



Submitted via FHFA.gov

September 8, 2014

Federal Housing Finance Agency
Office of Policy Analysis and Research
400 7th St., SW, Ninth Fl.
Washington, DC 20024

To Whom It May Concern:

Thank you for the opportunity to provide additional input on g-fees. I manage foreclosure prevention and fair lending work at the Connecticut Fair Housing Center, the only statewide nonprofit in Connecticut that represents and advocates for homeowners facing foreclosure. I write today on behalf of the Center and the homeowners it serves. In November 2012, we submitted opposition to the initial g-fee increase proposal, and we remain strongly opposed to penalizing Connecticut borrowers on the basis of flawed analysis.

This letter supplements the letters submitted on behalf of Connecticut in November 2012. It covers two pieces of legislation passed since then, information on Connecticut's post-foreclosure eviction process, and the latest results from Connecticut's foreclosure mediation program.

1. Connecticut's 2013 Mediation Reform Legislation Will Shorten the "Foreclosure Timeline."

All stakeholders involved with Connecticut's foreclosure mediation program have long agreed that, despite its considerable success, reaching resolution often takes too many months and too many mediation sessions. Thanks to Governor Malloy and legislative leaders, Connecticut reformed the program in 2013 with the explicit goal of "getting to yes or no" more quickly.

The new law reflects substantial input from us at the Center and from a variety of industry-side advocates. Mediators now issue reports after each session identifying the source of any delay. There is a presumption that mediation will conclude no later than seven months after the case begins. Before meeting with their lenders, borrowers must submit requested documents through a new premediation process designed to reduce the "document chase." Mortgagees foreclosing on vacant and abandoned properties may now use an expedited process. While its roots preceded the g-fee announcement, the legislation and the changes it contained could be read as an appropriate reaction, and solution, to the concerns highlighted in the Agency's September 2012 proposal.

We at the Center visited with each of the state's mediators several months after the changes went into effect. Despite widespread failure by servicers to timely comply with the new premediation

requirement – 59% noncompliance in the first three months (see p. 9 of the attached report from Connecticut’s Judicial Branch, reporting non-compliance in 570 out of 960 cases) – mediators have seen resolution reached more quickly as a result. From what we at the Center have seen in our own cases and from all the discussions we have had, we believe borrowers are better able to submit the documents that servicers request. In turn, servicers are more likely to promptly provide an answer to the homeowner’s loan workout request. Reports from other stakeholders, such as industry representatives and other homeowner attorneys, have been similarly positive.

We believe the next report from our court system, in early 2015, will show the improvements intended by the bill. If the Agency wants to rely on timeline-based studies to set g-fee policy, notwithstanding the flaws raised with this approach in various November 2012 comments, it should analyze the pace of foreclosures commenced in Connecticut’s courts on or after October 1, 2013, after the changes went into effect.

2. Connecticut Has Worked to Increase Short Sales over Foreclosures.

Short sales are often derailed by junior lienholders who delay or stop a sale, whether through obstinacy or extortion-like tactics. Mortgagees in first-lien position must often instead foreclose or recognize increased losses while waiting for the junior lienholders’ objections to be resolved. A working group led by our Department of Banking produced successful legislation in 2014 intended to increase short sales by reducing the leverage wielded by underwater junior lienholders. The legislation goes into effect on January 1, 2015 and is, we believe, the only one of its kind in the country. The expected increase in short sales and the decreased timeline for completing short sales should both result in cost savings for the Enterprises.

3. The Speed of Connecticut’s Post-Foreclosure Eviction Process Depends Largely on Servicers and Their Counsel.

While commenters from Connecticut discussed the ability of foreclosing mortgagees to quickly foreclose if the homeowner does not appear (a bit longer than 2 months), they paid little attention to the post-foreclosure eviction process. In short, people who have lost their homes to foreclosure may be ejected with little court involvement because foreclosing mortgagees obtain the right to possession of the property when they obtain title. The new owner merely needs to request court authorization to “eject” the homeowners as soon as it has title. There is no mandatory waiting period and, once the authorization is issued (typically within hours or days after it’s requested), ejection can occur 24 hours after notice is served. Affected homeowners may seek a “stay” of ejection, but we know from the thousands of homeowners with whom we speak each year that only a small percentage actually do. Of the ones who do, few are successful in obtaining a reprieve of more than a month or two.

In short, servicers (and their counsel) can decide to proceed as quickly as post-foreclosure eviction they’d like, with little resistance or delay from Connecticut’s court system or laws. Accordingly, any analysis of Connecticut’s post-foreclosure eviction process must take these dynamics into account.

4. Connecticut Continues to Save the Enterprises Money.

Commenters in November 2012 highlighted the success of Connecticut’s mediation program. Earlier this year our Judicial Branch released updated statistics. Since the program began in July

2008, 84% of the cases that have completed mediation have settled. In other words, these parties voluntarily agreed to a foreclosure alternative that was mutually beneficial and, likely in the overwhelming majority of cases, cost-saving for the mortgagee. This number has been steadily rising throughout the history of the program, and 91% of the cases that completed mediation in 2013 settled. (The reports with these figures are at the end of the attached report.) Foreclosure timeline studies simply do not reflect this success.

The success Connecticut has had in achieving cost-savings loss mitigation results for parties participating in its foreclosure mediation program is exceptional. But we know from working with peers in other states, and from my past experience in New York's foreclosure settlement conferences, that the other states targeted for elevated fees have similarly successful foreclosure diversion programs. Punishing states in spite of their success in reaching alternatives to foreclosure, without any apparent accounting for loss mitigation results within the state, was ill-conceived and remains problematic.

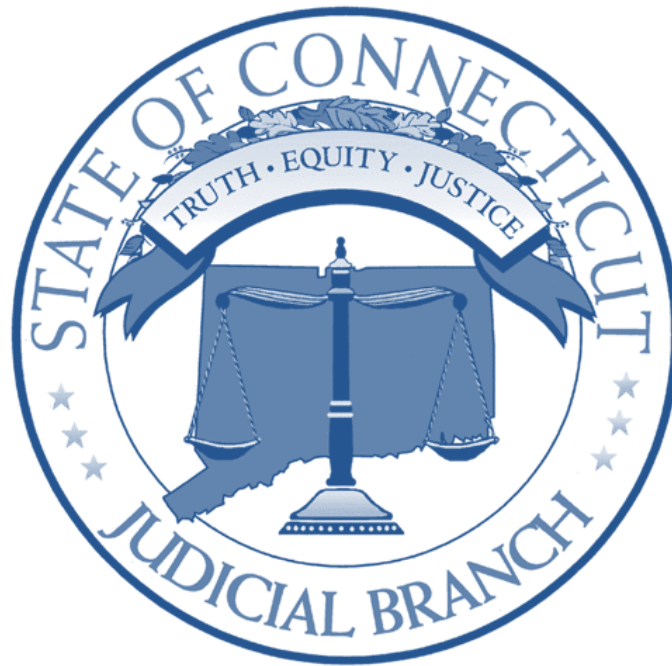
Please do not hesitate to contact me at (860) 263-0741 or jgentes@ctfairhousing.org should you have any questions regarding the above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey Gentes', with a long horizontal flourish extending to the right.

Jeffrey Gentes
Managing Attorney, Fair Lending and Foreclosure Prevention

2014



Foreclosure Mediation Program

*Report to the General Assembly
Submitted Pursuant to Section 4(d) of Public Act 13-136*

February 14, 2014

Office of the Chief Court Administrator
Honorable Patrick L. Carroll, III

The following report concerning the Foreclosure Mediation Program is submitted pursuant to General Statutes §§ 11-4a and 49-31n (d)(1).



Introduction

The mortgage foreclosure crisis continues to have profound effects on Connecticut homeowners, their families and children. Its impact has extended to the neighborhoods in which they live, their surrounding communities, the State's economy, and to the nation. Recognizing the need for early intervention, in 2008 the Connecticut General Assembly established the first statewide Foreclosure Mediation Program in the country, effective July 2008 pursuant to No. 08-176 of the 2008 Public Acts.¹ The Program is often cited as a model for developing and operating statewide foreclosure mediation programs across the nation based upon its structure, operational history, and positive results. Since its inception, changes to the Program have come about as a result of statutory amendments,² most recently by No. 13-136 of the 2013 Public Acts.

Early in the crisis, with the U.S. economy continuing to weaken and job losses multiplying, federal assistance programs such as the President's *Making Home Affordable* programs were created and then expanded in an attempt to assist homeowners in crisis and find alternatives to foreclosure. In Connecticut, the state's Emergency Mortgage Assistance Program was expanded in order to reach previously ineligible homeowners with Federal Housing Administration (FHA)-insured loans. More recently, in 2012, 49 state attorneys general and the federal government announced the National Mortgage Settlement (NMS), a joint state-federal settlement with the nation's five largest mortgage servicers³ for alleged improper mortgage servicing practices. The NMS, totaling \$25 billion, represented the largest consumer financial protection settlement in U.S. history. Connecticut's share was \$190 million, a portion of which went towards state foreclosure prevention programs. Among other things, the Settlement created new mortgage loan servicing standards, irrespective of loan ownership.⁴ Many of the servicing standards

¹ Public Act 08-176, *An Act Concerning Responsible Lending and Economic Security*, created the Foreclosure Mediation Program and was codified as General Statutes §§ 49-31l through 49-31o, inclusive.


² See Public Acts 2009, No. 09-209; Public Acts 2011, No. 11-201.

³ Bank of America, N.A.; CitiMortgage, Inc.; J.P. Morgan Chase Bank, N.A.; Wells Fargo & Company and Wells Fargo Bank, N.A.; and Residential Capital LLC and affiliates (formerly GMAC).

⁴ Joseph A. Smith, Jr. was appointed to serve as Compliance Monitor of the NMS. His responsibilities include ensuring that there is compliance with the consumer relief and servicing standards of the Settlement. His reports can be found at www.mortgageoversight.com.

parallel requirements found in our own foreclosure mediation statute or court standing orders.⁵

Despite these various, ongoing efforts to mitigate the number of homes lost to foreclosure, Connecticut continues to see high foreclosure rates.⁶ Notwithstanding these numbers, however, the Foreclosure Mediation Program continues to record positive settlement results for homeowners who complete mediation, permitting them to retain their homes or gracefully exit from them. Foreclosure Mediation Program statistics since inception and for 2013 are attached to this report.



Foreclosure Mediation Program Summary

The traditional mediation process generally involves parties to a dispute sitting in a room together, engaged in confidential discussions which are facilitated by a third party neutral, with the goal of reaching a mutually agreeable settlement of the dispute. The parties present generally have settlement authority, and rarely rely on a “play book” of available outcomes, instead having the flexibility to craft creative solutions to their conflict.

By contrast, the foreclosure mediation landscape looks quite different. The options available to homeowners to avoid foreclosure are frequently predetermined by loan type and origination, the amount of the arrearage, the identity of the servicer and investor, and the borrower’s current financial situation. Rather than to facilitate creative problem solving, the mediator’s role is, in large part, to ensure that homeowners provide requested documentation and loan servicers timely and properly review them for the assistance for which they are eligible according to applicable program guidelines. Despite their duty to be unbiased,⁷ mediators are required to file reports to the court of mediation sessions, which address the parties’ behavior,⁸ which can be used by the court to support the imposition of sanctions.⁹ Reportedly, lender representatives with settlement authority are rarely present, either by phone or in person, and often those who are present lack knowledge of the file’s status or loss mitigation program

⁵ Mortgage Foreclosure Standing Order Federal Loss Mitigation Programs, form JD-CV-117, Rev. 8/10; Uniform Foreclosure Mediation Standing Orders.

⁶ In 2008, a total of 11,827 foreclosure actions were filed statewide. These numbers soared to 27,241 in 2009; dropped to 21,717 in 2010; further declined to 14,782 in 2011; rose to 19,199 in 2012; and reached 21,440 in 2013. These numbers include commercial and residential mortgage foreclosures as well as actions to foreclosure tax or condominium liens.

⁷ General Statutes § 49-31m

⁸ General Statutes §§ 49-31n (b) (2) and 49-31n (c) (2).

⁹ General Statutes §§ 49-31n (b) (2) and 49-31n (c) (2).

requirements. While lenders, homeowners, and mediators all agree that the process takes far too long, it is also indisputable that thousands of homes have been saved from foreclosure to the benefit of both parties.

Foreclosure Mediation Program Staff: The Foreclosure Mediation Program currently is staffed by one program manager, 25 mediation specialists serving the state's 14 judicial districts, 9 designated caseflow coordinators and 16 office clerks. Mediation specialists are Judicial Branch employees who are trained in mediation and all relevant aspects of the law. They have substantial knowledge of federal and state assistance programs and their respective guidelines, as well as community-based resources in each district. Most are attorneys with many years of mediation experience.

The Foreclosure Mediation Program: Public Act 13-136, effective July 15, 2013, made sweeping changes to Connecticut's mediation process, as summarized, in part, below.

- Participation: The Program continues its opt-in model for homeowner participation, requiring homeowners to file an Appearance and Foreclosure Mediation Certificate demonstrating Program eligibility within 15 days of the case's return date. However, the court can refer a homeowner to the Program at any time for good cause.
- Mediation Period: The mediation period now concludes on the earlier of 7 months from the return date or 3 mediation sessions, although the period can be extended by the court in certain circumstances. Transitional rules also may apply in certain instances to increase the number of sessions allowed.
- Objectives of the Mediation Program: The Program's objectives are to determine if the lender and homeowner can reach an agreement that will either avoid the foreclosure through loss mitigation, or expedite or otherwise facilitate the foreclosure. The parties are expected to pursue these objectives with reasonable speed and efficiency and in good faith without unreasonable and unnecessary delays. Loan servicers are expected to respond with a decision on a homeowner's request for assistance within 35 days of receipt of a complete financial package. If the decision is a denial, the reasons must be explained in writing. If additional information is requested or if the package is incomplete, the servicer is required to request the missing or additional information within a reasonable period of time in writing, and the 35 day response time is extended for a reasonable time.
- Scope: The statute now clarifies that mediation addresses all issues of the foreclosure, including the disposition of the property by other means, including short sales and deeds-in-lieu of foreclosure.
- Premediation Process: Homeowners whose cases have return dates on or after October 1, 2013 are required to participate in a new premediation process. In such

cases, lenders must provide the mediator and the homeowner with forms and other information within 35 days of the return date. Thereafter, the homeowner meets with the assigned mediator who reviews the completed forms and documentation, or assists in its completion. The mediator may refer the homeowner to appropriate community assistance programs and, at the conclusion of premediation, facilitates the delivery of the completed financial package to the lender's attorney. The mediator is required to file a Premediation Report indicating whether mediation with the lender will be scheduled.

- Mediator Reports: Effective July 15, 2013, mediators are required to file a report with the court within 3 business days after each mediation session that is held. A summary of the data collected in the mediator reports is provided later in this report.
- Extensions of the Mediation Period: The court must review all motions or requests to extend the mediation period and rule on the motion or request within 20 days. The mediation period may be extended if the court finds either that (i) a party engaged in a pattern or practice of conduct contrary to the objectives of the mediation program or (ii) it is highly probable that the parties will reach an agreement. An additional extension may be granted, if by agreement of the parties.
- Sanctions: The court may impose sanctions on a party or a party's counsel who engages in intentional, or a pattern or practice of, conduct contrary to the objectives of the mediation program. Sanctions include terminating mediation, ordering the personal appearance of a party, imposing fines, and awarding or disallowing attorneys' fees.



Data Collection Summary

From July 1, 2013 through December 31, 2013

Number of cases in mediation: There were 11,018 cases active in mediation during this period.

Number of mediation sessions held: During the period, 9,971 mediation sessions were held. This number does not include the number of sessions that were scheduled but did not go forward. It also does not include cases with return dates on or after October 1, 2013 since it is unlikely that these cases will have completed premediation. For the few that may have, mediation sessions would be scheduled outside of this reporting period.

Number of agreements reached before the conclusion of the mediation period: In 346 cases, mediators filed final reports during this timeframe indicating a settlement was reached during the mediation period. In an additional 406 cases, mediators reported that settlements were reached during an extended mediation period.

Number of continuance motions filed: A total of 4,701 continuance motions were filed during the period. Of these, 2,171 were filed by the Plaintiff and 2,528 were filed by the defendant. Two were reported as being filed by the Court.

Number of motions to modify the mediation period filed: A total of 8,686 motions were filed. Of these, 1,750 were filed by the plaintiff; 4,631 were filed by the defendant; and 2,305 were requests by the mediator.

Number of loans serviced by third parties: Mediators reported 798 cases where the loan was serviced by a third party.

Number of cases by Judicial District:

<i>Location</i>	<i>Cases</i>	<i>Location</i>	<i>Cases</i>
Ansonia-Milford	732	New Haven	1227
Danbury	724	New Haven at Meriden	62
Fairfield	1371	New London	732
Hartford	1608	Stamford-Norwalk	1201
Litchfield	465	Tolland	302
Middlesex	394	Waterbury	914
New Britain	848	Windham	438

Number of cases where the defendant is a self-represented party: There was at least one self-represented mortgagor in 7,819 of the 11,018 reported cases during the period (71%).



Data Collection Summary

Mediators Reports

From July 15, 2013 through August 15, 2013, mediators filed 2,105 Mediator Reports in paper format in order to comply with the statutory mandate. On August 16, 2013, changes went into effect which permitted the data to be captured and collected electronically. **Accordingly, the data reported below is only for the period August 16, 2013 through December 31, 2013, inclusive.**

1. Did the parties engage in conduct consistent with the objectives of the mediation program?

	Yes	No
Plaintiff:	95%	5%
Defendant:	98%	2%

Did the parties possess the ability to mediate?

	Yes	No
Plaintiff:	95%	5%
Defendant:	98%	2%

2. Did the mortgagor submit a complete financial package to the mortgagee?

Yes	No
64%	36%

3. What foreclosure alternative has the mortgagor requested?

Alternative		Alternative	
loan modification	85%	reinstatement	1.6%
short sale	10%	repayment	1%
deed-in-lieu	2%	modified law day / sale date	0.4%

4. Has the mortgagor been previously evaluated for a similar request?

Yes	28%	No	72%
prior to mediation	70%		
in mediation	63%		
financial circumstances change	59%		

5. Has the mortgagee responded to the mortgagor's request?

Yes*	No	n/a
38%	30%	32%

*(of these, 52% were approved for assistance; 48% were denied)

Is the mediator aware of any reason to disagree with that response?

Yes	No
10%	90%

6. Has the mortgagor responded to the mortgagee's offer on a reasonably timely basis?

Yes	No	n/a
17%	2%	81%

7. Has the mortgagee requested additional information from the mortgagor?

Yes	No
57%	43%

8. Has the mortgagor supplied, on a reasonably timely basis, additional information reasonably requested by the mortgagee?

Yes	No	n/a
52%	6%	42%

9. Is the information provided by the mortgagor still current for the mortgagee's review?

Yes	No
69%	31%

10. Has the mortgagee provided a reasonable explanation of a denial for the foreclosure alternative requested?

Yes	No	n/a
11%	2%	87%

Is the mediator aware of any material reasons to disagree with the denial?

Yes	No
16%	84%

11. Has the mortgagee complied with the statutory time frames for responding to requests for decisions?

Yes	No
93%	7%

12. Did the parties satisfy the expectations set forth in the previous report?

	Yes	No	n/a
Plaintiff:	46%	9%	45%
Defendant:	45%	11%	44%

Is a subsequent mediation session expected to occur?

Yes	No	Don't Know
86%	5%	9%

13. Will the parties benefit from further mediation?

Yes	No
95%	5%



Additional Data Collected

The following data, applicable to this reporting period, pertains to cases which participate in the premediation process.

Number of cases in mediation with return dates from October 1, 2013 through December 31, 2013:

- 960 cases - these cases are required to participate in the premediation process.

Number of FMP 2013 non-compliance events scheduled: An FMP 2013 non-compliance event is scheduled by the FMP caseflow coordinator whenever the plaintiff has failed to provide the mediator with the required information within 35 days of the case's return date or where the documentation provided was incomplete.¹⁰

- 570 events were scheduled as a result of plaintiff's statutory non-compliance.

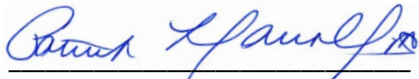
Number of Premediation meetings scheduled:

- 495 premediation meetings scheduled - In cases where plaintiff timely provided the required documentation to the mediator and homeowner, the court

¹⁰ General Statutes § 49-31/ (c) (4).

scheduled the first premediation meeting within 49 days of the case's return date.¹¹

Submitted this 14th day of February, 2014

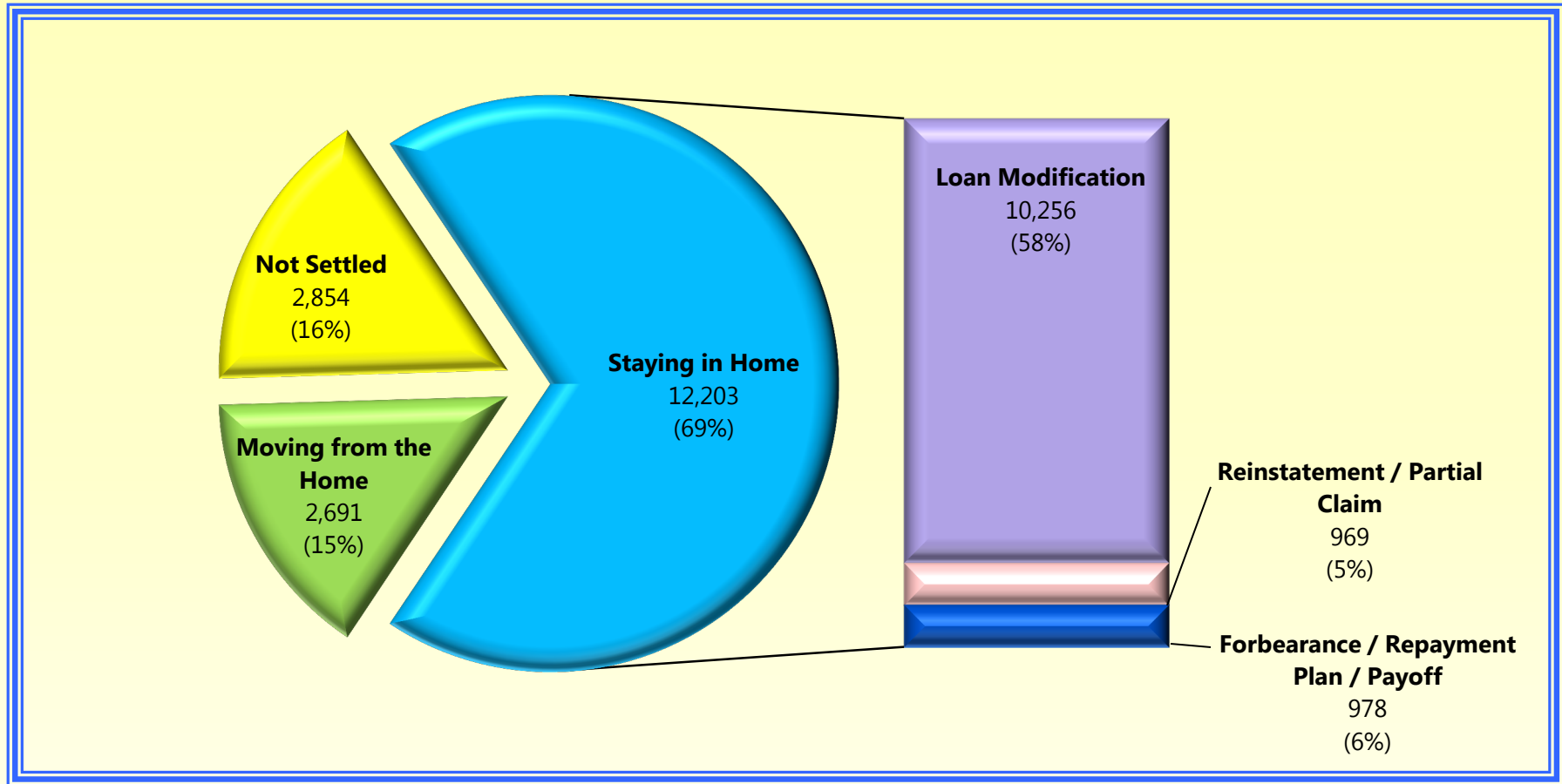
A handwritten signature in blue ink, reading "Patrick L. Carroll III". The signature is written in a cursive style and is positioned above a horizontal line.

Hon. Patrick L. Carroll III
Chief Court Administrator

¹¹ General Statutes § 49-31f (c) (4).

Foreclosure Mediation Program (FMP) Results

July 1, 2008 through December 31, 2013



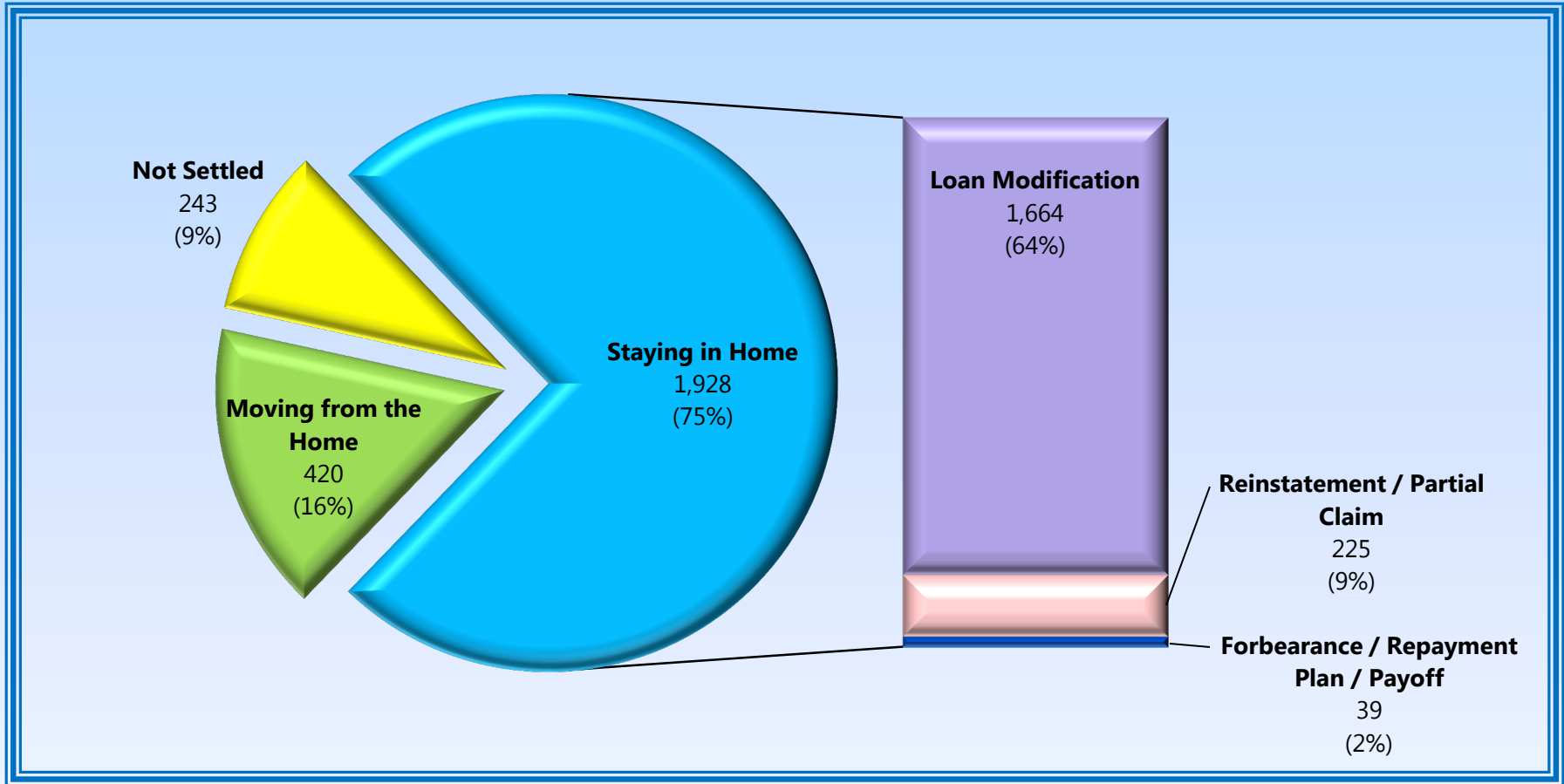
STATEWIDE, 17,748 CASES HAVE COMPLETED MEDIATION FROM JULY 1, 2008 THROUGH DECEMBER 31, 2013. THIS CHART ILLUSTRATES THE OUTCOME OF THESE CASES.

THE CATEGORY "MOVING FROM HOME" INCLUDES AGREEMENTS FOR A SALE, SHORT SALE, A DEED IN LIEU, OR AN EXTENSION OF THE LAW DAY OR SALE DATE.

THE CATEGORIES "MOVING FROM HOME" AND "STAYING IN HOME" WHEN ADDED TOGETHER RESULT IN A **SETTLEMENT RATE OF 84%**.

Foreclosure Mediation Program (FMP) Results

January 1, 2013 through December 31, 2013



STATEWIDE, 2,591 CASES HAVE COMPLETED MEDIATION FROM JANUARY 1, 2013 THROUGH DECEMBER 31, 2013. THIS CHART ILLUSTRATES THE OUTCOME OF THESE CASES.

THE CATEGORY "MOVING FROM HOME" INCLUDES AGREEMENTS FOR A SALE, SHORT SALE, A DEED IN LIEU, OR AN EXTENSION OF THE LAW DAY OR SALE DATE.

THE CATEGORIES "MOVING FROM HOME" AND "STAYING IN HOME" WHEN ADDED TOGETHER RESULT IN A **SETTLEMENT RATE OF 91%**.