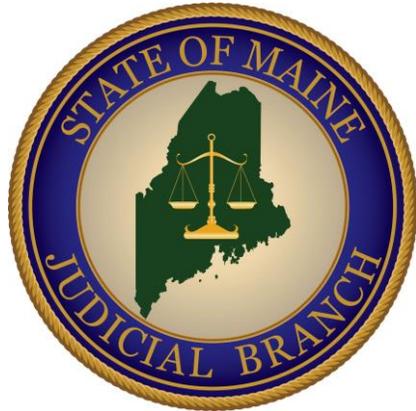


**STATE OF MAINE
JUDICIAL BRANCH**



FORECLOSURE DIVERSION PROGRAM

Report to the Joint Standing Committee on
Health Coverage, Insurance and Financial Services and
the Joint Standing Committee on Judiciary

131st Legislature

February 13, 2024

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JUDICIAL BRANCH
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Executive Summary

At the height of the national foreclosure crisis in 2009, the Foreclosure Diversion Program (“FDP”) was established by the 124th Maine Legislature to provide foreclosure mediation in Maine courts.¹ Begun as a pilot program in 2009 in York County, the FDP was launched statewide January 1, 2010. The FDP provides parties in foreclosure cases the opportunity to meet to explore alternatives to foreclosure and to pursue paths to settlement of their cases. FDP mediation has played an integral role in the resolution of foreclosure actions in Maine over the past 14 years, providing 18,010 mediation sessions in 10,618 cases. Of the cases participating in the FDP, 62% (6,579 cases) have been dismissed following mediation.

Mediation in foreclosure cases has proven its effectiveness. Impartial, court-appointed mediators meet with lenders and homeowners together and help them explore their options for resolving their cases. Mediators encourage and facilitate communication and trust through dialogue and exploration of options. Detailed mediator’s reports to the court lay out the parties’ agreements and plans for next steps. The mediator’s reports provide a basis for accountability for promises and obligations agreed to in mediation. Frequently, the result of mediation is a mutually beneficial, party-driven agreement to settle the dispute.

Annual Report

The Maine Judicial Branch submits this annual report on the performance of the Foreclosure Diversion Program (“FDP”) in 2023, as required by 14 M.R.S. § 6321-A(7)(B).

¹ P.L. 2009, ch. 402. Governing authorities are: 14 M.R.S. § 6321-A and M.R.Civ. P. 93.

I. The FDP Process

A. Eligibility and Starting the Process

Foreclosure cases may be filed in any District or Superior Court in Maine. Eleven courts throughout the eight judicial regions host FDP mediation. A case must involve an owner-occupied primary residence of no more than four units to be eligible for FDP mediation; lenders in these cases must serve a form answer with the foreclosure complaint that includes notice of mediation and serves as a vehicle to request FDP mediation.² If a homeowner asks, in writing, for mediation, or appears in the action,³ the case is assigned to the FDP. 14 M.R.S. § 6321-A(6); M.R. Civ. P. 93(c)(1). If the court in which the case is filed does not host the FDP, the case is transferred temporarily to the regional FDP court for mediation.

B. The Information Session

The first court event in the FDP is the Information Session, at which a judge explains the FDP mediation process and a HUD-certified housing counselor gives information about different types of loans, a variety of loan workout possibilities, and how homeowners can find legal assistance and free housing counseling. The FDP held 85 Information Sessions in 2023.

C. Mediation

Mediation takes place after homeowners attend an Information Session. Participants include the homeowner, lender, attorney(s), and the mediator. Parties have the opportunity to articulate their goals and the mediator helps them to explore their options to reach a mutually beneficial resolution, and to plan their next steps. Possible settlement plans include:

- Reinstatement of the loan through up-front payment of the arrearages;
- Repayment of arrearages over time by raising the monthly payment;
- Loan modification – change of loan terms by, for example, recapitalization, principal forbearance, change of interest rate, and/or term extension; and
- Liquidation options – sale and payoff, or transfer of the property to the lender.

To apply for most workout options, lenders require homeowners to submit personal financial documents such as bank statements, paystubs, and tax returns. Document submission and review is often critical to settlement, and the process is carefully tracked in mediation.

D. The Mediator's Report

After each session, the mediator submits a “Mediator’s Report” to the court with copies to parties. This report creates a record of agreements, timelines, and next steps. In subsequent sessions it provides a basis for holding parties accountable for their promises.

² The form answer is developed by the Bureau of Consumer Credit Protection pursuant to 14 M.R.S. § 6321-A(2).

³ On occasion, foreclosure cases filed in the United States District Court for the District of Maine have participated in FDP mediation based on that court’s determination that 14 M.R.S § 6321-A creates a substantive right in eligible cases.

II. Staff, Mediators, and Continuing Education

A. FDP Staffing

FDP positions in the court are funded by a fee imposed on each foreclosure case filed.⁴ Designated FDP positions include a Program Manager, Administrative/Data Assistant, and three full-time clerks. Current funding levels accommodate only a Program Manager and Assistant, but if foreclosure filings and activity increase, the FDP might reinstate additional clerk support.

B. FDP Mediators

Mediators in the FDP are independent contractors experienced in the fields of mediation, law, real estate, and foreclosure. The roster of 16 mediators meets the statewide need for FDP mediation services provided both remotely and in person at the courthouse. The format of mediation depends on court scheduling needs and each court's physical facility, including air flow in mediation rooms, the availability of marshals, and regional internet bandwidth both at court and in the community. Litigants also have the option to file a "Motion for Alternative Format" to ask to have mediation in a different format from the one scheduled, and the court and mediators can accommodate the format that works best for the parties.

C. Orientation and Continuing Education

To join the FDP roster, mediators must attend a two-day orientation to learn about the FDP process and related law and regulation. Through FDP and other continuing education programs, they continue to hone their knowledge and mediating skills, keeping up-to-date on the federal and state foreclosure law, practice and procedures. In June 2023 the FDP provided a day-long continuing education program featuring sessions on Maine foreclosure case law, federal regulation, the HAF program (Homeowner Assistance Fund)⁵ in Maine, and listening skills in mediation, as well as a panel discussion on a variety of mediation skills. Mediators regularly participate in monthly meetings on Zoom to discuss current topics and scenarios.

III. Performance of the Program

A. Foreclosure Filing Activity and Participation Rate in FDP

In 2023, a total of 895 new foreclosure cases were filed in Maine courts, reflecting a 13.5% decrease from the 1,035 cases filed in 2022. One reason for the decrease is that many homeowners in default have applied for and received HAF assistance in time to cure their defaults without the need for a foreclosure action to be filed. Mediation was requested in 357 of the cases filed, reflecting a 40% participation rate (an 8% increase over the participation rate in 2022).

⁴ P.L. 2009, ch. 402 § 26.

⁵ This is a federal program implemented at the state level, offering up to \$50,000 in assistance for home retention.

B. Volume of Mediation and Homeowner Assistance

In 2023, FDP mediators conducted 633 mediation sessions in 403 cases, for an average of 1.6 mediation sessions per case. Homeowners in the FDP reported receiving legal advice in 109 cases, and receiving assistance in completing forms for mediation in 255 cases. After mediation is complete, cases may be concluded by an agreed-upon judgment or dismissal or may remain active on the civil docket. Frequently cases that return to the docket from mediation are later resolved, building upon relationships established in mediation.

C. FDP Facilitates Timely, Efficient Process and Access to Mediation

The FDP continually strives to minimize delay and maximize opportunities for settlement agreements for parties in foreclosure. Communication between the parties and accountability for agreements and next steps are ensured through active mediation, detailed mediator's reports, and appropriate scheduling of follow-up mediation.

Mediators work to meet challenges, ensuring clear communication between the parties and encouraging good faith efforts to reach a mutually beneficial resolution. The FDP remains committed to providing excellent foreclosure mediation service in whatever format works best for the participants, the mediators, and the court.

III. Conclusion

Foreclosure mediation in Maine continues to be a consistently valuable settlement tool in foreclosure cases. Well over half of the cases that participate in the FDP conclude in dismissals. Resolutions reached during and after mediation save time and resources, and avoid the stress involved in going to trial. The FDP will continue to provide high quality mediation services to help parties reach mutually beneficial resolutions of their foreclosure cases.

Respectfully Submitted,



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