ADMINISTRATIVE DIRECTIVE
OF THE
PRESIDENT JUDGE OF THE SUPERIOR COURT
OF THE STATE OF DELAWARE

NO. 2017-6

AUTOMATIC RESIDENTIAL MORTGAGE
FORECLOSURE MEDIATION PROGRAM

This 17th day of August, 2017,

WHEREAS, an Automatic Residential Mortgage Foreclosure Mediation Program (the "**Mediation Program**") was established by House Substitute Bill No. 1 to House Bill No. 58 of the 146th General Assembly that was signed by the Governor on September 21, 2011 and is codified in 10 *Del. C.* §5062C (the "**Mediation Act**");

WHEREAS, the Mediation Program seeks to encourage parties to a foreclosure action to meet and address, among other things, loss mitigation programs offered by the plaintiff for which the defendant could be eligible, along with other potential resolutions that may allow the defendant to continue to own the property or otherwise avoid a foreclosure judgment or Sheriff's sale;

WHEREAS, on January 20, 2011, Administrative Directive No. 2011-2 was issued to implement a Residential Mortgage Foreclosure Mediation Program established by Administrative Directive No. 2009-3 which remains in effect and governs foreclosure actions filed prior to the effective date of the Mediation Act,

except that no judgment may be entered in those mortgage foreclosure actions governed by Administrative Directive No. 2011-2 that have not gone to Sheriff's sale as of January 19, 2012, unless the plaintiff has filed a loss mitigation affidavit as required by 10 *Del. C.* § 5062A(b);

WHEREAS, Administrative Directive No. 2012-2 was issued to implement the Mediation Program for foreclosure actions filed on or after January 19, 2012, the effective date of the Mediation Act;

WHEREAS, the Mediation Act provides that the Superior Court (the "**Court**") perform or delegate certain functions necessary to implement the Mediation Program;

WHEREAS, the Department of Justice, Division of Consumer Protection has accepted its role as Program Administrator (as defined in paragraph 3, below) and has agreed to make the delegations of its authority as described herein;

WHEREAS, a revision to Administrative Directive No. 2012-2 was appropriate to provide for the proper administration of the Mediation Program,

WHEREAS, on May 28, 2013, the Governor signed House Bill No. 40 of the 147th General Assembly, which among other things extended the effective date of the Mediation Program to foreclosure actions filed on or before January 18, 2018;

WHEREAS, on May 28, 2013, Administrative Directive No. 2013-2 was issued superseding Administrative Directive 2012-2 by amending and restating the Mediation Program in full; and

WHEREAS, on July 17, 2017, the Governor signed House Bill No. 76 of the 149th General Assembly which extended the effective date of the Mediation Program to actions filed on or before January 18, 2020,

NOW, THEREFORE, IT IS DIRECTED that Administrative Directive No. 2017-6 hereby supersedes Administrative Directive No. 2013-2, which is hereby amended and restated in full, as follows:

1. **Scope of Program**. This Administrative Directive and the Mediation Program apply to all mortgage foreclosure actions filed under 10 *Del. C.* §5061 from January 19, 2012 through January 18, 2020 with respect to owner-occupied one-to-four family primary residential properties, unless the mortgage is held by the seller of the subject property who does not hold more than five such properties.

2. **Effect of Mediation Conference**.

2.1. No judgment may be entered in any action for which a mediation conference is scheduled until the day after a Final Mediation Record (as defined in paragraph 15.5.2, below) is E-filed with the Court and, in accordance with paragraph 13, below, the required Mediation Fee (as defined in paragraph

13.1, below) has been paid. In addition, an affidavit attesting to the filing of the Final Mediation Record and the payment of the Mediation Fee is required to be filed with the request for judgment. In accordance with 10 *Del. C.* § 5062D(c), and subject to the rules of the Court, a Defendant is thus able and permitted to file an answer with the Court on or before the date of any scheduled mediation conference.

2.2. None of the plaintiff's or the defendant's rights in the foreclosure action shall be waived by participation in the Mediation Program. No recommendation or determination of a Mediator under the Mediation Program shall form the basis of an appeal of any foreclosure judgment.

3. **Delegations**. Pursuant to the Mediation Act the Court may delegate certain responsibilities detailed in the Mediation Act to others. The Court hereby delegates the administration of the Mediation Program to the Department of Justice, Division of Fraud and Consumer Protection (the "**Program Administrator**"). The Court authorizes the Program Administrator to delegate certain of the Program Administrator's responsibilities to other entities that have certain expertise or resources which will serve to enhance the process, efficiency and effectiveness of the Mediation Program. The Program Administrator may, with the consent of the Court, further delegate or re-delegate such of its responsibilities as it determines is necessary to

ensure the process, efficiency and effectiveness of the Mediation Program. Each delegation herein and each subsequent delegation by the Program Administrator is subject to the absolute discretion of the Court to revoke the delegation at any time. Each delegatee shall perform its delegated responsibilities with due care and responsibility and with the same integrity as if it were dealing with the Court directly.

3.1. The Program Administrator shall be responsible for:

3.1.1. scheduling mediation conferences,

3.1.2. sending mediation notices,

3.1.3. ensuring the collection of the Mediation Fee (as defined in paragraph 13.1, below),

3.1.4. ensuring the maintenance of Mediation Program funds,

3.1.5. disbursing such expenses of the Mediation Program that the Paying Agent (as defined below in paragraph 3.2) does not disburse, as set forth in paragraph 13, below,

3.1.6. compiling program statistics, and

3.1.7. if applicable, employing and overseeing Mediator(s) (as defined in paragraph 4.1, below) for the Mediation Program.

3.2. The Program Administrator delegates certain fiscal responsibilities to the Delaware State Housing Authority to act as the paying agent for the Mediation

Program ("**Paying Agent**"). The Paying Agent shall be responsible, together with the Program Administrator, for disbursing funds to pay operating costs, housing counselors, and other administrative expenses of the program, as set forth in paragraph 13, below.

3.3. If additional mediator support is necessary beyond those hired pursuant to paragraph 4.2, below, the Program Administrator may delegate certain mediation coordination responsibilities to Delaware Volunteer Legal Services, Inc. to act as the volunteer mediator coordinator for the Mediation Program ("**Mediation Coordinator**"). If necessary, the Mediation Coordinator, with assistance from the Program Administrator and attorneys and staff of other Delaware-based non-profit legal services organizations, including Community Legal Aid Society, Inc., Legal Services Corporation of Delaware, Inc., and such other organizations as approved by the Court, shall be responsible for:

3.3.1. coordinating volunteer Mediator assignments; and

3.3.2. arranging for the provision of *pro bono* legal representation to homeowners at mediation conferences, where appropriate.

3.4. Where appropriate, the Mediation Coordinator may enlist volunteer Mediators and shall assign such volunteer Mediators to be responsible for specific mediation conferences. Any such volunteer Mediators:

3.4.1. shall be either a Delaware attorney certified as a mediator after completion of Superior Court mediation training or any other mediator approved by the Court; and

3.4.2. to the extent permitted by the Supreme Court, may be awarded continuing legal education credit.

4. **Mediators**.

4.1. The term "**Mediator**" as used herein refers to each individual who acts as a mediator for the Mediation Program.

4.2. The Program Administrator may hire or engage one or more Mediators for the Mediation Program.

4.3. The Program Administrator shall designate a Mediator hired or engaged under paragraph 4.2, above, to serve as the primary Mediator for cases under the Mediation Program.

4.4. Each individual who serves as a Mediator shall be responsible for E-filing or causing to be E-filed the Continuing Mediation Records (as defined in paragraph 15.5.1, below) and Final Mediation Records (Continuing Mediation Records and Final Mediation Records are collectively referred to in this Administrative Directive as "**Mediation Records**") with the Court.

4.5. The Mediator shall have no authority to bind the parties to a resolution. The Mediator's recommendations to the Court shall be included in a Mediation Record E-filed with the Court. See Paragraph 15.5, below.

4.6. If additional mediation conferences are to be held for a given case, it is preferable but not necessary that the same Mediator be assigned to the subsequent mediation conferences.

5. **Notices and Communications**

5.1. Notification of Filings. Each plaintiff shall, no later than the next business day after the complaint is filed with the Court, provide notice of such filing to each of the Program Administrator and the Mediator. Such notice may be satisfied by including these parties as additional notice parties on the Court's E-filing system at the time of filing the complaint or other initial pleading in the case.

5.2. Electronic Communications and Notices.

5.2.1. Notices required by this Administrative Directive and other communications among parties participating in the Mediation Program may be delivered electronically where a party or attorney has indicated it is willing to receive communications electronically. Once a party or attorney has so indicated, the Program Administrator and Mediation Coordinator may continue to communicate electronically with such party or attorney in future cases subject to the Mediation Program.

5.2.2. Whenever a notice, record, or other document is required by this Administrative Directive to be E-filed with the Court, the E-filing party shall send an electronic notification on the Court's E-filing system to each party identified as a notice party for the relevant case on the E-filing system.

5.3. Plaintiff's Counsel. Where a plaintiff is represented by counsel, notices and communications sent in connection with the Mediation Program shall be sent to such counsel. The counsel or other individual appearing at the mediation conference on behalf of the plaintiff will be responsible for receipt of all information – including documentation required to be provided as part of the pre-conference document exchanges set forth in Paragraph 14, below – from defendant and will be responsible for communicating and delivering that information to the plaintiff. Plaintiff's counsel shall designate a specific email address within its organization for receipt of documentation provided by the defendant, his or her Housing Representative, and/or his or her attorney.

5.4. Housing Representatives. Where a defendant has E-filed a Certificate of Participation that identifies a Housing Representative (as defined in paragraph 12.1, below), copies of all notices and communications that are sent to the defendant in connection with the Mediation Program shall be sent to the Housing Representative.

5.5. Loss Mitigation Affidavit. Any filing of a loss mitigation affidavit required by 10 *Del. C.* § 5062A(b) shall include the case caption, either on the affidavit itself or on a cover sheet included with the filing.

6. **Notice of Foreclosure Mediation**.

6.1. A Notice of Foreclosure Mediation shall accompany both the complaint and the posted and mailed Notice to Lien Holders and Tenants as set forth in Superior Court Civil Rule 4(f)(4).

6.2. The Notice of Foreclosure Mediation accompanying the copy of the complaint served on the defendant should be placed immediately under the writ and on top of the complaint.

6.3. The Notice of Foreclosure Mediation shall include a list of HUD-approved housing counseling agencies located in Delaware. Such list shall be available upon request from Delaware State Housing Authority.

6.4. The **Notice of Foreclosure Mediation** shall be in such form and include such information as is required by 10 *Del. C.* § 5062C(c)(2)(A) & (B). The form of such notice that must be used is attached as **Exhibit A**, or such later court-approved form.

7. **Documents to be included with the Notice of Foreclosure Mediation**.

7.1. A **Certificate of Participation** shall accompany the Notice of Foreclosure Mediation and include the information in 10 *Del. C.* § 5062C(c)(2)(D). The

form of such certificate that must be used is attached as **Exhibit B**, or such later court-approved form.

7.2. A **Universal Intake Form** and **Foreclosure Intervention Counseling Client's Checklist** shall also be attached. The forms of such documents that must be used are attached as **Exhibits C and D**, respectively, or such later court-approved forms.

8. **Mediation Conference Scheduling**.

8.1. In accordance with the Mediation Act, the Program Administrator shall schedule an initial mediation conference in each case for a date that is between 45 days and 75 days from the date the complaint and the Notice of Foreclosure Mediation were served on the defendant.

8.2. A **Mediation Scheduling Notice** shall include such information as is required by 10 *Del. C.* § 5062C(d)(1). The form of such notice that must be used is attached as **Exhibit E**, or such later court-approved form.

8.3. Subject to Paragraph 8.4, below, upon scheduling or re-scheduling a mediation conference (including the scheduling of a new mediation conference pursuant to Paragraphs 17.3 and 18, below), the Program Administrator shall issue a Mediation Scheduling Notice by:

8.3.1. E-filing a copy with the Court and selecting e-service to plaintiff's counsel, the mediator, and any other party so registered for electronic notification;

8.3.2. mailing it or sending it by electronic mail to the defendant and any other necessary parties that have filed a notice of appearance who have not registered for electronic notification; and

8.3.3. if a Certificate of Participation has been E-filed, mailing or sending the Mediation Scheduling Notice by electronic mail to the Housing Representative identified on such Certificate, if any.

8.4. No Mediation Scheduling Notice shall be required when the date and time for a new mediation conference is reflected in a Continuing Mediation Record.

8.5. With respect to an initial mediation conference, the copy of the Mediation Scheduling Notice sent to the defendant shall be accompanied by the following forms (which shall not be E-filed with the Court):

8.5.1. a Certificate of Participation (see **Exhibit B**, or such later court-approved form);

8.5.2. a Universal Intake Form (see **Exhibit C**, or such later court-approved form); and

8.5.3. a Foreclosure Intervention Counseling Client's Checklist (see **Exhibit D**, or such later court-approved form).

9. **Rescheduling Mediation Conferences**.

9.1. The plaintiff, the defendant, or their representatives, if any, another party who has filed a notice of appearance, the Mediator, and the Mediation Coordinator may, for good cause, request that a mediation conference be rescheduled. The Program Administrator may reschedule a mediation for good cause shown, upon agreement of the parties, or for an overdue Mediation Fee, as authorized by paragraph 13.4, below.

9.2. The Court may in its discretion order the Program Administrator to reschedule a mediation conference.

9.3. Prior to rescheduling an initial mediation conference for a date that is earlier than 45 days from the date the Notice of Foreclosure Mediation was served on the defendant, the Program Administrator must receive written consent from the defendant (which consent may be electronic).

9.4. Prior to rescheduling an initial mediation conference for a date that is later than 75 days from the date the Notice of Foreclosure Mediation was served on the defendant, the Program Administrator must receive written consent from both the plaintiff and the defendant (which consent may be electronic).

9.5. When a mediation conference has been re-scheduled pursuant to this paragraph 9, the Program Administrator shall issue a new Mediation Scheduling Notice pursuant to Paragraph 8.3, above.

10. **Cancelling Mediation Conference where Action not Subject to Mediation Program.**

10.1. If a plaintiff, subsequent to the filing and service of a complaint in a mortgage foreclosure action that asserts it is subject to the Mediation Program, learns that the action is not subject to the Mediation Program because the property is not an owner-occupied one-to-four family primary residential property, such plaintiff may request that mediation be cancelled by E-filing a request ("**Cancellation Request**") and mailing a copy to the defendant.

10.2. A defendant shall have 20 days from the date of service of the Cancellation Request to contest the granting of such request by providing a response to the Program Administrator.

10.3. After 20 days from the date the Cancellation Request was served on the defendant pursuant to paragraph 10.1, above, (which, in accordance with court rule, shall be 23 days from the date of mailing), the Program Administrator shall make a determination as to whether the mortgage foreclosure action is subject to the Mediation Program. If the Program Administrator receives conflicting statements as to the applicability of the Mediation Program to a particular mortgage foreclosure action, the Program Administrator may determine that the mediation process should go forward. Either party may

challenge the determination of the Program Administrator by E-filing a motion to order or cancel mediation with the Court.

10.4. Each Cancellation Request shall:

10.4.1. be accompanied by a certification from plaintiff's counsel stating with particularity the reason(s) that the mortgage foreclosure action is not subject to the Mediation Program, along with a statement explaining how such facts were determined;

10.4.2. include the last known address and phone number for the defendant;

10.4.3. state the date of the next schedule mediation for which cancellation is requested; and

10.4.4. include the following statement:

"**Attention Defendant**: If you wish mediation to continue, you must respond in writing to the Program Administrator within 20 days contesting the certified statements above. You can call the Program Administrator at 1-800-220-5424 for more information.

If you do not provide a response to this Cancellation Request within 20 days, your mediation may be cancelled, your foreclosure action may go forward, and the plaintiff may be permitted to seek judgment against

you if you have not filed a responsive pleading with the Court, such as an answer to the complaint.

In addition, even if you file a response to this Cancellation Request, the Program Administrator may determine that you are not subject to mediation. If that occurs, your mediation may be cancelled, your foreclosure action may go forward, and the plaintiff may be permitted to seek judgment against you if you have not filed a responsive pleading. Thus, if you wish to contest the foreclosure action, you should file a responsive pleading, such as an answer, with the Superior Court before the end of the 20 day period."

10.5. Upon making a determination to cancel mediation pursuant to paragraph 10.3, above, the Program Administrator shall issue a **Mediation Cancellation Notice**. The form of such notice that must be used is attached as **Exhibit F**, or such later court-approved form. The Mediation Cancellation Notice shall be issued by:

10.5.1. E-filing a copy with the Court;

10.5.2. mailing it or sending it by electronic mail to the defendant; and

10.5.3. mailing it or sending it by electronic mail to the Housing Representative identified on the Certificate of Participation, if any.

11. **Cancelling Mediation Conferences based on Certificate of Participation**.

11.1. Upon receipt of a Certificate of Participation that indicates a defendant is not eligible for, or does not wish to participate in, the Mediation Program, the Program Administrator shall issue a Mediation Cancellation Notice (see **Exhibit F**, or such later court-approved form) by:

11.1.1. E-filing a copy with the Court; and

11.1.2. mailing it or sending it by electronic mail it to the defendant; and

11.1.3. mailing it or sending it by electronic mail to the Housing Representative identified on the Certificate of Participation, if any.

11.2. Prior to the entry of judgment, a defendant whose initial mediation conference has been cancelled pursuant to paragraph 11.1, above, has the right to request that the Program Administrator reinstate mediation. The Program Administrator, in its discretion, may schedule a new mediation conference as soon as reasonably practicable and only if judgment has not yet been entered. If the Program Administrator schedules a new mediation conference pursuant to this paragraph, the Program Administrator shall issue a **Mediation Reinstatement Notice**. The form of such notice that must be used is attached as **Exhibit G**, or such later court-approved form. The Mediation Reinstatement Notice shall be issued by:

11.2.1. E-filing a copy with the Court;

11.2.2. mailing it or sending it by electronic mail it to the defendant; and

11.2.3. mailing it or sending it by electronic mail to the Housing Representative identified on the Certificate of Participation, if any.

12. **Certificate of Participation**.

12.1. In order to effectively participate in the Mediation Program, defendants are encouraged to work with and through a HUD-approved housing counseling agency or with an attorney who is employed by a non-profit legal services provider in Delaware (a "**Housing Representative**").

12.2. No more than 30 days from the date the complaint and Notice of Foreclosure Mediation was served, a defendant shall:

12.2.1. meet with a Housing Representative, unless the defendant has chosen not to do so or there are no Housing Representatives available;

12.2.2. complete a Certificate of Participation; and

12.2.3. cause the completed Certificate of Participation to be E-filed with the Court by any of the following:

12.2.3.1. sending the Certificate of Participation as a pdf document by electronic mail to the Program Administrator, who will then E-file the Certificate of Participation;

12.2.3.2. delivering three copies of the Certificate of Participation to the Program Administrator, who will then E-file a scanned copy of the Certification of Participation; or

12.2.3.3. E-filing the Certificate of Participation directly with the Court, if possible.

12.3. If a defendant fails to E-file a Certificate of Participation:

12.3.1. the defendant may still attend the scheduled mediation conference;

12.3.2. the plaintiff is excused from its pre-mediation conference obligations under the Mediation Program, but still must attend the scheduled mediation conference and engage in good faith in any pre-mediation conference negotiations, communications, or document exchanges initiated by the defendant.

12.4. If a defendant has failed to cause the E-filing of a Certificate of Participation, attends the scheduled mediation conference, and the parties agree to have an additional mediation conference scheduled, the defendant should, as soon as reasonably practicable upon the conclusion of the initial mediation conference, meet with a Housing Representative, complete a Certificate of Participation and cause it to be E-filed with the Court either in a manner

provided by paragraph 12.2.3, above, or using the E-filing capabilities provided at the mediation conference, if possible.

13. **Mediation Fee**.

13.1. The Prothonotary shall collect a Mediation Fee of $300 as required by 10 *Del. C.* § 5062C (q) (the "**Mediation Fee**"), after the filing of a Certificate of Participation. In order to better assure the financial stability of the Mediation Program, the Mediation Fee must be paid by the plaintiff and is not permitted to be advanced by counsel. The amount of the Mediation Fee is estimated, in whole or in part, to defray the costs and expenses of implementation of the Mediation Program and may be modified in the event the current estimation of implementation costs is adjusted to meet the requirements of the Mediation Program.

13.2. Payment of the Mediation Fee shall be through the Court's E-filing system by E-filing a **Mediation Fee Payment Notice** that includes the amount of the Mediation Fee. The form of such notice that must be used is attached as **Exhibit H**, or such later court-approved form.

13.3. Plaintiff shall pay the Mediation Fee within thirty days after a completed Certificate of Participation is E-filed with the Court. Notwithstanding the foregoing, no Mediation Fee shall be required where the mediation conference has been cancelled pursuant to paragraph 11.1, above and not rescheduled.

13.4. Where a Mediation Fee is overdue, the Program Administrator may, in its discretion, reschedule an upcoming mediation conference for a date after the Mediation Fee has been received.

13.5. If a Mediation Fee is due, no judgment shall be entered until such Mediation Fee is paid. Cases for which a Mediation Fee remains unpaid may be subject to dismissal by the Court.

13.6. The Program Administrator, together with Paying Agent as its sub-delegatee, shall be responsible for maintaining the Mediation Fee funds after collection. The Program Administrator and the Paying Agent anticipate entering into a Memorandum of Understanding that will be acknowledged by the Court (which may be subsequently amended, the "**MOU**"), to govern the maintenance and administration of such funds.

13.7. All Mediation Fees collected shall be maintained separately from other accounts and shall be transferred by the Court to Paying Agent (pursuant to its sub-delegation of authority from the Program Administrator) as set forth in the MOU. The Program Administrator and the Paying Agent shall jointly be responsible to disburse funds, as set forth in the MOU.

13.8. Funds in the Mediation Account may be used to pay Mediators, administrative expenses, and other implementation and operating costs of the Mediation Program, including a portion of the costs of Housing Representatives'

participation, if funds are available. The Program Administrator may directly pay for expenses of the Mediation Program and be reimbursed for such expenses by the Paying Agent.

13.9. Any service providers to the Mediation Program (other than as provided in paragraph 13.10, below) shall submit invoices, reports, or reimbursement requests along with any requested supporting documentation to the Program Administrator and shall provide copies of such documentation to the Paying Agent.

13.10. Any agency approved by the Paying Agent and employing Housing Representatives that have participated in the Mediation Program ("**Participating Housing Agency**") may be reimbursed in accordance with the formulas and procedures set forth in the MOU.

14. **Pre-Conference Document Exchange**.

14.1. At least 14 days prior to the date of the initial mediation conference, defendant shall provide a completed financial packet to the plaintiff's counsel (and, upon request, to the Mediator), which submission shall be substantially in the form provided in **Exhibit C**, or such later court-approved form.

14.2. Unless otherwise directed by the Mediator, at least seven days prior to the date of the initial mediation conference, the plaintiff shall provide to the defendant (and, upon request, to the Mediator) a list of documents that the defendant

must either bring to the mediation conference or provide to the plaintiff in advance of such mediation conference. The plaintiff shall specify on such checklist whether updated versions of previously provided documents are required. The plaintiff shall use the form provided in **Exhibit D**, or such later court-approved form, and identify on such checklist the necessary documents.

14.3. Either *sua sponte* or at the request of a party, the Mediator may schedule a pre-mediation teleconference to discuss the plaintiff's checklist and the defendant's provision of required documents to the plaintiff. That conference shall be at a mutually convenient time prior to the date of the initial mediation conference.

14.4. In accordance with § 5062C (h) of the Mediation Act, if the Mediator determines that the use of preliminary position statements or the provision of other information in advance of mediation is appropriate to facilitate a speedy and effective mediation process, the Mediator may require the parties to provide such statements or information.

15. **Mediation Conferences**.

15.1. Each mediation conference will be held at the time and place for which it was scheduled in the Mediation Scheduling Notice. At the mediation conference, the parties shall address applicable loss mitigation programs or other resolutions that may avoid a foreclosure judgment.

15.2. The Mediator will oversee one or more mediation conferences which may be held simultaneously at a single location. The Program Administrator will ensure that scanning, emailing, and copying capabilities are available. In addition, the mediation conference location should have security. With the Mediator's direction, parties may engage in party-led mediation during their mediation conference, and the Mediator will be available as necessary and appropriate to facilitate the mediation and to complete the Mediation Record.

15.3. Appearances. The plaintiff (or plaintiff's counsel), and the defendant shall appear in person at the mediation conference. If the plaintiff appears by counsel, a representative of the plaintiff with decision-making and settlement authority must be available during the mediation conference by telephone. The defendant may be accompanied by defendant's Housing Representative and/or a Delaware attorney.

15.4. The plaintiff shall bring to the mediation conference:

15.4.1. an updated and detailed itemization of all fees and costs, including any other charges and attorneys' fees, that must be paid as of the date of the mediation in order to reinstate the loan secured by the property; and

15.4.2. if not included as part of the itemization required in paragraph 15.4.1, above, a current itemization of all overdue amounts causing the loan to be in default.

15.5. Mediation Records. At the conclusion of each mediation conference, the parties or the Mediator shall complete the Mediation Record. The Mediation Record shall reflect the outcome of the mediation conference.

15.5.1. Where the mediation process is continuing, or where the foreclosure action is not permitted to proceed to judgment because an agreement has been reached or otherwise, a "Continuing Mediation Record" shall be filed. The form of **Continuing Mediation Record** that must be used is attached as **Exhibit I**, or such later court-approved form.

15.5.2. Where the mediation process is complete and the foreclosure action may proceed, or where the foreclosure action is not suitable for mediation, a "Final Mediation Record" shall be filed. The form of **Final Mediation Record** that must be used is attached as **Exhibit J**, or such later court-approved form.

15.6. Signing and Filing the Mediation Record. The Mediator shall sign the Mediation Record (or authorize the Program Administrator to electronically

sign the Mediation Record on the Mediator's behalf). Each party present at the mediation conference shall also sign the Mediation Record.

15.6.1. If one or more of the parties present at the mediation conference does not sign the Mediation Record, the Mediator shall note on the Mediation Record that the mediation process was unsuccessful or such other recommendations as the mediator deems appropriate, and cause the Mediation Record to be E-filed notwithstanding the missing signature.

15.6.2. If E-filing capability is available at the location of the mediation conference, the Mediator shall promptly cause the Mediation Record to be E-filed with the Court and shall provide copies to those parties present at the mediation conference.

15.6.3. If E-filing capability is not available at the location of the mediation conference, within two business days, the Mediator shall cause the Mediation Record to be E-filed with the Court and shall provide copies to those parties present at the mediation conference.

16. **Cancellation or Rescheduling of Mediation Conferences**.

16.1. The parties may cancel or reschedule their mediation conference by E-filing (or requesting the Mediator to E-file) with the Court an appropriate Mediation Record, which shall be identified as a "**Cancellation Record**" by checking

the appropriate space on the relevant form. The party E-filing such Cancellation Record shall provide a copy to the defendant and the Housing Representative, if any, as required by paragraph 16.3, below.

16.2. A Cancellation Record must be signed by each party and the Mediator. Alternatively, the Mediator may authorize the Program Administrator to electronically sign the Cancellation Record on the Mediator's behalf. The Mediator may sign on behalf of a party after discussing the terms with, and receiving signing authority from, such party, which authority may be granted verbally or in writing. A defendant's Housing Representative or counsel may likewise sign on behalf of a defendant after discussing the terms with and receiving signing authority from the defendant, which authority may be granted verbally or in writing.

16.3. Where the parties have mutually agreed to reschedule a mediation conference pursuant to paragraph 16.1, the parties shall:

16.3.1. contact the Program Administrator and request a subsequent mediation conference date to be set within a sufficient amount of time for the parties to be fully prepared to attend mediation, and

16.3.2. record the subsequent mediation conference date on a Cancellation Record which shall be E-filed by the Mediator or Program Administrator.

17. **Resolutions by Agreement of the Parties**.

17.1. If the parties reach a resolution either in advance of a mediation conference or at a mediation conference, the essential terms of the agreement will be memorialized in writing prior to E-filing of the Continuing Mediation Record, and the parties shall E-file a Continuing Mediation Record indicating that the parties have reached an agreement. This writing may be subject to execution of a fully documented agreement.

17.2. Promptly upon receipt of documents executed by the defendant reflecting the agreement of the parties or, in the case of a trial modification agreement, promptly upon conversion of the trial mortgage modification to a permanent mortgage modification, plaintiff shall seek dismissal of the foreclosure action in the Court, which may require a stipulation of dismissal signed by all parties.

17.3. After reaching an agreement in principle, if either party fails to execute documents reflecting that agreement, or if the material terms of the agreement are not fully met, or if a trial modification is not converted to a permanent modification as anticipated in the agreement, then either party may contact the Program Administrator to request a new mediation conference. The Program Administrator will schedule a new mediation conference as soon as reasonably practicable.

17.4. When a mediation conference has been rescheduled pursuant to paragraph 17.3, above, the Program Administrator shall issue a new Mediation Scheduling Notice pursuant to Paragraph 8.3, above.

18. **Bankruptcy**.

18.1. If, prior to entry of judgment, the defendant has filed for bankruptcy and the mortgage foreclosure action is subject to the automatic stay of the bankruptcy court, the mediation conference is cancelled and either a suggestion of bankruptcy or a completed Superior Court Civil Rule Form 47 should be filed with the Court. Upon termination of the automatic stay with respect to the defendant's mortgage obligation to the plaintiff, the plaintiff shall contact the Program Administrator to have a new mediation conference scheduled. No judgment may be entered in such matter until the day after a Final Mediation Record is E-filed.

18.2. When a mediation conference has been re-scheduled after bankruptcy pursuant to this paragraph 18, the Program Administrator shall issue a new Mediation Scheduling Notice pursuant to Paragraph 8.3, above.

18.3. Notwithstanding the provisions of paragraphs 18.1 and 18.2, above, if, prior to the entry of judgment, the defendant(s) filed for bankruptcy and the mortgage foreclosure action is subject to the automatic stay of the Bankruptcy Court, mediation conferences under the Mediation Program may be held upon

directive or order of the United States Bankruptcy Court for the District of Delaware.

19. **Parties Conduct**.

19.1. The Mediator may recommend that the Court dismiss an action where the plaintiff fails to appear at two consecutive mediation conferences.

19.2. If the defendant fails to appear at the mediation conference, a Final Mediation Record will be E-filed. The plaintiff may proceed with the foreclosure action upon such E-filing, unless judgment has not been entered and each of the following has occurred:

19.2.1. the defendant contacts the Program Administrator prior to the entry of judgment and shows good cause for his/her failure to appear at the mediation conference; and

19.2.2. the Program Administrator schedules a new mediation conference and issues a Mediation Reinstatement Notice prior to the entry of judgment by:

19.2.2.1. E-filing a copy with the Court;

19.2.2.2. mailing it or sending it by electronic mail to the defendant; and

19.2.2.3. mailing it or sending it by electronic mail to the Housing Representative identified on the Certificate of Participation, if any.

19.3. The Mediator may note in the Mediation Record the following, along with any reasonable cause shown where relevant:

19.3.1. if there was improper service of the complaint or required notices;

19.3.2. if a plaintiff fails to comply with 10 *Del. C.* § 5062C(i);

19.3.3. if a plaintiff requests rescheduling of the conference due to its lack of preparedness; or

19.3.4. if a plaintiff requests new documents not included in the checklist required under 14.2.

20. **Statistics**. The Program Administrator or its delegatee shall collect and compile data about the Mediation Program, and shall periodically make statistical information available to the public. Such data may also be made available at the discretion of the Program Administrator to outside entities seeking the study the effectiveness of the Mediation Program.

21. **Notice in Non-Mediation Cases**. Where the plaintiff determines that a foreclosure action is not subject to the Mediation Program, the statements required by 10 *Del. C.* § 5062D(a) to be included in the complaint shall:

21.1. be included on the first page of a complaint in a foreclosure action in bold text or, if not on the first page, shall also be included in bold text on a separate

sheet of paper placed on top of the copy of the complaint served on the defendant; and

21.2. be accompanied by the following sentence: "If the foregoing statement in bold text is incorrect, or for more information about the Automatic Residential Mortgage Foreclosure Mediation Program, call the Delaware Department of Justice at 1-800-220-5424."

22. **Mortgage Foreclosure Dormant Docket**. With respect to cases in the Mediation Program, it is not appropriate to move cases to the Dormant Docket until after the time for filing an answer to the complaint has expired.

/s/ Jan R. Jurden
President Judge

oc: Prothonotaries
cc: Superior Court Judges
Superior Court Commissioners
Hon. Matthew Denn
Hon. J. Brendan O'Neill
Court Administrator
Law Libraries
Carolyn Meier, LexisNexis
Michael Ferry
File

EXHIBIT A

Notice of Foreclosure Mediation Form

NOTICE REQUIRED BY DELAWARE LAW

AVISO REQUERIDO POR LA LEY DE DELAWARE

YOUR LENDER HAS FILED A FORECLOSURE ACTION AGAINST YOUR PROPERTY. YOU ARE ELIGIBLE TO PARTICIPATE IN MEDIATION. CALL THE DELAWARE ATTORNEY GENERAL'S FORECLOSURE HOTLINE AT 1-800-220-5424 NOW OR FIND A HOUSING COUNSELOR ON THE INCLUDED LIST TO START THE MEDIATION PROCESS.

EL PRESTAMISTA HA PRESENTADO UNA DEMANDA PARA LA EJECUCIÓN HIPOTECARIA DE LA VIVIENDA. USTED REÚNE LOS REQUISITOS PARA PARTICIPAR EN EL PROGRAMA DE MEDIACIÓN. LLAME AHORA AL 1-800-220-5424, LA LÍNEA DIRECTA DE EJECUCIÓN HIPOTECARIA DE LA FISCALÍA DEL ESTADO DE DELAWARE O CONSIGA UN ASESOR DE VIVIENDA EN LA LISTA QUE SE INCLUYE PARA INICIAR EL

Your lender has filed a foreclosure action against your property. You are eligible for mediation with your lender. **A mediation conference will be scheduled for you. Please look out for this mediation scheduling notice in the mail.**

Your lender will not be able to seek judgment against your property until the day after the date for which your mediation conference is scheduled.

In order to effectively participate in mediation, you must meet with a HUD-approved housing counselor and certify to the court your intent to participate in mediation within 30 days of today. You are encouraged to do this immediately; your chances of saving your home may be better the sooner you meet with a HUD-approved housing counselor. Please call the Delaware Attorney General's Foreclosure Hotline at 1-800-220-5424 or contact a HUD-approved housing counselor. A list of HUD-approved housing counseling agencies is also provided in this notice. A housing counselor may be able to assist you with the mediation process and with applying for loss mitigation programs and emergency assistance programs. You also must work with your HUD-approved housing counselor to prepare a proposal for your lender in advance of your mediation conference. A Certificate of Participation form is attached to this notice. If you do not certify your intent to participate in mediation, you may still attend your scheduled mediation conference and meet with a representative of your lender. However, your mediation is less likely to be successful and your lender may choose to seek judgment against your property immediately after mediation.

You must appear in person at your mediation conference. If you are unable to attend the mediation conference on the scheduled date, you may request that your mediation conference be rescheduled for good cause. You must make this request promptly or your request may be denied.

Additional information is available at www.DelawareHomeownerRelief.org.

El prestamista ha presentado una demanda para la ejecución hipotecaria de la vivienda. Usted reúne los requisitos para participar en el programa de mediación con el prestamista. **Se fijará la fecha para la mediación. Por favor, esté atento al aviso con la fecha de la mediación que le llegará por correo.**

El prestamista no podrá tratar de obtener un fallo con respecto a la vivienda hasta después de la fecha que se fijó para la reunión de mediación.

Para poder participar de manera eficaz en el proceso de mediación, usted debe reunirse con un asesor de vivienda aprobado por la agencia HUD y certificar que tiene la intención de tomar parte en la mediación dentro de los siguientes 30 días a partir de hoy. Lo alentamos a que lo haga de inmediato; tendrá mejores opciones de recuperar su vivienda si se reúne pronto con un asesor aprobado por HUD. Por favor llame al 1-800-220-5424, la Línea Directa de Ejecución Hipotecaria de la Fiscalía del Estado de Delaware o póngase en contacto con un asesor de vivienda aprobado por HUD. En este aviso se le proporciona una lista de las agencias de asesoría de vivienda aprobadas por HUD. Un asesor puede ayudarlo con el proceso de mediación y a presentar solicitudes a los programas para atenuar pérdidas y programas de asistencia en casos de emergencia. También debe preparar con el asesor una propuesta para el prestamista antes de la reunión de mediación. Se adjunta a este aviso un Certificado de Participación. Si usted no certifica que tiene la intención de participar en el proceso de mediación, aun así, puede asistir a la reunión de mediación programada y reunirse con el representante del prestamista. Sin embargo, lo más probable es que la mediación no tenga éxito y el prestamista decida tratar de obtener un fallo con respeto a la vivienda inmediatamente después de la mediación.

Debe presentarse en persona a la reunión de mediación. Si no puede asistir en la fecha fijada, puede pedir que se le dé otra fecha por motivo justificado. Debe hacer la solicitud sin demora o es posible que sea rechazada.

List of **FREE** Housing Counseling Agencies / *Lista de agencias de Asesoría de Vivienda*

Agency / *Agencia*	**Address / *Dirección***	**Telephone / *Teléfono***
CCCS of MD & DE, Inc.	2055 Limestone Road, Suite 212, Wilmington, DE 19808 375 West North Street, Dover, DE 19904	877-207-5682 877-207-5682
First State Community Action Agency, Inc.	308 North Railroad Avenue, Georgetown, DE 19947 655 South Bay Road, Suite 4J, Dover, DE 19901 Rosehill, 19 Lambson Lane, Suite 8, New Castle, DE 19720	302-856-7761 302-674-1355 302-498-0454
Hockessin Community Center	4266 Millcreek Road, Hockessin, DE 19707	302-239-2363
Housing Opportunities of Northern Delaware, Inc.	100 West 10th Street, Suite 1004, Wilmington, DE 19801	302-429-0794
Interfaith Community Housing Delaware, Inc.	613 North Washington Street, Wilmington, DE 19801 500 W. Loockerman Street, Suite 420, Dover, DE 19904	302-652-3991 302-741-0142
NCALL Research, Inc.	363 Saulsbury Road, Dover, DE 19904 501 Ogletown Road, Room 325, Newark, DE 19711 110 S. Bedford Street, Georgetown, DE 19947	302-678-9400 302-283-7505 302-855-1370
Neighborhood House, Inc.	18 B Street, Wilmington, DE 19801 219 West Green Street, Middletown, DE 19709	302-652-3928 302-378-7217
West End Neighborhood House, Inc.	710 N. Lincoln Street, Wilmington, DE 19805	302-658-4171
YWCA Delaware Homeownership Education	153 E. Chestnut Hill Road, Suite 102, Newark, DE 19713	302-224-4060
Clarifi	Community Services Building ,100 West 10th Street, Wilmington, DE 19801 2 Mill Road, Wilmington, DE 19806	1-800-989-2227 302-655-7659

Current list available at: (*Puede encontrar la lista actual en:*)

http://www.destatehousing.com/HomeOwnership/housing_counseling_agency_list.pdf

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If you wish to be represented by counsel, **free legal services** for eligible clients are also available from Legal Services Corporation of Delaware, Inc. Even if you retain an attorney, you should still also work with a housing counselor as part of the Mediation Program.

Si usted desea ser representado por un abogado, **servicios legales gratuitos** para clientes elegibles también están disponibles en la Corporación de Servicios Legales de Delaware, Inc. Incluso si usted retiene a un abogado, debe también trabajar con un asesor de vivienda como parte del Programa de Mediación.

Contact **Legal Services Corporation of Delaware, Inc.** (*Póngase en contacto con* ***Corporación de Servicios Legales de Delaware, Inc.***):

Dover Office / *Oficina de Dover*
24A Hiawatha Lane
Dover, Delaware 19904
302-734-8820 (Phone)
302-734-8826 (Fax)

Wilmington Office / *Oficina de Wilmington*
100 West 10th Street, Suite 203
Wilmington, DE 19801
302-575-0408 (Phone)
302-575-0478 (Fax)

EXHIBIT B

Certificate of Participation Form

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY

Plaintiff(s),	:	C. A. No.:
v.	:	
Defendant(s).	:	

Certificate of Participation for Automatic Residential Mortgage Foreclosure Mediation Program

If you own and occupy a one-to-four family primary residential property in Delaware that is being foreclosed upon, you have a right to participate in the Automatic Residential Mortgage Foreclosure Mediation Program (the "Mediation Program").

A mediation conference has been or will be scheduled for you.

Please complete this certificate and sign it where indicated below.

Property Address that is the subject of mortgage foreclosure action: _____

Telephone: _____ _____

Email: _____ _____

I am the borrower: ___YES ___NO

I occupy this property as my primary residence: ___YES ___NO

I want to keep living in this house or otherwise negotiate a resolution to this foreclosure that will not result in sheriff's sale: ___YES ___NO

If you checked "NO" for any of the above statements, your mediation conference will be cancelled, the foreclosures action may go forward, and the plaintiff may be permitted to seek judgment against you if you fail to file an answer within the time period allowed by law.

In order to effectively participate in the Mediation Program, you should work with and through a HUD-approved housing counselor or with an attorney who is employed by non-profit legal services provider in Delaware, who will be your "Housing Representative."

Have you contacted (or tried to contact) a Housing Counselor: __YES (do you have an appointment When? _____) __NO

My Housing Representative is: Name:_____ Agency/Firm: _____

Agency/Firm address for e-mailing documents: _____

Is your spouse or another person also listed as a co-borrower on your mortgage loan? ___YES ___NO.

If YES, do you authorize your co-borrower to participate in mediation on your behalf, and to sign mediation-related court documents that will bind you?

___YES (co-borrower's name: _____) ___NO

Unless you checked "YES" to authorize a co-borrower to act for you, all defendants should attend all mediation conferences.

I represent that the information herein is true, and certify that as required by the Automatic Residential Mortgage Foreclosure Mediation Program, I have met with the Housing Representative identified above (if any) and a proposal will be submitted on my behalf to Plaintiff's attorney at least 14 days before the date of the mediation conference.

_____ _____

Signature Date

Print name: _____

[*Cause this Certificate to be E-filed with the Superior Court by (1) sending the certificate as a pdf document by electronic mail to the Program Administrator, who will then E-file the Certificate of Participation; (2) Delivering three copies of the Certificate of Participation to the Program Administrator, who will then E-file a scanned copy of the Certification of Participation; or (3) E-filing directly with the Court.*]

EXHIBIT C

Universal Intake Form

Universal Intake Form

Please Print

How were you referred to us? _____ If you are a previous client, counselor's name: _____

Borrower Information:

Name: _____
First M.I. Last

_____ _____ _____ _____
Social Security # Date of Birth Race Ethnicity (Hispanic/non-Hispanic)

Address: _____
Street City State Zip

Home Phone: _____ Cell Phone: _____

Employer: _____ Annual Income: Gross $ _____

Other Income? * Please identify source and amount. _____

*Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered for repaying this loan.

Work Phone: _____ Email Address: _____

Marital Status: Married Separated Unmarried (single, divorced, widowed) # of People in Household? _____

Co-Borrower Information:

Name: _____
First M.I. Last

_____ _____ _____ _____
Social Security # Date of Birth Race Ethnicity (Hispanic/non-Hispanic)

Address: _____
Street City State Zip

Home Phone: _____ Cell Phone: _____

Employer: _____ Annual Income: Gross $ _____

Other Income? * Please identify source and amount. _____

*Alimony, child support, or separate maintenance income need not be revealed if the Borrower or Co-Borrower does not choose to have it considered for repaying this loan.

Work Phone: _____ Email Address: _____

Marital Status: Married Separated Unmarried (single, divorced, widowed)

Home Mortgage Loan Information

Do You Want to Keep Your Home? _____ Are you currently living in the home? _____

Name of Original Mortgage Company: _____

Name of Current Mortgage Company: _____

Have You Contacted Your Lender/Servicer? Yes _____ No _____ If Yes, Last Contact Date: _____

Loan Number: _____ Current Value of Your Home: _____

Type of Mortgage: ____ FHA ____ VA _____ Conv._____ ARM___ 80/20 ___ 30-Yr Fixed____

Other Identify: _____

Monthly Mortgage Payment: _____ Term: _____ Interest Rate: _____

Date Last Mortgage Payment Made: _____ How Many Months Past Due Are You? _____

Have You Been Served Legal Papers? _____ Do You Have a Second Mortgage? _____

If yes, with whom? _____

Ever Had a Loan Modification / Forbearance Agreement? _____ When? _____

Have You Filed Bankruptcy? _____ When? _____

Have You Ever Worked with Another Agency to Remedy Your Mortgage Default? _____

If Yes, Agency's Name: _____

Counselor: _____ Payments to Agency (if any): $_____

Income & Asset Sources

Monthly Income: Borrower		Monthly Income: Co-Borrower	
Wages (before taxes)	$ _____	Wages (before taxes)	$ _____
Unemployment Income	$ _____	Unemployment Income	$ _____
Child Support/Alimony*	$ _____	Child Support/Alimony*	$ _____
SSI/SSDI	$ _____	SSI/SSDI	$ _____
Retirement/Pension	$ _____	Retirement/Pension	$ _____
Rents received	$ _____	Rents received	$ _____
Other	$ _____	Other	$ _____
Gross Monthly Income:	$ _____	Gross Monthly Income:	$ _____
Net Monthly Income**	$ _____	Net Monthly Income**:	$ _____

***Alimony, child support, or separate maintenance income need not be revealed if Borrower or Co-Borrower does not want it considered for repaying this loan.**

**Gross income, less Federal/State/Local taxes, FICA, 401K deductions, etc.

Besides income sources, please circle additional resources available to pay towards defaulted mortgage:

401(k), 403(b), CDs, IRAs, Money Market, Family/Friends, Other Amount available: $ _____

Expenses

	Monthly	Annual	Total Owed
Total Mortgage Payment (including Principal & Interest., Property Taxes, H/O Insurances, H/O Ass'n Dues)	$ _____	$ _____	
If not escrowed, Property Taxes	$ _____	$ _____	
If not escrowed, H/O Insurance	$ _____	$ _____	
If not escrowed, Homeowner Associations Dues	$ _____	$ _____	
Auto Expenses (gas, maintenance, etc.)	$ _____	$ _____	
Auto Insurance	$ _____	$ _____	
Credit Cards	$ _____	$ _____	
Child Care, Alimony, Child Support:	$ _____	$ _____	
Food (Groceries, Eating Out, Snacks):	$ _____	$ _____	
Utilities (gas, electric, water, sewer, and garbage)	$ _____	$ _____	
Communications (cell phone, telephone, internet)	$ _____	$ _____	
Miscellaneous Spending Money:	$ _____	$ _____	
Auto Loans: Year _____ Make & Model _____	$ _____	$ _____	$ _____
Auto Loans: Year _____ Make & Model _____	$ _____	$ _____	$ _____
Installment Loans:	$ _____	$ _____	$ _____
Medical Expenses:	$ _____	$ _____	$ _____
Student Loans:	$ _____	$ _____	$ _____
Home Equity Loans, outstanding balances	$ _____	$ _____	$ _____
TOTAL MONTHLY EXPENSES:	$ _____		

MONTHLY SURPLUS/SHORTFALL (Total Monthly Income minus Total Monthly Expenses): $ _____

Legal Intake Questions

Original Mortgage Transaction

1. Do you have the documents from your original settlement or refinancing? _____
2. Were you represented by an attorney at your closing? _____
3. Was there anything unusual about your settlement or your settlement paperwork (e.g., blank pages or spaces)? _____

_____

4. Is your mortgage loan rate a variable rate or a fixed rate? _____

Contacts with Lender during Delinquency

5. At any point after you got behind in your mortgage payments, did you ask the lender to try to come up with a work-out plan or other plan to change your mortgage or mortgage payments? What was the response?

_____

6. Did you enter into negotiations with your lender? When did you start (before or after foreclosure)? Are you still negotiating?

_____

_____

The Foreclosure Action

7. What was the last written communication you received from your lender before being served with the Complaint?_____

_____

8. When did you first receive the complaint? _____ List all the ways you received a copy of the foreclosure complaint:

_____

_____

9. Is your complaint just *in rem*? Or does it also say *in personam*? (Look at the top right of the first page)_____
10. If you believe any statements in the complaint are incorrect (example: loan terms; interest rate; date of default), list them here?

_____

11. Have you filed a response to the Complaint with the Court? _____
12. Are you aware of any defenses to this foreclosure? _____ What? _____
13. Are you considering filing for bankruptcy?_____
14. Do other mortgages or liens exist on this property? (Example – home equity loan/ tax lien/ judgment from lawsuits.)

_____

15. Is the party suing you different than your original mortgage company?_____

Please provide the person receiving this form with the following documents:

- Mortgage
- Note
- Any Assignments
- Notice of Intent to Foreclose
- Foreclosure Complaint

Legal Representations

1. I/we represent that I am/we are currently occupying the property securing the loan as my/our primary residence. If I am /we are currently occupying the property, I/we also represent that I/we intend to continue occupying the property as my/our primary residence.
2. Under penalty of perjury, I/we certify that all documents and information that I/we provide to the Housing Counselor and the Lender/Servicer, including the documents and information regarding my eligibility for any modification, are true and correct and accurately reflect my financial status. My Lender/Servicer may discuss, obtain and share information about my mortgage and financial situation with third parties regarding a possible alternative to foreclosure.
3. I/we understand and acknowledge the Lender/Servicer may investigate the accuracy of my/our statements, may require me/us to provide supporting documentation, and that knowingly submitting false information may violate state and Federal law.
4. I/we understand that if I/we have intentionally engaged in fraud or misrepresented any fact(s), or if I/we do not provide all of the required documentation, the Lender/Servicer may refuse to consider any modification or alternative to foreclosure.
5. I/we certify that I am /we are willing to provide all requested documents and to respond to Housing Counselor/Mediator/Lender/Servicer communications in a timely manner. I/we understand that time is of the essence and intentional delays on my/our part could result in making me/us ineligible for the Foreclosure Mediation Program.
6. I/we understand that negotiations for a possible foreclosure alternative will not constitute a waiver or defense to my Lender's/Servicer's right to commence or continue any foreclosure or other collection action.
7. I/we understand that an alternative to foreclosure will only be provided if an agreement has been approved in writing by my Lender/Servicer.

Borrower	Date	Co-Borrower	Date

EXHIBIT D

Foreclosure Intervention Counseling Client's Checklist

WORKOUT PROPOSAL REQUIRED MATERIALS

Required Documents needed are checked off

Homeowner Name: _____

Date of the Request: _____

TIP: EVEN IF YOU HAVE PROVIDED SOME OR ALL OF THE ABOVE INFORMATION TO THE LENDER PREVIOUSLY BRING IT WITH YOU TO THE MEDIATION!

- ☐ 3 MONTHS OF RECENT BANK STATEMENTS - MOST RECENT FROM DATE OF MEDIATION some banks will not accept online printouts of statements so you will need to provide the actual statement (or a PDF printout)
- ☐ 30 days of Pay Stubs (most recent from date of mediation)
- ☐ 2 most current years of Tax Returns (signed & dated)
- ☐ Hardship Letter
- ☐ HAMP application
- ☐ Signed and dated IRS Form 4506T (Request for Transcript of Tax Return) – available on bank website
- ☐ If you have your own business: a Profit And Loss Statement (greater of past 3 months or year-to-date)
- ☐ If you have tenants: a signed lease or notarized letter(s) from tenant(s) with proof of receipt of the most recent 2 months of rental payments
- ☐ If you are getting contributions from a third party: Notarized Third Party Letter of Authorization
- ☐ Proposal, including amount of up-front funds and any interest rate reduction request
- ☐ Proof of other household income (Unemployment, SS, child support, etc.)
- ☐ Current Utility Bills
- ☐ If Recently Awarded Disability: A Copy Of Award Letter
- ☐ If You Are Receiving Child Support Or Alimony: Documentation Reflecting The Amount And Frequency Of Payments, and proof of receipt of the 2 most recent months
- ☐ If You Have Student Loans That Are In A Deferred Status: Proof Of Deferment
- ☐ Dodd Frank Certification
- ☐ If Loans Have Been Charged Off: Proof Of Charge Off
- ☐ Financial statement sheet – including monthly budget of income and expenses*
- ☐ Your most recent correspondence from the lender

If you are seeking a short-sale:

- ☐ Estimated HUD-1 Settlement Statement
- ☐ Listing agreement
- ☐ Agreement of Sale
- ☐ Mortgage Commitment
- ☐ Contact number and consent for bank access appraisal

☐ Other _____

TIP: REVIEW YOUR CREDIT REPORT BEFORE MEDIATION AND BE PREPARED TO ADDRESS FOR ALL ITEMS/ACCOUNTS ON REPORT: SOME BANKS WILL ATTRIBUTE YOU WITH MAKING MINIMUM REQUIRED PAYMENTS EVEN IF YOU ARE PAYING NOTHING

PLEASE KEEP IN CONTACT WITH YOUR HOUSING COUNSELOR AND MAKE SURE YOU PROVIDE THE COUNSELOR WITH UPDATED DOCUMENTS.

EXHIBIT E

Mediation Scheduling Notice Form

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY

Plaintiff(s),	:	C. A. No.:
v.	:	
Defendant(s).	:	

Notice of [Re-]Scheduled Foreclosure Mediation Conference
Date: _____, 201_
Time: __:00 AM/PM
Location: _____
_____

This is your ONLY notice for the Foreclosure Mediation.

You must sign in by ___:45 AM/PM

[*Include if rescheduled*: Your previously scheduled Mediation Conference has been cancelled and rescheduled. This is a new notice and replaces any previous Mediation Scheduling Notices that you have received.]

You must attend the mediation conference. If you are unable to attend the mediation conference on the scheduled day, you may request that your mediation conference be rescheduled for good cause. You must make this request promptly or your request may be denied. If you fail to attend the mediation on the above scheduled date, or if you appear late for the mediation, your mediation will be cancelled and may not be rescheduled. To request a continuance of this mediation or for questions about the mediation contact the Program Administrator at [phone].

Please be advised that mediation conferences are half-day events. Homeowners should be prepared to be present for the entirety of the mediation conference.

NOTE: Failure to appear for the mediation or arriving late to the mediation may result in the lender proceeding to judgment in the foreclose action against you.

If you are not the plaintiff or defendant in this case, you must file an appearance with the Superior Court in order to receive further notices through the Court's E-filing system.

Lender Representative: Name: _____

Firm: _____

Telephone: _____ E-mail: _____

Borrower(s): Name(s): _____

Address: _____

_____

Mediator: Name: _____

Telephone: _____ E-mail: _____

[Note: This notice is to be E-filed with the Court.]

EXHIBIT F

Mediation Cancellation Notice

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY

Plaintiff(s),	:	C. A. No.:
v.	:	
Defendant(s).	:	

Notice of Cancelled Mediation Conference

This is a notice that the Mediation Conference in this case has been cancelled.

You previously had a Mediation Conference scheduled for _____, 20___. That Mediation Conference has now been cancelled for the reason stated below following the completed checkbox.

☐ The Program Administrator had determined that this case is not subject to the Mediation Program because the property is not an owner-occupied one-to-four family primary residential property.

Upon the filing of this Cancellation Notice, your foreclosure action may go forward, and the plaintiff may be permitted to seek judgment against you if you have not filed a responsive pleading with the Court, such as an answer to the Complaint.

If you have questions about why you received this notice, you may contact the Program Administrator at [phone] or [email]. If you believe your mediation should not have been cancelled, you may file a Motion to Order Mediation with the Court.

☐ You filed a Certificate of Participation indicating that:

- ☐ you are not eligible for the Mediation Program.
- ☐ you do not wish to participate in the Mediation Program.

Upon the filing of this Cancellation Notice, your foreclosure action may go forward, and the plaintiff may be permitted to seek judgment against you if you have not filed a responsive pleading with the Court, such as an answer to the Complaint.

Prior to the entry of judgment, you have the right to request that the Program Administrator reinstate mediation. In order to make such a request, contact the Program Administrator at [phone] or [email]. The Program Administrator may schedule a new mediation conference, but will only do so if judgment has not yet been entered. If the Program Administrator schedules a new mediation conference pursuant to this paragraph, you will receive a Mediation Reinstatement Notice.

EXHIBIT G

Mediation Reinstatement Notice

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY

Plaintiff(s),	:	C. A. No.:
v.	:	
Defendant(s).	:	

Notice of Reinstated Mediation

Date: _____, 201_
Time: __:00 AM/PM
Location: _____
_____

You must sign in by ___:45 AM/PM

Your mediation in this case was previously cancelled or placed on hold because:

- ☐ You filed a Certificate of Participation indicating that:
  - ☐ you are not eligible for the Mediation Program.
  - ☐ you do not wish to participate in the Mediation Program.
- ☐ You failed to appear at your scheduled mediation conference.

Mediation has now been reinstated so long as the Plaintiff has not obtained judgment from the Court prior to the Court's acceptance of this Notice. Upon the effectiveness of this reinstatement notice, judgment may not be entered until the day after the date of the mediation conference scheduled above.

You must attend the mediation conference. If you are unable to attend the mediation conference on the scheduled day, you may request that your mediation conference be rescheduled for good cause. You must make this request promptly or your request may be denied. If you fail to attend the mediation on the above scheduled date, or if you appear late for the mediation, your mediation will be cancelled and may not be rescheduled. To request a continuance of this mediation or for questions about the mediation contact the Program Administrator at [phone].

NOTE: Failure to appear for the mediation or arriving late to the mediation may result in the lender proceeding to judgment in the foreclose action against you.

Lender Representative: Name: _____
Firm: _____
Telephone: _____ E-mail: _____

Borrower(s): Name(s): _____
Address: _____
_____

Mediator: Name: _____
Telephone: _____ E-mail: _____

[This Form must be E-filed and accepted by the Court prior to the entry of judgment in order to be effective.]

EXHIBIT H

Form of Mediation Fee Payment Notice

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY

Plaintiff(s),	:	C. A. No.:
v.	:	
Defendant(s).	:	

Mediation Fee Payment Notice

In accordance with the requirements of 10 *Del. C.* § 5062C(q) and Administrative Directive No. 2012-2, Plaintiff hereby submits its Mediation Fee in the amount of $300.00.

[PLAINTIFF'S COUNSEL SIGNATURE BLOCK]

EXHIBIT I

Form of Continuing Mediation Record

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR _____ COUNTY

Plaintiff(s),	:	C. A. No.:
v.	:	
Defendant(s).	:	

Continuing Mediation Record

Today's Date: _____, 201_ Defendant's Housing Representative: _____

What type of Mediation Record is this: __Initial Conference ___Continuing Conference (provide number) ___Cancellation Record

Mediator: _____ Appeared – Plaintiff: __YES __NO Defendant: __YES __NO

Plaintiff's Counsel: _____

Mediation Fee: ___ Paid ___ Due But Not Paid ___ Not Required

Today, being the date (or, if this is a Cancellation Record, a date prior to the date) for a scheduled mediation conference in the above-referenced foreclosure case that is subject to the Automatic Residential Mortgage Foreclosure Mediation Program, the Mediator, pursuant to Superior Court Administrative Directive No. 2012-2, hereby finds and recommends that (check all that apply):

☐ The parties agree that the scheduled mediation conference shall be cancelled and rescheduled for the date and time stated below.

☐ The __Defendant / __Plaintiff (check one) failed to appear and an additional mediation conference is being scheduled. (See below for date and time.) No judgment may be entered in the foreclosure action until the day after such date.

☐ The parties have agreed to schedule a new or additional mediation conference. (See below for date and time.)

☐ The parties have reached a mutually agreeable resolution. The essential terms of the agreement have been memorialized in writing and each party has a copy of that writing. The Plaintiff agrees that no entry of default judgment will be sought pending the execution of documents memorializing the agreement of the parties.

- ☐ The Plaintiff will seek to dismiss the foreclosure action upon execution of such documents by filing a notice or stipulation of dismissal or by moving the Court for dismissal, as appropriate, no later than 60 days from the date of such execution.
- ☐ The parties have agreed to a trial mortgage modification, which must be verified before any judgment. Plaintiff will seek to dismiss the foreclosure action upon the conversion of the trial modification to a permanent modification by filing a notice or stipulation of dismissal or by moving the Court for dismissal, as appropriate, no later than 60 days from the date of such conversion.
- ☐ The Plaintiff agrees to: _____.

☐ An additional mediation conference has been scheduled for this matter.

This mediation conference will be held on _____, 201_ at _____AM/PM.
No judgment may be entered in the foreclosure action until the day after the mediation record for this conference has been E-filed.

The Mediator will be _____. Telephone: _____

☐ Mediation is placed on hold because there was improper service of the complaint or the required notices. An additional mediation conference will be scheduled after proper service has been made. No judgment may be entered in the foreclosure action until the day after such conference.

☐ Mediation is placed on hold because a bankruptcy petition has been filed. Upon termination of the automatic stay, Plaintiff shall request that an additional mediation conference be scheduled. No judgment may be entered in the foreclosure action until the day after such conference.

[*please complete second page*]

Plaintiff's Counsel's Comments: _____

_____

_____

_____[Check to continue on Reverse: __]

The Mediator makes the following additional recommendations: _____

_____

_____

_____[Check to continue on Reverse: __]

☐ The __Defendant / __Plaintiff (check one) has refused to sign this Mediation Record. The stated reason for not signing is: _____

_____

Signatures:
Plaintiff:_____ Defendant_____

Mediator: _____
(Note if also signing on behalf of __Plaintiff __Defendant pursuant to Paragraph 16.2 of Administrative Directive No. 2012-2.)

The following result is expected __as a result of this mediation __as a result of the parties' efforts outside the Mediation Program:

☐ Ongoing Mediation ☐ Loan has been paid in full

☐ Foreclosure will proceed ☐ Short-Sale ☐ Deed-in-Lieu ☐ Cash-for-Keys

☐ Defendant will stay in home and pay a lower mortgage payment as a result of __lower interest, __reduced principal, _____.
This is a: ☐ Home Affordable Loan Modification ☐ Traditional Loan Modification

☐ Loan has been brought current by: ☐ Repayment Agreement; ☐ Forbearance Agreement; ☐ Full Arrears Payment

☐ Defendant will stay in home and pay rent ☐ Other: _____

EXHIBIT J

Form of Final Mediation Record

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

Plaintiff(s),	:	C. A. No.:
v.	:	
Defendant(s).	:	

Final Mediation Record

Today's Date: _____, 201_ Defendant's Housing Representative: _____

What type of Mediation Record is this: __Initial Conference ___Subsequent Conference (provide number) ___Cancellation Record

Mediator: _____ Appeared – Plaintiff: __YES __NO Defendant: __YES __NO

Plaintiff's Counsel: _____

Mediation Fee: ___ Paid ___ Due But Not Paid ___ Not Required

Today, being [*circle if this is a cancellation record:* a date prior to] the date for a scheduled mediation conference in the above-referenced foreclosure case that is subject to the Automatic Residential Mortgage Foreclosure Mediation Program, the Mediator, pursuant to Superior Court Administrative Directive No. 2012-2, hereby finds and recommends that (check all that apply):

☐ The parties have agreed that the scheduled mediation conference is not necessary and shall be cancelled. The foreclosure action may proceed.

☐ The Defendant failed to appear and the mediation process is complete. The foreclosure action may proceed.

☐ The Plaintiff failed to appear. The case may be dismissed due to the Plaintiff's failure to appear for two successive mediation conferences.

☐ The mediation process was unsuccessful because the parties failed to come to agreement. The foreclosure action may proceed.

This failure was because: _____

☐ The foreclosure action may proceed because the case is not suitable for mediation for the following reason:

☐ The subject property is not an owner-occupied one-to-four family primary residence. The foreclosure action is not subject to the Mediation Program and may proceed.

☐ _____

☐ The __Defendant / __Plaintiff (check one) has refused to sign this Mediation Record. The stated reason for not signing is: _____

_____

☐ The parties agree that Plaintiff shall not seek default judgment before: _____, 201_.

☐ The parties agree that the subject property shall be sold at Sheriff's Sale no earlier than: _____, 201_.

☐ Plaintiff's Counsel's Comments: _____

_____

_____ [Check to continue on Reverse: __]

☐ The Mediator makes the following additional recommendations: _____

_____

_____ [Check to continue on Reverse: __]

Signatures:

Plaintiff: _____ Defendant _____

Mediator: _____

(Note if also signing on behalf of __Plaintiff __Defendant pursuant to Paragraph 16.2 of Administrative Directive No. 2012-2.)

[*please complete second page*]

The following result is expected __as a result of this mediation __as a result of the parties' efforts outside the Mediation Program:

☐ Ongoing Mediation ☐ Loan has been paid in full

☐ Foreclosure will proceed ☐ Short-Sale ☐ Deed-in-Lieu ☐ Cash-for-Keys

☐ Defendant will stay in home and pay a lower mortgage payment as a result of __lower interest, __reduced principal, _____.
This is a: ☐ Home Affordable Loan Modification ☐ Traditional Loan Modification

☐ Loan has been brought current by: ☐ Repayment Agreement; ☐ Forbearance Agreement; ☐ Full Arrears Payment

☐ Defendant will stay in home and pay rent ☐ Other: _____