

UNIFORM HOME FORECLOSURE PROCEDURES 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
JULY 10 - JULY 16, 2015

STATUTORY TEXT ONLY

COPYRIGHT © 2015

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 21, 2015

*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

UNIFORM HOME FORECLOSURE PROCEDURES ACT

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Home Foreclosure Procedures Act.

SECTION 102. 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 Section 104.

(4) “Expenses of foreclosure” means the lesser of:

(A) the reasonable expenses incurred by a foreclosing creditor to the extent provided in the mortgage; or

(B) the maximum amount permitted by law of this state other than this [act] as expenses in connection with a foreclosure.

(5) “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 a homeowner or an action to recover possession of property after a completed foreclosure sale. “Foreclose” has a corresponding meaning.

(6) “Foreclosure resolution” means a process in which a neutral individual assists the parties to exchange information, prepare for and attend an in-person meeting or other communication where a creditor, obligor, and neutral individual simultaneously can communicate with one another with the objective of reaching an agreement between the parties for an alternative to foreclosure.

(6) “Foreclosure resolution” means a process in which a neutral individual assists the parties to exchange information, prepare for and attend an in-person meeting or other communication where a creditor, obligor, and neutral individual simultaneously can communicate with one another with the objective of reaching an agreement between the parties for an alternative to foreclosure.

(7) “Foreclosure resolution agency” means [the administrative or judicial agency designated by the state to supervise foreclosure resolution].

(8) “Holder” means a person in possession of a negotiable instrument that is payable either to bearer or to an identified person in possession of the instrument.

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

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

(11) “Loss mitigation” means an alternative to foreclosure offered by a creditor to a homeowner in default or facing imminent default.

(12) “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.

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

(14) “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 such as farming, commercial, or industrial use.

(15) “Negotiable instrument” means a negotiable instrument as defined in [UCC Section 3-104].

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

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

mortgage.

(18) “Obligor” means a person that:

(A) owes payment or performance of an obligation;

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

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

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

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

(21) “Record”, used as a noun, means information that is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.

(22) “Servicer” means a person responsible for servicing an obligation, including a person that holds or owns an obligation or originates a mortgage loan if the person also services the obligation.

(23) “Servicing” means:

(A) receiving a scheduled periodic payment from an obligor under the terms of an obligation, including an amount received for an escrow account;

(B) making or advancing a payment to the owner of an obligation on account of an amount due from the obligor under a mortgage-servicing loan document or a servicing contract;

(C) making a payment to the obligor under a home-equity-conversion mortgage or

reverse mortgage; or

(D) evaluating the obligor for loss mitigation or communicating with the obligor with respect to loss mitigation.

(24) “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.

SECTION 103. SCOPE. This [act] applies to foreclosure of mortgaged property in this state.

SECTION 104. PERSON ENTITLED TO FORECLOSE. The only person who may commence a foreclosure is:

(1) if the obligation is evidenced by a negotiable instrument, the “person entitled to enforce” the instrument specified in [U.C.C. Section 3-301]; provided, if that person is not in possession of the instrument due to its loss, theft or destruction, that person must meet the requirements of Section 403;

(2) if the obligation is evidenced by a “transferable record” as defined in [UETA] or the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7021(a), the person with control of the transferable record; or

(3) if the obligation is not evidenced by a negotiable instrument or transferable record, the person entitled to enforce the obligation as determined by law other than this [act].

SECTION 105. DUTY OF GOOD FAITH; COMMERCIAL REASONABLENESS.

(a) A person whose conduct is governed by this Act shall comply in good faith with the requirements of this [act] and shall act in good faith throughout the foreclosure process. “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair

dealing.

(b) A creditor shall proceed in a commercially reasonable manner in complying with this [act].

SECTION 106. PROHIBITED ACTS. A creditor may not:

(1) make a misleading statement orally or in writing to a homeowner or obligor which would discourage a reasonable person from participating in loss mitigation or foreclosure resolution; or

(2) misrepresent any aspect of a foreclosure, including informing the homeowner or obligor that:

(A) a sale date is set when the procedure for setting a sale date has not been completed;

(B) the foreclosure sale has been postponed, canceled, or stayed due to loss mitigation or pre-foreclosure resolution when the sale has not been postponed, canceled or stayed; or

(C) the obligor is not eligible for a loss-mitigation option when the option is available and the creditor has not evaluated the option.

SECTION 107. APPLICATION OF LOCAL REGULATIONS.

(a) [Notwithstanding [insert reference to any applicable “home rule” provision under the law of this state]], a municipality, [county], or other political subdivision in this state may not impose a regulation, restriction, or limitation on foreclosure or add to or diminish the rights and obligations of a creditor, servicer, homeowner, or obligor under this [act].

(b) Except as otherwise provided in subsection (a), this [act] does not invalidate or modify a zoning, subdivision, building, or safety code or other ordinance or regulation generally

applicable to the use of real property.

SECTION 108. SERVICERS.

(a) A creditor may delegate a duty under this [act] to a servicer.

(b) A servicer to whom a creditor delegates a duty or a person authorized to foreclose under Section 401(c) or Section 402(b):

(1) has all the rights conferred on creditors by this [act] with respect to the authorized action, unless limited by contract; and

(2) is subject to the duties imposed by this [act] on the creditor.

(c) A creditor's liability for a servicer's noncompliance with this [act] is determined by law of this state other than this [act].

(d) Nothing in this section prevents a creditor from delegating its duties under this [act] to a person who is not a servicer.

SECTION 109. NO WAIVER. The rights of an obligor or homeowner under this [act] may not be waived and the duties of a creditor under this [act] may not be diminished by contract.

[ARTICLE] 2

NOTICES; RIGHT TO CURE

SECTION 201. NOTICE OF DEFAULT; RIGHT TO CURE.

(a) A person may not initiate foreclosure under [insert reference to state foreclosure law other than this [act]] until 30 days after the person sends separately to each obligor a written notice of default and right to cure.

(b) The notice under subsection (a) must state:

(1) the nature of the default, including a statement, as of the date of the notice, of

all past-due payments, fees, and other charges owed to the creditor;

(2) the specific action the obligor must take to cure any curable default, including the exact amount that must be paid, all payment methods permitted by section 204 and any other payment methods acceptable to the creditor;

(3) the date by which the default must be cured, which may not be fewer than 30 days after the date the notice is sent;

(4) that if the obligor does not cure, the creditor may accelerate the obligation and demand payment of the full amount of the obligation, not just past-due payments, and may foreclose the mortgaged property;

(5) the effect of curing the default, including the right to have the obligation and mortgage remain in effect;

(6) that the obligor may dispute the default and raise any other defense to foreclosure or payment of the obligation and the manner of exercising those rights;

(7) the name of

(A) the creditor and the facts that establish the creditor's right to foreclose under section 104;

(B) the servicer, if different from the creditor; and

(C) the legal owner of the obligation, if the creditor is not the legal owner;

(8) that the obligor may request a copy of the negotiable instrument or other evidence of the obligation and a copy of any record that demonstrates the right to foreclose; and

(9) if the creditor is relying on a lost, destroyed, or stolen negotiable instrument, the information required by Section 403(b).

(c) The notice under subsection (a) may include additional information, including the fact

that additional amounts will come due after the date of the notice.

(d) The notice under subsection (a) may be combined with other notices required by the mortgage agreement or by other law, but may not be combined with the notice required by Section 302.

SECTION 202. MANNER OF NOTICE DELIVERY. A notice required by Section 201 or 302 must be sent by first-class mail addressed to each obligor at each obligor's last known address. At least one mailed notice must also be addressed to "homeowner" at the address of the mortgaged property. If the obligor or the obligor's representative has requested in a record to receive notice by electronic mail and has provided the creditor an electronic-mail address, the notice also must be sent to the electronic-mail address.

SECTION 203. RIGHT TO CURE DEFAULT.

(a) A person may cure a monetary default on an obligation by tendering payment in cash or with an electronic funds transfer, cashier's check, certified check, teller's check or equivalent obligation of a bank or money order, the amount specified in subsection (c) at any time after a notice under Section 201 and not later than two days before a scheduled or postponed foreclosure sale.

(b) A person may cure a default other than a monetary default at any time not later than two days before a scheduled or postponed foreclosure sale.

(c) To cure a default under this section, a person shall:

(1) tender all amounts that would have been due at the time of tender in the absence of acceleration;

(2) perform any other duty under the obligation or mortgage agreement that would have been due in the absence of default or acceleration;

(3) tender all expenses of foreclosure specified in a record provided by the creditor that accrued before the time of tender; and

(4) tender any late fees, if provided for in the mortgage agreement or obligation and permitted by law other than this [act].

(d) Cure of a default under subsection (c) restores the obligor to the same position under the mortgage and the obligation it secures as if the default had not occurred.

(e) This section does not impair a greater right to cure a default that the obligor has under the mortgage agreement or the obligation.

(f) This section does not limit a right of an obligor to redeem the mortgaged property by paying the full amount of the accelerated obligation at any time before the foreclosure sale is completed.

SECTION 204. UNKNOWN HOMEOWNER OR OBLIGOR.

(a) A creditor does not have a duty under Section 201, 302, 404(e) or 405 to notify a homeowner or obligor unless the creditor knows:

(1) that the person is a homeowner or obligor; and

(2) the identity of the person.

(b) If the creditor knows the identity of a homeowner or obligor but does not know the homeowner's or obligor's mailing address, notice to the homeowner or obligor under Section 201, 302, 404(e) and 405 must be sent to the address of the mortgaged property.

[ARTICLE] 3

FORECLOSURE RESOLUTION

SECTION 301. FORECLOSURE RESOLUTION PROGRAM. [The court or agency serving as the foreclosure resolution agency] is the foreclosure resolution agency. The

agency shall adopt rules under [insert reference to state administrative procedures act or, if the agency is the judicial system, to the rules of court] establishing procedures and standards for foreclosure resolution. The agency will appoint a neutral individual to assist parties making a request under Section 303 to achieve alternatives to foreclosure.

SECTION 302. NOTICE OF FORECLOSURE RESOLUTION.

(a) Before or at the time of commencing a judicial foreclosure, the creditor shall send to the homeowner and obligor a notice under subsection (d) of the right to participate in foreclosure resolution, or shall request that the foreclosure resolution agency send the notice under subsection (c), not later than service of a foreclosure [complaint] on the homeowner. In a nonjudicial foreclosure, the creditor shall send to the homeowner and obligor a notice under subsection (d) of the right to participate in foreclosure resolution, or shall request that the foreclosure resolution agency send the notice under subsection (c), no later than 30 days after sending a notice of default and right to cure required by Section 201.

(b) A creditor is not required to send or request a notice if a court or governmental agency has determined under Section 602 or 603 that the property is abandoned. If a court or governmental agency later determines that the property is not abandoned and a foreclosure sale has not been completed, the creditor shall request the notice under subsection (b) or send the notice under subsection (c) no later than 30 days after the determination that the property is not abandoned.

(c) If the foreclosure resolution agency establishes a procedure for the agency to send the notice required by subsection (a), a creditor shall request the agency to send the notice to the creditor and to each homeowner and obligor and the agency shall promptly send the notice. The notice may be sent before or after commencement of a foreclosure action, as provided by the

foreclosure resolution agency's rules, but must be sent before a creditor may request entry of a default or foreclosure judgment or give a notice of a judicial or nonjudicial-foreclosure sale.

(d) If the foreclosure resolution agency does not establish a procedure for the agency to send notice required by subsection (a), the creditor shall send notice to each homeowner and obligor, in the same manner as required for the notice under Section 201.

(e) A notice of the right to participate in foreclosure resolution must include the following:

(1) the name, address, and telephone number of each housing counseling agency, lawyer-referral service, and legal-aid agency serving the geographic area of the mortgaged property designated by the foreclosure resolution agency;

(2) the name, address, telephone number, and electronic-mail address of the appropriate contact person or group assigned by the creditor or servicer to the homeowner or obligor under rules of the federal Consumer Financial Protection Bureau;

(3) that the homeowner or obligor may request a foreclosure resolution meeting, that the request must be made not later than 30 days after notice is sent, the instructions for requesting foreclosure resolution, and all eligibility requirements under the agency's rules;

(4) a description of all documents the homeowner or obligor must bring to the foreclosure resolution meeting under the agency's rules; and

(5) a form prescribed by the agency for the homeowner or obligor to request foreclosure resolution and to affirm that the homeowner or obligor meets the eligibility requirements of Section 303.

SECTION 303. ELIGIBILITY FOR PARTICIPATION IN FORECLOSURE

RESOLUTION.

(a) If a homeowner or obligor makes a request for foreclosure resolution not later than 30 days after the sending of a notice under Section 302(b) or (c), the agency shall schedule a meeting in accordance with its rules and appoint a neutral individual to conduct the meeting. For good cause shown the agency may schedule a meeting and initiate foreclosure resolution later than 30 days after the sending of the notice. The agency may not initiate a second foreclosure resolution or schedule a second meeting in a foreclosure if an earlier resolution was concluded unless both parties consent.

(b) If the foreclosure resolution agency schedules a meeting under subsection (a), the creditor and homeowner or obligor shall attend and participate in compliance with agency rules and any scheduling or other order rendered by the neutral individual or the agency. Failure to comply with this subsection includes failure:

(1) without good cause to timely attend a meeting;

(2) without good cause to provide, before a scheduled meeting, documents and information required by foreclosure resolution agency rules or reasonably requested by the neutral individual;

(3) to designate a person with authority to reach a settlement agreement, if the authority exists;

(4) without good cause to pay any required foreclosure resolution fee;

and

(5) to advise the homeowner, obligor, and the neutral individual of any loss-mitigation option that is available to the homeowner or obligor or to consider the homeowner or

obligor for the loss-mitigation option before or during foreclosure resolution.

(c) A homeowner or obligor is eligible for foreclosure resolution only if the mortgaged property is occupied by the homeowner or obligor. If the mortgaged property contains more than one dwelling unit, foreclosure resolution is available only if at least one dwelling unit is occupied by the homeowner or obligor. With a request for foreclosure resolution, the homeowner or obligor shall submit to the foreclosure resolution agency an affirmation that the mortgaged property is occupied either by an obligor or homeowner. If the agency determines that the property is not occupied by a homeowner or obligor, the agency may not schedule a meeting under subsection (a), but instead shall permit the creditor to proceed with foreclosure under Section 305.

SECTION 304. PARTICIPATION IN FORECLOSURE RESOLUTION.

(a) The creditor shall inform the homeowner, obligor, and the foreclosure resolution agency of (i) the loss-mitigation options available to the homeowner and obligor; and (ii) its willingness or refusal to offer a loss-mitigation option requested by the homeowner or obligor, the reasons for any refusal, and the information on which any refusal is based.

(b) A creditor may not charge a homeowner or obligor a fee for foreclosure resolution. The foreclosure resolution agency may charge a fee or costs for the foreclosure resolution process to either or both parties.

(c) A homeowner or obligor that participates in foreclosure resolution shall provide reasonably available financial and other information to enable the creditor to evaluate any loss-mitigation options.

(d) This [act] does not impose a duty on a creditor to provide a loss mitigation option. The foreclosure resolution agency rules may not impose a duty on a creditor to provide a loss-

mitigation option.

(e) A homeowner or obligor may be accompanied at a foreclosure resolution meeting by an attorney, housing counselor, or other individual.

(f) Personal financial information exchanged during foreclosure resolution is confidential and not subject to disclosure under [state FOIA or sunshine laws]. Neither the foreclosure resolution agency nor the neutral individual is required to respond to a discovery request in a court proceeding, to the extent that the discovery seeks personal financial information or other privileged information exchanged during foreclosure resolution.

(g) The neutral individual shall disclose potential conflicts of interest in the time and manner provided by the agency rules.

SECTION 305. FORECLOSURE ACTION DURING FORECLOSURE RESOLUTION.

(a) Subject to law of this state other than this [act], the creditor may commence a foreclosure at the time provided in Section 302(a). Subject to subsection (c), the creditor may not file a default or dispositive motion in a foreclosure action, or schedule or cause to be scheduled a foreclosure sale, unless:

(1) the notice under Section 302 has been sent;

(2) neither the homeowner nor obligor responds to the foreclosure resolution notice by making a request for foreclosure resolution to the agency not later than 30 days after the notice is sent;

(3) the agency notifies the creditor that

(A) the parties have participated in the meeting required by Section 303(a) and reached an impasse, or

(B) the homeowner or obligor has failed to participate in foreclosure resolution, provide required information after a reasonable opportunity to do so, or materially comply with agency rules or orders; or

(4) the court or agency renders an order permitting the creditor to proceed with foreclosure.

(b) If the court or agency determines that the mortgaged property is not occupied by the homeowner or obligor, the court or agency shall render an order permitting the creditor to proceed with foreclosure.

(c) A creditor may proceed to file a default or dispositive motion in a foreclosure action, or schedule or cause to be scheduled a foreclosure sale, [90] days after the notice required by Section 302 is sent, unless the parties agree in a record to continue foreclosure resolution or the court or foreclosure resolution agency directs the parties to begin or continue foreclosure resolution.

(d) The court or foreclosure resolution agency may render an order imposing appropriate conditions on the parties to foreclosure resolution, including the payment of fees and costs of foreclosure resolution to the agency authorized by Section 304(b) or the tender of periodic payments by the homeowner or obligor to the creditor.

SECTION 306. EXEMPTION FOR SMALL CREDITORS. The provisions of this Article do not apply to a foreclosure by a person that is the owner, holder, or servicer of five or fewer mortgages at the time the notice required by Section 201 is sent. An exempt small creditor may elect to participate in foreclosure resolution in accordance with this Article and agency rules.

[ARTICLE] 4

FORECLOSURE REQUIREMENTS; PUBLIC SALE PROCEDURE

SECTION 401. JUDICIAL FORECLOSURE.

(a) A creditor may commence judicial foreclosure only after default in the obligation and satisfaction of all conditions required by the mortgage agreement and by law.

(b) In a judicial foreclosure, the following rules apply:

(1) The creditor must plead that it has the right under Section 104 to foreclose;

and

(2) If the obligation is evidenced by a negotiable instrument, the [complaint] must include:

(A) a copy of the instrument in its present condition, including any indorsement or allonge and a statement identifying the person in possession of the instrument; or

(B) a statement that the instrument has been lost, destroyed, or stolen and a copy of the instrument in its last-known condition, in which case the [complaint] must include an affidavit that complies with Section 402.

(3) If the obligation is not evidenced by a negotiable instrument, the [complaint] must include a copy of the record evidencing the obligation and the creditor's right to enforce the obligation.

(c) The creditor, in a record, may authorize another person to foreclose. The [complaint] described in subsection (b) must disclose the name of the creditor and the person authorized by the creditor to foreclose.

(d) If the obligation is evidenced by a negotiable instrument and the creditor knows that it does not own the obligation, the [complaint] described in subsection (c) must disclose the name

of the legal owner of the obligation.

SECTION 402. NONJUDICIAL FORECLOSURE.

(a) A creditor may commence nonjudicial foreclosure only after default in the obligation and satisfaction of all conditions required by the mortgage agreement and by law.

(b) The creditor, in a record, may authorize another person to foreclose.

(c) The notice of nonjudicial foreclosure required by [insert statutory reference] must disclose the name of the creditor and the person authorized by the creditor to foreclose.

SECTION 403. LOST, DESTROYED, OR STOLEN NEGOTIABLE INSTRUMENT; AFFIDAVIT.

(a) If the obligation is or was evidenced by a negotiable instrument and the creditor is not in possession of the instrument, the creditor may foreclose the mortgage only if:

(1) the creditor:

(A) was entitled to enforce the instrument when loss of possession occurred; or

(B) the creditor has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) the loss of possession was not the result of a transfer by the creditor or a lawful seizure; and

(3) the creditor cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) If a creditor seeks to foreclose under subsection (a), the notice of default and right to cure sent under Section 201 must state that the instrument is unavailable and provide information establishing that the creditor may foreclose under subsection (a) and must state that there may be a risk that a person other than the creditor will seek to enforce the instrument, that the homeowner or obligor has the right to adequate protection against a claim by another person. In a nonjudicial foreclosure, the notice also must:

(1) that the homeowner or obligor has the right to petition the [name of appropriate court] where the mortgaged property is located for an order requiring the creditor to provide adequate protection; and

(2) include the indemnity required by subsection (c).

(c) If a creditor seeks to foreclose under subsection (a) the homeowner or obligor is entitled to adequate protection against loss that might occur by reason of a claim by another person to enforce the negotiable instrument. The creditor must provide in a record an indemnity against loss by the homeowner or obligor. In a judicial foreclosure, the court may require additional protection against a claim by another person. In a nonjudicial foreclosure, the homeowner or obligor may petition the [name of appropriate court] where the mortgaged property is located for an order requiring the creditor to provide additional protection against a claim by another person.

(d) In a judicial foreclosure, a creditor shall file a [verified complaint] [complaint with affidavit] attesting to facts under subsection (a). The creditor shall provide the indemnity required by subsection (c) no later than the date established by the court.

SECTION 404. ADVERTISEMENT OF PUBLIC SALE.

(a) Mortgaged property may be sold at a public sale no sooner than 30 days after the

creditor has published an advertisement of the sale that satisfies this section. An advertisement satisfies this section if:

(1) published in a newspaper having general circulation in the [county] where the mortgaged property is located once per week for three consecutive weeks before the sale; or

(2) published on an Internet website that is reasonably expected to be viewed by persons having an interest in purchasing the mortgaged property and the Internet publication remains regularly available between the time of posting and the time of sale.

(b) An advertisement under subsection (a) must indicate:

(1) the name of the homeowner and, if not the same, the name of the person that signed the mortgage agreement;

(2) the name of the person that will conduct the sale;

(3) the date, time, and place of the sale;

(4) the street address or, if there is no street address, other information identifying the location of the mortgaged property;

(5) any improvements and personal property included in the sale, if that information is readily available to the creditor;

(6) whether the mortgaged property is to be sold subject to senior indebtedness;

(7) the material terms of the sale, including payment terms required of the successful bidder at the completion of the auction;

(8) whether access to the mortgaged property for the purpose of inspection is available to prospective bidders before the sale; and

(9) a telephone number and electronic-mail address from which a person may obtain additional information concerning the mortgaged property and the sale.

(c) An advertisement under subsection (a) need not contain a legal description of the mortgaged property or recording information for the mortgage or other instrument of record.

(d) The creditor may post an advertisement under subsection (a) or other information pertaining to the sale at the location of the mortgaged property.

(e) A creditor shall send a copy of the advertisement under subsection (a) to the homeowner and to each obligor no later than the date of newspaper publication or Internet posting. The creditor may send the copy with the notice of public sale required by Section 404 or send it separately.

SECTION 405. NOTICE OF PUBLIC SALE. A creditor shall send each homeowner and obligor notice of the date, time, and place of a scheduled public sale. The creditor must send the notice of sale by first-class mail to the last-known address of each homeowner and obligor and send a separate copy by first-class mail, addressed to the occupant at the property address. Notice of sale must be mailed or delivered at least 30 days before the sale date.

SECTION 406. POSTPONEMENT OR CANCELLATION OF PUBLIC SALE.

(a) A creditor may postpone or cancel an advertised public sale for any reason. If the sale is postponed, the announcement of postponement must include the date, time, and place of the rescheduled sale. If announcement of the postponement is made at the date, time, and place advertised for the sale, a new public advertisement is not required under Section 404, unless the sale is postponed for longer than [180] days after the date originally advertised. If the announcement is not made at the date, time, and place advertised for the sale, a new public advertisement under Section 404 is required.

(b) If a public sale is postponed, the creditor promptly shall give each homeowner and

obligor commercially reasonable notice of the postponement. The notice must include the date, time, and place of the rescheduled sale.

(c) If a public sale is cancelled, the creditor promptly shall notify each homeowner and obligor in the manner provided in Section 405. The notice must include a telephone number and electronic-mail address from which a person may obtain additional information concerning the creditor's plan for the mortgaged property, including any new sale date.

[SECTION 407. CONFIRMATION OF PUBLIC SALE.]

(a) Not later than 30 days after a public sale of mortgaged property pursuant to an order or judgment of a court, the person conducting the sale shall file a report of sale with the court. The report must name the purchaser and describe the property, the amount bid, the amount paid to date, the expenses of the sale, and any other material terms.

(b) The creditor may file a motion for confirmation of a public sale not later than one year after the sale of the mortgaged property. The motion must be served on all parties and the person that conducted the sale.

(c) The court that holds a hearing on a motion filed under subsection (b) shall confirm the sale unless the court concludes:

- (1) there was a material procedural irregularity;
- (2) the terms of sale were unconscionable; or
- (3) the sale was conducted fraudulently.

(d) If the court does not confirm a public sale under subsection (c) and a party makes a motion to set aside the sale, the court may order a resale of the property.

(e) For purposes of this subsection, a foreclosing creditor is not a good faith purchaser for value. A final order for which time for appeal has expired, confirming a public sale pursuant to

subsection (c) conclusively establishes compliance with this [act] in favor of a purchaser of the mortgaged property in good faith for value

(f) Confirmation of a public sale is not required. Unless the creditor files a motion for confirmation of the sale, entry of the judgment of foreclosure concludes the judicial-foreclosure, subject to law of this state other than this [act].]

[ARTICLE] 5

NEGOTIATED TRANSFER

SECTION 501. NEGOTIATED TRANSFER OF MORTGAGED PROPERTY IN SATISFACTION OF OBLIGATION.

(a) A homeowner and creditor may negotiate a transfer of mortgaged property to the creditor in full satisfaction of the obligation to the creditor secured by the mortgaged property if:

(1) all the homeowners and the creditor agree to the transfer in a record after default by the homeowner or obligor;

(2) the agreement states it is made pursuant to this section;

(3) the creditor sends notice of the proposed negotiated transfer to the persons entitled to notice under Section 502; and

(4) the creditor does not receive an objection to the proposed transfer in a record from any person entitled to notice under Section 502 within 20 days after notice was sent to the person.

(b) If a homeowner or person claiming under the homeowner is in possession of the mortgaged property, an agreement under subsection (a) must specify the date and time when the homeowner must surrender possession to the creditor. If a person is entitled to notice under Section 502, the homeowner is not obligated to surrender possession before the 20-day period

provided in subsection (a)(4) has expired, regardless of the terms of the proposed transfer.

(c) This section does not authorize a transfer of mortgaged property to a creditor in partial satisfaction of the obligation it secures.

(d) A negotiated transfer does not affect the rights of a person holding an interest in mortgaged property which has priority over the interest of a creditor that takes title to the property under this section.

SECTION 502. NOTICE OF NEGOTIATED TRANSFER.

(a) If a negotiated transfer under Section 501 is proposed when a judicial-foreclosure is pending, the homeowner and creditor shall request the court to send notice of the proposed negotiated transfer to all parties to the action other than the homeowner and creditor. The court promptly shall send the notice.

(b) If a negotiated transfer under Section 501 is proposed when a judicial-foreclosure is not pending, the creditor shall send notice of the proposed transfer to:

(1) a person from which the creditor received, before the homeowner and the creditor agreed to the proposed transfer, notice of a claimed interest in the mortgaged property; and

(2) a person that, [10] days before the homeowner and creditor agreed to the proposed transfer, held a recorded interest in the property subordinate to the mortgage that is the subject of the proposed transfer.

SECTION 503. OBJECTIONS TO NEGOTIATED TRANSFER.

(a) Except as provided in subsection (b), (c) and (d), if a judicial foreclosure is pending and the court receives an objection from a person holding an interest in the mortgaged property which would be affected by a negotiated transfer under Section 501, the court shall set a date not

later than [30] days after the date of the objection by which the person objecting may tender to the creditor that is a party to the proposed negotiated transfer an amount equal to the obligation to be satisfied under Section 501. If the person objecting tenders the amount to the creditor within the time set by the court, the person objecting is entitled to the benefit of the proposed negotiated transfer, and all interests subordinate to the interest of the creditor that is a party to the proposed negotiated transfer are extinguished effective on the date of tender. If the person objecting does not tender the amount to the creditor within the time set by the court, the rights of the person objecting and all other interests subordinate to the interest of the creditor that is a party to the proposed negotiated transfer are extinguished, effective on the date set by the court by which the tender could have been made.

(b) If a judicial foreclosure is pending and the court receives objections from more than one person holding an interest in the mortgaged property which would be affected by a negotiated transfer under Section 501, the court shall promptly determine the relative priorities of the interests held by each of the persons who filed objections. The court shall then set consecutive days by which each of the objecting persons holding interests in the mortgaged property may tender (i) the sums described in subsection (a) to the creditor proposing the negotiated transfer; and (ii) all sums due to all other persons holding interests in the mortgaged property which are subordinate to the interest of the creditor proposing the negotiated transfer. The court shall assign those dates to the objecting parties in the reverse order of their priorities, with the most junior objecting party receiving the first tender date.

(c) If a judicial proceeding is not pending and a creditor that sends a notice under Section 502(b) receives an objection from a person holding an interest in the mortgaged property which would be affected by the negotiated transfer under Section 501, the negotiated transfer may not proceed unless the creditor initiates a judicial proceeding to allow the objecting person to tender the

amount due to the creditor. The judicial proceeding must be conducted as provided by subsections (a), (b), (d), and (e).

(d) If the objecting person holding the most junior interest in the mortgaged property tenders the amounts described in subsection (b) within the time set by the court, that person is entitled to the benefit of the proposed negotiated transfer, and all interests subordinate to the interest of the creditor that first proposed the negotiated transfer are extinguished effective on the date of tender.

(e) If the objecting person holding the most junior interest in the mortgaged property does not tender the amounts described in subsection (b) to the creditors within the time set by the court: (i) the rights of the person who failed to tender are forever extinguished; and (ii) the objecting party with the next tender date shall be entitled to tender to all creditors who are senior to the objecting party in the same manner as described in subsection (b). This process shall continue until each objecting person shall either have been paid in full, or shall have its interest extinguished.

SECTION 504. EFFECT OF NEGOTIATED TRANSFER.

(a) A homeowner's transfer of mortgaged property pursuant to Section 501 to a creditor in satisfaction of an obligation to the creditor:

(1) discharges the obligation in full;

(2) transfers to the creditor all of the homeowner's rights in the property, except for a right of the homeowner to continue to occupy the property pursuant to an agreement between the homeowner and the creditor which is incorporated into the negotiated-transfer agreement;

(3) discharges the mortgage held by the creditor and any mortgage or other lien subordinate to the mortgage held by the creditor; and

(4) terminates any other subordinate interest except an interest protected from termination by law other than this [act].

(b) A subordinate interest is discharged or terminated under subsection (a) even in the event of noncompliance with this [article]. A creditor that fails to comply with this [article] is liable for damages in the amount of any loss caused by its failure to comply.

(c) If a homeowner and creditor agree that the homeowner may continue to occupy the mortgaged property for a fixed time after a transfer, the agreement creates a license unless the parties agree in a record to enter into a landlord-and-tenant relationship.

(d) Transfer of mortgaged property under Section 501 terminates all rights of the creditor to obtain a personal judgment for the obligation, including attorney's fees, costs, and other expenses, against the homeowner and any other person liable for the obligation secured by the property.

(e) Transfer of mortgaged property under Section 501 terminates any right of the homeowner and other persons to redeem the property.

(f) This [article] does not prevent a homeowner and creditor from entering into an agreement other than a negotiated transfer, but a negotiated transfer described in this section does not apply to an agreement that does not state it is made pursuant to Section 501.

[ARTICLE] 6

ABANDONED PROPERTY

SECTION 601. DETERMINATION OF ABANDONMENT IN JUDICIAL FORECLOSURE.

(a) In a judicial foreclosure, a creditor or governmental subdivision in which the mortgaged property is located may move for a determination that the property is abandoned

property. If the property is located in a common-interest community, the community association may also move for a determination that the property is an abandoned property.

(b) A moving party under subsection (a) shall send separately to each homeowner and obligor a notice that contains the following:

(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 that the party will submit as evidence;

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

(4) a statement that the recipient may contact the [applicable government official] to obtain further information or object to the proposed determination of abandonment.

(c) The notice required by subsection (b) may be combined with the notice required by Section 201.

(d) The party filing a motion 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 reasonably appropriate times. Posting the notice on the property is not required.

(e) When a motion is filed under subsection (a), the court shall schedule a hearing on the motion to be held not less than [15] nor more than [30] days after the filing of the motion.

(f) At a hearing under subsection (e), 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 602. DETERMINATION OF ABANDONMENT IN NONJUDICIAL FORECLOSURE.

(a) In a nonjudicial foreclosure, the creditor, the governmental subdivision in which the mortgaged property is located, or if the property is located in a common-interest community the community association 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 separately to each homeowner and obligor a notice that contains the following:

- (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 sending a notification of objection to the [building code appeals board]; and
- (6) a statement that the notification of objection must be received within 30 days after the notice was sent to the recipient, in which event the [building code appeals board] will not issue a determination of abandonment.

(c) The notice required by subsection (b) may be combined with the notice required by Section 201.

(d) A person that submits a request 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. One attempt must be before noon, and the other attempt must be between 6 P.M. and 10 P.M. Posting the notice on the mortgaged property is not required.

(e) The [building code appeals board], no sooner than 30 days after sending notice under subsection (b), may issue a determination in a record that the property is abandoned property if:

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

(2) the [building code appeals board] has not received a notification of objection to the proposed determination from a person entitled to notice under subsection (b) not later than 30 days after notice was sent to 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.

(f) In a proceeding under subsection (e), 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 issue a determination that the mortgaged property is abandoned property.

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

(h) A determination of abandonment under subsection (e) or the refusal of the [building

code appeals board] to issue a determination is subject to de novo judicial review.

SECTION 603. PRESUMPTION OF ABANDONMENT.

(a) In a proceeding under sections 601 or 602, 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) (i) One or more doors to the property are boarded up, broken off, or continuously unlocked; (ii) multiple windows are boarded up or closed off; or (iii) multiple window panes are broken.

(B) Gas, electric, or water service to the property has been terminated or utility consumption is so low that it indicates that 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 constitutes a serious 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 at least two separate reports 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 survivor or an heir of the homeowner is in actual possession of the property.

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

SECTION 604. 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 605. FORECLOSURE OF ABANDONED PROPERTY.

(a) In a judicial foreclosure, if a court determines that 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 a 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 a motion of the foreclosing creditor, if the court determines that there is no equity in the mortgaged property available to satisfy the interests of subordinate creditors, the court shall order a 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 has determined that the mortgaged property is abandoned property, a 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. The creditor shall comply with the notice requirements of Section 404, except that [15]-days' notice of the sale is sufficient.

(c) After a judicial order or a determination by a governmental agency that the 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 the 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 to maintain the property under Section 606 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 nor purchaser is liable to the homeowner or obligor for disposal of personal property pursuant to this subsection.

(e) Completion of a public sale or a 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 606. MAINTENANCE OF ABANDONED PROPERTY.

(a) In this section, "maintain" means to:

(1) care for the yard and exterior of any building on abandoned property,

including removing excessive foliage growth that diminishes the value of surrounding properties;

(2) prevent trespassers from remaining on the property;

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

(4) take any other actions needed to prevent conditions on the property which

create a public or private nuisance.

(b) If a creditor commences a judicial foreclosure, the creditor shall maintain the mortgaged property beginning when the court renders an order determining that the property is abandoned property under Section 601.

(c) If a creditor commences a nonjudicial foreclosure, the creditor shall maintain the mortgaged property beginning when a [building code appeals board] determines that the property is abandoned property under Section 602.

(d) Absent a judicial order under subsection (b) or a determination under subsection (c), a creditor that has commenced a foreclosure shall maintain the mortgaged property beginning when the creditor receives notice that a [building code appeals board] has determined that the property is abandoned property and is in a condition that poses a threat to public safety or health.

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

(f) A creditor that is obligated to maintain abandoned property may enter the property peacefully and cause 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 an obligation of the homeowner and are secured by the mortgage.

(g) A person that enters abandoned property for a purpose described in subsection (f) 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.

(h) The following have the right to enforce the obligations created by this section:

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

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

(i) The obligation of a creditor to maintain abandoned property is limited to the obligations created by this section. If the creditor becomes the owner of the property, the creditor's obligations with respect to the property are 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 obligations created by this section.

[ARTICLE] 7

REMEDIES

SECTION 701. EFFECT OF VIOLATION; DEFENSES.

(a) In a judicial foreclosure, if the court finds that the creditor or servicer or a person that has commenced foreclosure has committed a material violation of this [act], the court may dismiss the action, stay the action on appropriate terms and conditions, or impose any sanction the court finds appropriate. Dismissal must be without prejudice unless the court determines that a new foreclosure action should be barred because of substantial misconduct by the creditor or servicer or other good cause.

(b) In a nonjudicial foreclosure, the homeowner or obligor may initiate an action against the creditor or servicer or a person that has commenced foreclosure asserting a defense to

foreclosure or that a creditor or servicer or a person that has commenced foreclosure committed a material violation of this [act]. If the court finds that a defense exists or a material violation of this [act] occurred, the court may enjoin the foreclosure, stay the foreclosure on appropriate terms and conditions, or impose any sanction the court finds appropriate. An injunction must not be permanent unless the court determines that foreclosure should be barred because of substantial misconduct by the creditor or servicer or other good cause.

(c) If a court determines there is a material violation of this [act] under subsection (a) or (b), the creditor or servicer or other person that has commenced foreclosure may not add to the amount of the obligation any attorney's fees or costs incurred as a result of the violation, or any other attorney's fees and costs incurred before the creditor cures the violation.

(d) A homeowner or obligor injured by a violation of this [act] may bring an action for actual damages sustained by the homeowner or obligor against the person that caused the violation.

(e) In addition to the damages recoverable under subsection (d), the court may award a homeowner or obligor statutory damages not exceeding \$[15,000] for a pattern or practice of violating this [act]. In determining whether to award statutory damages and the amount of statutory damages, the court shall consider, all relevant factors, including:

(1) the frequency and persistence of violations by the creditor or servicer in its business practices;

(2) the nature of the violations, and

(3) the extent to which the violations were intentional.

(f) In opposing the imposition or amount of statutory damages for violations of this [act] established by the obligor or homeowner, the creditor or servicer may show that:

(1) the violation was due to a mistake, other than a mistake of law, that occurred notwithstanding reasonable procedures established to preclude such mistakes; or

(2) before the action was brought, the creditor or servicer discovered and cured the violations.

(g) An action for damages brought under this section must be commenced not later than [one] year after the violation on which it is based.

SECTION 702. DEFENSE OR REMEDY OF HOMEOWNER OR OBLIGOR UNDER OTHER LAW. This [act] does not displace any defense or remedy a homeowner or obligor has under federal law or law of this state other than this [act].

SECTION 703. ATTORNEY'S FEES AND COSTS. In an action in which a party seeks a remedy under Section 701 based on a violation of this [act], or asserts a defense or remedy under Section 702, the court may award the costs of the action and reasonable attorney's fees to the prevailing party.

SECTION 704. ENFORCEMENT BY [ATTORNEY GENERAL]. In addition to enforcing any remedies available under law of this state other than this [act], the [attorney general or other state official or agency] may bring an action to enjoin a pattern or practice of violating this [act]. In such an action the court may (1) issue an injunction or order against a creditor, servicer, their agents, or any other person violating this [act], which may include requiring steps to be taken to remedy a violation or the payment of damages to aggrieved obligors or homeowners; and (2) assess a civil penalty of not less than \$[_____] nor more than \$[_____].

SECTION 705. EFFECT OF THE HOLDER IN DUE COURSE RULE.

(a) Notwithstanding [insert reference to UCC Section 3-305] and any agreement waiving

claims or defenses by an obligor or homeowner, a creditor that is a holder in due course or who seeks to enforce a waiver of claims or defenses is subject to the following claims and defenses that the obligor or homeowner could assert against the initial holder of the obligation:

(1) a claim or defense based on specific allegations of fraud in connection with the original loan transaction;

(2) a claim or defense based on specific allegations of material misrepresentation in connection with the original loan transaction; or

(3) a claim or defense based on a breach of promise in connection with the original loan transaction that substantially deprives the obligor of the benefit of the expected bargain.

(b) If the creditor is a holder in due course under [insert reference to UCC Section 3-305] or seeks to enforce a waiver of claims and defenses, an obligor or homeowner may:

(1) assert, in addition to the defenses otherwise available under [insert reference to UCC Section 3-305], any defense against the holder in due course described in subsection (a); or

(2) bring a declaratory judgment action to establish any claim against the holder in due course described in subsection (a).

(c) A claim or defense under subsection (a) may not be made or asserted more than six years after signing of the record creating the obligation being enforced.

(d) If an obligor or homeowner establishes a claim or defense under this section, relief is limited to modification of the remaining obligation and recoupment. Recoupment must be in the amount of the economic loss caused by the fraud, misrepresentation, or material breach of promise and may not exceed the amount owed on the obligation at the time of judgment. The

court may determine whether the effect of recoupment is to cure the default or reinstate the obligation pursuant to Section 203. Recoupment reduces both what the creditor is entitled to collect in foreclosure and what the creditor is entitled to collect by other processes, including a separate action to collect the obligation.

(e) This section applies to obligations incurred after [the effective date of this [act]].

[ARTICLE] 8

MISCELLANEOUS PROVISIONS

SECTION 801. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 802. 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 803. 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 804. PRE-EFFECTIVE DATE TRANSACTIONS. This [act] applies to foreclosure of a mortgage created before, on or after the effective date of this [act], unless the creditor has commenced a foreclosure before the effective date of this [act].

SECTION 805. REPEALER; CONFORMING AMENDMENTS. The following

acts and parts of acts are repealed:

(a)

(b)

(c)

If there is a conflict between this [act] and other law of this state, this [act] prevails.

SECTION 806. EFFECTIVE DATE. This [act] takes effect