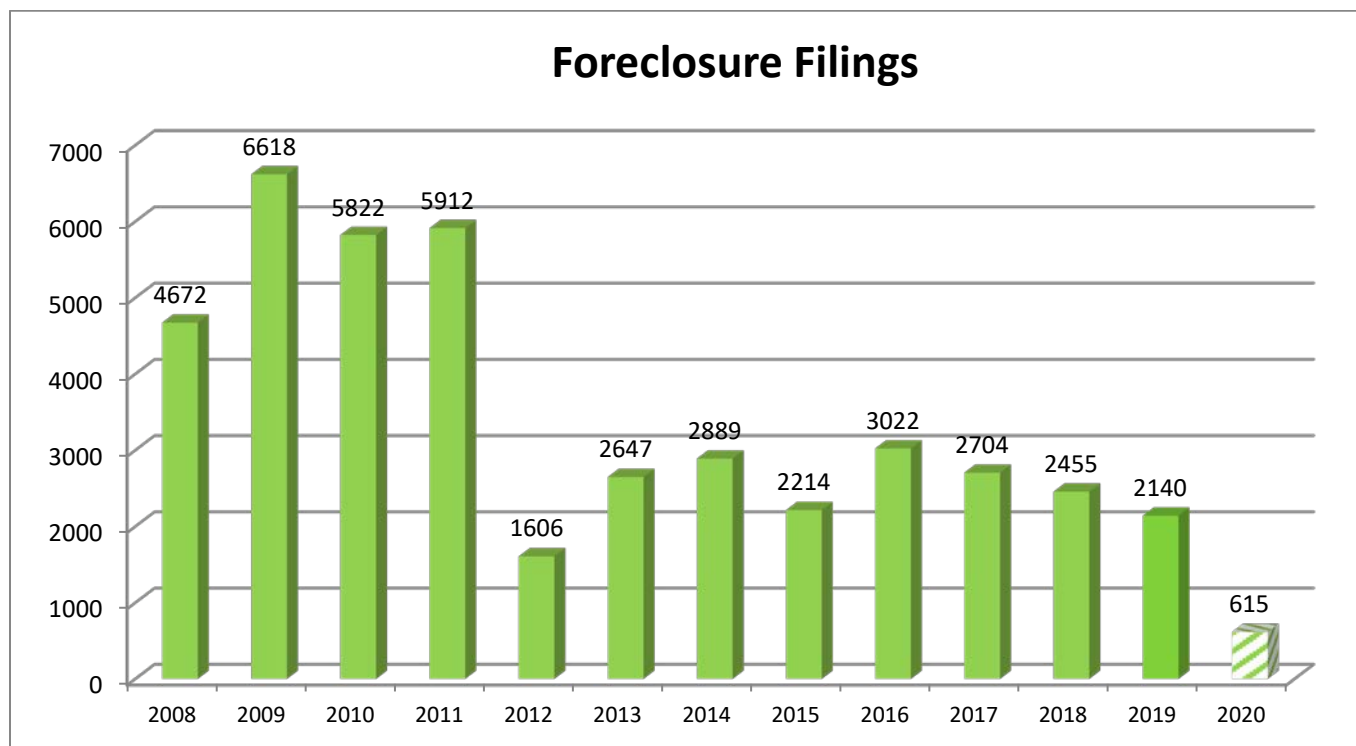
1. Statistical Snap Shot

During the Third Quarter of 2020, 22 eligible foreclosure actions were filed with the Superior Court as well as 358 Mediation Scheduling Notices and 14 Certificates of Participation. Cumulatively

since 2012, 14,348 eligible foreclosure actions have been filed, with a **54.64% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **61.24%** 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

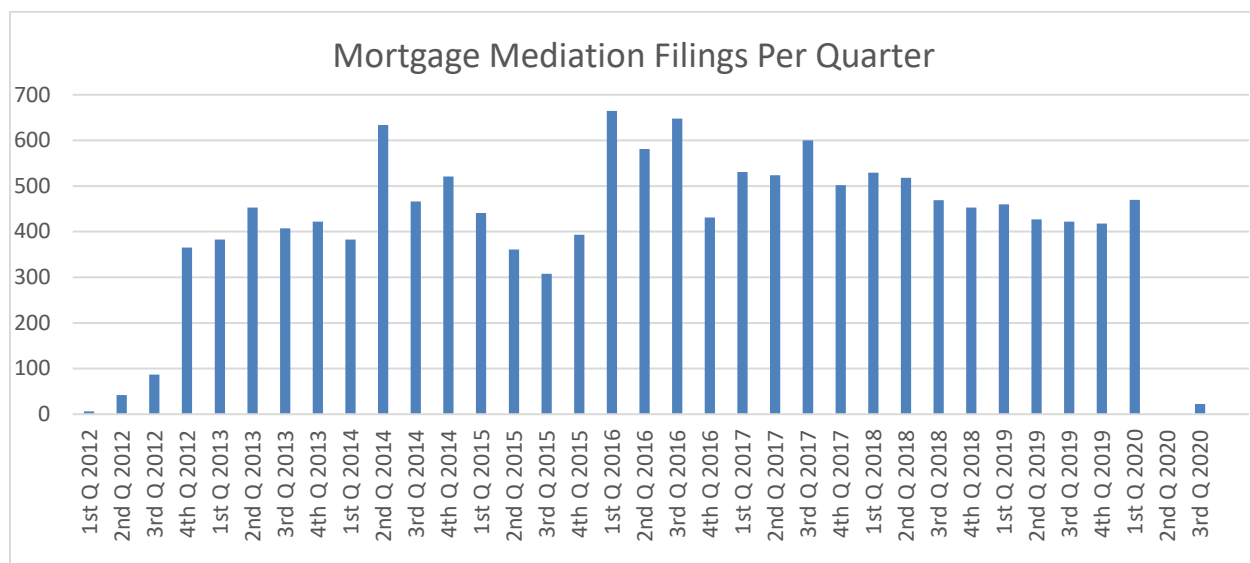
Between January 19, 2012 and September 30, 2020, there have been a total of 20,152 foreclosure filings statewide with 14,348 of those cases, or 71.20%, eligible for the Mediation Program.² Most

¹ This data is compiled through September 30, 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

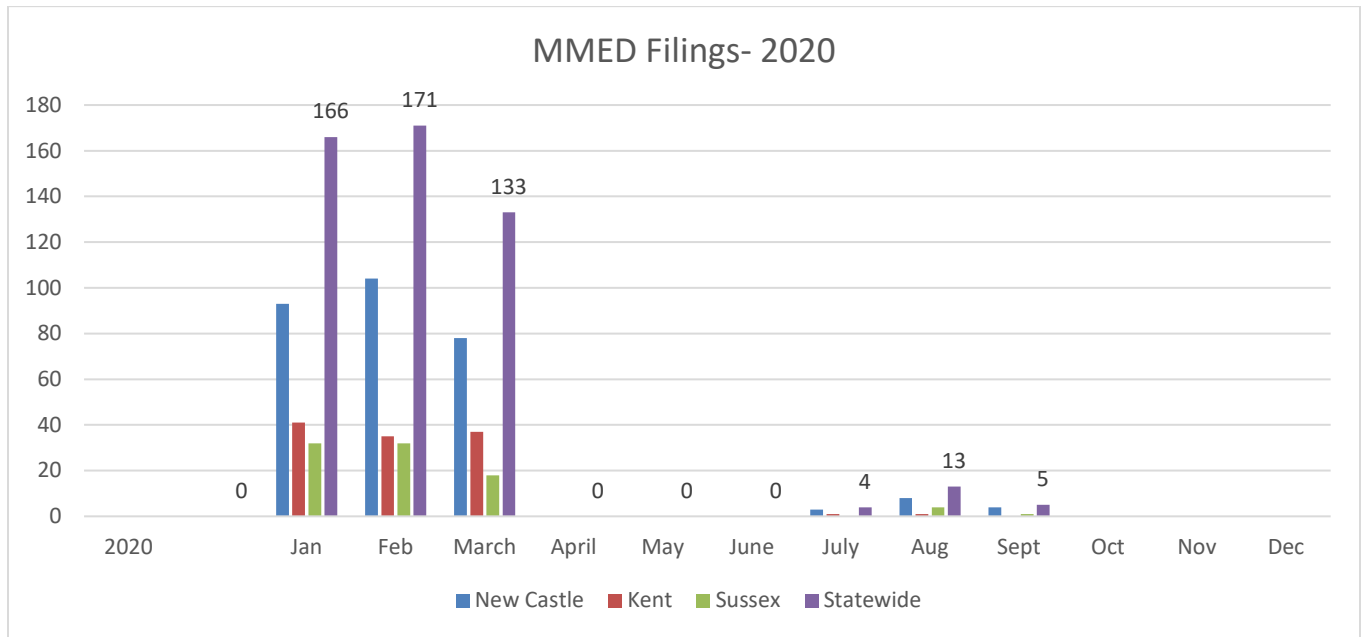
recently, in 2019, there were 1,727 eligible filings with an average of 432 filings per quarter. In the first quarter of 2020, there were 470 eligible filings. With the inception of the Emergency Order, all residential foreclosure filings halted. In the 3rd Quarter of 2020, there were 58 foreclosure filings, 22 were mediation eligible. This compares with an average of 434 eligible filings per quarter since the Program’s inception in 2012. The number of eligible foreclosure filings remain low due to the extension of Federal Foreclosure Moratoriums and forbearance programs.

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



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- 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%, Q4 2019-70.92% and Q1 2020 71.20%.

The following chart demonstrates the number of foreclosures filed in each county from July 1, 2020 through September 30, 2020. New Castle County continues to have the highest number of filings while Kent and Sussex are about the same. 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. The Twenty-Third Modification to the State of Emergency Order lifted the moratorium on foreclosure filings on July 1, 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. With the resumption of mediations virtually, we can schedule up to 16 conferences per day for each lender’s counsel. We can accommodate up to 64 conferences per day. We schedule conferences each half hour and space the conferences by counsel and housing counselor. This has eliminated the occasionally lengthy waits for some homeowners but has increased the length of the mediation day for counsel with larger volumes, the mediator, and staff. In the Third Quarter of 2020, we hosted 7 mediation days. For the August 2020 mediation conferences, we focused on scheduling those homeowners who were working with a housing counselor and for whom we had an email address or telephone number to advise them of the conference in addition to mailing.

Hon. Jan R. Jurden
Hon. David P. Sokola
Hon. Peter C. Schwartzkopf
January 25, 2021
Page 5 of 8

New Castle County averaged 45 mediations per conference day, Kent averaged 24 mediations and Sussex averaged 31 mediations per conference day during the Third Quarter of 2020.³ We are continuing to hold mediation conferences virtually in 2021 and expect to continue to do so through the Spring of 2021. Homeowners are continuing to participate in the mediation program with the virtual format. We have revised our scheduling letter to include tips for using Zoom and our office has guided numerous homeowners through the process. Those homeowners who do not have access to a computer or smart phone are able to call in to the conference. Many housing counselors have also participated in conferences with the homeowner on speaker phone while the housing counselor is connected virtually. The virtual conferences have allowed homeowners to continue to pursue loss mitigation while remaining safe from possible exposure to COVID-19.

During the Third Quarter of 2020, 358 Mediation Scheduling Notices and 14 Certificates of Participation were filed with the Superior Court. Overall, the Mediation Program has a **54.64% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **61.24%** have either achieved a non-foreclosure resolution or remain in mediation and continue loss mitigation negotiations with their lender/servicer.⁴ The remaining 38.76% 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.⁵ 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 September 30, 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.⁶ 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.

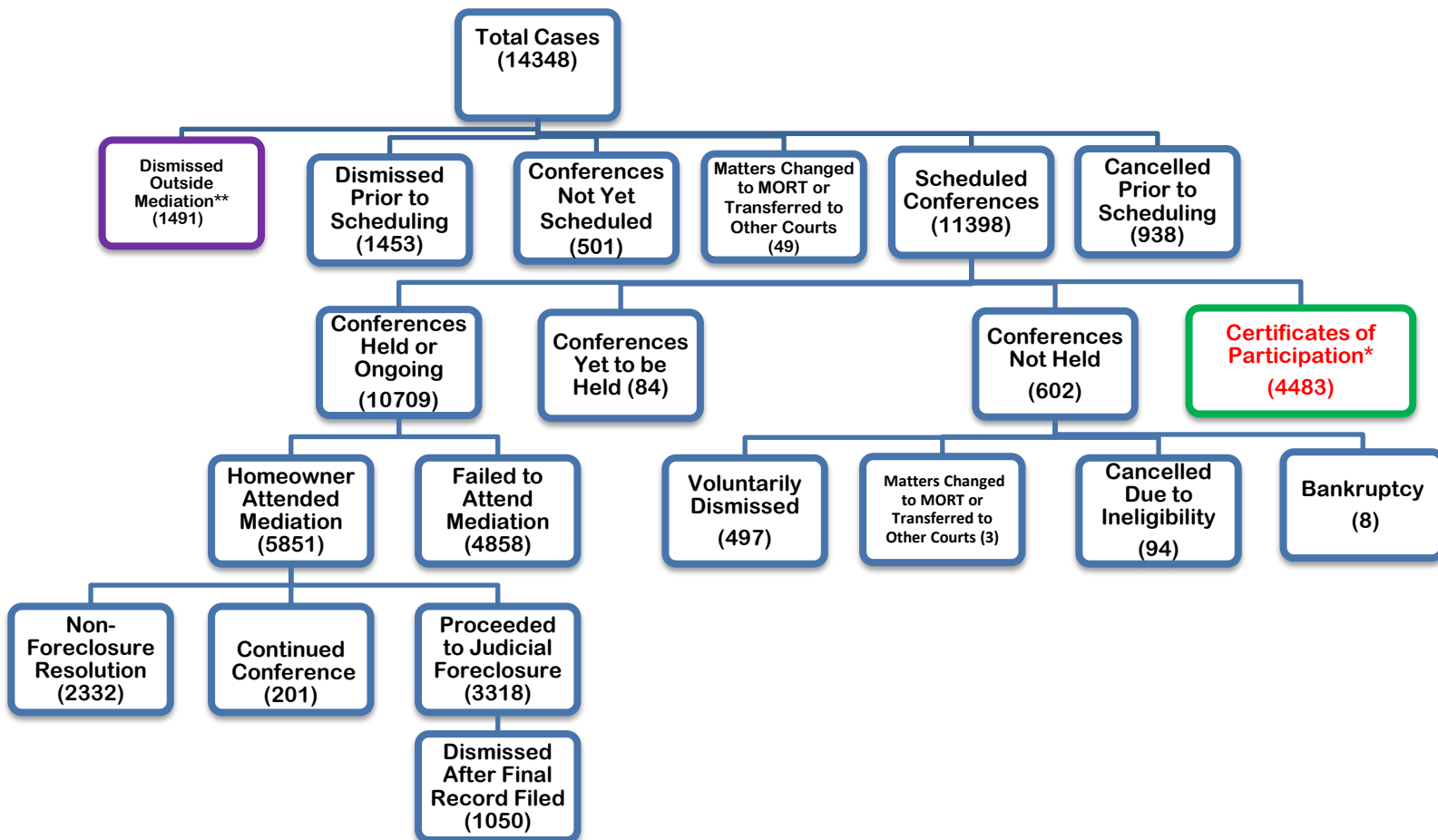
³ Average of mediations scheduled per day from August 24, 2020 through September 30, 2020.

⁴ "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.

⁵ For those 4,858 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.

⁶ 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 September 30, 2020



4. Delinquency Rates and Foreclosure Filings

Delaware’s delinquency rates and percentage of loans in foreclosure remained high in the 3rd Quarter of 2020. As of November 10, 2020, the total percentage of loans past due for Delaware was 7.45% and

the national loans past due rate is 7.60%.⁷ The MBA reported an estimated 3.4 million homeowners in the United States were on forbearance plans as of September 27, 2020.⁸

As of November 10, 2020, Delaware had a seriously delinquent rate of 5.17%, a foreclosure inventory of 0.82%, and total foreclosure starts of 0.04%.⁹ For comparison, the national seriously delinquent rate or 90+ Day Delinquency Rate is 5.16%.¹⁰ The national non-seasonally adjusted foreclosure inventory is 0.59% and the national non-seasonally adjusted foreclosure starts is 0.03%.¹¹ Delaware continues to also rank relatively high among other states in delinquency measures (12th in percent of loans in foreclosure, 14th in foreclosure starts, and 20th in 90+ days delinquent).¹² The number of total past due loans rose from 4.71% in the 3rd Quarter of 2019 to 7.45% in the 3rd Quarter of 2020, a 2.74% increase.¹³

5. Going Forward

While the number of mediation eligible filings was low this quarter, the threat of losing one's home continues to be a painful reality for many Delawareans. 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 rise in mortgage delinquencies. The Mediation Program is ready and able to address this need. 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.

⁷ Mortgage Bankers Association, National Delinquency Survey, Q3 2020(November 10, 2020) at 4.

⁸ Mortgage Bankers Association, Press Release, Q 3 2020 (November 10, 2020) at 2.

⁹ Mortgage Bankers Association, National Delinquency Survey, Q3 2020(November 10, 2020) at 4.

¹⁰ Id.

¹¹ Id.

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

¹³ Mortgage Bankers Association, National Delinquency Survey, Q3 2020(November 10, 2020) at 4.

Hon. Jan R. Jurden
Hon. David P. Sokola
Hon. Peter C. Schwartzkopf
January 25, 2021
Page 8 of 8

The Department of Justice is ready to meet the dramatic increase in demand we expect to occur upon the expiration of the Federal Foreclosure Moratoriums and forbearance programs and the subsequent rise in participation in the Mediation 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 black ink, appearing to read "Owen P. 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