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February 21, 2023

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 2022

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

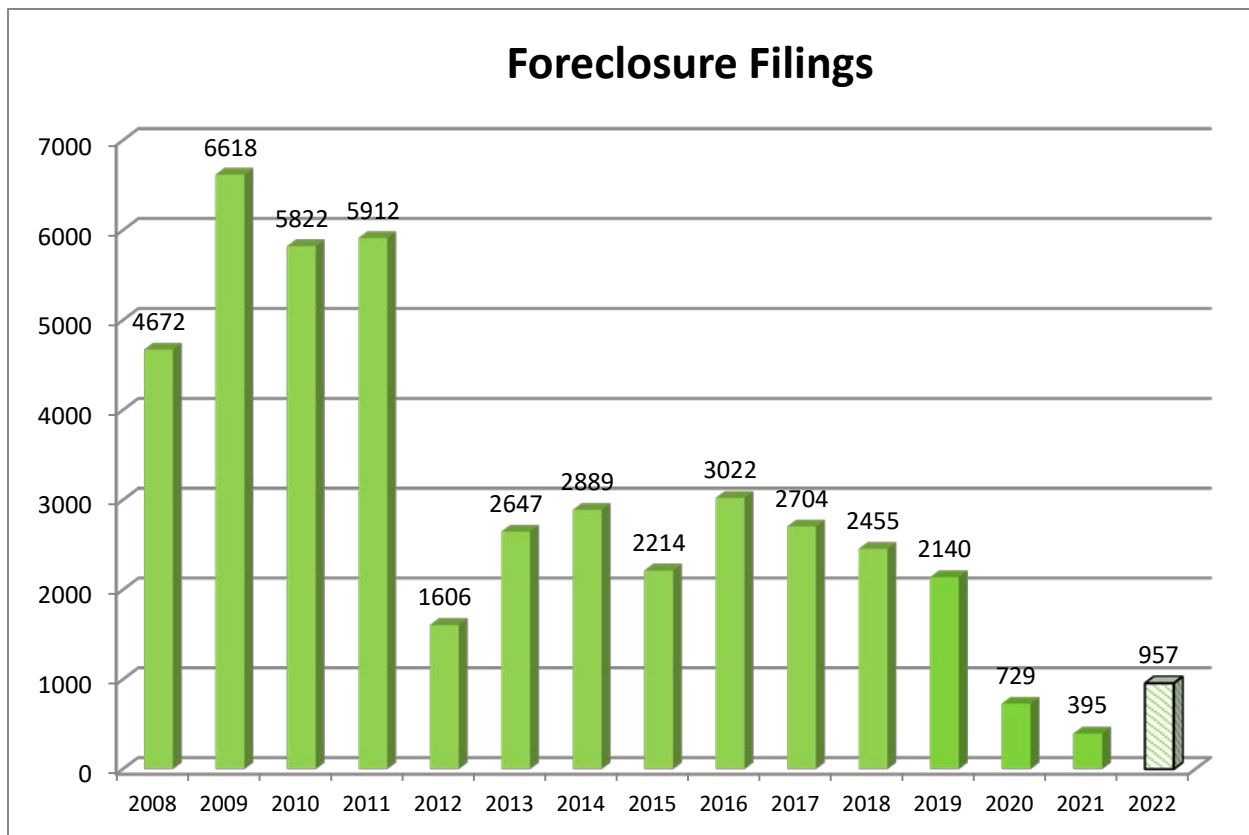
As the delegee of the Superior Court under 10 *Del. C.* § 5062C(t), the Department of Justice is required to periodically report relevant statistics about the proceedings of the Mediation Program. This letter serves as the Third Quarter Report for 2022. We continue to conduct all conferences virtually both for the convenience and privacy of homeowners and to avoid unnecessary in person gatherings due to COVID-19. Throughout the pandemic, we have been available to assist homeowners and answer their questions regarding the foreclosure process and the options available to them. The Federal Foreclosure Moratorium ended on July 31, 2021 and FHA extended the Eviction Moratorium for Foreclosed loans through September 30, 2021. The Consumer Financial Protection Bureau's additional servicing rule expired on January 1, 2022. The last nine months have seen an increase in foreclosure filings with the end of the Moratorium and CFPB regulations.

### 1. Statistical Snap Shot

During the Third Quarter of 2022, 289 eligible foreclosure actions were filed with the Superior Court as well as 231 Mediation Scheduling Notices and 63 Certificates of Participation. Cumulatively since 2012, 15,398 eligible foreclosure actions have been filed, with a **54.84% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **63.82%** 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>

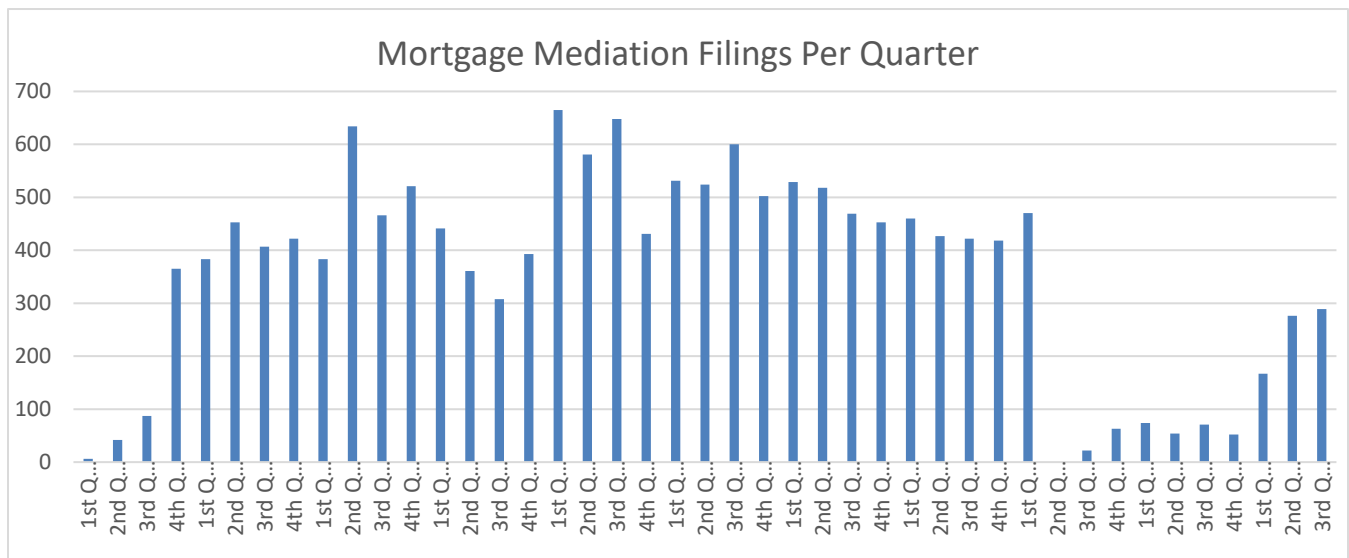
The following chart demonstrates the number of foreclosure actions<sup>1</sup> filed statewide in the calendar years indicated.



<sup>1</sup> This data is compiled through September 30, 2022. Additional information by county and case type is available on the Department of Justice’s website: <http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>

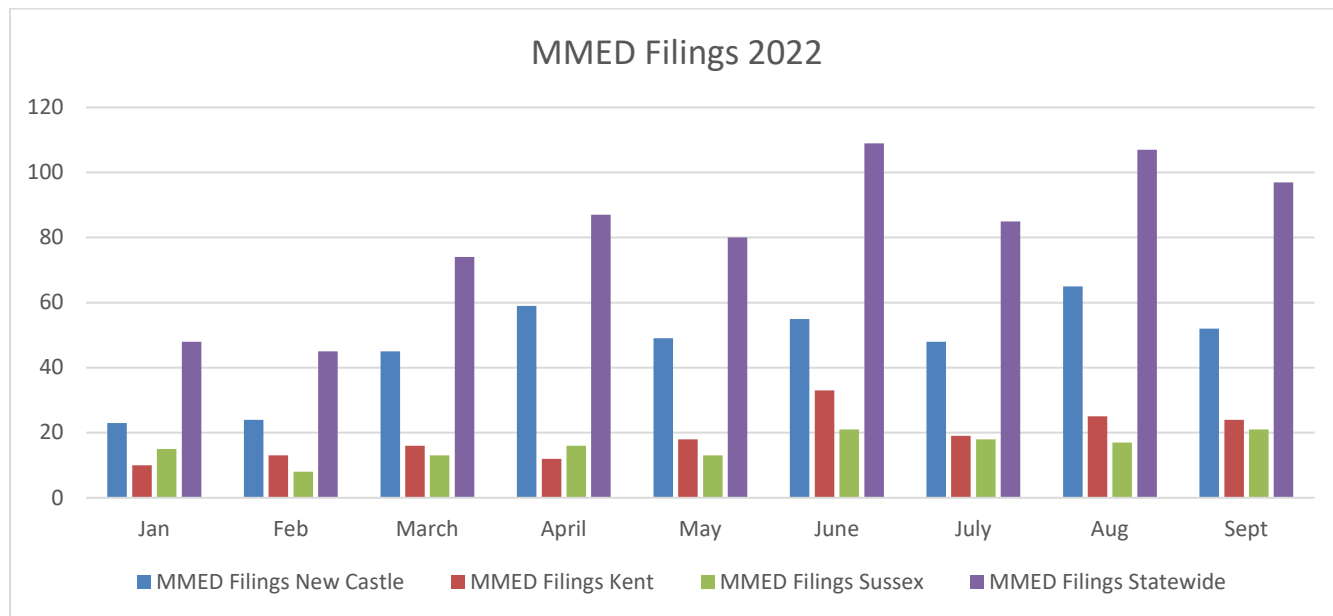
**2. Foreclosure Filings Since Inception of the Mediation Program**

Between January 19, 2012 and September 30, 2022, there have been a total of 21,600 foreclosure filings statewide with 15,398 of those cases, or 71.29%, eligible for the Mediation Program.<sup>2</sup> In 2019 and the First Quarter of 2020, there were an average of 439 filings per quarter. With the inception of the Emergency Order, all residential foreclosure filings halted and there were no eligible foreclosure filings in the Second Quarter of 2020. In the last two Quarters of 2020, there were an average of 76 filings per quarter, of which 43 were mediation eligible. In 2021, there were an average of 99 foreclosure filings per quarter, 63 were mediation eligible. In 2022, 957 foreclosure actions have been filed and 732 were mediation eligible. During the Third Quarter of 2022, a total of 359 foreclosure actions have been filed and 289 were mediation eligible. The number of eligible foreclosure filings has continued to increase this year with the expiration of the Consumer Financial Protection Bureau rule. The below chart demonstrates the number of mediation-eligible filings per quarter since 2012.



The next chart demonstrates the number of mediation eligible foreclosures filed in each county from January 1, 2022 through September 30, 2022. New Castle County continues to have the highest number of filings while Kent is slightly higher than Sussex County.

<sup>2</sup> Historically, the percentage of mediation-eligible foreclosure actions in Superior Court have been as follows: Q2-Q3 2012-26.2%; 2013- 64.03%; 2014- 68.23%; 2015-66.47%; 2016-63.22%; 2017-66.31%; 2018-69.06%; 2019-70.48%; Q1 2020-71.20%, Q3 2020-71.20%, Q4 2020-71.15%, Q1 2021-71.12%, Q2 2021-71.07%, Q3 2021-71.03%, Q4 2021-71.01%, Q1-Q2 2022-71.13%.



### **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. Prior to the pandemic, 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 accommodate up to 64 conferences per day with each lender’s counsel holding up to 16 conferences per day. Conferences are scheduled each half hour and the conferences are spaced by counsel and housing counselor. This has eliminated the occasionally lengthy waits for some homeowners. We are able to accommodate homeowners work and childcare schedules and they are able to participate on breaks and do not need to travel to conferences. We are also able to accommodate homeowners attendance on another county’s mediation day since all are virtual. We continue to host four mediation days per month. We are still able to accommodate mediation scheduling requests and schedule initial conferences within 45 to 75 days of completion of service.

New Castle County averaged 34 mediations per conference day, Kent County averaged 24 mediations and Sussex County averaged 18 mediations per conference day during the Third Quarter of 2022. We expect to continue to hold mediation conferences virtually for the foreseeable future. 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

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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. Many have expressed a preference for the virtual format as it eliminates travel time and taking time off from work. The virtual conferences are also private, and homeowners are not discussing their financial details in a large room with multiple other homeowners.

During the Third Quarter of 2022, we filed 231 Mediation Scheduling Notices and 63 Certificates of Participation were filed with the Superior Court. Overall, the Mediation Program has a **54.84% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **63.82%** have either achieved a non-foreclosure resolution or remain in mediation and continue loss mitigation negotiations with their lender/servicer.<sup>3</sup> The remaining **36.18%** 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.<sup>4</sup> 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, 2022. 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.<sup>5</sup>

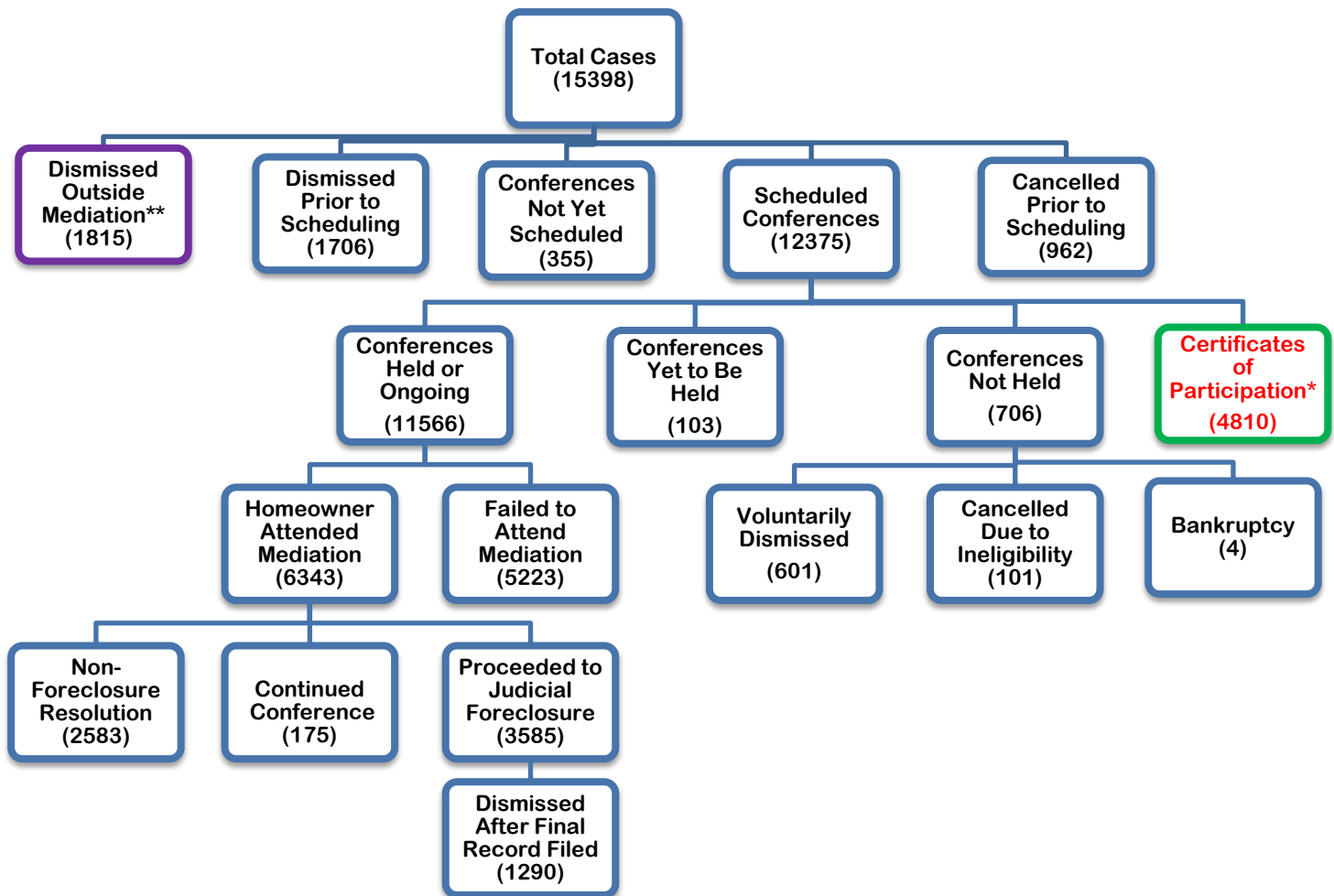
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<sup>3</sup> “Successful mediation” is defined as any conference where the homeowner achieves a non-foreclosure resolution to avoid a Sheriff’s Sale of the property, or where the parties remain engaged in negotiations and the homeowner is granted a subsequent mediation conference date.

<sup>4</sup> For those 5,163 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.

<sup>5</sup> 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, 2022**



We have also examined the participation rate for the Program for those matters filed since July, 2020. The current participation rate for these matters is **58.68%** and the success rate for those who participate is **73.83%**. These numbers demonstrate that the participation rate for virtual mediations remains as high as the rate for in-person mediations.<sup>6</sup>

<sup>6</sup> A detailed overview of the July 2020 through June 2022 participation numbers is available on the Department of Justice’s website. <http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>.

#### **4. Delinquency Rates and Foreclosure Filings**

Delaware's delinquency rates and percentage of loans in foreclosure continue to track with the national numbers or slightly higher. For the Third Quarter of 2022, the total percentage of loans past due for Delaware was 3.98% and the national loans past due rate is 3.59%.<sup>7</sup>

For the Third Quarter of 2022, Delaware had a seriously delinquent rate of 2.24%, a foreclosure inventory of 0.70% and total foreclosure starts of 0.16%.<sup>8</sup> For comparison, the national seriously delinquent rate is 1.90%.<sup>9</sup> The national non-seasonally adjusted foreclosure inventory was 0.56% and the national non-seasonally adjusted foreclosure starts was 0.15%.<sup>10</sup>

Delaware continued to also rank relatively high among other states in delinquency measures (17th in percent of loans in foreclosure, 23rd in foreclosure starts, and 20<sup>th</sup> in 90+ days delinquent).<sup>11</sup>

The percentage of loans in foreclosure in Delaware decreased 4 basis points from the First Quarter of 2022 and the 90 + day delinquency rate decreased 18 basis points from previous quarter. In the Fourth Quarter of 2019, the total number of loans past due was 4.77%, this Quarter, the total number of loans past due is 3.98%.<sup>12</sup>

#### **5. Going Forward**

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 Mediation Program continues to serve as a resource to explain the foreclosure process, provide education and resources to homeowners who are facing the painful threat of losing their home.

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. OFP has continued to reach out to homeowners and provide resources and

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<sup>7</sup> Mortgage Bankers Association, National Delinquency Survey, Q3 2022 (November 10, 2022) at 4.

<sup>8</sup> Mortgage Bankers Association, National Delinquency Survey, Q3 2022 (November 10, 2022) at 4.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Mortgage Bankers Association, National Delinquency Survey Briefing Materials, Q3 2022 (November 10, 2022) at 16-22.

<sup>12</sup> Mortgage Bankers Association, National Delinquency Survey, Q3 2022 (November 10, 2022) at 4.

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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 meeting the increase in foreclosure filings that began in the Winter of 2022 and has continued into 2023. The COVID-19 crisis and ensuing economic consequences has 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 continue to see how many Delaware homeowners are facing foreclosure. But I am comforted by the fact that the Mediation Program is up to the task of preventing unnecessary foreclosures. DOJ stands ready and able willing to help ensure borrowers 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", is centered on the page.

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. Eugene R. Young, Jr.