



# **Attorney General Janet Mills' Foreclosure Report**

**Presented to:**

**The Joint Standing Committee on the Judiciary**

**January, 2014**

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## I. Summary

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As a result of the recession, the subprime mortgage crisis, excessive credit and sometimes fraudulent lending practices, home foreclosures spiked nationally in 2009-2011. Maine's foreclosure rates were slower to accelerate than the rest of the nation at the front end of the crisis but now are slower to recede. Maine has a higher inventory in the foreclosure pipeline than the national average, and foreclosure filings went up instead of down in 2013. The crisis continues in Maine.

Maine is one of 23 states that have a judicial foreclosure process. Judicial action is slower than an administrative process but offers more protections to homeowners. Maine is also one of 26 states that offer mediation to any homeowner who requests it. Mediation helps homeowners and lenders find alternatives to a judgment of foreclosure.

Over the last three years, the median number of days to process a foreclosure has increased from 218 to 381 days, leading to legislative proposals for change. In the spring of 2013, the Joint Standing Committee on the Judiciary had under consideration nine pieces of legislation related to foreclosures. Attorney General Janet T. Mills offered to convene a working group to review the foreclosure process and to report back to the Committee. This report is the result of that work.

In preparing this report, Attorney General Mills conducted more than fifteen meetings with interested parties; hosted two public panel discussions; conducted research and collected information; initiated a web-based forum; and engaged in follow up conversations with homeowners, counselors, attorneys, bankers, regulators and many other stakeholders.

The conclusion is that Maine has all of the elements in place for a good system – housing counseling, mediation, legal protections. There is no need to radically change what is in place. But there are things that can be done to make the system work better.

Much of what needs to be done can be done without legislation by the Judiciary, the Bureau of Consumer Credit Protection, the Attorney General's Office and by lenders. Some modest legislation might facilitate the process, but there is no need for new general fund money.

Eighteen actions are proposed:

### ***For the Attorney General's Office***

- 1. Obtaining funds for the housing counseling programs.*
- 2. Public education for homeowners about counseling options*
- 3. Monitoring and reporting violations of mortgage servicing requirements*

**For the Judicial Branch**

4. *Continuing to track its clearance rate of foreclosure cases, the performance of the foreclosure clerks and the results of the mediation program.*
5. *Implementing successful pilot program procedures in all courts in Maine.*
6. *Expediting uncontested cases involving abandoned properties.*
7. *Training mediators to issue noncompliance reports.*
8. *Improving the training and qualifications of mediators.*

**For Lenders and Servicers**

9. *Giving mediation session participants decision-making authority.*
10. *Using Community Reinvestment Funds to support housing counseling services.*
11. *Providing for Pre-Foreclosure Mediation and Counseling.*
12. *Listing and Maintaining Abandoned and Vacant Properties.*

**For the Legislature**

13. *Amending the real estate transfer tax law to close a loophole and increase funding for counselors.*
14. *Expediting the process for abandoned property in uncontested foreclosures.*
15. *Eliminating unlimited postponements of foreclosure sales involving abandoned properties.*
16. *Shortening the 15-year period for owners of tax-acquired property to receive warranty title.*
17. *Returning half of the proceeds from tax-acquired properties to the former homeowner and, if there is no response from the homeowner, applying the proceeds to the housing counselor program.*
18. *Providing a legal framework for municipalities to enact ordinances creating registries of abandoned or vacant properties.*

The 18 actions proposed above are all manageable and achievable. If implemented, the result will be a direct impact on four principles:

**1. Reduce the number of people who lose their homes to foreclosure**

The most effective strategy for reducing the number of foreclosures is to get help for troubled homeowners early with housing counseling. The proposed reforms identify four actions to increase funding for housing counseling, none of which involve general fund appropriations.

**2. Increase the number of negotiated settlements**

Success in achieving this goal requires a more effective mediation process, which means getting the right people and the right information together for discussion and giving mediators the tools to enforce compliance with the good faith requirement. Three recommendations accomplish this.

**3. Speed up the process, particularly in uncontested cases where the property is abandoned**

The most dramatic single step that anyone can take to speed up the process will be for the court to apply the best practices of its pilot mediation experiences to all of the courts in Maine. In cases where a property is abandoned and the court case is uncontested, the court can expedite cases, and the Legislature can shorten the redemption period.

**4. Protect municipalities and neighborhoods from negative effects of abandoned homes**

There are several recommendations for lender and legislative action to make it easier for municipalities to track vacant and abandoned homes and ensure that they are maintained.

Under the authority of the National Mortgage Settlement and under the statutory and common law responsibilities of the Attorney General, this Office will continue to work with the Judiciary, the Bureau of Consumer Credit Protection and other stakeholders to monitor the foreclosure process, to escalate problem cases, to report any irregularities and violations to the NMS Monitor and to the Legislature and to take any appropriate legal action for violations of law.

## II. Background on Maine's Foreclosure Crisis

The national recession began in December of 2007. The combination of rising unemployment, declining incomes, declining house values, and the automatic increases contained in some adjustable rate mortgages created a housing foreclosure crisis within two years. Shoddy and sometimes illegal lending practices in the early 2000s made the problem worse.

Figure 1 below shows the general movement of the foreclosure crisis over time: first rising delinquencies in 2008, then higher foreclosures in 2009-2011. The delinquency rates have fallen since 2010, but there is still a high rate of foreclosures as the inventory slowly works its way through the process.

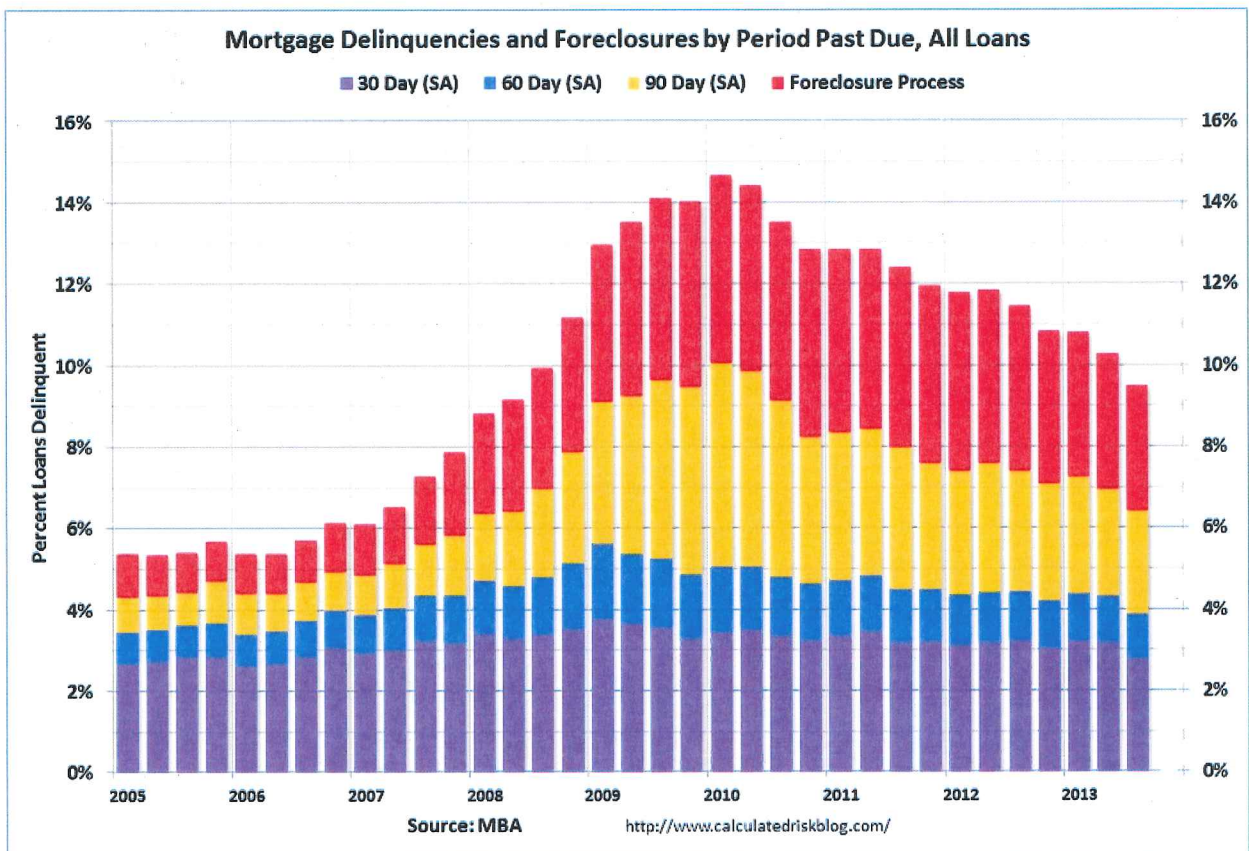
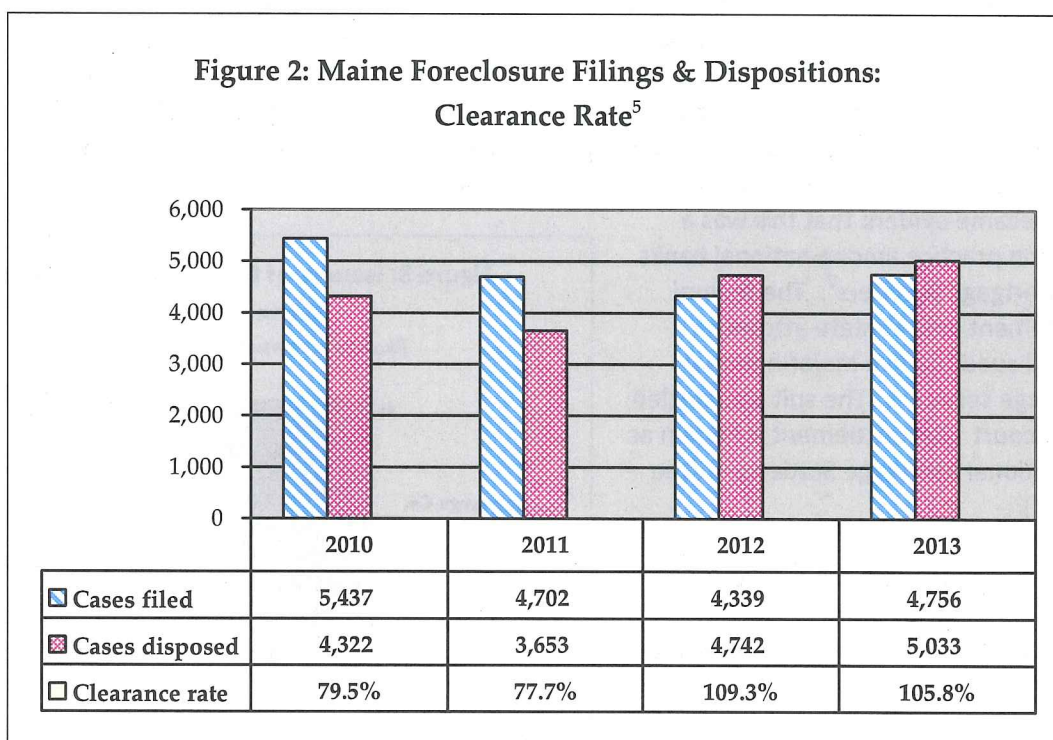


Figure 1: The National Foreclosure Experience

Maine has not been spared. A 2006 report, written before the recession and foreclosure increase, documented high levels of predatory mortgage practices going on in Maine<sup>1</sup>. Reports from the Maine State Housing Authority demonstrated that home values had risen by 70% between 2000 and 2006, while incomes had increased less than 20% -- a formula for future problems.<sup>2</sup>

Maine's foreclosure rates were slower than the nation's to accelerate at the front end of the crisis<sup>3</sup>, but today Maine presents a mixed message on foreclosures. Maine has a higher inventory in the foreclosure process than the national average (4% of all homes with a mortgage in September of 2013, compared to 2.3% for the nation)<sup>4</sup>, and the judicial system is working its way through the inventory. In 2010, when more cases were being filed than being resolved, a backlog grew. By 2012, the courts had more than caught up and cleared more cases than were being filed in 2012 and 2013 (see Figure 2)<sup>5</sup>. However, even as Maine's economy was recovering, foreclosure filings rose again in 2013.

**Figure 2: Maine Foreclosure Filings & Dispositions:  
Clearance Rate<sup>5</sup>**



<sup>1</sup> Dickstein, Thomas, and King; Predatory Mortgages in Maine, a joint report issued by Coastal Enterprises, Inc. and the Center for Responsible Lending; 2006.

<sup>2</sup> See <http://www.mainehousing.org/data/housing-facts>

<sup>3</sup> "Foreclosures in Maine and New England," Kai-yan Lee, Federal Reserve Bank of Boston, July 7, 2010.

<sup>4</sup> CoreLogic National Foreclosure Report, September 2013.

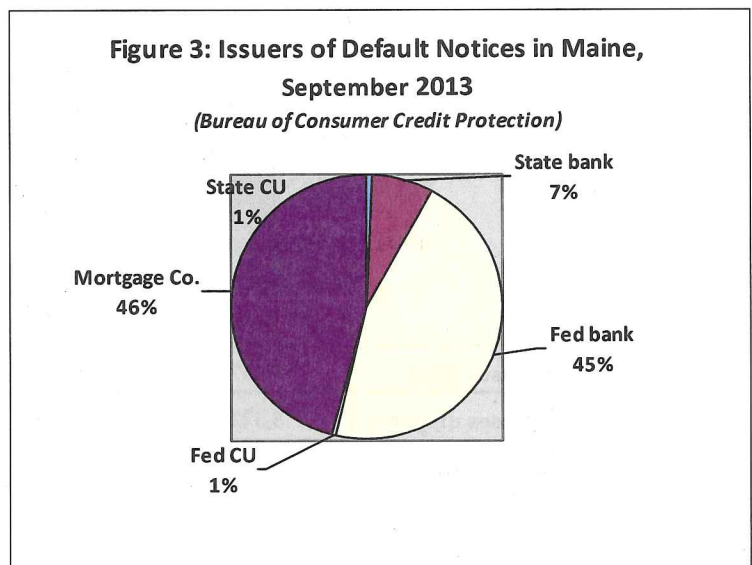
<sup>5</sup> State of Maine Judiciary Foreclosure Data, January 2014, Appendix A.

Different sectors of Maine’s lending industry are impacted differently by the foreclosure problem. Maine’s Bureau of Financial Institutions (BFI), which regulates Maine’s 31 state-chartered banks and credit unions, reported that foreclosure filings decreased in 2013.<sup>6</sup> This figure differs from the overall state experience in 2013 (see Figure 2), but state-chartered banks and credit unions only account for 8% of mortgage defaults (see Figure 3) and 7.5% of foreclosure filings.<sup>7</sup> On the other hand, consistent with overall Maine foreclosure data, initial default notices from all financial institutions in 2013 are expected to exceed all prior years at 44,000, according to Maine’s Bureau of Consumer Credit Protection (BCCP).<sup>8</sup>

Maine is one of 23 states that handle foreclosures through a judicial process. The other 27 states use administrative procedure. The judicial process is slower than an administrative process, but it provides more protection to the homeowner.

It was because Maine had a judicial rather than administrative foreclosure process that the national problem of “robosigning” first came to light. Robosigning is the practice of using automatic signature pens to sign bank foreclosure documents. The signature is supposed to be an assurance that the person signing has read and approved the document. Signing a document without reviewing the contents is a violation of law. The practice was discovered in 2009 by Pine Tree attorney Thomas Cox. Cox was representing a family in Denmark, Maine, who was being foreclosed on by GMAC Mortgage Company. The discovery led to a national scandal, as it soon became evident that this was a common practice among national banks and mortgage servicers<sup>9</sup>. The federal government and 49 state attorneys general sued the five major national mortgage servicers. The suit was settled out of court. The settlement is known as the National Mortgage Settlement (the “NMS”).

The NMS became effective in 2012. Its terms require Ally/GMAC, Bank of America, Citi, JPMorgan Chase, and Wells Fargo to provide:



<sup>6</sup> Maine Bureau of Financial Institutions, Foreclosure Release – November 14, 2013.

<sup>7</sup> BFI November Foreclosure Release: state-chartered banks and credit unions accounted for 325 of the 4,339 foreclosures in 2012, or 7.5%.

<sup>8</sup> Maine Bureau of Consumer Credit Protection, Fifteenth Periodic Report on the Bureau’s Foreclosure Diversion Program, November 21, 2013.

<sup>9</sup> “Servicers” are entities that are responsible for the day-to-day management of mortgage loans on behalf of other entities. ... For example, servicers send bills, collect payments, and keep track of balances.” *Bank of America, N.A. v. Cloutier*, 2013 ME 17, ¶ 6 n.3, 61 A.3d 1242, 1243.



- financial relief to homeowners struggling to stay in their homes;
- refinancing for homeowners whose homes are “under water” (have higher debt than the value of the home);
- enhanced disclosure to ensure that homeowners understand the process and understand the resources available to avoid foreclosure;
- compensation payments to people who had been foreclosed previously with faulty procedures; and
- payments to states to support counseling, mediation, and other foreclosure prevention programs.

In return, the states and federal government agreed to hold the five servicers harmless against suits by the states or federal government for past behavior related to mortgage origination, servicing or foreclosures. Suits by individuals, including class action suits, are not barred by the settlement.

Most foreclosures in Maine are brought by nationally-chartered banks and mortgage service companies (see Figure 3) – therefore many Maine foreclosures already are governed by the procedures laid out in the settlement. Among other things, the NMS requires the five servicers to:

- Provide a “single point of contact” for the homeowner, in order to prevent homeowners from being bounced around different departments of the lender;
- Inform struggling homeowners about options to avoid foreclosure, such as loan modifications or short sales<sup>10</sup>;
- Respond to a loan modification application within 5 days if the information is incomplete, and within 30 days with the answer to a completed application;
- In the case of a denial, send a letter within 10 days providing the reasons for the denial, the data used, and information about appeals; and
- Cease foreclosure activity in many circumstances while reviewing a loan modification (“dual tracking”).

The NMS is overseen by a National Monitor and by a committee of state Attorneys General, and the Monitor issues public reports on the servicers’ performance against 33 metrics. Already the NMS is having effect in Maine. Since 2012, there have been:

- Loan forgiveness, modifications, refinances, and short sales for over 1,000 Maine homeowners, totaling \$58.4 million<sup>11</sup>;

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<sup>10</sup> A “loan modification” is a lowering of the interest rate, extension of the term, or writing down of the mortgage principal, in order to help the homeowner afford to stay in the home. A “short sale” is the sale of the home at a price that is too low to repay the mortgages and liens on the home.

<sup>11</sup> National Mortgage Settlement Monitor, consumer relief between March 1, 2012 and June 30, 2013 ([www.mortgageoversight.com/reports/final-progress-report](http://www.mortgageoversight.com/reports/final-progress-report)).

- Compensation payments to 1,334 foreclosed Maine homeowners, totaling nearly \$2 million<sup>12</sup>; and
- Direct payments to Maine of nearly \$7 million, of which the Attorney General's Office in 2012 distributed \$1 million to the Maine Bureau of Consumer Credit Protection (BCCP) for its housing counselor program; \$500,000 to Pine Tree Legal Services for foreclosure prevention; and \$5.4 million to the General Fund.

Maine is also one of 26 states that mandate a mediation process. The process was set up in 2009 as a result of major legislative reforms and the work of the Maine Supreme Judicial Court's Foreclosure Diversion Commission<sup>13</sup>. The Commission recommended:

- *Making mediation mandatory upon request of the owner of a 1-4 unit family residence;*
- *Encouraging mediation as early in the foreclosure case as is practical after service of the summons and complaint and providing it, upon request, at any time through the sixtieth day of the redemption period.*
- *Mandating the lender's attendance at the mediation by persons authorized to reach agreements concerning modification to the mortgage loan.*

In 2009, the Legislature enacted LD 1418, "An Act to Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures," which codified the mediation and default notice programs. Figure 4 below describes mediation and foreclosures in Maine.

#### Figure 4: The Foreclosure Process In Maine

The lender delivers a **Notice of default** to the homeowner who is delinquent on mortgage payments. The homeowner has 35 days to make any overdue payments.

If the payments are not made, the lender may file a **Complaint** with the court and have the owner served with the **Complaint and Summons, along with loan modification applications to prepare for mediation.**

The **Complaint** states the nature of the default and the balance due and requests a judgment ordering a sale of the property to satisfy the unpaid mortgage debt. The **Summons** includes the location of the court and the time limit for filing a response to the Complaint.

If the owner then files a written **Answer** or **Response** within 20 days and requests mediation, **Mediation** is held. If the owner does not file an answer, the case proceeds to motions and trial. The owner may still request mediation.

The mediation process consists of:

- An **information** session, in which a mediator describes the process, the resources available to the owner, and the document requirements;
- A **first mediation** in which the mediator tries to find a mutually agreeable solution for the owner and lender;
- A **follow-up mediation** if necessary.

Parties are required to mediate in "good faith." When they do not, the mediator may issue a "noncompliance report" to the court, and the court may order sanctions. If the mediation fails to achieve a solution, the case proceeds to motions and trial.

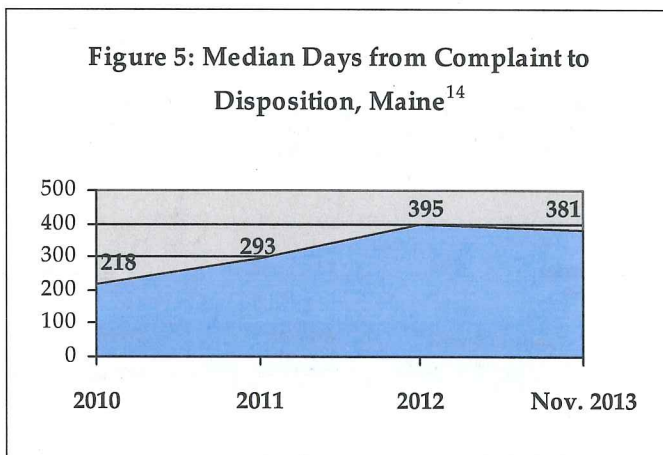
<sup>12</sup> National Mortgage Settlement Administrator, relief through January 29, 2014.

<sup>13</sup> Report of the Judiciary, Foreclosure Diversion Commission, June 8, 2009.

Mediators are hired and trained by Maine’s Judiciary. As of February 2013, there were 32 active mediators. A total of 7,591 cases were mediated from 2010 through June of 2012. Of these cases, 44% were dismissed and did not go to judgment. Although the reasons for most dismissals are not recorded, of those which were documented, 65% resulted in a loan modification which enabled the owner to stay in the home.<sup>14</sup>

While mediation and other reforms have helped Maine homeowners, they have also added time to the foreclosure process. In cases which are not delayed due to bankruptcy filings, the median number of days rose from 2010 to 2012, but declined modestly in 2013 (see Figure 5)<sup>15</sup>.

In 2012, the Judiciary instituted a pilot mediation program in Bangor and Rockland that has the potential to shorten the timeline for mediated cases by 20% (see Figure 6).



The Maine Supreme Judicial Court has issued several decisions clarifying foreclosure procedures. For example, the Court requires that parties seeking foreclosure demonstrate that they have strictly complied with all necessary steps.<sup>16</sup> The Court requires plaintiffs filing motions for summary judgment to provide evidence of proof of ownership and the amount due; and that procedures were strictly followed for the default notice, the complaint and mediation.<sup>17</sup> The Court later clarified that “proof of ownership” means that the plaintiff must “identify the owner or economic beneficiary of the note and, if it is not itself the owner, prove that it has power to enforce the note.”<sup>18</sup>

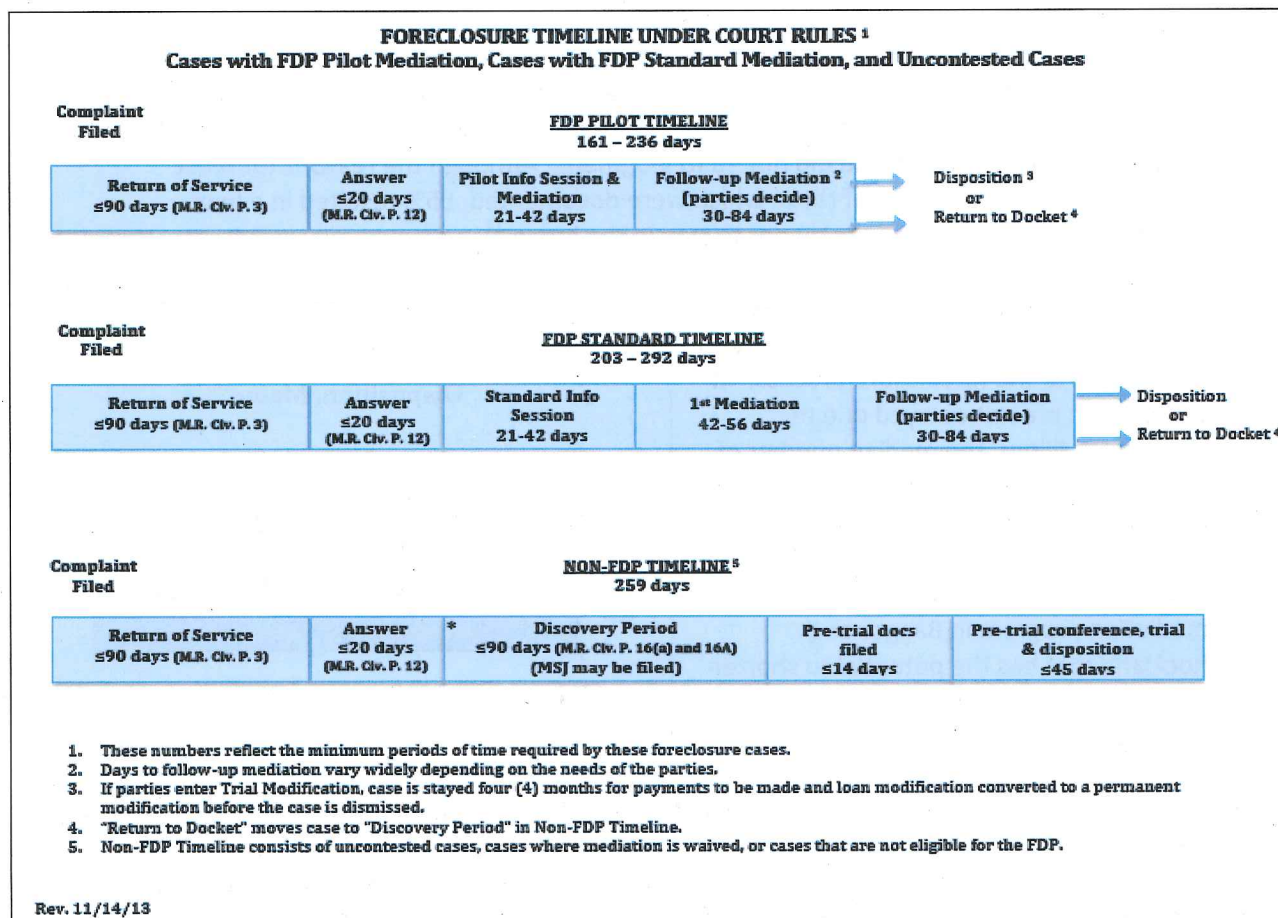
<sup>14</sup> State of Maine Judiciary’s Foreclosure Diversion Program data, September 2013, Appendix A.

<sup>15</sup> State of Maine Judiciary’s Foreclosure Data, November 2013, Appendix A.

<sup>16</sup> *Camden National Bank v. Peterson*, 2008 ME 85, ¶ 21, 948 A.2d 1251, 1257.

<sup>17</sup> *Chase Home Finance LLC v. Higgins*, 2009 ME 136, ¶11, 985 A.2d 508, 510.

<sup>18</sup> *Bank of America, N.A. v. Cloutier*, 2013 ME 17, ¶ 21, 61 A.3d 1242, 1247.



**Figure 6: Timelines for Foreclosure in the Mediation Pilot Program, in the Regular Mediation Program, and in the case of No Mediation<sup>19</sup> (see appendix A for larger version)**

While the National Mortgage Settlement (NMS), the 2009 Maine reform, state court decisions and rules changes have helped Maine homeowners to cope, the foreclosure process remains complicated for a homeowner to navigate. There are many options for helping the owner stay in the home (also known as “loss mitigation”), including loan modification, principal forgiveness, refinancing the loan and forbearance of unpaid amounts; and many other options which may allow the family to leave the home, such as a short sale or a deed-in-lieu of foreclosure, sometimes with a waiver of the deficiency. Loan modifications require detailed financial documents from the homeowner. Many different financial agencies may be involved—a loan owner or investor, which may be a bank or a trust or a governmental entity such as the Maine State Housing Authority or Fannie Mae or Freddie Mac; a loan servicer, which may be another bank or a mortgage service company; and a loan insurer, which may be a governmental agency such as Fannie Mae, Freddie Mac, the Veterans Administration, the U.S. Department of Agriculture and others. It is difficult for a homeowner to successfully navigate the process without help from a housing counselor or an attorney, and most homeowners facing foreclosure do not have the resources to pay for an attorney.

<sup>19</sup> Source: State of Maine Judiciary, Appendix A. “FDP” refers to “Foreclosure Diversion Program.”

Housing counselors are important because they provide non-legal logistical support to homeowners free of charge. The Maine Bureau of Consumer Credit Protection engages housing counselors in nonprofit organizations around the state. In the first three quarters of 2013 alone, counselors took on 1,547 new cases, helped 303 Maine homeowners obtain loan modifications and helped another 98 families stay in their homes through other means.<sup>20</sup>

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<sup>20</sup> Fourteenth Periodic Report on the Bureau's Foreclosure Diversion Program, August 1, 2013 and Fifteenth Periodic Report on the Bureau's Foreclosure Diversion Program, November 21, 2013.

### **III. The Consultation Process**

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In the waning days of the First Regular Session of the 126<sup>th</sup> Legislature, the Joint Standing Committee on the Judiciary was considering nine pieces of legislation<sup>21</sup> related to the foreclosure process in Maine. Attorney General Janet T. Mills, having been a member of the Judiciary's 2009 Foreclosure Diversion Commission, offered to convene a working group to review the foreclosure process and report back to the Committee.<sup>22</sup> The Chairs of the Judiciary Committee accepted the offer and suggested parties to participate in the group.<sup>23</sup>

Attorney General Mills conducted more than fifteen meetings with interested parties and stakeholders; hosted two public panel discussions with representatives from various groups; collected research from state and federal governmental agencies and private sources; initiated a web-based forum to collect documents and share information; and conducted follow up discussions with homeowners, counselors, attorneys, bankers, regulators and others.

The Attorney General met with the following:

- Housing Counselors
- Maine Credit Unions
- Homeowners' Attorneys (Pine Tree Legal, Legal Services for the Elderly, and private bar)
- Maine Bureau of Consumer Credit Protection
- Plaintiffs' Attorneys
- Maine Bankers Association
- CEI (Coastal Enterprises, Inc)
- Members of the Judiciary
- TD Bank
- Bank of America
- Maine Realtors
- Maine State Bar Association, Real Estate & Title Section
- Community Association Institute (Condominiums)
- Maine State Housing Authority
- Citi
- Wells Fargo
- Tranzon Auction Properties
- JPMorgan Chase

The first public panel discussion was held at Portland City Hall. The meeting was attended by more than 50 people and the panel took comments from more than a dozen members of the public.

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<sup>21</sup> LDs 125, 392, 450, 612, 784, 807, 851, 1116, 1389.

<sup>22</sup> Letter from Attorney General Mills to Sen. Valentino and Rep. Priest, May 13, 2013, Appendix B.

<sup>23</sup> Letter from Sen. Valentino and Rep. Priest to Attorney General Mills, May 16, 2013, Appendix B.

<b>Foreclosure Working Group Panel Participants, Portland Meeting – October 10, 2013</b>	
<u>Panelist</u>	<u>Representing</u>
Attorney General Janet T. Mills	Attorney General
Bill Kany, <i>Attorney, Saco &amp; Biddeford Savings</i>	Maine Banker's Association
Andrea Bopp Stark, <i>Molleur Law Office</i>	Defense Attorney
Brian Grip, <i>Bank of America</i>	National Servicer
Denis Culley, <i>Legal Services for the Elderly</i>	Defense Attorney
David Jones, <i>Jensen Baird Gardner &amp; Henry</i>	Plaintiff's Attorney
Jason Thomas, <i>Coastal Enterprises, Inc.</i>	Housing Counselors, Coastal Enterprises, Inc.
Richard Romeo, <i>Mediator</i>	Mediators
Laura Pearlman, <i>Manager, Judiciary's Foreclosure Diversion Program</i>	Judiciary
Will Lund, <i>Superintendent, BCCP</i>	BCCP's Foreclosure Diversion Program
Barbara Berry, <i>Maine Realtors Association</i>	Realtors
Frank D'Allesandro, <i>Pine Tree Legal Assistance</i>	Defense Attorney
Marie Day, <i>Wells Fargo</i>	National Servicer
Jennifer Gordon, <i>York Cty. Community Action</i>	Housing Counselors, CAP Agencies
Ben Marcus, <i>Attorney, Drummond Woodsum</i>	Maine Credit Union League
Frank O'Hara, <i>Meeting Moderator</i>	

Important themes from that meeting:

- **General reaction to Maine's foreclosure process**
  - Maine's Foreclosure Process is well designed and any problems with it may result from inconsistent application of the law. An entire re-write of the statutes is not warranted.
- **Mediation**
  - Mediation is effective and needs to remain a robust part of the foreclosure process.
  - Some mediators apply the rules with differing levels of intensity.
- **Counselors**
  - Housing counselors serve a very important role in helping a homeowner navigate a foreclosure proceeding.
  - When a housing counselor is involved with a homeowner, mediation typically functions more efficiently.
  - Housing counselors face funding issues that limit their availability.
- **Delays**
  - There are unnecessary delays in the foreclosure process, but there was no consensus on who is at fault. There was also disagreement on who benefits from any delay.

- **Abandoned Property**
  - There was consensus that if a property is truly abandoned, there should be a way to expedite the foreclosure. There was no agreement on how to determine if a property is truly abandoned and how to trigger a faster process.
- **Loss Mitigation and Loan Modifications**
  - Homeowner advocates expressed frustration with the difficulty of applying for a loan modification and or the ability to even give up the property through a short sale or a deed-in-lieu. Lender representatives said that this was because the servicer and the loan owner are not always the same, and that obtaining approval from investors and underwriters can be cumbersome because of investor or insurer requirements, such as those of Fannie Mae or Freddie Mac.

The second meeting, held in Room 208 of the Cross State Office Building in Augusta, largely comprised the same people.

<b>Foreclosure Working Group Panel Participants, Augusta Meeting – November 14, 2013</b>	
<u>Panelist</u>	<u>Representing</u>
Attorney General Janet T. Mills	Attorney General
Marcia Hennessey, <i>Bath Savings</i>	Maine Banker's Association
Andrea Bopp Stark, <i>Molleur Law Office</i>	Defense Attorney
Ty Smith, <i>JPMorgan Chase</i>	National Servicer
Denis Culley, <i>Legal Services for the Elderly</i>	Defense Attorney
David Jones, <i>Jensen Baird Gardner &amp; Henry</i>	Plaintiff's Attorney
Jason Thomas, <i>Coastal Enterprises, Inc.</i>	Housing Counselors, CEI
Richard Romeo, <i>Mediator</i>	Mediators
Laura Pearlman, <i>Manager, Judiciary's Foreclosure Diversion Program</i>	Judiciary
Will Lund, <i>Superintendent, BCCP</i>	BCCP's Foreclosure Diversion Program
Barbara Berry, <i>Maine Realtors Association</i>	Realtors
Frank D'Allesandro, <i>Pine Tree Legal Assistance</i>	Defense Attorney
Ben Marcus, <i>Attorney, Drummond Woodsum</i>	Maine Credit Unions League
Jennifer Gordon, <i>York Cty. Community Action</i>	Housing Counselors, CAP Agencies
Frank O'Hara, <i>Meeting Moderator</i>	



Important themes from the second meeting:

- **Data**
  - New data was presented by the Attorney General's Office<sup>24</sup> by Pine Tree Legal Assistance<sup>25</sup> and by the Judiciary (excerpts from the presentation are included in Sections II and IV of this report).
  - By some measures, foreclosures can take over a year and a half; by other measures as little as six months, especially in uncontested cases. There is no standard way to measure the time it takes to complete the foreclosure process, which adds to lack of understanding of the underlying problems.
  - Far and away, the majority of foreclosures in Maine are initiated by national loan servicers, with state-chartered lending institutions comprising about 7.5% of foreclosure filings.
  - Foreclosures initiated by national loan servicing institution generally take longer than those initiated by a state chartered bank or credit union.
- **Mediation and Pre-Mediation**
  - The Foreclosure Mediation Program is effective. If there are shortcomings, they should be ironed out rather than diverting resources elsewhere.
  - New Consumer Financial Protection Bureau (CFPB) rules take effect in January, extending the stay for filing a foreclosure complaint following delinquency from 35 to 120 days. Could this period be used to ramp up pre-foreclosure negotiations? There was concern from homeowner advocates that any process outside the court process would lack sufficient safeguards for homeowners.
  - It would be helpful to give mediators a more objective and more uniform definition of "good faith" in mediation so that they can hold parties accountable and expedite mediation.
- **Abandoned Property**
  - There was general agreement that there must be a way to deal with homes that have been abandoned particularly in cases that are uncontested. Can these cases be expedited? Can lenders be required to maintain these properties and put them back on the market quickly? How can lenders and servicers be encouraged to maintain abandoned properties and avoid community blight?

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<sup>24</sup> Appendix C.

<sup>25</sup> Appendix D.

## IV. Major Issues

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### 1. Delays in the foreclosure process

The Working Group heard that foreclosures in Maine take a long time to complete. However, reliable data on the duration of foreclosures is scarce and often difficult to interpret.

- It is commonly said that the average Maine foreclosure takes 570 days. This statement does not comport with the data reviewed by the Working Group; rather, 570 days is the *maximum* amount of time allowed for a foreclosure process in Maine by Fannie Mae and Freddie Mac before they penalize servicers for delays.<sup>26</sup>
- The median length of foreclosures in 2012 was 404 days. 44% of all cases were disposed of in less than 12 months, 24% took 12-18 months, and 32% took more than 18 months. Of the cases taking more than 18 months, half were uncontested.<sup>27</sup>
- Pine Tree Legal Assistance conducted a random audit of more than 400 foreclosure cases from 2010-2012. It found that an average of 377 days elapsed between the homeowner's default and when the foreclosure complaint was filed. Of the 67 cases with judgments entered, an average of 293 days had elapsed from complaint to judgment. Though the sample size of local banks and local credit union cases was limited (20), it appeared that their cases moved through the process faster than those filed by national servicers.<sup>28</sup>

Many foreclosure cases in Maine take a year and a half or more to process and many of these cases are uncontested. The data also shows long time lapses between a homeowner's default and plaintiff's filing a complaint and that state-chartered financial institutions move their cases faster than national banks. Some suggest that these facts indicate that delays in many cases may be caused by plaintiffs themselves, especially larger national lenders and servicers. Continued tracking of foreclosure cases will help the parties fully understand delays in foreclosures.

As a result of the discussions of the Working Group, the Judiciary is now tracking foreclosure cases specifically and taking steps to move cases to judgment. The Judiciary's foreclosure clerks, who are responsible for reviewing motions for summary judgment, are now returning motions to judges in a matter of weeks. Judges reported that requests for extensions by plaintiffs are

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<sup>26</sup> Freddie Mac Single-Family Seller/Servicer Guide, Exhibit 83, as updated June 1, 2013. <http://www.freddiemac.com/sell/guide/> (last accessed December 19, 2013).

<sup>27</sup> State of Maine Judiciary's Foreclosure Data, November 2013, Appendix A.

<sup>28</sup> Appendix D. Note that there is no single definition of "local banks and credit unions". The Bureau of Financial Institutions ("BFI") regulates and surveys the foreclosure activity of state-chartered banks and credit unions. Both the Maine Bankers Association and the Maine Credit Unions League include members which are state- or nationally-chartered institutions.

common and are filed early and repeatedly, but judges are now scheduling slow-moving cases for trial.

No person was able to identify an ideal length of time for a foreclosure to take. Each case is unique with regard to the characteristics of the loan, the property, the homeowner's issues and history, the responsiveness of the lender, whether the homeowner has a counselor or attorney, and so forth. The ability of Maine's system to handle the unique characteristics of each case may be its strongest feature.

## **2. Connecting homeowners with housing counselors early in the process**

Many homeowners who are struggling to pay their mortgages avoid engaging until late in the foreclosure process. Many people are afraid, facing mounting debts, and are overwhelmed and upset with their situation. Housing counselors can help these homeowners. The Working Group determined that access to HUD-certified housing counselors is the single most important factor in helping homeowners save their homes and in helping foreclosures proceed more smoothly and more efficiently.

The sooner homeowners engage with the lender, a housing counselor and the courts, the better their chances are of saving their home or arranging for a 'soft landing.' Many urged that ways be found to connect homeowners to counselors before the foreclosure filing.

The outreach program created by the Legislature in 2009 and administered by the Bureau of Consumer Credit Protection, on its own and in combination with the Judiciary's Foreclosure Diversion Program, is providing valuable help and information to many homeowners and assisting them in gathering documents and navigating the loan modification process. However, the counselors' caseloads are large, averaging 70 active cases, as reported by the Bureau in its August 1, 2013 quarterly report, and funding for the counseling program is lower than expected.

## **3. Providing documents and loss mitigation options in a timely manner**

The Attorney General and the Working Group heard consistently from housing counselors, attorneys for homeowners and mediators that a significant problem keeping homeowners from successful outcomes and causing substantial delays is the failure of lenders to:

- provide accurate information about the status of mortgage loans;
- provide required loss mitigation forms with foreclosure complaints;
- keep track of and properly accept forms and financial documents submitted by homeowners; and
- participate meaningfully at mediations by having a person present who has the authority to make decisions on behalf of the lender.

As a result, many homeowners who would be eligible for loan modifications and who might avoid foreclosure are often denied modifications, or give up prior to obtaining a modification, or suffer delay and increased interest and fees as they wait for decisions on loan modifications. These problems affect all homeowners, but are hardest to cope with for those homeowners who lack counselors or legal representation. Because the vast majority of homeowners cannot afford an attorney and go through the foreclosure process unrepresented, this problem is especially troublesome.

Although Maine law and the National Mortgage Settlement require a timely and accurate response to loss mitigation applications, many people reported that lenders fail to do so and they urged that mediators report this failure in a consistent and regular way, and that courts provide effective sanctions for noncompliance.

#### **4. Improving the Effectiveness of the Judiciary's Mediation Program**

The Working Group and the Attorney General heard consistently that the mediation program is very effective. The Judiciary's Foreclosure Diversion Program reports that mediators have helped more than 2,000 Maine homeowners avoid foreclosure between 2010 and 2013. Mediation has significantly improved communications between homeowners, lenders and the program is well managed, the staff is always working to improve the program's performance and mediators are very committed to their work.

Suggestions to improve the program include enforcing requirements pertaining to loss mitigation; enhancing the consistency, qualifications, and training of mediators; and tracking mediation outcomes.

#### **5. Abandoned Property**

Properties that are abandoned soon lose value as a result of vandalism, theft and neglect. Many participants suggested that foreclosure cases which are (1) unopposed, and (2) involve abandoned property should have a separate fast-track judicial process.

The challenge is how to determine when a property is "abandoned." A health crisis or estate complications may cause an owner to be absent for an extended period. Tenants often remain in properties that have been abandoned by landlords. A system for determining whether a property is abandoned must be constructed carefully.

Abandoned properties, including those in which the lender has taken title back, affect neighborhoods as well. Abandonment can lead to blight and crime, diminishing the value of surrounding homes. Municipalities lose tax revenue and incur increased costs from police, fire, and other services.

The Maine Municipal Association conducted a survey of its members to clarify municipal concerns with abandoned property.<sup>29</sup> Municipal officials reported difficulty in establishing contact with a lender that is foreclosing on a vacant property or convincing the lender to secure and maintain the property. Some municipalities, such as Bangor, have enacted local ordinances creating registries of abandoned properties. To the extent such ordinances impose fees or other obligations upon entities such as Fannie Mae or Freddie Mac, they may be subject to a court challenge.<sup>30</sup>

## **6. National efforts which impact Maine's foreclosure process**

### **A. New U.S. Consumer Financial Protection Bureau (CFPB) rules**

New CFPB regulations, effective January 14, 2014, specify the notices and information which lenders and servicers must provide to homeowners. These requirements are similar to those of the National Mortgage Settlement, in effect for over a year for five national servicers. The new regulations are designed to improve communication between a lender and a homeowner regarding ways to avoid foreclosure and to provide consumer protections against mistakes, negligence or fraud by a lender or servicer.

One of the new CFPB regulations, called the "120-day rule", prohibits a lender or servicer from filing a foreclosure complaint until the homeowner is more than 120 days delinquent.<sup>31</sup> This is a longer time than that required by Maine law, which is 35 days from the notice of default. Lenders and servicers expressed concern that the notice of default could not be sent until the 120-day period had expired because the default notice is required as part of a plaintiff's foreclosure complaint, adding the 35-day period to the 120-day period. A clarification issued by the CFPB in October 2013 indicates that default notices like Maine's may be filed during the 120-day period.

### **B. Settlements with Lenders and Servicers**

Beyond the National Mortgage Settlement, there are other cases and settlements with industry participants, such as the JPMorgan Chase settlement with the federal government last year and the recent Ocwen settlement with the state Attorneys General. The Attorney General continues to participate in such efforts in order to secure additional protections and restitution for Maine homeowners.

### **C. The Federal Housing Finance Agency (FHFA)**

FHFA is the federal conservator of Fannie Mae and Freddie Mac, the guarantors and owners of many, and possibly most, mortgages in Maine. Because they are federal entities, the FHFA,

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<sup>29</sup>See Appendix E.

<sup>30</sup>*Federal Housing Financing Agency v. City of Chicago*, 2013 WL 4505413 (N.D. Illinois).

<sup>31</sup>During the 120-day period, the regulations require reaching out to the homeowner with loss mitigation options to avoid foreclosure by phone before the 36th day of delinquency, and by letter by the 45th day.

Fannie Mae and Freddie Mac take the position that they cannot be required to pay transfer taxes or municipal fees related to abandoned property. Representatives of lenders also warned that the FHFA is planning to make mortgages more expensive in Maine and other states because of the length of those states' foreclosure processes. FHFA did recently propose raising certain fees (guarantee fees or "g-fees") for new mortgages in states in which foreclosure takes significantly longer than the national average, starting with New York, Florida, New Jersey and Connecticut. Reports indicated Maine was in the next group and might see an increase soon.

The U.S. Senate confirmed U.S. Representative Mel Watts in 2013 as the new Director of the FHFA. Director Watts announced on January 8, 2014 that he is delaying implementation of the g-fee changes so that he may evaluate them.<sup>32</sup>

#### D. The Uniform Law Commission

The national Uniform Law Commission began work in 2012 to develop a uniform foreclosure procedures law that could be implemented in all states.<sup>33</sup> Its most recent draft was released in November 2013 along with memoranda of issues and subjects for upcoming meetings. Reports indicate that the Commission's work is slowing down and that the Commission is not likely to circulate a new draft in the next several months. The work product of this Commission, when completed, may form the template for legislation down the road.

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<sup>32</sup> "FHFA Directs Fannie Mae and Freddie Mac To Delay Guarantee Fee Changes", FHFA press release, January 8, 2014 (<http://www.fhfa.gov/webfiles/25937/GFeeDelay010814.pdf>, last accessed 1/18/2014).

<sup>33</sup> <http://www.uniformlaws.org/Committee.aspx?title=Home%20Foreclosure%20Procedures%20Act>.

## V. Recommendations and Actions

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The recommendations are based on **two principles**:

1. Maine has all of the elements in place for a good system – counseling, mediation, legal protections. There is no need to radically change what is in place. But there is much that can be done to make the system work better.
2. Much of what needs to be done can be done without changes to the law by the Judiciary, the Bureau of Consumer Credit Protection, the Attorney General's Office and lenders. Some modest legislation would be helpful to facilitate the process, requiring no General Fund appropriation.

The **goals** are simple:

1. Reduce the number of Mainers who lose their homes to foreclosure;
2. Increase the number of negotiated settlements;
3. Speed up the process where it can be done without infringing on homeowner protections; and
4. Protect municipalities and neighborhoods from the negative effects of abandoned properties.

Eighteen **actions** are proposed to achieve these goals:

### ***The Attorney General's Office:***

1. *Locate funds for housing counseling programs.* The Attorney General commits to finding funds for the housing counselor program by working with nonprofit foundations and industry representatives to identify grant opportunities.
2. *Public Education:* Early engagement by homeowners is crucial, but many homeowners do not know about the state's free housing counselor program. The Attorney General is:
  - *Assisting the Bureau of Consumer Credit Protection (BCCP) to develop a brochure to be mailed with the BCCP's default notices and to be posted in public places throughout Maine.*
  - *Assisting the BCCP in developing, printing and distributing posters for public places promoting the BCCP's foreclosure prevention program.*
  - *Assisting the BCCP in disseminating information about home foreclosures on television and in social media.*
  - *Warning homeowners of debt relief scams and cracking down on them.*

3. *Monitoring violations of the servicing standards:* The Attorney General's Office receives numerous complaints of lenders and servicers violating the National Mortgage Settlement or other regulations. The Attorney General's Office is able to escalate cases to the servicers and achieve results for homeowners and will continue to do so. The Attorney General's Office will work with the BCCP to track violations and report them to the National Mortgage Settlement Monitor, the NMS Monitoring Committee, the CFPB and the legislature.

#### ***For the Judiciary***

4. *Continuing to track its clearance rate of foreclosure cases, the performance of its foreclosure clerks, and the performance of the mediation program.* The Judiciary has agreed to review its practices for tracking the timeframes of foreclosure cases, especially those which are unopposed and which involve abandoned property. The Judiciary will work with interested parties to identify improvements to its tracking and ways to help move cases through the courts.
5. *Implementing successful pilot program procedures in all courts in Maine.* The Judiciary's pilot program is reducing the timelines for mediated foreclosure cases by 20% (see Figure 6). Over the next several years, the Judiciary should implement the successful procedures from the pilot in all courts in Maine.
6. *Expedite uncontested cases involving abandoned properties.* Fast-tracking these cases would depend on a fair, reliable and objective court determination that a home has been abandoned.
7. *Train mediators to issue noncompliance reports.* Mediators should more freely report to the court a lender's apparent failure to live up to its obligations, including those under the CFPB regulations and the NMS requirements. When noncompliance is established, courts should issue appropriate sanctions to back up the mediators and should impose sanctions which discourage repeated noncompliance.
8. *Improve the training and qualifications of mediators.* The Judiciary should continue recruiting mediators who are qualified in real estate, finances and mortgage servicing regulations and should train them in the CFPB and NMS requirements. Both are essential to providing more efficient, consistent and productive mediations.

#### ***For the Lenders and Servicers***

9. *Give mediation session participants decision-making authority.* To make mediation meaningful and efficient for all, the parties present must be able to strike a deal. Lenders and servicers must comply with Maine law to provide a decision-maker, and mediators and courts must hold lenders and servicers accountable for this requirement.



10. *Use Community Reinvestment Funds to support housing counseling services.* Banks support local social services every year and report this assistance as part of their evidence that they comply with Community Reinvestment Act requirements. What better use could there be for local branch donations than to support counseling services for homeowners in trouble? Besides the public interest, there is also a private interest in such support: a strong counselor program will mean fewer foreclosures, fewer complaints, streamlined cases, and lower costs for the mortgage industry.
11. *Provide for Pre-Foreclosure Mediation and Counseling.* The CFPB's 120-day stay on foreclosure filings after default presents an opportunity for the lender and the homeowner to negotiate. Lenders should make available a mediator and a certified counselor to the homeowner for negotiations during this period. The outcome and financial documents of such mediations should be made available to any subsequent mediation. Importantly, because there is an inherent power imbalance between lenders and homeowners, neither party should be required to give up any existing rights in order to participate in pre-foreclosure mediation. The Judiciary's mediators are skilled in all aspects of foreclosure law, and lenders should engage them for such pre-foreclosure mediation.
12. *Listing and Maintaining Abandoned and Vacant Property.* Lenders and servicers should provide to municipalities a list of properties which they believe are abandoned, or those which are owned by the lender and are vacant. Lenders and servicers must improve their communication with municipalities about problem properties and must take on the obligation to maintain them to avoid blight. Deteriorating properties hurt the market and everyone involved, including lenders and subsequent owners.

#### ***For the Legislature***

13. *Amend the real estate tax transfer provision to close a loophole and increase funding for counselors.* Transfer taxes on foreclosure deeds provide the current funding for the MBCCP's housing counselor program. A loophole exists in the current statute by which a plaintiff might avoid transfer taxes by assigning its rights as high bidder at the foreclosure sale to another entity (which is either itself or the owner of the loan). Because only the rights of the high bidder, and not the underlying property itself, are transferred, the transfer tax may not apply. This loophole should be closed.
14. *Speed the process for abandoned property and uncontested foreclosures.* The Attorney General proposes reducing the 90-day redemption period to 45 days in cases which are uncontested and in which it is established with clear and convincing evidence that the property is abandoned. Such evidence could be provided by a municipal determination of abandonment or acknowledgement by the homeowner. Lenders and servicers who

benefit from this procedure should be required to take on maintenance and security obligations immediately upon obtaining judgment, including compliance with any applicable municipal ordinance, and should be required to return the property to the market as quickly as practicable so the property may be rehabilitated.

15. *Eliminate unlimited postponements of foreclosure sales involving abandoned properties.* Foreclosing plaintiffs sometimes obtain judgment and then avoid taking ownership of properties, perhaps to avoid maintaining the property, by repeatedly postponing foreclosure sales. Abandoned properties lie in limbo and deteriorate or attract crime, causing blight to their communities. Such “adjournments” of the sale should be limited to one, unless good cause is shown to the court for additional adjournments.
16. *Shorten the 15-year period for owners of tax-acquired property to receive warranty title to 5 years.* When municipalities foreclose on properties with tax liens, Maine law currently provides for a 15-year period to challenge the foreclosure. During this time, the new owner of the property cannot obtain warranty title without bringing an action in court to quiet title. This reduces the marketability and postpones rehabilitation of such properties. With sufficient due process, this period should be reduced to 5 years.
17. *Return half of the proceeds from tax-acquired properties to the former homeowner and, if there is no response from the homeowner, use the proceeds to fund the housing counselor program.* This proposal is a variation of L.D. 851 to authorize ordinances requiring the return of half of the excess proceeds from a tax foreclosure to the prior homeowner, provided the owner applies for the funds within 90 days of recording the deed. Any funds not claimed could be paid to the BCCP for the housing counselor program. This provision could sunset after 5 years to account for expected declining foreclosures.
18. *Provide a legal framework for municipalities to enact ordinances creating registries of abandoned or vacant properties.* Municipalities voiced frustration with lenders who did not secure and maintain abandoned properties awaiting foreclosure or vacant foreclosed properties awaiting sale to a new homeowner. Some municipalities have moved forward with ordinances creating registries of such properties. The Legislature can provide public purpose language, a regulatory structure, a model ordinance and a measure of uniformity to municipal registries statewide.

## **Effects of recommendations**

These 18 recommendations are manageable and achievable. If implemented, the result will be a direct impact on the four goals stated at the beginning of this section.

### **1. Reduce the number of Mainers who lose their homes to foreclosure**

The most effective strategy for reducing the number of foreclosures is to get help for troubled homeowners early with housing counseling. The proposed reforms identify six specific actions to increase funding for housing counseling by the Attorney General's Office, lenders, and the Legislature. None of these steps involves general fund money. In addition, the recommended actions include making use of the new 120-day waiting period after nonpayment of a mortgage to institute a new pre-foreclosure mediation process and additional publicity to make the availability of counseling more widely known among homeowners.

### **2. Increase the number of negotiated settlements**

Success in achieving this goal requires a more effective mediation process—getting the right people and the right information together for discussion. In the past, there have been problems getting the proper documents and the appropriate decision-makers in the room for mediation. This has particularly been a problem with lenders. Lenders must meet their obligation to give mediation session participants decision-making authority, the courts should provide training and guidance to mediators to identify when obligations are not met, and the courts must provide predictable sanctions when obligations are not met.

The more effective mediation is, the more homeowners will be able to achieve negotiated settlements and stay in their homes.

### **3. Speed up the process where it can be done without infringing on homeowner protections**

The Court itself has been experimenting with procedures to shorten the foreclosure process in its pilot mediation projects in Bangor and Rockland. The most dramatic step to speed up the process will be for the Judiciary to apply the best practices of its pilot mediation experiences to all of the courts in Maine. In cases where a property is abandoned and the case is uncontested, the court can expedite procedures and the Legislature can shorten the redemption period.

The Judiciary should continue to report on the lengths of time and the outcomes of foreclosure cases, as well as the outcomes of mediations, so that the Legislature and all affected parties can understand and address the causes of delays.

**4. Protect municipalities and neighborhoods from the negative effects of abandoned properties**

This is an area where the Legislature can make the process clearer for the courts, for lenders and for municipalities. The Legislature can limit the postponement of foreclosure sales for abandoned properties, thus taking away a strategy for lenders to avoid the responsibility for maintenance; it can shorten the time for owners of tax-acquired property to receive warranty title; and it can provide a framework for municipalities to create registries of vacant and abandoned properties. Lenders can cooperate by providing to municipalities lists of abandoned and vacant properties that are owned by the lender and by maintaining such properties in marketable condition.

As a party to the National Mortgage Settlement, and pursuant to its broad statutory and common law authority to act in the public interest, the Attorney General's Office will continue working with the Judiciary, the Bureau of Consumer Credit Protection and other stakeholders to monitor the foreclosure process, to report irregularities and violations to the NMS Monitor and to the Legislature and to take any appropriate legal action for violations of law.

## **Appendices**

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Attorney General Janet Mills' Foreclosure Report  
January 2014

**APPENDIX A**

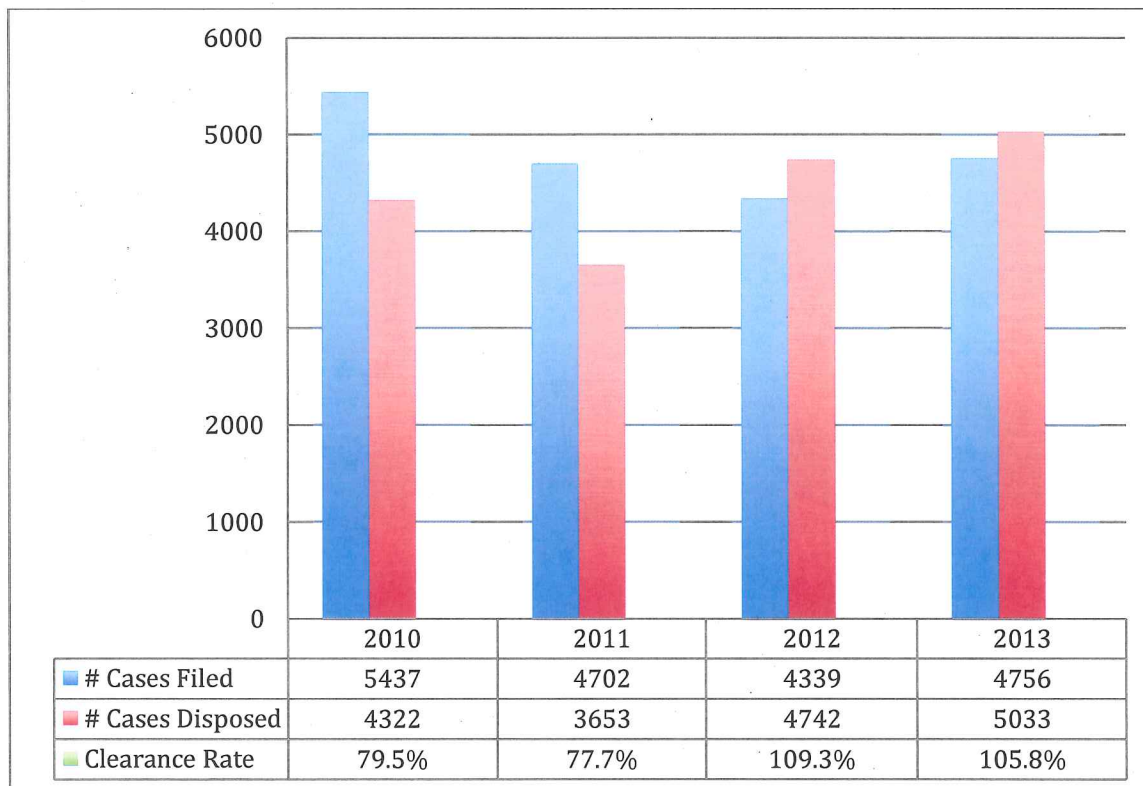
## FORECLOSURE: NUMBER OF CASES FILED & DISPOSED IN MAINE'S COURTS

These figures report the number of foreclosure actions filed and disposed in Maine's District and Superior Courts. Each case is counted only once, even if it is transferred.

Disposition of the case is determined when the court makes a judgment, or finding, or when a case is dismissed.

Clearance rate is the number of cases disposed divided by the number of cases filed, and measures the rate of case completion in the courts. A clearance rate above 100% means that the courts are disposing ("clearing") more cases than were received (filed) during the time period. Note that as filings increased, the courts struggled to keep up with caseload. In the most recent years, the courts are catching up, and more cases are being completed.

The chart below illustrates foreclosure case activity in Maine from 2010 through 2013:



**FORECLOSURE -- TIME FROM FILING TO DISPOSITION: STATEWIDE TREND DATA SOURCE ForecloseStats run 11.1.13 DATA REFRESH**

AOC/saw  
11.13.13

- NOTES: 1. Bankruptcy indicated in cases in "yes" rows. No Bankruptcy involved in cases in "no" rows. Bankrupt & no-bankrupt included in Total rows.  
 2. Time/Age Data Detail reflects cases that were DISPOSED during each year, regardless of when they were filed.  
 3. NOT CONTESTED defined by lack of mediation events within case (as docketed in MEJIS)  
 4. CONTESTED defined by presence of mediation events within case (as docketed in MEJIS)

**2010**

(2.) TIME FROM FILING TO DISPOSITION FOR CASES DISPOSED IN 2010:

Bankruptcy (1.)	Filings	Dispositions	Clearance Rate	Average Days	Median Days	Less than 6 Months		6+ - 9 Months		9+ - 12 Months		12+ - 15 Months		15+ - 18 Months		More than 18 Months	
						(count)	(percent)	(count)	(percent)	(count)	(percent)	(count)	(percent)	(count)	(percent)	(count)	(percent)
ALL	389	256	65.81%	381.8	244	96	37.5%	47	18.36%	30	11.72%	20	7.81%	16	6.25%	47	18.36%
Statewide YES	5048	4066	80.55%	277.7	218	1657	40.75%	837	20.59%	551	13.55%	276	6.79%	277	6.81%	462	11.36%
Statewide NO	5437	4322	79.49%	283.9	218	1753	40.56%	884	20.45%	581	13.44%	296	6.85%	293	6.78%	509	11.78%
Statewide Total	237	227	95.78%	403	246	85	37.44%	39	17.18%	24	10.57%	17	7.49%	15	6.61%	47	20.7%
NOT CONTESTED (3.)	2992	3430	114.64%	288	220	1408	41.05%	624	18.19%	439	12.8%	252	7.35%	255	7.43%	447	13.03%
Statewide YES	3229	3657	113.25%	295.1	221	1493	40.83%	663	18.13%	463	12.66%	269	7.36%	270	7.38%	494	13.51%
Statewide NO	152	29	19.08%	216.3	204	11	37.93%	8	27.59%	6	20.69%	3	10.34%	1	3.45%	0	0%
Statewide Total	2056	636	30.93%	222.3	210	249	39.15%	213	33.49%	112	17.61%	24	3.77%	22	3.46%	15	2.36%
Statewide	2208	665	30.12%	222	210	260	39.1%	221	33.23%	118	17.74%	27	4.06%	23	3.46%	15	2.26%

**2011**

(2.) TIME FROM FILING TO DISPOSITION FOR CASES DISPOSED IN 2011:

Bankruptcy (1.)	Filings	Dispositions	Clearance Rate	Average Days	Median Days	Less than 6 Months		6+ - 9 Months		9+ - 12 Months		12+ - 15 Months		15+ - 18 Months		More than 18 Months	
						(count)	(percent)	(count)	(percent)	(count)	(percent)	(count)	(percent)	(count)	(percent)	(count)	(percent)
ALL	329	193	58.66%	753	536	27	13.99%	11	5.7%	25	12.95%	20	10.36%	15	7.77%	95	49.22%
Statewide YES	4373	3460	79.12%	368.9	292.5	1002	28.96%	568	16.42%	507	14.65%	361	10.43%	263	7.6%	759	21.94%
Statewide NO	4702	3653	77.69%	389.2	301	1029	28.17%	579	15.85%	532	14.56%	381	10.43%	278	7.61%	854	23.38%
Statewide Total	185	146	78.92%	867.6	655	19	13.01%	8	5.48%	18	12.33%	9	6.16%	8	5.48%	84	57.53%
NOT CONTESTED (3.)	2402	2175	90.55%	385.5	280	750	34.48%	304	13.98%	257	11.82%	146	6.71%	124	5.7%	594	27.31%
Statewide YES	2587	2321	89.72%	415.8	289	769	33.13%	312	13.44%	275	11.85%	155	6.68%	132	5.69%	678	29.21%
Statewide NO	144	47	32.64%	397	410	8	17.02%	3	6.38%	7	14.89%	11	23.4%	7	14.89%	11	23.4%
Statewide Total	1971	1285	65.2%	340.8	312	252	19.61%	264	20.54%	250	19.46%	215	16.73%	139	10.82%	165	12.84%
Statewide	2115	1332	62.98%	342.8	314	260	19.52%	267	20.05%	257	19.29%	226	16.97%	146	10.96%	176	13.21%



**2012**

**(2.) TIME FROM FILING TO DISPOSITION FOR CASES DISPOSED IN 2012:**

Bankruptcy (1.)	Filing	Dispositions	Clearance Rate	Average Days	Median Days	Less than 6 Months		9+ - 12 Months		12+ - 15 Months		15+ - 18 Months		More than 18 Months	
						(count)	(percent)	(count)	(percent)	(count)	(percent)	(count)	(percent)	(count)	(percent)
<b>ALL</b>															
Statewide YES	230	323	140.43%	673.6	566	40	12.38%	25	7.74%	38	11.76%	32	9.91%	166	51.39%
Statewide NO	4109	4419	107.54%	441.2	395	817	18.49%	616	13.94%	565	12.79%	482	10.91%	1369	30.98%
Statewide Total	4339	4742	109.29%	457	404	857	18.07%	641	13.52%	603	12.72%	514	10.84%	1535	32.37%
<b>NOT CONTESTED (3.)</b>															
Statewide YES	143	203	141.96%	755.1	623	22	10.84%	13	6.4%	22	10.84%	21	10.34%	108	53.2%
Statewide NO	2329	2357	101.2%	430	359	582	24.69%	297	12.6%	252	10.69%	215	9.12%	692	29.36%
Statewide Total	2472	2560	103.56%	455.8	375.5	604	23.59%	310	12.11%	274	10.7%	236	9.22%	800	31.25%
<b>CONTESTED (4.)</b>															
Statewide YES	87	120	137.93%	535.6	513.5	18	15%	12	10%	16	13.33%	11	9.17%	58	48.33%
Statewide NO	1780	2062	115.84%	454	427	235	11.4%	319	15.47%	313	15.18%	267	12.95%	677	32.83%
Statewide Total	1867	2182	116.87%	458.5	432	253	11.59%	331	15.17%	329	15.08%	278	12.74%	735	33.68%

**2013 to 11/1/13**

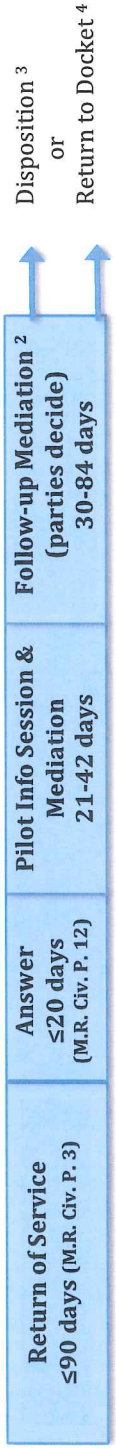
**(2.) TIME FROM FILING TO DISPOSITION FOR CASES DISPOSED Jan 2013 through Oct 2013:**

Bankruptcy (1.)	Filing	Dispositions	Clearance Rate	Average Days	Median Days	Less than 6 Months		9+ - 12 Months		12+ - 15 Months		15+ - 18 Months		More than 18 Months	
						(count)	(percent)	(count)	(percent)	(count)	(percent)	(count)	(percent)	(count)	(percent)
<b>ALL</b>															
Statewide YES	85	268	315.29%	776.2	676	15	5.6%	28	10.45%	20	7.46%	17	6.34%	174	64.93%
Statewide NO	3806	4173	109.64%	461.4	381	900	21.57%	552	13.23%	418	10.02%	379	9.08%	1375	32.95%
Statewide Total	3891	4441	114.14%	480.4	393	915	20.6%	580	13.06%	438	9.86%	396	8.92%	1549	34.88%
<b>NOT CONTESTED (3.)</b>															
Statewide YES	61	162	265.57%	805.8	668.5	11	6.79%	21	12.96%	10	6.17%	11	6.79%	98	60.49%
Statewide NO	2574	2393	92.97%	462.7	363	593	24.78%	287	11.99%	212	8.86%	173	7.23%	800	33.43%
Statewide Total	2635	2555	96.96%	484.5	375	604	23.64%	308	12.05%	222	8.69%	184	7.2%	898	35.15%
<b>CONTESTED (4.)</b>															
Statewide YES	24	106	441.67%	731	689	4	3.77%	7	6.6%	10	9.43%	6	5.66%	76	71.7%
Statewide NO	1232	1780	144.48%	459.6	401.5	307	17.25%	265	14.89%	206	11.57%	206	11.57%	575	32.3%
Statewide Total	1256	1886	150.16%	474.8	416	311	16.49%	272	14.42%	216	11.45%	212	11.24%	651	34.52%

**FORECLOSURE TIMELINE UNDER COURT RULES <sup>1</sup>**  
**Cases with FDP Pilot Mediation, Cases with FDP Standard Mediation, and Uncontested Cases**

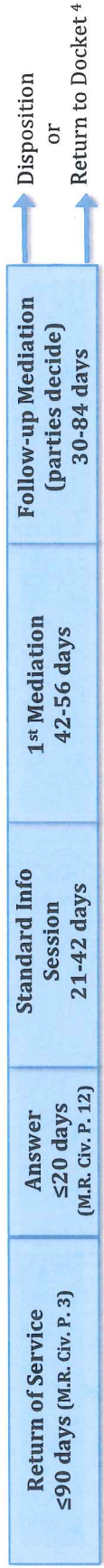
Complaint  
Filed

**FDP PILOT TIMELINE**  
161 - 236 days



Complaint  
Filed

**FDP STANDARD TIMELINE**  
203 - 292 days



Complaint  
Filed

**NON-FDP TIMELINE <sup>5</sup>**  
259 days



1. These numbers reflect the minimum periods of time required by these foreclosure cases.
2. Days to follow-up mediation vary widely depending on the needs of the parties.
3. If parties enter Trial Modification, case is stayed four (4) months for payments to be made and loan modification converted to a permanent modification before the case is dismissed.
4. "Return to Docket" moves case to "Discovery Period" in Non-FDP Timeline.
5. Non-FDP Timeline consists of uncontested cases, cases where mediation is waived, or cases that are not eligible for the FDP.

Updated FDP Annual Report Chart

Status of Cases Participating in Mediation

Foreclosure Diversion Program Cases	2013 Cases Jan-Jun	%	2012 Cases	%	2011 Cases	%	2010 Cases	%	Total Cases	%
Total mediation sessions held	1,335	-	2,560	-	2,435	-	1,261	-	7,591	-
Total cases participating in mediation	1,020	-	1,646	-	1,575	-	993	-	4,518	-
Average Mediation Session per Case	1.3	-	1.6	-	1.5	-	1.3	-	1.7	-
Cases Dismissed	128	13%	656	40%	916	58%	593	60%	2,001	44%
Foreclosure judgments entered	59	6%	448	27%	522	33%	354	36%	1,265	28%
Cases remaining in FDP	320	31%	105	6%	16	1%	3	<1%	361	8%
Cases Returned to civil docket	513	50%	437	27%	121	8%	43	4%	891	20%

Type of Dismissal Agreements Reached

Type of Agreement Reached In Dismissed Cases	2013 (Jan-Jun) Cases Mediated	Total Cases Mediated 2010-2013
Loan Modification	38	408
Reinstatement	3	37
Repayment/Forbearance Plan	1	24
Deed in Lieu of Foreclosure	2	26
Short Sale	7	50
Other	1	85
Unknown	76	1,371
<b>TOTAL</b>	<b>128</b>	<b>2,001</b>

**FDP Statistics on Informational Sessions and Mediations for 2012 Per Judicial Region**

Region / Court	Avg. Info Sessions Per Mo. (2012/13)	Avg. Cases per Info Session (2012/13)	Avg. FTA's <sup>3</sup> per Info Session (2012/13)	Average Mediation Sessions per month (2012)	Average Mediation Sessions per mediator per month (2012)	# Mediators
1: SPVL	1.4 / 1.9	32.3 / 31	5.7 / 7.7	53	7.6	8
2: PTLD*	1.0 / 1.6	32.3 / 25.4	7.8 / 4	35	4.4	9
2: BRIDG	0.5	15.2 / 20	3.3 / 3.8	8	4	2
3: LEW	1.0	19	4	27	3.9	4
3: FAR	1.0	4.9 / 4.3	30%	4	2	2
4: Augusta	1.1	17	4	21	7	5
5: Bangor*	1.3 / 1.6	13.3 / 15	3.9 / 3	20	6	4
6: W. Bath*	1.0	10.2 / 12	2	12	6	3
6: Rockland*	1.0	15 / 8	3	16	5.3	4
7: Ellsworth*	1.0	13.5 / 5	4.5 / 1.3	10	3.3	3
8: PRE	0.5	9.8 /	30%	8	8	2

1) \* Indicates courts where First Call Pilot ("The Pilot" has been implemented). Generally Pilot Informational Session/First Mediation days occur once a month except in Portland and Bangor where they occur twice per month. The Pilot results in fewer cases per Informational Session and more Informational Sessions per month, to ensure the opportunity for individuals to meet with housing counselors before mediation, and the opportunity for all cases to have mediation in a half day.

2) The average number of mediations per mediator per month in each region shows that the average is 1-2 mediations per week per mediator, which can be covered easily by the current number of mediators.

3) Failure to Appear (FTA)

Attorney General Janet Mills' Foreclosure Report  
January 2014

**APPENDIX B**

JANET T. MILLS  
ATTORNEY GENERAL



TEL: (207) 626-8800  
TTY USERS CALL MAINE RELAY 711

STATE OF MAINE  
OFFICE OF THE ATTORNEY GENERAL  
6 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES  
84 HARLOW ST. 2ND FLOOR  
BANGOR, MAINE 04401  
TEL: (207) 941-3070  
FAX: (207) 941-3075

415 CONGRESS ST., STE. 301  
PORTLAND, MAINE 04101  
TEL: (207) 822-0260  
FAX: (207) 822-0259

14 ACCESS HIGHWAY, STE. 1  
CARIBOU, MAINE 04736  
TEL: (207) 496-3792  
FAX: (207) 496-3291

Monday, May 13, 2013

Honorable Linda Valentino  
Honorable Charles Priest  
Chairs, Joint Standing Committee on Judiciary  
Room 438, State House, SHS #3  
Augusta, Maine 04333

Re: LDs 125, 612, 392, 807, 1116, 1389,  
Foreclosure bills

Dear Senator Valentino and Representative Priest:

The various foreclosure bills you have under review reveal some disturbing criticisms of the foreclosure process in Maine from the various parties involved in these court proceedings.

Four years ago I helped write the rules for the foreclosure mediation process, as a member of the Chief Justice's special committee on foreclosure mediation. While campaigning last year, and in recent months, I have heard from consumers, attorneys, banks and legislators that the system is not working satisfactorily.

With your approval, I would like to convene a work group to address foreclosure issues over the next six months and report back to you in January of 2014 with our findings and any proposals for legislation.

I propose that the Consumer Protection Division of my office work with the Consumer Credit Protection Bureau, Pine Tree Legal Assistance, the CAP agencies (those who provide foreclosure counseling), the Maine Bar Association, Maine Housing, community banks, credit unions, the major servicing banks, interested legislators, and members of the District Court assigned by the Chief Justice.

I make this proposal in part because of our participation in the landmark national settlement against the five largest mortgage servicing banks in the country. As you will recall, just over a year ago the Maine Attorney General's Office took part in this twenty-five billion dollar federal-state litigation to address foreclosure abuses, fraud and unacceptable nationwide mortgage servicing practices.

The case, *United States of America et al, v. Bank of America, et al.*, involved the U.S. Department of Justice, U.S. Department of Housing and Urban Development, 49 states and the District of Columbia. The settlement made great strides in reforming the mortgage servicing system, requiring banks to consider principal reduction, loan modifications and short sales, and preserving important options for homeowners facing foreclosure.

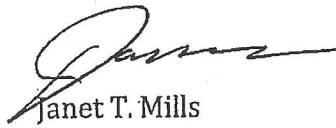
In approving the settlement, the court authorized a fulltime independent monitor to oversee and implement the 300 servicing standards and 29 metrics to test those standards. To date the monitor reports that nearly 56 million dollars in cumulative relief has been provided in Maine as a result of this settlement.

Still I hear anecdotal reports of consumers who are frustrated with their mortgage servicer and their inability to achieve a fair resolution of their debt. At the same time I hear from community banks that the court process is taking too long when the homeowner has not filed an appearance and has vacated the property.

It is time for a full discussion of the problems facing Maine citizens involved in the foreclosure process. Such a discussion would include an analysis of how provisions of the national settlement can help people facing foreclosure in our state. I would be happy to host, facilitate and participate fully in such a discussion.

I await your thoughts. Thank you for the time and effort you are giving this legislation.

Yours very truly,



Janet T. Mills  
Attorney General

Cc: Sen. Doug Thomas  
Rep. Alan Casavant  
Rep. Roberta Beavers  
Rep. Jarrod Crockett

## SENATE

LINDA M. VALENTINO, District 5, Chair  
 JOHN L. TUTTLE, JR., District 3  
 DAVID C. BURNS, District 29

MARGARET J. REINSCH, Legislative Analyst  
 SUSAN Z. JOHANNESMAN, Legislative Analyst  
 SUSAN M. PINETTE, Committee Clerk



## HOUSE

CHARLES R. PRIEST, Brunswick, Chair  
 KIM MONAGHAN-DERRIG, Cape Elizabeth  
 JENNIFER DECHANT, Bath  
 MATTHEW W. MOONEN, Portland  
 STEPHEN W. MORIARTY, Cumberland  
 LISA R. VILLA, Harrison  
 JARROD S. CROCKETT, Bethel  
 MICHAEL G. BEAULIEU, Auburn  
 ANITA PEAVEY HASKELL, Milford  
 STACEY K. GUERIN, Glenburn  
 WAYNE T. MITCHELL, Penobscot Nation

State of Maine  
 ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE  
 COMMITTEE ON JUDICIARY

May 16, 2013

Hon. Janet T. Mills, Attorney General  
 Office of the Attorney General  
 6 State House Station  
 Augusta, Maine 04333

Re: Foreclosure working group

Dear Attorney General Mills:

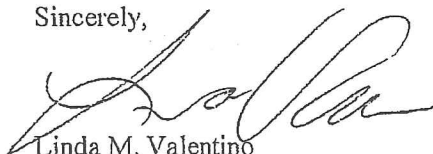
Thank you for the offer to convene a working group to address foreclosure issues. The testimony on the eight bills before the Judiciary Committee made it clear that the system is not working satisfactorily, and that a collaborative effort is needed to identify the problems and develop solutions.


We agree with your suggested list of participants, but request a few modifications. We recommend that instead of including legislators as members of the working group, that you keep the Judiciary Committee, as well as other interested legislators, apprised of the meetings and activities of the working group. Your suggested report date of January 2014 should give us sufficient time to consider proposed legislation during the Second Regular Session.

We appreciate the willingness of the Consumer Protection Division of your Office taking the lead in the working group. Although the make-up of the working group is ultimately up to you, we suggest the consideration of the following groups and interested parties: the Judicial Branch, in particular the Foreclosure Diversion Program; the Bureau of Consumer Credit Protection; Pine Tree Legal Assistance, as well as attorneys providing services pro bono; the Maine State Bar Association; foreclosure counseling and education providers, including CAP agencies and CEI; the real estate industry; condominium owners and associations; community banks; credit unions; major servicing banks; and the Maine State Housing Authority.

Thank you again for showing leadership in the resolution of the foreclosure problems in Maine. We look to updates and your final report in January.

Sincerely,

  
 Linda M. Valentino  
 Senate Chair

  
 Charles R. Priest  
 House Chair



Attorney General Janet Mills' Foreclosure Report  
January 2014

**APPENDIX C**

**Office of the Attorney General  
Foreclosure Working Group**

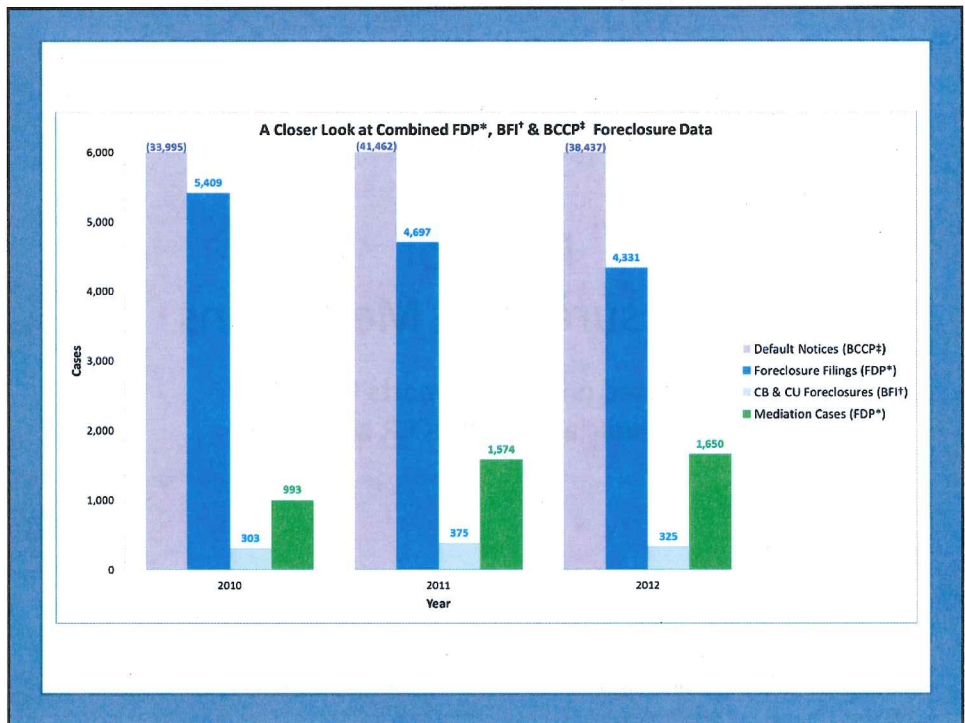
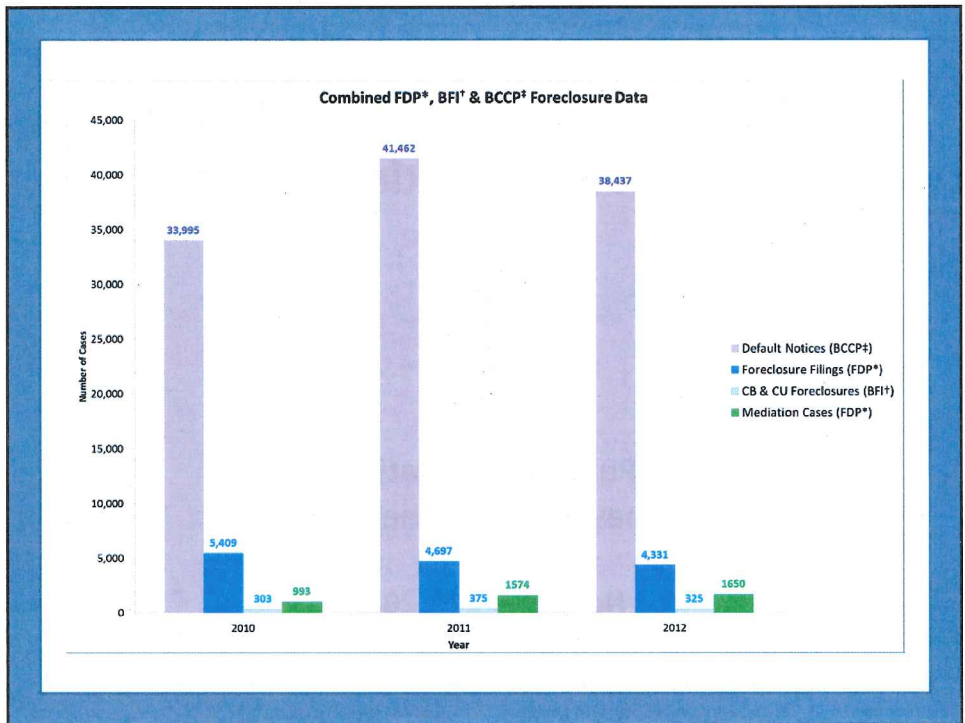


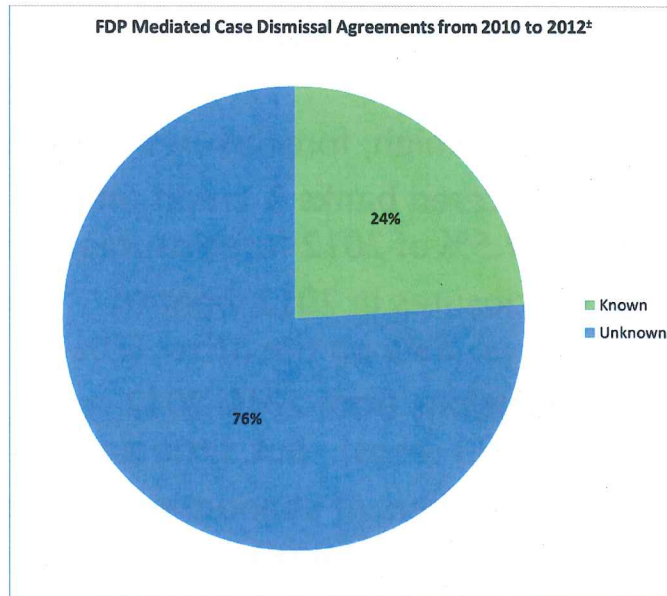
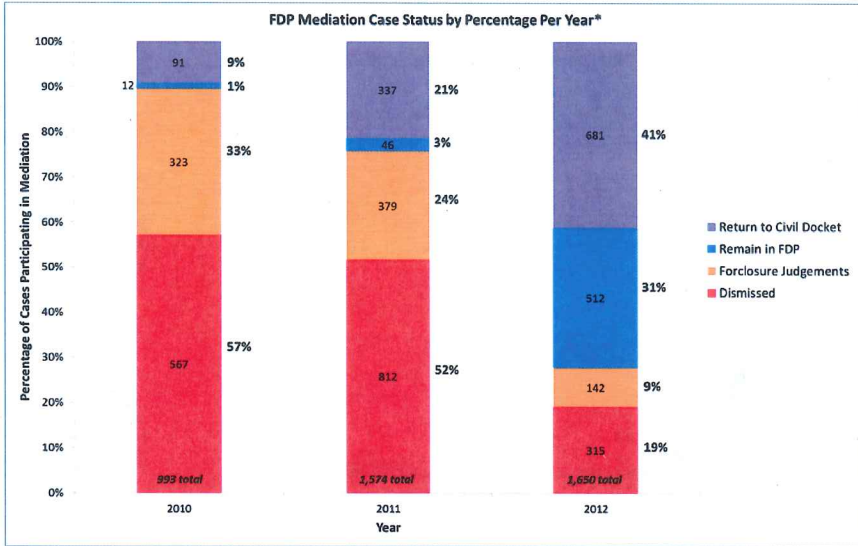
**Public Presentation  
Attorney General Janet T. Mills**

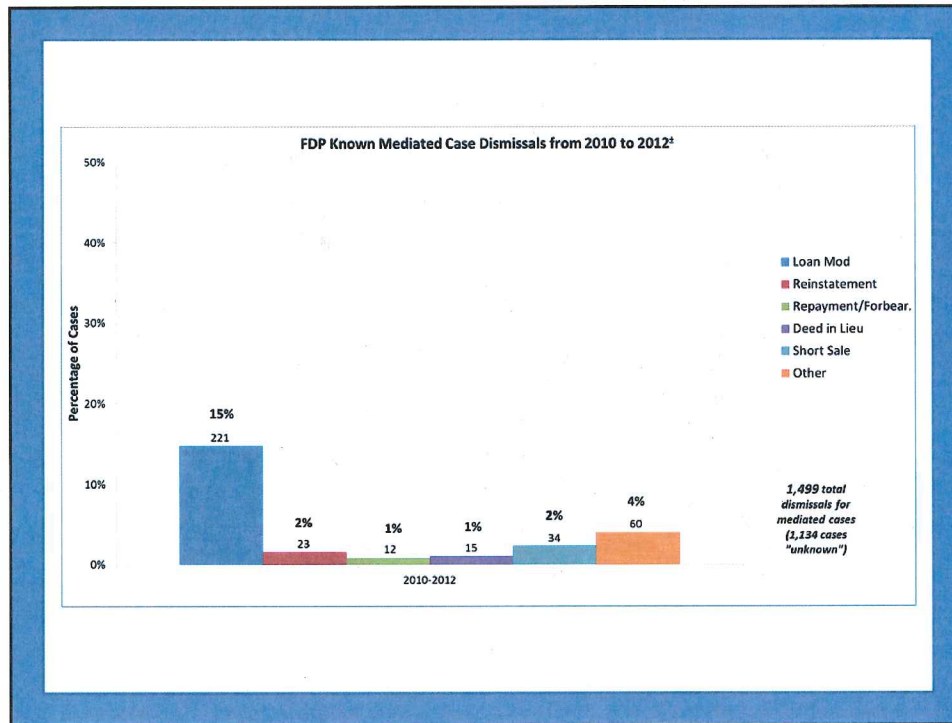
November 14<sup>th</sup>, 2013  
Augusta, Maine

**Rates of  
Foreclosures and Mediations**

Based on Public Reports from  
the Judiciary's FDP, BCCP, and BFI







## Summary

- Defaults remain high; foreclosures are slowing
- 31 State-chartered banks & credit unions account for 7.5% of 2012 foreclosures initiated
- 40% of foreclosures in 2012 went to mediation – no data on the other 60%
- 40% of mediations from 2010-2012 result in dismissal (1,499 cases). But, little data on why
- No data on numbers of abandoned property or uncontested foreclosures

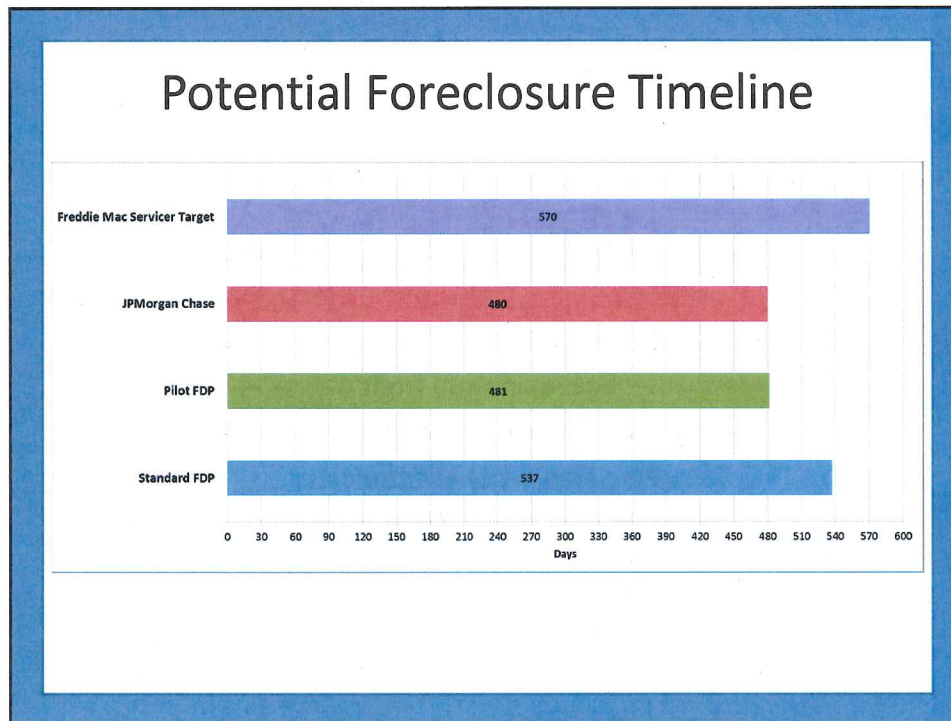
## Sources of Data

- Judiciary FDP Report - Feb 15, 2013
- BCCP Foreclosure Report - Jan 29, 2013
- BFI Foreclosure Report - Aug 29, 2013

## Foreclosure Timelines

Based on Data from  
Judiciary's Foreclosure Diversion Program,  
Pine Tree Legal Assistance,  
Freddie Mac, and JPMorgan Chase

State	Most Common Foreclosure Type**	"Mortgages referred to foreclosure from October 1, 2011 through June 20, 2013 are subject to the following State foreclosure time lines."*	"Mortgages referred to foreclosure on or after July 1, 2013 are subject to the following State foreclosure time lines."*
New York	Judicial	820	820
New Jersey	Judicial	750	750
Connecticut	Strict foreclosure (no sale)	690	690
Florida	Judicial	660	660
Pennsylvania	Judicial	600	600
<b>Maine</b>	<b>Judicial</b>	<b>570</b>	<b>570</b>
Hawaii	Power of sale	530	530
Vermont	Judicial	510	510
Maryland	Power of sale	485	485
Delaware	Judicial	480	480
Illinois	Judicial	480	480
Indiana	Judicial	480	480
Iowa	Judicial	480	450
Wisconsin	Judicial	480	450
New Mexico	Judicial	450	450
Ohio	Judicial	450	450
Idaho	Power of sale	440	440
Massachusetts	Power of sale	440	440
Kentucky	Judicial	420	420
Oklahoma	Judicial	420	420
Rhode Island	Power of sale	420	420
South Carolina	Judicial	420	420
North Dakota	Judicial	405	405
Louisiana	Judicial	390	390
Oregon	Power of sale (deeds of trust)	390	390
Colorado	Power of sale	360	360
Montana	Power of sale	360	360
Nevada	Power of sale (deeds of trust)	360	360
South Dakota	Power of sale	360	360



### Pine Tree Legal Assistance Timeline

#### All Cases

Cases Audited	Cases with Answers Filed	At Least One Mediation	Motion or Notice of Dismissal Filed	Plaintiff File Motion for Summary Judgment	Judgments Entered	Judgment Waived, Vacated, Relieved	Reports of Sales Filed
<b>426</b>	202	102	130	77	67	7	18

#### Average Timeline in Days for "All" Cases

Default until Complaint Filed	Complaint to Dismissal Filing	Complaint to Default or Summary Judgment Motion	Complaint to Judgment Entered	Judgment to Sale (in 18 Reported Cases)	Complaint to Sale
<b>377</b>	244	<b>255</b>	293	153	<b>363</b>

### Pine Tree Legal Assistance Timeline

#### Cases with No Answer Filed

Cases with No Answer Filed	Motion or Notice of Dismissal Filed	Plaintiff File Motion for Summary Judgment	Judgments Entered	Judgment Waived, Vacated, Relieved	Reports of Sales Filed
<b>224</b>	66	42	35	3	13

#### Average Timeline in Days for "No Answer Filed" Cases

Default until Complaint Filed	Complaint to Dismissal Filing	Complaint to Default or Summary Judgment Motion	Complaint to Judgment Entered	Judgment to Sale (in 13 Reported Cases)	Complaint to Sale
<b>388</b>	199	<b>210</b>	233	136	<b>337</b>



## Pine Tree Legal Assistance Timeline Cases from Local Banks and Credit Unions

Cases Brought	Cases with Answers Filed	At Least One Mediation	Motion or Notice of Dismissal Filed	Plaintiff File Motion for Summary Judgment	Judgments Entered	Judgment Waived, Vacated, Relieved	Reports of Sales Filed
20	11	4	5	12	10	0	4

### Average Timeline in Days for "Local Banks and Credit Union" Cases

Default until Complaint Filed	Complaint to Dismissal Filing	Complaint to Default or Summary Judgment Motion	Complaint to Judgment Entered	Judgment to Sale (in 4 Reported Cases)	Complaint to Sale
257	183	122	186	129	227

## Timeline Summary

- Little data – Freddie Mac is just a guideline, but may be based on its internal studies
- Pine Tree’s randomized audit shows
  - Plaintiffs delay before filing - after filing, time is significantly shorter than Freddie Mac
  - In uncontested cases, Plaintiffs delay before filing and between filing and Summary Judgment
  - Local banks & credit unions face the shortest timeframe (but, only 20 cases)

## Sources of Data

- Freddie Mac – Single-Family Servicer Guide Exhibit 83
- National Consumer Law Center, *Foreclosures: Mortgage Servicing, Mortgage Modifications, and Foreclosure Defense* 845-867 (4th ed. 2012)
- Pine Tree Legal Assistance – Foreclosure Cases Audit: 2010, 2011, March 2012
- Judiciary FDP

## Maine Municipal Association Survey Foreclosed Properties

The Maine Municipal Association conducted the following electronic survey of its members between August 26<sup>th</sup> and September 6<sup>th</sup>, 2013.

Total municipalities responding: 63

1. *Are Circumstances associated with bank foreclosures generating negative municipal impacts in your community, such as property abandonment and deterioration, vandalism or looting, potential fire dangers, requests for relocation assistance, etc.?*
  - Yes: 37 respondents (59%)
  - No: 26 respondents (41%)
  
4. *What is your experience dealing with the banks that are processing these foreclosures?*

A. Good, constructive, open communication.	(2 – 5%)
B. Frustrating, the banks are hard to deal with.	(15 – 38%)
C. Difficult to connect with the right financial institution or the right people within the bank.	(24 – 62%)
D. Hit or miss, depends on the bank.	(13 – 33%)
E. Other (see comments).	(8 – 21%)

## “Foreclosure Rates” Full References

- ‡ Bureau of Consumer Credit Protection, Homeowners Newly in Default, Thirteenth Periodic Report on the Bureau's Foreclosure Diversion Program, and Semi-annual Report on the Program's Finances (Jan 29, 2013), memo to Joint Standing Committee on Insurance and Financial Services and Joint Standing Committee on Appropriations and Financial Affairs.
- † Foreclosures Initiated by State-Chartered Banks and Credit Unions as Reported by the Bureau of Financial Institutions, Foreclosure Starts Decline 16.7% Year-over-year and Foreclosure Inventory Declines 3.2% in 2nd Quarter 2013, Foreclosure Release (Aug 29, 2013), <http://www.maine.gov/pfr/financialinstitutions/press/2nd%20Qtr%202013%20Foreclosure%20Report.pdf>.
- ± State of Maine Judicial Branch, Chart 3: Types of Dismissal Agreements Reached, Foreclosure Diversion Program (Feb 15, 2013), [http://www.courts.state.me.us/maine\\_courts/fdp/pdfs/FDP%20Annual%20Report%202012.pdf](http://www.courts.state.me.us/maine_courts/fdp/pdfs/FDP%20Annual%20Report%202012.pdf)
- \* State of Maine Judicial Branch, Report to the Joint Standing Committee on Insurance and Financial Affairs, Foreclosure Diversion Program (Feb 15, 2013), [http://www.courts.state.me.us/maine\\_courts/fdp/pdfs/FDP%20Annual%20Report%202012.pdf](http://www.courts.state.me.us/maine_courts/fdp/pdfs/FDP%20Annual%20Report%202012.pdf)

## “Timeline” Full References

- Freddie Mac, Exhibit 83: Freddie Mac State Foreclosure Time Lines, Single-Family/Service Guide (Apr 1, 2013), <http://www.freddiemac.com/learn/pdfs/service/exhibit83.pdf> (last visited Aug 2, 2013).
- National Consumer Law Center, Foreclosures: Mortgage Servicing, Mortgage Modifications, and Foreclosure Defense 845-867 (4th ed. 2012)
- Pine Tree Legal Assistance, Foreclosure Cases Audit Study: 2010, 2011, 2012 (Oct 25, 2013).
- State of Maine Judicial Branch, Report to the Joint Standing Committee on Insurance and Financial Affairs, Foreclosure Diversion Program (Feb 15, 2013), [http://www.courts.state.me.us/maine\\_courts/fdp/pdfs/FDP%20Annual%20Report%202012.pdf](http://www.courts.state.me.us/maine_courts/fdp/pdfs/FDP%20Annual%20Report%202012.pdf)

Attorney General Janet Mills' Foreclosure Report  
January 2014

**APPENDIX D**

Results from Foreclosure File Audit Study conducted in March, August, and September 2012

Cases audited in Biddeford, Lewiston, Portland, and Springvale. Each court was asked to pull 110 random cases from 2010, 2011, and 2012 until March 2012. 14 cases were not available during either audit period. A total of 426 cases of the possible 440 cases was audited - 382 in March, 44 in Aug/Sept.

All cases

Number of cases audited	Number of cases with answers filed	Number of cases in which at least one mediation has been held	Number of cases in which a motion to dismiss or notice of dismissal has been filed	Number of cases in which Plaintiff has filed a motion for summary judgment	Number with judgments entered	Number of cases in which judgment was waived, vacated, or relieved	Number with reports of sale filed
426	202	102	130	77	67	7	18

Timeline of "all" cases

Average number of days from date of default until complaint filed	Average number of days from filing of complaint until filing of dismissal	Average number of days from filing of complaint until filing of motion for judgment	Average number of days from filing of complaint until judgment entered	Average number of days from judgment to sale date in the 18 cases which have a report of sale date filed	Average number of days from complaint to sale
377	244	255	293	153	363

Cases in which NO answer was filed

Number of cases in which no answer was filed	Number of unanswered cases in which a motion to dismiss or notice of dismissal has been filed	Number of unanswered cases in which a motion for summary judgment has been filed	Number of cases in which judgment has entered	Number of cases in which judgment was waived, vacated or relieved	Number of cases in which a report of sale has been filed in an unanswered case
222*	66	42	35	3	13

Timeline of unanswered cases

Default to complaint	Complaint to dismissal	Complaint to SJ motion filed	Complaint filed to judgment	Judgment to sale	Complaint to sale
388	199	210	233	136	337

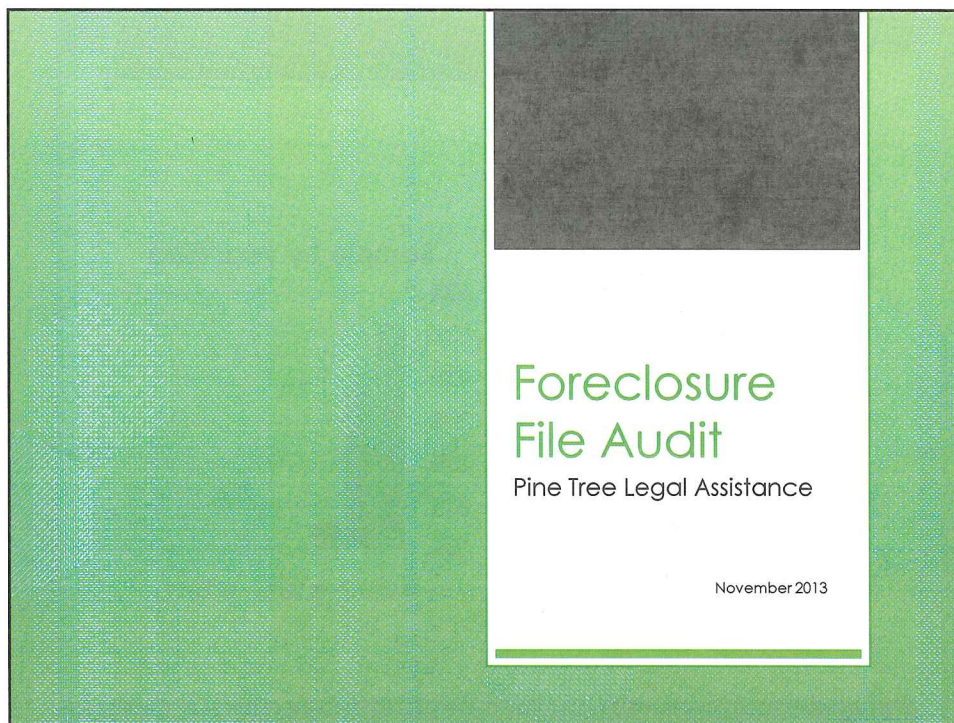
\*224 were captured as having no answer filed but in 2 of those cases a mediation was held so they are not counted here

Local Banks

Number of cases that are brought in name of local bank	Number of cases with answers filed	Number of cases in which at least one mediation has been held	Number of cases in which a motion to dismiss or notice of dismissal has been filed	Number of cases in which Plaintiff has filed a motion for summary judgment	Number with judgments entered	Number of cases in which judgment was waived, vacated, or relieved	Number with reports of sale filed
20	11	4	5	12	10	0	4

Timeline of local bank cases

Average number of days from date of default until complaint filed	Average number of days from filing of complaint until filing of dismissal	Average number of days from filing of complaint until filing of motion for judgment	Average number of days from filing of complaint until judgment entered	Average number of days from judgment to sale date in the 4 cases which have a report of sale date filed	Average number of days from complaint to sale
257	183	122	186	129	227

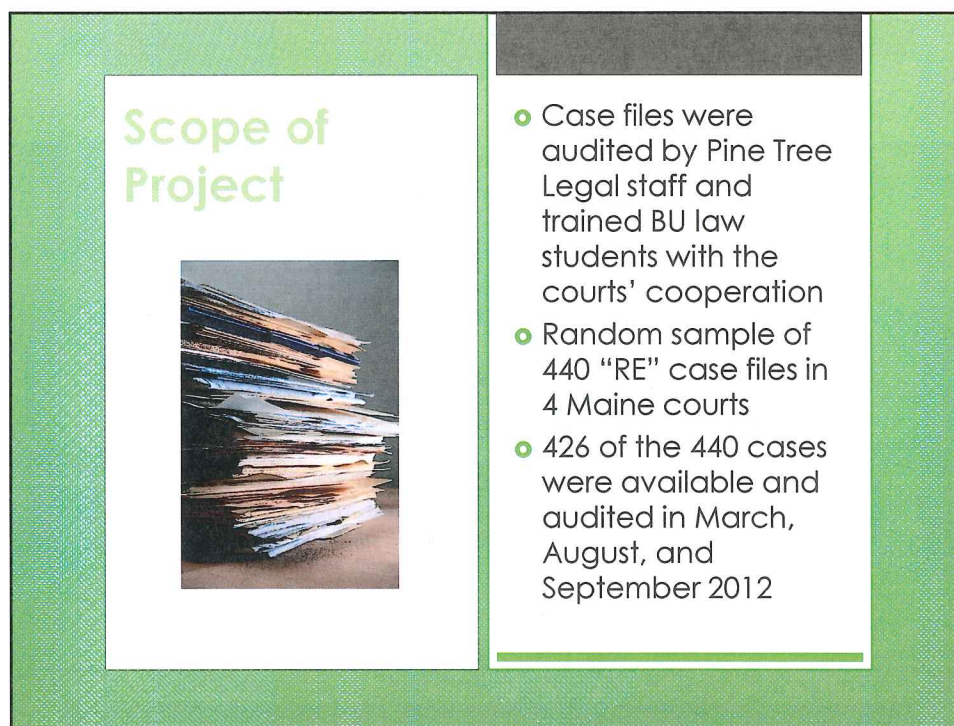


The slide features a green textured background. On the right side, there is a white rectangular area containing the title and date. Above this white area is a dark grey rectangular box.

## Foreclosure File Audit


Pine Tree Legal Assistance

November 2013



The slide has a green textured background. On the left, there is a white box with the title and an image of a stack of papers. On the right, there is a white box with a list of bullet points. Above the right box is a dark grey rectangular box.

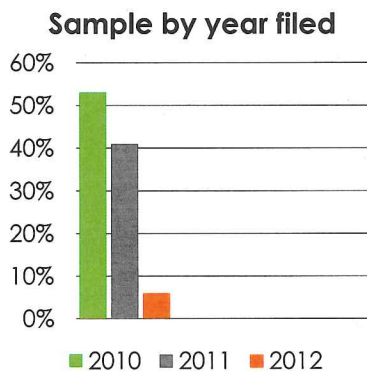
### Scope of Project



- Case files were audited by Pine Tree Legal staff and trained BU law students with the courts' cooperation
- Random sample of 440 "RE" case files in 4 Maine courts
- 426 of the 440 cases were available and audited in March, August, and September 2012

## Audit Sample

- 110 Random cases were selected in 4 different courts
- The cases were RE filings for all of 2010, 2011, and Jan-Feb 2012
- The 4 courts included Lewiston, Biddeford, Springvale, and Portland district courts



## General Case Activity



The cases audited are at various procedural stages. Some might have answers filed after the audit. The results here show only answers filed as of the date of the audit.

## Date of Default until Complaint Filed

• 377  
Days

All cases



• 388  
Days

All "no  
answer" cases



• 257  
Days

Local banks  
and credit  
unions



- By capturing information from the complaint in each file, we measured the average number of days plaintiffs were waiting before filing a complaint after the date of default.

## Cases Filed By Local Bank Or Credit Union

• 426

All cases  
audited



• 20

Cases filed  
by Local  
Bank or  
Credit Union



- 20 cases from the sample were identified as foreclosure cases brought by a local bank or credit union, resulting in less than 5% of the total sample.

The definition for local bank or credit union in this breakdown was "easily identifiable" local bank or credit union. It did not include all the banks who are part of the Maine Bankers Association, such as Bank of America, TD Bank, or Key Bank. It also did not include foreclosure cases brought by Maine State Housing Authority.



## Cases Dismissed

• 130 Cases  
• 244 Days

For all cases audited



• 66 cases  
• 199 Days

Cases in which no Answer filed



• 5 cases  
• 183 Days

Local Banks and Credit Unions



- The Plaintiff dismissed 130 of all the cases it filed. The Plaintiff waited on average 244 days before requesting dismissal.
- The Plaintiff dismissed 66 of the cases filed in which no answer was filed and no mediation was held. The Plaintiff waited on average 199 days before requesting dismissal in those cases.
- Local Banks dismissed 5 of the 20 cases they brought.

## Cases In Which Plaintiff Requested Summary Judgment

• 77 Cases  
• 255 Days

For all cases audited



• 42 Cases  
• 210 Days

Cases in which no Answer filed



• 12 Cases  
• 122 Days

Local Banks and Credit Unions



- The Plaintiff requested judgment in 77 of all the cases it filed. The Plaintiff waited on average 255 days before requesting judgment.
- The Plaintiff requested judgment in 42 of the cases in which no answer was filed and no mediation was held. The Plaintiff waited an average of 210 days before requesting judgment in those cases.
- Local Banks requested judgment in 12 of the 20 cases they brought and waited 122 days before requesting judgment.

## Inactive Cases

- 211 Cases
- 343 Days

For all cases audited



- 112 Cases
- 349 Days

Cases in which no Answer filed



- There were 211 cases which had "no action" from the time of the filing of the complaint until the date of the audit. 112 of these cases were cases in which no answer was filed.
- "No action" is defined as no motion to dismiss or motion for summary judgment filed and/or no entry of judgment.
- The average number of days which had passed in the inactive cases from the time of the filing of the complaint until the date of the audit was **343 days**.
- The average number of days which had passed in the inactive cases in which no answer had been filed was **349 days**.

## Foreclosure Timeline Filing to Sale

• 363  
Days

All cases



• 337  
Days

All "no answer" cases



• 227  
Days

Local banks and credit unions



- In our sample, we measured the average number of days from the filing of a foreclosure complaint until a sale date occurred.
- In the sample, only 18 cases had reports of sale filed, although judgment had entered in 67 cases.

## Foreclosure File Audit Results and Observations

Local Banks and Credit Unions are moving cases through the existing process much more quickly than the other banks.

Plaintiffs are not filing quickly after default – waiting an average of 377 days.

Average Foreclosure Process is complete in 363 days.

Plaintiffs had taken no action in nearly half the cases audited. They had taken no action for an average of 343 days as of the date of the audit.

The majority of the plaintiff "no action" cases are uncontested cases.

Attorney General Janet Mills' Foreclosure Report  
January 2014

# APPENDIX E

## Municipal Survey Regarding Foreclosed Properties

The Maine Municipal Association conducted the following electronic survey of its members between August 26<sup>th</sup> and September 6<sup>th</sup>, 2013.

Total municipalities responding: 63

1. Are circumstances associated with bank foreclosures generating negative municipal impacts in your community, such as property abandonment and deterioration, vandalism or looting, potential fire dangers, requests for relocation assistance, etc.?

Yes: 37 respondents (59%)

No: 26 respondents (41%)

\*Note: Members were only asked to answer the following questions if they answered "yes" to the first question. The percentages below were calculated using 39 rather than 37 respondents because two municipalities responded "no" but proceeded to answer questions 2-4.

2. How would you describe the scope or extent of the municipal problems related to bank foreclosures?

- A) Serious and ongoing. (11 – 28%)
- B) Significant but sporadic. (13 – 33%)
- C) Some impacts but entirely manageable. (7 – 18%)
- D) Recession-related but now improving. (4 – 10%)
- E) Other (see comments). (7 – 18%)

3. Please describe the specific municipal impacts associated with foreclosed and abandoned properties (check all that apply):

- A) Negative property values/loss of tax revenue. (35 – 90%)
- B) Increased building inspection efforts. (17 – 44%)
- C) Increased policing efforts. (22 – 56%)
- D) Increased fire protection efforts. (11 – 28%)
- E) Increased General Assistance/social services. (9 – 23%)
- F) Increased administrative management/bank negotiations. (12 – 31%)
- G) Managing abandoned but occupied rental properties. (6 – 15%)
- H) Other (see comments). (12 – 31%)

4. What is your experience dealing with the banks that are processing these foreclosures?

- A) Good, constructive, open communication. (2 – 5%)
- B) Frustrating, the banks are hard to deal with. (15 – 38%)
- C) Difficult to connect with the right financial institution or the right people within the bank. (24 – 62 %)
- D) Hit or miss, depends on the bank. (13 – 33%)
- E) Other (see comments). (8 – 21%)

5. Please identify any tools, resources or authorities municipal officials need to more effectively prevent or reduce the problems associated with bank foreclosed property that becomes abandoned or improperly maintained.

6. Please provide any additional information or suggestions related to this topic.

## Survey Comments

### Question 2

- 2-3 properties but little municipal.
- Mostly usual neglect and vandalism.
- We have very few.
- It would be described as Significant and ongoing.
- Bank of America conveys to mystery owners!
- Some impacts, causes confusion for Office and public.

### Question 3

- Condemnation of damaged structures and lots of staff time tracking down owners.
- Tiny town so effects negligible.
- Banks pay property taxes on foreclosed properties.
- Neighbor complaints and increased staff time working with those neighbors.
- Property Maintenance.
- Entire neighborhoods losing significant value due to deterioration and vermin infestations.
- Junk mobile homes abandoned. Need new laws to allow Land owner to much more easily take over the abandoned Home and dispose with no recourse against the land owner Which can be the town when the land has been taken for taxes.
- Property has become tax acquired but bank is not responding or recorded paperwork to clear their interest. They are giving me the run-around.
- Getting banks to respond swiftly is non-existent.
- Lawns not mowed detract from appearance of surrounding property and the Town.
- Blight.

#### Question 4

- The town clerk says the taxes are paid, otherwise no interaction with banks, so far.
- Banking Institution Lawyers are assigned from Bank of America (ex) and have really limited ability to do much when pressed to maintain. It takes forever for them to do anything.
- The larger the bank, the bigger the headache.
- The bigger the mortgage holder the more difficult to deal with if at all.
- In State banks as generally good while out of State Banks will not work with us or even answer any of our concerns.
- Local banks are good, out-of-state banks impossible to communicate with.
- Verbal agreements to cover municipal costs that are not followed through with. Once you establish a point of contact the responsible party or person is no longer employed there or has otherwise changed.

#### Question 5

- Simplify process for condemning properties.
- The ability to maintain the outside appearance of property and to be able to add those cost to current taxes.
- Banks should be contacting the municipality with contact information when the foreclosure process begins.
- Banks need to be more proactive once foreclosed. List the property for sale and maintain it.
- Anything that would force banks to move forward with foreclosure/make that process speedier/require responsible stewardship of these properties would be extremely helpful. Communities impacted by abandoned properties and with lenders that don't aggressively manage their assets and pursue foreclosure should adopt the International Property Maintenance Code. This is a very helpful tool; however, impacted communities need to have funding in place to raze buildings deemed dangerous by municipal officials and/or by the Superior Court. A requirement under law that mortgage holders be responsible for securing vacant properties and maintaining them would be helpful.
- A bill is needed requiring financial institutions to act within a set time period to complete the foreclosure process, market the property, stabilize the property for winter months, or donate properties to the municipalities. This lack of activity is destroying the aesthetics and the values of many towns, not to mention the deleterious effect on the bank's own stockholders.
- Must appoint Management Firm to the property that is required to maintain the property. Name of the firm and bank representative responsible given to the town for contact.

#### Question 5 (cont'd)

- Recorded deeds should have the detailed contact information for the bank listed on the foreclosure notice. The information listed seems to change or is incorrect when the time comes to reference it.
- Many states require that the lending institutions notify the municipalities of eviction and foreclosure dates. This allows the municipality to be aware of vacant properties and also allows for contact information if problems do arise.
- Not sure there's much that could affect the local level here, other than the general economy improving and banking reforms.
- It would be nice if there was funding provided to help communities out when they are faced with these additional costs. There should be a time line on when banks get notified and don't respond the town continues to play the waiting game not sure if they are going to waive their rights by the time that happens the home has been stripped of copper pipes, furnaces' etc.
- Communication would be a great start in the right direction especially with out of State banks. Another thing banks are doing is hiring the owners to clean out the home before they leave and in doing so they get paid. But we are still not notified that this is going on or if anything else is going on.
- Funding to cover enforcement staff salaries and funding for condemnation and demolition of dilapidated structures. A shared attorney for processing condemnations or solidifying ownership status would be helpful.
- Security as our town does not have its own police force.
- If banks could provide a single point of contact with a person who can deal with these issues, that would mitigate the frustration with communication. Secondly, inclusion with the process from onset, even if simply through communication would help anticipate needs.
- Banks need to be swifter in their action, or at least maintain the property in better condition during the time that the building is empty, this creates a hazard to all properties around them. Also it gives thieves an opportunity to remove any or all metals or wiring from the property, which goes un-noticed for months at a time. The more rural the bigger the problem.
- Support for property maintenance ordinances that will be effective against banks.
- I believe it should be necessary for banks to have a point of contact person for each foreclosure. It is impossible to make contact with the bank regarding property maintenance, delinquent taxes or general questions regarding the property. Providing a more direct line with banks would alleviate a majority of the issues seen on a daily basis. That one on one with a representative makes a big difference.
- The biggest issue is time related. The process is very slow moving and it is difficult to try and deal with the previous owner and bank at the same time while foreclosure process is taking place. The financial institutes should have some basic maintenance requirements, such as mowing grass, securing buildings, etc. so neighborhoods are not adversely impacted.



#### Question 5 (cont'd)

- Mortgages are sold and transferred and towns are not notified.
- A rock-solid abandoned property maintenance ordinance that could be adopted and upheld in court would be nice. If a bank starts a foreclosure process, notification should be made to the municipality identifying a direct contact person who can deal with issue related to that property.

#### Question 6

- This town has 80 empty properties, many of them "foreclosures" that have been unresolved for up to four years!!!
- The Financial Institution should be required to sell or auction property within x # of months of foreclosing on it.
- Lenders are as a rule terrible to get information from. Ordinances to deal with maintenance of foreclosed properties. Ability of municipality to bill banks for maintenance issues.
- The City recently enacted a new Property Maintenance Ordinance to address vacant properties.
- Junk trailers.
- In relation to the ongoing issue of properties associated with bank foreclosure the most difficult obstacle is reaching the right agency. More often than not our office has found that with many of the larger banks getting ahold of the proper people can be difficult and when we are eventually put in touch with them it's rarely someone local. Without having someone local who can assess the site for themselves creates issues of bidding wars from lawn service companies, lawns not properly being maintained, and most of all the issue becomes time consuming. It can often be weeks if not months before a lawn is properly maintained. The same can be said for vandalized properties and those that are victims of burglary. Many properties have had copper piping and wiring stripped from the building without anyone ever knowing because windows were never broken. Such incidences can lead to basement flooding, potential fire hazard, and serious effect the marketability of the property in the future. Our best suggestion is to have someone that communities can reach out to and potentially meet with on site to discuss the issues at hand. Not only satisfy the local ordinances, but more importantly to help banks protect their investment. We occasionally have trespass issues with properties in the foreclosure process as well. Typically these properties have not been through the entire foreclosure process or ownership has transferred between banks and they are in sort of a "no man's land" where it is difficult to ascertain who the actual owner is. These situations are tricky because we need to have an actual complainant to enforce trespassing laws. A potential aid to the problem: I don't know how it could be accomplished but simply having a centralized list of these properties in Brewer with appropriate contact information would be a huge help. Lincolnville has had relatively few issues. Usually finding the "right" person to speak with has been the challenge as often times the "bank" is out of state or not easily identifiable with in state banks. Once we've found the right person we've had pretty good luck addressing the issues.

#### Question 6 (cont'd)

- Banks need to work with us or at least answer our questions. All of our work is based in time schedules which we must follow by State law. Thing would go a lot easier if we knew what the banks had for a time of events schedule; so, we could then work our schedules together and send the correct paper work to the right people at the right time.
- Hope this helps some... difficult issue. We only have a couple properties at this time with this specific issue. I am new to this position and am at the beginning of the process to deal with the abandoned buildings/properties in town. Many are just abandoned by the residents, little is known of whether they are in foreclosure or not.
- We maintain a list of know vacant and foreclosure properties and many of them have been robbed of copper and heating systems. The list is useful for other departments to help monitor the properties and to review general assistance requests for fraud. One of the biggest challenges is waiting on a foreclosure while the ownership is unclear and no one takes responsibility for the property. Once a bank sees a property as a liability they delay the foreclosure process, especially when the City has condemned it. A couple suggestions that might help:
  1. Speed the foreclosure process or establish a deadline to complete the process after it is initiated.
  2. When Local, State or Federal dollars are involved in a subordinate position for a rehab or other loan, give the municipality first right of refusal for a sale after a foreclosure. All too often people buy those properties for pennies on the dollar and the public loses all of the investment that it made and the private buyer steals that as instant equity.