**[MODEL ABANDONED PROPERTY ACT]**

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES

at its

ANNUAL CONFERENCE

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FOURTH YEAR

WILLIAMSBURG, VIRGINIA

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*WithOUT Comments*

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By

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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**[MODEL ABANDONED PROPERTY ACT]**

SECTION 1. SHORT TITLE.This [act] may be cited as the [Model Abandoned Property Act].

SECTION 2. DEFINITIONS. In this [act]:

(1) “Abandoned property” means mortgaged property with respect to which the homeowner and all persons claiming through the homeowner, including tenants, have relinquished possession. The term does not include unoccupied mortgaged property that is:

(A) undergoing construction, renovation, or rehabilitation that is proceeding with reasonable diligence to completion;

(B) physically secured and used or held for use by the homeowner as a vacation or seasonal home; or

(C) physically secured and the subject of a probate action, action to quiet title, or other litigation in which ownership is contested.

(2) “Common-interest community” means real property with respect to which a person, by virtue of ownership of a unit, is obligated to pay real-property taxes or insurance premiums or for maintenance, improvement of other real property, or services described in a declaration or other governing document, however denominated. The term includes properties held by a cooperative-housing corporation. In this paragraph, “ownership” includes a leasehold interest if the lease term is at least [20] years, including renewal options.

(3) “Creditor” means a person that is entitled to foreclose a mortgage under the law of this state.

(4) “Foreclosure” means a process, proceeding, or action to enforce a mortgage by terminating a homeowner’s interest in mortgaged property or obtaining possession of mortgaged property. The term does not include a voluntary transfer by the homeowner or a process, proceeding, or action to recover possession of property after a completed foreclosure sale. “Foreclose” has a corresponding meaning.

(5) “Homeowner” means a person that owns an interest in mortgaged property, other than a mortgage, lien, security interest, easement, servitude, or leasehold with a term of less than [20] years, including renewal options.

(6) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

(7) “Maintain” means to:

(A) care for the yard and exterior of a building on abandoned property, including removing excessive foliage growth that diminishes the value of surrounding properties;

(B) prevent trespassers from remaining on the property;

(C) prevent mosquito larvae from growing in standing water on the property; and

(D) take any other action needed to prevent conditions on the property which create a public or private nuisance or hazard.

(8) “Mortgage” means a consensual interest in real property which secures an obligation. The term does not include a lien that secures an obligation owed to a homeowners’ association in a common-interest community.

(9) “Mortgage agreement” means a record that creates a mortgage.

(10) “Mortgaged property” means real property improved with not more than four dwelling units which is subject to a mortgage. The term includes:

(i) an attached single-family unit;

(ii) a single-family manufactured-housing unit or a time share in a dwelling unit if either is treated as real property under law of this state other than this [act];

(iii) real property on which construction of not more than four dwelling units has commenced; and

(iv) a single-family unit in a common-interest community.

The term does not include real property that, when the mortgage being foreclosed was created, was used or intended to be used primarily for nonresidential purposes.

[(11) “Nonjudicial foreclosure” means a foreclosure that proceeds without judicial process under [insert statutory reference].]

(12) “Obligation” means a debt or other duty or liability of an obligor secured by a mortgage.

(13) “Obligor” means a person that:

(A) owes payment or performance of an obligation;

(B) has signed a mortgage agreement with respect to mortgaged property; or

(C) is otherwise accountable in whole or in part for payment or performance of the obligation.

(14) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity.

(15) “Public sale” means a sale by auction authorized by law of this state other than this [act].

(16) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

***Legislative Note:*** *In a state that allows one or more types of nonjudicial foreclosure of a residential mortgage, a reference to the relevant statute should be added to the definition of “nonjudicial foreclosure.” In a state that does not allow nonjudicial foreclosure, this definition should be deleted, along with references to “nonjudicial foreclosure” elsewhere in this act. In some states, a land sale installment contract does not constitute a mortgage, with all the attendant consequences for a homeowner and a creditor, until a specified percentage of the original principal amount has been paid to the creditor. In Illinois, for example, that percentage is 50 percent of the original principal amount. In a state in which the issue arises, a statutory drafter should make appropriate revisions to this act to track existing practice in that state.*

# SECTION 3. DETERMINATION OF ABANDONMENT IN JUDICIAL FORECLOSURE.

(a) In a judicial foreclosure, a creditor or governmental subdivision in which the mortgaged property is located or, if the property is located in a common-interest community, the community association also may move for a determination that the property is abandoned property.

(b) The moving party under subsection (a) shall deliver by first-class mail and serve in the manner described in subsection (d), separately to each homeowner and obligor, a notice that contains:

(1) a copy of the motion;

(2) a copy of any affidavit attesting to abandonment or a governmental agency’s determination that the property is abandoned which the party will submit as evidence;

(3) a description of the consequences that will follow from a determination of abandonment; and

(4) if the notice contains an agency determination of abandonment, a statement that the recipient may contact the [applicable government official] to obtain further information or object to the determination of abandonment.

(c) The moving party under subsection (a) shall serve personally, or make two attempts to serve personally, the notice described in subsection (b) on a homeowner at the mortgaged property. The attempts must be at least 72 hours apart at reasonable times. Posting the notice on the property is not required.

(d) The court shall schedule a hearing on a motion under subsection (a**)** to be heldnot fewer than [15] nor more than [30] days after filing of the motion.

(e) At the hearing under subsection (d), if no appearance is made to oppose the relief sought and credible evidence is presented supporting the allegations in the motion, the court shall render an order that the mortgaged property is abandoned property.

# [SECTION 4. DETERMINATION OF ABANDONMENT IN NONJUDICIAL FORECLOSURE.

(a) In a nonjudicial foreclosure, a creditor or governmental subdivision in which the mortgaged property is located or, if the property is located in a common-interest community, the community association also may submit a request to the [building-code appeals board] for a determination that the property is abandoned property. The request must be accompanied by an affidavit attesting to facts indicating abandonment.

(b) A person that submits a request under subsection (a) shall send by first-class mail in the manner described in subsection (d) separately to each homeowner and obligor a notice that contains:

(1) a copy of the request;

(2) a copy of the affidavit attesting to abandonment;

(3) a description of the consequences that will follow from a determination of abandonment;

(4) a statement that the recipient may contact the [building-code appeals board] to obtain further information;

(5) a statement that the recipient has the right to object to the proposed determination of abandonment by making an objection to the [building-code appeals board]; and

(6) a statement that the objection must be received not later than 30 days after the notice was sent, and that if the objection is timely received, the [building-code appeals board] will not issue a determination of abandonment.

(c) A person that submits a request under subsection (a) shall deliver personally, or make two attempts to deliver personally, the notice described in subsection (b) on a homeowner at the mortgaged property. The attempts must be at least 72 hours apart at reasonable times. Posting the notice on the mortgaged property is not required.

(d) Not earlier than 30 days after sending the notice required by subsection (b), the [building-code appeals board] may determine in a record that the property is abandoned property if:

(1) the [building-code appeals board] receives evidence that notice under subsection (b) was sent to each homeowner and obligor;

(2) during the 30-day period after notice was sent to a person entitled to notice under subsection (b), the [building code-appeals board] did not receive an objection to the proposed determination from the person;

(3) the [building-code appeals board] has received an affidavit attesting to facts indicating abandonment; and

(4) a representative of the [building-code appeals board] has personally inspected the property.

(e) In a proceeding under subsection (d), if no objection is made to the proposed determination and credible evidence is presented supporting the allegations of abandonment, the [building-code appeals board] shall determine in a record that the mortgaged property is abandoned property.

(f) The [building-code appeals board] shall send a determination of abandonment under subsection (d) or (e) to the creditor and each homeowner and obligor.

(g) A determination of abandonment or the refusal of the [building-code appeals board] to issue a determination under subsection (d) or (e) is subject to de novo judicial review.]

***Legislative Note:*** *Because subsection (g) provides for de novo judicial review, a state should consider whether the requirements of this section are compatible with existing statutes or rules governing appeals from administrative bodies such as the body designated in this section, and make changes if appropriate.*

# SECTION 5. PRESUMPTION OF ABANDONMENT.

(a) In a proceeding under Section 3 or 4, mortgaged property is presumed to be abandoned property if:

(1) a [building inspector] determines that the property is abandoned; or

(2) three or more of the following subparagraphs apply to the property:

(A) There are:

(i) one or more doors on the property that are boarded up, broken off, or continuously unlocked;

(ii) multiple windows that are boarded up or closed off; or

(iii) multiple window panes that are broken.

(B) Gas, electric, or water service to the property has been terminated or utility consumption is so low that it indicates the property is not regularly occupied.

(C) Rubbish, trash, or debris has accumulated on the property.

(D) A governmental agency has determined that the property is unfit for occupancy or poses a threat to public health or safety.

(E) A creditor has changed the locks or otherwise secured the property and, for at least 30 days thereafter, the homeowner has not contacted the creditor to request entrance to the property or re-entered the property.

(F) One or more written statements signed by the homeowner indicate a clear intent to abandon the property.

(G) A law-enforcement agency has received reports of at least two separate incidents of trespass, vandalism, or other illegal acts being committed on the property in the 180 days before determination of abandonment is sought.

(H) The homeowner is dead and there is no evidence that a household member or heir of the homeowner is in actual possession of the property.

(b) An affidavit attesting to the conditions described in subsection (a) and any other facts evidencing abandonment must be signed by and based on personal knowledge of the affiant and state the basis for that personal knowledge. A person may submit one or more affidavits as evidence of abandonment.

# SECTION 6. WITHDRAWAL OF ABANDONED-PROPERTY PROCEEDING.

[(a)] In a judicial foreclosure, after a party has moved for a determination that the property is abandoned property, the motion may be withdrawn only by leave of court.

[(b) In a nonjudicial foreclosure, after a person has requested a determination that the property is abandoned property, the request may be withdrawn only with consent of the person submitting the request and each homeowner and obligor.]

# SECTION 7. FORECLOSURE OF ABANDONED PROPERTY.

(a) In a judicial foreclosure, if the court determines that the mortgaged property is abandoned property and the court previously rendered or at the same time renders a judgment of foreclosure, the court shall:

(1) order public sale of the abandoned property not earlier than [30] days but not later than [45] days after entry of the order; or

(2) on motion of the foreclosing creditor, if the court determines there is no equity in the mortgaged property available to satisfy the interests of subordinate creditors, order transfer of the abandoned property directly to the foreclosing creditor without public sale. The transfer of the property extinguishes the rights of all interests subordinate to the interest of the foreclosing creditor.

(b) [In a nonjudicial foreclosure, if a governmental agency determines that the mortgaged property is abandoned property, the creditor may conduct an expedited public sale of the property. Unless an action for judicial review of the determination is pending, the sale may take place not earlier than [30] days but not later than [60] days after issuance of the determination.

(c)] After a judicial order or determination by a governmental agency that mortgaged property is abandoned property, the creditor shall cause the public sale or transfer of the mortgaged property to the creditor to be completed not later than 120 days after the order is rendered or determination is made, unless the creditor releases its mortgage and the release is filed in the [real-property records]. Unless the creditor releases its mortgage, the creditor may not seek to end its obligation under Section 8 to maintain the property by dismissing, terminating, or suspending the foreclosure.

(d) On a public sale or transfer of the mortgaged property to the creditor under subsection (a) [or (b)], any personal property remaining on the abandoned property is deemed to have been abandoned by the owner of the personal property and may be disposed of by the purchaser or transferee of the property [60] days after the sale or transfer. Neither the creditor, purchaser nor transferee is liable to the homeowner or obligor for disposal of personal property pursuant to this subsection.

(e) Completion of a public sale or transfer of mortgaged property to the creditor under subsection (a) [or (b)] terminates the right of the homeowner and any other person to redeem the property under law of this state other than this [act].

# SECTION 8. MAINTENANCE OF ABANDONED PROPERTY.

(a) If a creditor commences a judicial foreclosure, the creditor shall maintain the mortgaged property beginning when the court renders an order under Section 3 determining that the property is abandoned property.

(b) [If a creditor commences a nonjudicial foreclosure, the creditor shall maintain the mortgaged property beginning when the [building-code appeals board] determines under Section 4 that the property is abandoned property.

(c)] Absent a judicial order under Section 3 [or a determination under Section 4], a creditor that has commenced a foreclosure has no obligation under this [act] to maintain the mortgaged property unless the creditor receives notice that the [building-code appeals board] has determined that the property is abandoned property and is in a condition that poses a threat to public health or safety.

(d) A creditor’s duty under this section to maintain abandoned property continues until the property is conveyed to a purchaser or the creditor records a release of its mortgage.

(e) A creditor that has a duty under this section to maintain abandoned property may enter and permit others to enter the property peacefully for the limited purpose of maintenance required by this section and inspection and repair. All reasonable expenses incurred by a creditor in complying with this section are obligations of the homeowner and secured by the mortgage.

(f) A person that enters abandoned property for a purpose described in subsection (e) is not liable to the homeowner for trespass or for damage to the property resulting from a cause other than the person’s negligence or willful misconduct.

(g) The obligations created by this section may be enforced by:

(1) a governmental subdivision in which the mortgaged property is located; or

(2) if the property is located in a common-interest community, the community association.

(h) The duty of a creditor to maintain abandoned property is limited to the duty created by this section. If the creditor becomes the owner of the property, the creditor’s duty with respect to the property is determined by law of this state other than this [act]. The creditor does not become a mortgagee in possession of the property solely by virtue of the creditor’s performance of the duty created by this section.

SECTION 9. GENERAL PRINCIPLES OF LAW APPLICABLE. The principles of law and equity, including the law of principal and agent, supplement this [act] unless displaced by its particular provisions.

SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 11. TRANSITION. This [act] applies only to proceedings to determine whether mortgaged property has been abandoned that were commenced on or after [the effective date of this [act]].

SECTION 12. EFFECTIVE DATE. This [act] takes effect . . . .