

## **MEMORANDUM**

**TO: HOME FORECLOSURE PROCEDURES ACT DRAFTING COMMITTEE MEMBERS, REPORTERS, ADVISORS AND OBSERVERS,**

**FROM: Bill Breetz, Chair**

**DATE: NOVEMBER 5, 2013**

**RE: OUR UPCOMING MEETING – NOVEMBER 15-16, 2013**

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WASHINGTON, DC  
Tel. 202 -628-2100**

I write in anticipation of our next meeting; this is our first meeting since April, 2013 and our first since the Uniform Law Commission's annual meeting in Boston in July, where the Act received its first reading.

**Preliminary Comments** I believe the consensus of the Drafting Committee after the July meeting was that the membership of the Uniform Law Commission was very supportive of the draft that we discussed. In a departure from normal practice, the Drafting Committee did not read the entire act line by line. Instead, we presented a Policy Paper to the Floor and discussed a number of major policy issues, and read selected provisions of the Act. Interested parties may obtain an electronic copy of that Policy Paper and a complete transcript of the discussion on the Floor from the Chicago office.

Since the annual meeting, we have continued our efforts to engage with a broader group of stakeholders from the lending industry, the securitization industry, borrower advocates and government. As a result, the Committee has received a good number of comments about specific provisions of the Act; those comments are discussed below.

In addition, Barry Nekritz and I met with nearly 140 senior representatives of the American Bankers Association in October in Chicago, to discuss our work to date, and solicit input from the lending industry. In that connection, we prepared a survey and sent it to Matthew Street of the ABA, seeking any detailed comments from his membership that they would be willing to share with us; that survey is attached as item 12 in the Compilation of Materials discussed below. We continue to be available to meet with any groups that express an interest in our work.

Finally, the Permanent Editorial Board on the Uniform Commercial Code, consisting of representatives of the Uniform Law Commission and the American Law Institute, met in mid-October and discussed the Act at length. The Compilation and the so-called 'Comments Draft' includes all the comments from the PEB. As a result of their continuing interest in coordinating the draft of this Act and the UCC, there is consideration being given at a senior level to the possibility of extending this drafting committee for a third year. At this writing, your Chair does not know whether or not that extension will take place.

**Materials for This Meeting** I want to alert you to the materials you may expect to receive, either as attachments to this memorandum or in separate emails over the next several days.

**1. The New Draft** Most fundamentally, accompanying this memorandum is the most recent Draft of the Home Foreclosure Procedures Act in a redlined version. The redlines compare the draft of the Act as it was presented at the Annual Meeting of the Conference, with changes which I as the Chair, Barry Nekritz as the American Bar Association Advisor and Professors Jim Smith and Alan White as our two co-Reporters, have prepared.

**2. The ‘Comments’ Draft** Also accompanying this memorandum is an earlier version of the same Act – what I am calling the “Comments Draft” – in which we have incorporated some 200 comments that we have received from a number of sources; most of the comments come from four members of the Permanent Editorial Board on the Uniform Commercial Code, three of whom – Teresa Harmon, Neil Cohen and Tom Buiteweg – will be present during some or all of our November meeting. But we are gratified to have also received comments from Attorney Rita J. Lewis, Vice President and Asst. General Counsel for Mortgage Banking at Chase Bank, from Attorney Mark Greenlee and Tom Fitzpatrick of the Cleveland Federal Reserve Bank, from Attorney Gus Frangos of a land bank in Cleveland, and from Attorney John Manning of Rabo AgriFinance, Inc. a farm lender in Missouri. By inserting those comments at the sections in the draft on which each comment is focused, we hope to have provided the reader with a useful and complete range of all the comments we received.

**3. Major Issues List** The ABA Advisor, the co-Reporters and I have prepared what we are calling an “Issues List”, in which we have compiled a section by section list of those topics that appear to pose significant policy issues. In preparing this list, we acknowledge that we have been selective- we have not listed every issue on which comments were filed.

At the same time, given the time constraints of the meeting, I believe we will be fortunate if we allocate time to address all the issues that are contained in this List. Beyond that, I anticipate that members of the Drafting Committee or the observers present will want to raise issues that are not on this list, or even addressed in the comments. As Chair, I understand my duties to include both the need to provide an appropriate opportunity for each person who favors us by their presence to express their opinion on any subject before us, and the need to move through the entire agenda in two days. I pledge to do my best in accommodating both competing duties.

**4. The Agenda** Also accompanying this memorandum is an agenda for the meeting. As you will see, on the first day of the meeting, I hope to devote the bulk of our time to two major issues confronting the drafters:

**First**, the topic of facilitation in Article 3; and

**Second**, the issue of how - or if - the draft should amend the Holder in Due Course doctrine.

The balance of the two day meeting will be devoted to discussing the topics on the Major Issues list; the only entirely new subject will be a brief discussion led by Attorney Tom Cox who wishes to bring to the group's attention concerns posed by possible amendments which Fannie Mae and Freddie Mac are considering to their Uniform Note to accommodate conversion of electronic notes to paper notes, and vice versa. Representatives of Fannie Mae and Freddie Mac, of course, may choose to respond to Attorney Cox' concerns; they may also feel constrained to some degree by the necessarily preliminary nature of their work.

**5. Other Relevant Materials** Finally, I have asked the Chicago office of the Uniform Law Commission to send to each of you, as a separate transmittal, a range of materials which are relevant to our discussions. They will include the following:

- A memorandum from Commissioner Elizabeth Kent with suggestions concerning the facilitation process; Commissioner Kent is a Uniform Law Commissioner from Hawaii and leads that state's mortgage mediation program; she is also a new member of the drafting committee on this Act.
- A memorandum from Attorney Heather Schiewe Kulp, commenting on the facilitation draft as it now exists. The Drafting Committee will recall the Attorney Kulp, now a teaching fellow at Harvard Law School, participated in our first drafting committee meeting to speak about the mediation process.
- A letter from Attorney Mark Greenlee of the Cleveland Federal Reserve Bank, and an accompanying letter from Attorney Gus Frangos of Ohio, with recommendations urging an expedited process for foreclosing abandoned property.
- The written comments of Attorney Steven Weise, a member of the PEB/UCC;
- The written comments of Attorney Rita J. Lewis, Vice President and Asst. General Counsel for Mortgage Banking at Chase Bank;
- The written comments of Attorney John P. Manning, General Counsel & Secretary of Rabo Agri-finance.
- A memorandum prepared by Alan White outlining the CFPB servicing rules as they intersect with our current draft on facilitation.
- A copy of the survey that was forwarded to the membership of the American Bankers Association.

I look forward to visiting with as many of you as possible at the meeting, and look forward to another vigorous and productive meeting.