



STATE OF MAINE  
DEPARTMENT OF PROFESSIONAL  
AND FINANCIAL REGULATION  
BUREAU OF CONSUMER CREDIT  
PROTECTION  
35 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0035

PAUL R. LEPAGE  
GOVERNOR

William N. Lund  
SUPERINTENDENT

**To:** Senator Geoffrey M. Gratwick, Chair  
Representative Sharon Anglin Treat, Chair  
Joint Standing Committee on Insurance and Financial Services

**From:** William N. Lund, Superintendent  
Bureau of Consumer Credit Protection

**Re:** Fourteenth Periodic Report on the Bureau's  
Foreclosure Diversion Program

**Date:** August 1, 2013

## INTRODUCTION

With more than 4,280 mortgage default notices recorded in the Bureau's pre-foreclosure filing database, the July 2013 total represented the largest number of such notices received in a one-month period, exceeding the previous high by 115 filings. Each filing represents a "Notice of Right to Cure Default" from a mortgage lender to a Maine homeowner. These notices are the last formal documents required before foreclosure can be initiated, and the debts can be "accelerated" (deemed due and owed in full) if the "cure" amounts (past-due payments and accrued interest) are not proffered by the consumers within 35 days.

During July, the Bureau's staff sent out 4,310 packets of foreclosure information, making the month's total among the three highest in the history of the program. During the first six months of this year, more than 21,200 such packets were mailed – the highest number for any 6-month period in more than two years. At the current pace, the total number of defaults in 2013 will exceed the current annual high of 41,462 established in 2011.

All counties, with the exception of Washington, saw increases in pre-foreclosure notices during the month of July. By category of lender, the rise in filings was driven primarily by an increase in notices submitted by non-bank mortgage companies and national, securitized pools of investors, although all lender/servicer types reflected at least small increases.

According to figures from RealtyTrac, a national reporting company, mid-year foreclosure reports released in early July revealed that across the country foreclosure



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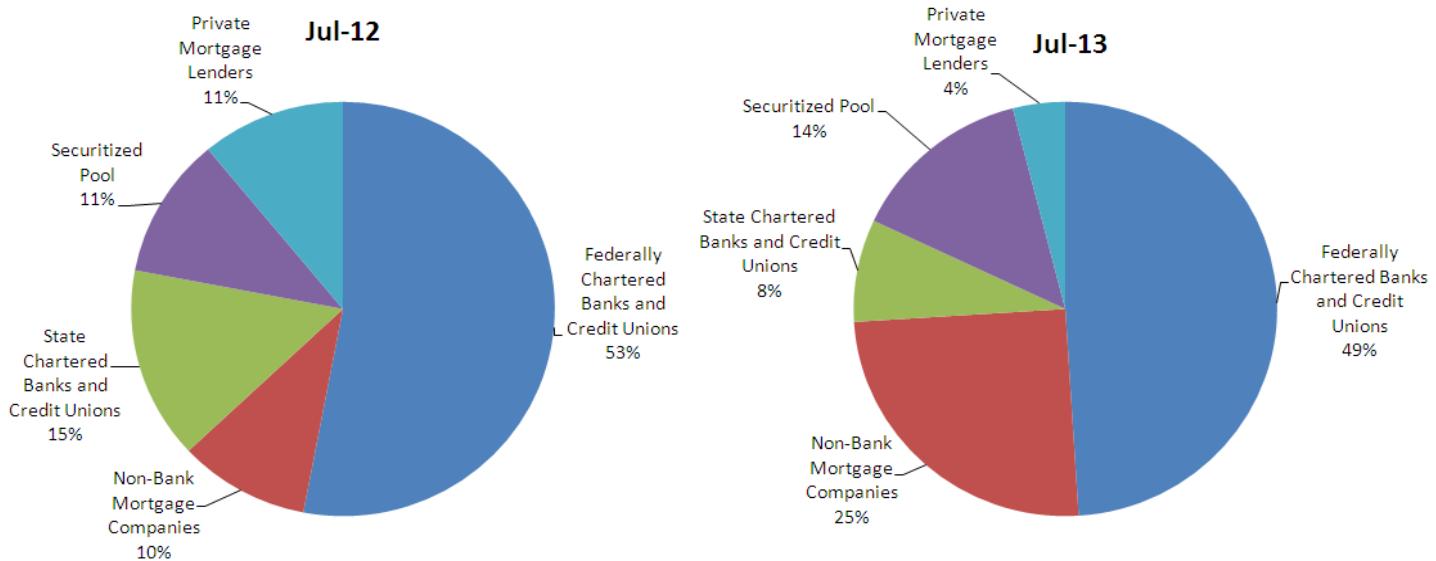
rates are dropping. However, based on information received by the Bureau, that's not the case here in Maine. That perception is borne out by the rate of foreclosure filings made in Maine state courts, which have increased in each of the last four quarters. With foreclosure rates dropping in other states, it's possible that lenders and servicers are focusing their attention on states, including Maine, that have experienced slower recoveries from the housing bubble and recession.

The pie charts below illustrate the types or categories of lenders that sent default notices to Maine homeowners, comparing the percentages from July, 2012 to July of 2013.

The largest category remains "federally-chartered banks and credit unions," which account for nearly one-half the total.

The largest increase percentage-wise between the two months derives from non-bank mortgage companies, which reported only 10% of the total in July of 2012, with that percentage growing to 25% in July, 2013.

The percentage of defaults experienced by state-chartered banks and credit unions dropped from 15% in July of 2012, to 8% in July of 2013.



This report will detail the following trends and findings:

1. As stated above, lenders are notifying the Bureau of homeowner defaults at elevated rates, even when the rate of foreclosures is dropping slightly on the national level.
2. The rate of foreclosure filings in the Maine courts remains at a consistent high level.
3. Maine consumers and housing counselors tell Bureau staff that the loan modification process continues to be complicated, and that some servicers are not honoring loan modification standards.

4. When a Maine consumer's account is sold by one servicer or investor and purchased by another, that transaction often results in bookkeeping errors, as well as in situations in which the new owner fails to recognize loan modification commitments entered into with the prior owner.

5. Nationally, compliance examiners participating in the "independent foreclosure review" process discovered hundreds of cases – some likely in Maine – in which foreclosure was initiated on loans not then in default.

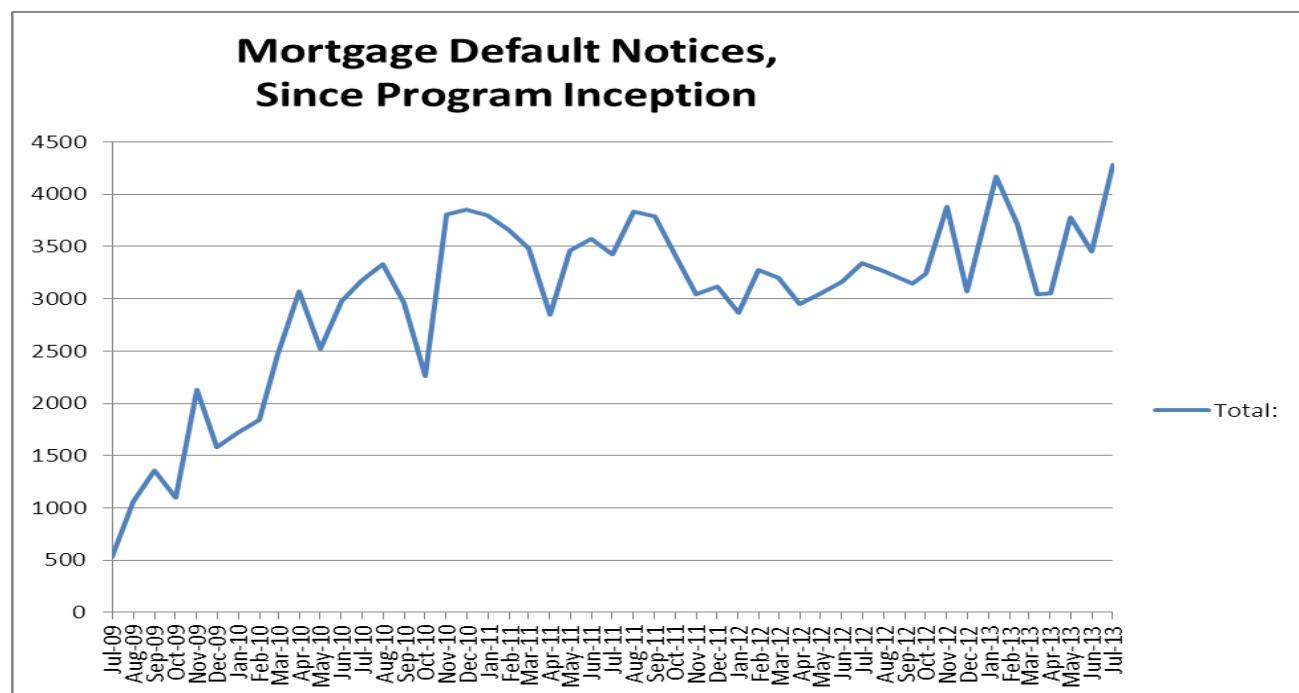
6. Homeowner advocates across the country are concerned after learning that lenders provided incentives to loan servicers making it more attractive for the servicers to offer modifications on large-dollar mortgages, to the exclusion of less-affluent homeowners with a less-valuable homes and smaller mortgages.

### **RATE OF PRE-FORECLOSURE NOTICES MAILED TO MAINE HOMEOWNERS**

The Bureau's foreclosure counseling and referral initiative was established by the Maine Legislature in 2009. So that packages of information could be sent to those consumers most in need, the Legislature required that whenever lenders send pre-foreclosure "Notices of Default and Right to Cure" letters to Maine homeowners, the lenders must simultaneously provide the names and addresses of those consumers, confidentially, to the Bureau of Consumer Credit Protection.

The Bureau then provides information to those homeowners, detailing their rights and responsibilities, including the availability of HUD-certified counselors through the Bureau's hotline (1-888-NO-4-CLÖZ, or 1-888-664-2569), as well as describing the mediation process available to those consumers against whom judicial foreclosure is initiated.

As the chart below indicates, the number of consumer mortgage defaults has remained at a high, consistent level for the past 2 ½ years.



The following table shows the number of defaults by county since January, 2012. Note that the five highest monthly totals in the last 19 months have occurred since November 2012.

Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13	May-13	Jun-13	County
225	260	314	272	215	258	292	273	248	257	334	247	320	317	249	225	323	335	<b>Androscoggin</b>
101	114	113	98	103	104	116	108	128	104	179	140	156	144	112	98	106	110	<b>Aroostook</b>
480	578	587	543	559	517	566	572	479	626	677	577	738	625	522	545	627	601	<b>Cumberland</b>
78	95	79	61	76	62	73	53	72	57	76	63	94	75	67	66	65	72	<b>Franklin</b>
93	130	105	71	106	128	91	89	81	94	96	91	118	114	110	84	119	111	<b>Hancock</b>
334	341	279	322	288	304	331	299	325	305	404	308	472	357	331	302	377	303	<b>Kennebec</b>
77	101	85	104	107	128	80	122	202	96	115	82	134	108	108	164	142	123	<b>Knox</b>
112	116	131	99	103	146	107	137	107	113	127	97	127	113	129	121	126	112	<b>Lincoln</b>
139	166	181	141	152	172	155	155	144	163	192	147	183	218	157	145	188	160	<b>Oxford</b>
290	360	330	307	337	360	443	377	363	383	456	345	501	392	333	318	498	369	<b>Penobscot</b>
45	58	43	38	38	57	33	38	46	47	71	54	80	51	42	32	57	63	<b>Piscataquis</b>
127	105	140	131	115	129	156	138	178	129	149	90	187	158	132	103	129	121	<b>Sagadahoc</b>
88	147	127	118	108	133	131	144	122	138	140	105	150	140	128	115	160	126	<b>Somerset</b>
90	107	86	63	108	99	113	106	95	101	145	103	129	108	93	105	132	107	<b>Waldo</b>
71	105	91	87	85	85	77	75	88	119	91	63	118	124	73	99	90	112	<b>Washington</b>
519	488	506	495	553	479	574	579	466	508	628	557	659	667	461	532	637	626	<b>York</b>
2869	3271	3197	2950	3053	3161	3338	3265	3144	3240	3880	3069	4166	3711	3047	3054	3776	3451	<b>59,642</b>

Foreclosure filings in Maine courts are also occurring at a consistently high rate, as the charts below illustrate. Statewide, 93 more foreclosure actions were filed in court in the first 6 months of 2013 than during the same period in 2012.

## A. 2012 Court Filings

Region/Court	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	CY 2012
	Jan- Mar 2012	Apr-Jun 2012	Jul-Sep 2012	Oct-Dec 2012	TOTAL
<b>STATEWIDE TOTAL</b>	<b>1087</b>	<b>1132</b>	<b>1016</b>	<b>1095</b>	<b>4330</b>
Alfred Superior Court	57	64	48	39	<b>208</b>
York District Court	41	27	19	24	<b>111</b>
Biddeford District Court	42	45	50	57	<b>194</b>
Springvale District Court	64	52	60	76	<b>252</b>
<b>Region 1 Subtotal</b>	<b>204</b>	<b>188</b>	<b>177</b>	<b>196</b>	<b>765</b>
Portland Superior Court	41	35	38	38	<b>152</b>
Bridgton District Court	43	56	53	42	<b>194</b>
Portland District Court	96	130	100	106	<b>432</b>
<b>Region 2 Subtotal</b>	<b>180</b>	<b>221</b>	<b>191</b>	<b>186</b>	<b>778</b>

Region/Court	1st Qtr Jan- Mar 2012	2nd Qtr Apr-Jun 2012	3rd Qtr Jul-Sep 2012	4th Qtr Oct-Dec 2012	CY 2012 TOTAL
South Paris Superior Court	28	19	18	14	<b>79</b>
Auburn Superior Court	36	44	41	24	<b>145</b>
Farmington Superior Court	9	14	8	4	<b>35</b>
Lewiston District Court	79	54	64	81	<b>278</b>
Farmington District Court	17	18	14	15	<b>64</b>
Rumford District Court	12	9	14	11	<b>46</b>
Livermore Falls District Court	0	0	0	0	<b>0</b>
South Paris District Court	23	24	15	19	<b>81</b>
<b>Region 3 Subtotal</b>	<b>204</b>	<b>182</b>	<b>174</b>	<b>168</b>	<b>728</b>
Skowhegan Superior Court	13	17	12	16	<b>58</b>
Augusta Superior Court	26	21	19	13	<b>79</b>
Skowhegan District Court	38	34	27	30	<b>129</b>
Waterville District Court	16	25	33	34	<b>108</b>
Augusta District Court	34	59	36	53	<b>182</b>
<b>Region 4 Subtotal</b>	<b>127</b>	<b>156</b>	<b>127</b>	<b>146</b>	<b>556</b>
Dover Foxcroft Superior Court	3	4	8	3	<b>18</b>
Bangor Superior Court	51	56	34	24	<b>165</b>
Millinocket District Court	0	0	0	0	<b>0</b>
Dover Foxcroft District Court	9	6	11	12	<b>38</b>
Lincoln District Court	19	20	12	18	<b>69</b>
Newport District Court	18	14	17	29	<b>78</b>
Bangor District Court	40	42	54	65	<b>201</b>
<b>Region 5 Subtotal</b>	<b>140</b>	<b>142</b>	<b>136</b>	<b>151</b>	<b>569</b>
Wiscasset Superior Court	9	8	7	7	<b>31</b>
Bath Superior Court	12	5	4	7	<b>28</b>
Rockland Superior Court	8	12	5	11	<b>36</b>
Belfast Superior Court	10	14	6	5	<b>35</b>
Belfast District Court	26	23	20	27	<b>96</b>
Wiscasset District Court	18	22	18	28	<b>86</b>
West Bath District Court	39	39	28	44	<b>150</b>
Rockland District Court	21	19	18	21	<b>79</b>
<b>Region 6 Subtotal</b>	<b>143</b>	<b>142</b>	<b>106</b>	<b>150</b>	<b>541</b>
Machias Superior Court	4	11	7	4	<b>26</b>
Ellsworth Superior Court	15	4	11	8	<b>38</b>
Bar Harbor District Court	0	0	0	0	<b>0</b>
Machias District Court	7	13	18	11	<b>49</b>
Calais District Court	5	7	7	5	<b>24</b>
Ellsworth District Court	26	30	25	27	<b>108</b>
<b>Region 7 Subtotal</b>	<b>57</b>	<b>65</b>	<b>68</b>	<b>55</b>	<b>245</b>

Region/Court	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	CY 2012
	Jan- Mar 2012	Apr-Jun 2012	Jul-Sep 2012	Oct-Dec 2012	TOTAL
Houlton Superior Court	4	2	2	2	10
Caribou Superior Court	10	11	10	11	42
Caribou District Court	5	7	5	4	21
Houlton District Court	3	6	7	12	28
Madawaska District Court	0	0	0	0	0
Fort Kent District Court	3	4	7	3	17
Presque Isle District Court	7	6	6	11	30
<b>Region 8 Subtotal</b>	<b>32</b>	<b>36</b>	<b>37</b>	<b>43</b>	<b>148</b>

## B. 2013 Court Filings (through June)

Region/Court	1st Qtr Jan- Mar 2013	2nd Qtr Apr- Jun 2013	CY 2013 TOTAL
<b>STATEWIDE TOTAL</b>	<b>1101</b>	<b>1211</b>	<b>2312</b>
Alfred Superior Court	40	39	79
York District Court	31	28	59
Biddeford District Court	44	47	91
Springvale District Court	66	91	157
<b>Region 1 Subtotal</b>	<b>181</b>	<b>205</b>	<b>386</b>
Portland Superior Court	46	50	96
Bridgton District Court	62	42	104
Portland District Court	111	94	205
<b>Region 2 Subtotal</b>	<b>219</b>	<b>186</b>	<b>405</b>
South Paris Superior Court	15	16	31
Auburn Superior Court	43	43	86
Farmington Superior Court	8	6	14
Lewiston District Court	67	65	132
Farmington District Court	12	25	37
Rumford District Court	19	19	38
Livermore Falls District Court	0	0	0
South Paris District Court	17	19	36
<b>Region 3 Subtotal</b>	<b>181</b>	<b>193</b>	<b>374</b>
Skowhegan Superior Court	9	10	19
Augusta Superior Court	22	15	37
Skowhegan District Court	36	38	74
Waterville District Court	24	39	63
Augusta District Court	34	62	96
<b>Region 4 Subtotal</b>	<b>125</b>	<b>164</b>	<b>289</b>

Region/Court	1st Qtr Jan- Mar 2013	2nd Qtr Apr- Jun 2013	CY 2013 TOTAL
Dover Foxcroft Superior Court	2	1	<b>3</b>
Bangor Superior Court	33	47	<b>80</b>
Millinocket District Court	0	0	<b>0</b>
Dover Foxcroft District Court	15	18	<b>33</b>
Lincoln District Court	23	21	<b>44</b>
Newport District Court	27	27	<b>54</b>
Bangor District Court	54	61	<b>115</b>
<b>Region 5 Subtotal</b>	<b>154</b>	<b>175</b>	<b>329</b>
Wiscasset Superior Court	11	9	<b>20</b>
Bath Superior Court	6	8	<b>14</b>
Rockland Superior Court	8	10	<b>18</b>
Belfast Superior Court	8	11	<b>19</b>
Belfast District Court	23	38	<b>61</b>
Wiscasset District Court	23	31	<b>54</b>
West Bath District Court	35	35	<b>70</b>
Rockland District Court	15	14	<b>29</b>
<b>Region 6 Subtotal</b>	<b>129</b>	<b>156</b>	<b>285</b>
Machias Superior Court	7	6	<b>13</b>
Ellsworth Superior Court	7	18	<b>25</b>
Bar Harbor District Court	0	0	<b>0</b>
Machias District Court	8	16	<b>24</b>
Calais District Court	10	13	<b>23</b>
Ellsworth District Court	37	28	<b>65</b>
<b>Region 7 Subtotal</b>	<b>69</b>	<b>81</b>	<b>150</b>
Houlton Superior Court	0	3	<b>3</b>
Caribou Superior Court	11	28	<b>39</b>
Caribou District Court	8	3	<b>11</b>
Houlton District Court	10	9	<b>19</b>
Madawaska District Court	0	0	<b>0</b>
Fort Kent District Court	7	4	<b>11</b>
Presque Isle District Court	7	4	<b>11</b>
<b>Region 8 Subtotal</b>	<b>43</b>	<b>51</b>	<b>94</b>

## PROGRAM RESULTS

The Bureau assigned 333 new cases to counselors in the first quarter of 2013 and 261 in the second quarter, for a total of 594 cases year-to-date. Counselors report that they took on an additional 305 new homeowners who self-referred after receiving the Bureau's informational mailing, and 204 more new cases from other sources, such as Congressional offices or municipal sources. In total, therefore, counselors under contract to the Bureau received 1,103 new cases to date this year. On average, each counselor is carrying an active caseload of more than 70 separate files.

During the quarter, counselors under contract with the Bureau assisted 246 homeowners to obtain relief that allowed them to remain in their homes. These resolutions included:

- 183 loan modifications
- 39 mortgage loans brought current
- 14 forbearance or repayment plans entered into
- 8 refinances or reverse mortgages obtained
- 2 second mortgages obtained.

In cases in which continued home ownership was not a viable option due to reduced earning capability or other life-changing circumstance, counselors also assisted homeowners to arrange conventional sales of the property in nine cases, "short sales" in 22 cases, and "deeds in lieu of foreclosure" (in which the lender accepts a deed to the property instead of foreclosing) in nine cases.

## NEWS AND TRENDS

Articles relating to national settlements reached with lenders and servicers have detailed problems with the foreclosure and loan modification processes. In a recent *American Banker* article, the author noted that workers on the "independent foreclosure review" reported:

*... Modifications are particularly vexing to sort through, because [a major national bank] had dozens of programs in place. In some cases, it also sent borrowers flurries of contradictory solicitations, rejections and new solicitations within a matter of weeks. Borrowers were offered loan mods that they did not qualify for or were rejected over a lack of paperwork already in the bank's files."*

The same article noted that before the "independent foreclosure review" was discontinued, more than 600 loans were foreclosed upon in cases in which the loan was not in default. In other cases,

- 1) Lenders foreclosed on consumers who were eligible for assistance under the Servicemembers Civil Relief Act;
- 2) Foreclosures were pursued despite consumers being under the protection of the bankruptcy courts;

- 3) Foreclosure was pursued even though the consumers had completed all requirements for loan modification or forbearance programs offered by the lender or by national, binding settlement terms; and
- 4) Lenders pursued foreclosure in cases in which the consumers were meeting current payment plans, and lenders failed to convert cases from temporary to permanent loan modifications despite the homeowners having complied with all payment plans.

The same article reported on the impact of the incentives offered by lenders to servicers:

*“... \$5.7 billion from the settlement will be [in the form of] credits to the servicers for offering foreclosure prevention assistance to affected borrowers based on the full unpaid balance of the mortgage. That, too, has created concerns for consumer advocates, who argue servicers will be more likely to help borrowers with larger mortgage amounts to get a larger credit than the low-to-middle income borrowers.”*

*CBS News/Moneywatch* published a story on the continuing problems with so-called “zombie mortgages,” in which lenders, especially national lenders without offices in the affected states, choose not to pursue foreclosures after filing suit, and often after the consumer has moved from the property in full anticipation that the process will be completed. The story states that banks are finding it difficult to sell their foreclosed inventory and often choose not to complete foreclosures rather than owning the properties and having to pay taxes and maintenance. Of particular interest in the report was the assertion by RealtyTrac that Maine has one of the highest percentages of “zombie foreclosure” residences compared to all other states.

*Bloomberg.com* reported in July that Bank of America had entered into a settlement with secondary-market investor and guarantor Fannie Mae, agreeing to pay Fannie Mae \$10 billion and sell the servicing rights to the loans to Nationstar. However, Nationstar has established one of the lowest figures for percentage of modifications granted, permitting modification in only 22% of the cases in which application is made (compares to 24% for Ocwen, 30% for JP Morgan Chase, 43% for Citi and 45% for Bank of America).

## **EXPERIENCE IN MAINE**

In many ways, the experiences of the Bureau’s counselors and staff are reflective of the trends and findings being reported in national media. For example, Portland attorney Tom Cox, who works closely with the Bureau’s counseling agencies, recently notified the Bureau and its counselors that he’d received two sets of conflicting and inconsistent answers from one of the nation’s largest servicers on how to fill out the loan modification application form, and that neither of the answers agreed with the written instructions found on the document itself.

Counselors and consumer complaints to the Bureau reflect constant and continuing problems with loan servicers not complying with servicing guidelines, asking repeatedly for documents they have already received, and failing to approve loan modifications after homeowners have met all requirements for eligibility.

In one case recently handled by Bureau staff, homeowners began receiving deficiency notices from their new loan servicer shortly after servicing of their loan was transferred. The homeowners had been behind on their loan several years earlier but had caught up and had no

issues with their prior servicer for several years. The new servicer claimed their account review showed an amount due from the period when the homeowners had been behind in payments with the former servicer, even though the prior servicer had made no such claim for more than four years. The Bureau was able to obtain relief for the homeowners.

Maine homeowners also complain to the Bureau that they are given impossibly-short deadlines within which to complete and return loan modification paperwork. In several cases, homeowner who have completed the trial modification period receive a permanent loan modification contract, with instructions that it must be returned to, and received by, the lender, fully executed, within two or three days of the date it is received by the homeowner. Homeowners failing to meet this impossible deadline are told to start the entire trial process over again.

An even more troubling problem occurs when the Maine homeowner does everything right and on time and is still denied a modification. The Bureau is currently dealing with a case in which the homeowners completed their trial payments, timely signed and returned their loan modification documents, and made their modified payments on time for the next seven months. The couple then abruptly received a notice of deficiency and right to cure giving them 35 days to pay all “arrearages” on their account, which included the difference between their original payment and their modified payment, plus late fees and other charges. By way of explanation, the servicer stated that it (the *servicer*) had never signed the loan modification contract once it was returned by the consumers, and that the document was not valid until the servicer had signed it.

In a different case involving the same servicer, the servicer sent the final loan modification package to the homeowners for signature, accompanied by a letter stating that the homeowners would be contacted by a representative of the servicer who would bring more copies of the modification documents, ensure that the documents were properly executed, notarize the homeowners’ signatures at no cost and ensure that the documents were returned to the servicer. In fact, however, no one ever contacted the homeowners. Confused, they reached out to their designated contact, and uploaded and sent him copies of the signed documents before the deadline. The lender still denied the modification, stating that the original documents were not timely received. The Bureau has intervened on behalf of the homeowners.

Maine is also encountering a continuing problem with so-called “zombie mortgages.” In cases received by the Bureau, three issues recur:

1) A foreclosure action is filed and a judgment is obtained. Pursuant to 14 M.R.S. §6323, a mortgagee is supposed to notice a public sale within 90 days after the expiration of the period of redemption in the judgment and hold the sale not less than 30 nor more than 45 days after the date of first publication of the notice of sale. In many cases, sales are not held within these time frames. Sometimes months – or even a year or two – later, the lender files a request to be allowed to initiate a sale well outside the statutory guidelines. During this entire period, ownership of the property is at issue, to the detriment of towns trying to collect taxes, neighbors of the vacant houses, and consumers who may be on the hook for any damage done to the house by vandals or weather conditions.

2) In some cases, a sale is actually held but no deed is recorded until much later. The former homeowner, now living elsewhere, receives no notice that the sale has occurred, and title does not actually pass until a deed is recorded in the Registry of Deeds. Municipalities and

utility districts continue to send bills in the name of the homeowner who was foreclosed upon, to the address at which the consumer no longer resides.

3) In the third common category of case, a lender begins the foreclosure process and a homeowner, somewhat logically, decides he or she cannot save the home, and moves out, or the lender obtains a judgment and evicts the homeowner after expiration of the statutory period of redemption. If the lender then decides to abandon the foreclosure process before a sale is held, the homeowner who was evicted or who left voluntarily remains liable for taxes and other charges. Meanwhile, no one maintains the property, creating a hazardous condition and affecting surrounding property values.

## **CONCLUSION**

The need to retain a robust referral and counseling program for Maine homeowners at risk of foreclosure remains strong. Counselors under contract with the Bureau have a proven track record in assisting homeowners in need. The Bureau's staff, together with trained counselors, remain the primary watchdogs to ensure compliance and fair dealings by lenders and servicers, especially nationally-based lenders and investors with no geographical ties to Maine other than having invested in mortgages secured by residences in this state. Based on the numbers of default notices received and also after review and analysis of the rate of court filings, Bureau staff sees no indication that the need for this program, nor for the services of the Judicial Branch's mediation program for those who are sued in foreclosure, will diminish in the near future.