

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

131st Legislature

February 10, 2023

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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 over the past 12 years.

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 for resolution of the case. Detailed mediator’s reports to the court lay out the parties’ agreements and next steps. Mediator’s reports provide a basis for accountability for promises and obligations agreed to in mediation. Frequently, the result of mediation 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. In the second half of 2021, as courts gradually resumed FDP activity, 148 FDP mediation sessions were conducted statewide. By mid-2022, all courts that host FDP events had resumed mediation activity; the FDP provided 575 mediation sessions in 361 cases in 2022. The FDP anticipates both of these numbers to increase with the FDP being fully operational statewide throughout 2023.

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 2022, 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. FDP mediation is conducted in eleven courthouses throughout the eight judicial regions. To be eligible for FDP mediation, a case must involve an owner-occupied primary residence of no more than four units, and in all eligible cases lenders must attach to the front of the foreclosure complaint a form answer that includes notice of mediation.² Upon the request of a homeowner,³ the case is assigned to the FDP. Requests must be in writing and submitted to the court. Homeowners may use the form answer or other written request or appearance in the case. 14 M.R.S. § 6321-A(6); M.R.Civ.P. 93(c)(1). If the court in which the case is filed does not host the FDP, the case is temporarily transferred to the regional FDP host court for mediation.

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. There were 96 Information Sessions provided statewide in 2022.

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 helps parties explore their options and plan next steps. 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
- Liquidation options – sale and payoff, or transfer of the property to the lender.

² 14 M.R.S. § 6321-A(2).

³ On occasion, 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, pursuant to 14 M.R.S § 6321-A.

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. The Mediator's Report

After each session, the mediator submits a "Mediator's Report" to the court with copies to parties. This report creates a record of agreements and timelines and provides a basis for holding parties accountable in the mediation process.

E. FDP Staffing

FDP positions in the court are funded by a fee imposed on each foreclosure case filed.⁴ Designated FDP staff positions are: Program Manager, Administrative/Data Assistant, and three full-time foreclosure clerks in the courts. However, the FDP's current funding levels can only accommodate a Program Manager and Administrative/Data Assistant. If foreclosure filings increase as interest rates continue to rise and funding can be improved, it is possible that the FDP will reinstate the court clerk positions that have remained vacant as a result of the profound effect of the pandemic on the number of foreclosure filings.

F. FDP Mediators

Mediators in the FDP are independent contractors experienced in the fields of mediation, real estate, law, and foreclosure. The roster of 16 mediators has continued to hone mediating skills, follow developments in federal and state foreclosure regulation and relief measures, and learn and improve their ability to use the technology required for remote mediation. Courts have continued to grapple with variable COVID-19 infection rates, and the resulting challenges to provide mediation in a well-ventilated safe space, along with the continuing backlog of cases. FDP mediation is held either remotely or in-person, depending on each FDP court's physical facility, the availability of marshals, regional internet bandwidth, and the accessibility of the courthouse to the parties involved. In addition, litigants unable to attend mediation in the format on their scheduling notice are invited to file a "Motion for Alternative Format" to ask the court to provide mediation in a different format.

In 2022, the FDP instituted a new practice of conducting meetings each month via Zoom. Mediators attend with questions and reports "from the field" about current issues and scenarios they face. Foreclosure attorneys have spoken at these informal meetings about a variety of issues and programs related to foreclosure mediation. One such program that has had a significant and positive effect on foreclosure mediation is the Maine Homeowner Assistance Fund (the "Maine HAF"). This federal relief program for homeowners who have been affected financially by COVID-19 and are at risk of foreclosure or loss of services, can provide financial relief up to \$25,000 per eligible household, and is administered by the Maine Bureau of Consumer Credit Protection. Applying for Maine HAF assistance has been a viable option in many mediation sessions in 2022, and receipt of the funds has certainly prevented foreclosures in certain instances.

⁴ P.L. 2009, ch. 402 § 26.

II. Performance of the Program

A. Foreclosure Filing Activity and Participation Rate in FDP

In 2022, a total of 1,035 new foreclosure cases were filed in Maine courts.⁵ Mediation has been requested in 335 of those cases, reflecting a 32% participation rate. 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.

B. Volume of Mediation and Legal Advice Provided

In 2022, FDP mediators conducted 575 mediation sessions in 361 cases, for an average of 1.6 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 2022, homeowners reported having received legal advice regarding their foreclosure cases in 108 instances. They reported receiving assistance in completing forms for mediation, either from an attorney, a housing counselor, or another professional, in 209 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 mediation. In 2021, The FDP resumed court events by videoconference and in person, depending upon court and clerk capacity, and has been able to continue that process in 2022.

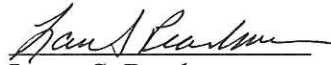
Videoconferencing technology allows parties to attend foreclosure mediation without the challenges and risks involved in travelling to a courthouse and sitting in close quarters talking with others. This format has been welcomed by many litigants, attorneys, and mediators. On the other hand, in-person 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 can facilitate 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 can hear and be heard, and understands the information shared and agreements made. Mediators work to meet these challenges to ensure clear communication between the parties and good faith effort to reach a mutually beneficial resolution. The FDP remains committed to providing excellent foreclosure mediation service in whatever format works best for the participants, the mediators, and the court.

⁵ 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.

III. Conclusion

Foreclosure mediation in Maine continues to be a consistently 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,



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