Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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WHY YOUR STATE SHOULD ADOPT THE MODEL NEGOTIATED ALTERNATIVE TO FORECLOSURE ACT (MNAFA)

The mortgage foreclosure crisis that began in 2007 revealed some glaring weaknesses in our procedure for resolving delinquent mortgage loans and transferring property to mortgagees. The widespread securitization of residential mortgage notes combined with some haphazard recordkeeping caused confusion over which party was entitled to enforce the mortgage and take possession of the property. Even when the proper parties could be identified, courts were overwhelmed with foreclosure cases and multi-year delays were common. Procedural delays worsened the deterioration of properties that were neglected or abandoned by borrowers who owed more than the property was worth.

In this environment, many borrowers and lenders could have benefited from working out new loan terms, but surprisingly few were able to reach an agreement. One frequent obstacle was a subordinate lienholder that had little hope of recovering on its lien when the primary mortgage was underwater, but could prevent a workout agreement by insisting on a full foreclosure proceeding. MNAFA addresses this issue by providing an expedited procedure for borrowers and lenders to agree to terms and legally extinguish valueless junior liens that could otherwise cloud the title.

- ***MNAFA encourages quick, fair, and efficient workouts for delinquent mortgage loans.*** When a lender and borrower mutually agree to forego foreclosure and negotiate a transfer of the property, MNAFA provides the legal structure to make the agreement enforceable and ensure the lender receives a marketable title, free of any junior liens.

- ***MNAFA is strictly voluntary.*** Any party with an interest in the mortgaged real estate can initiate foreclosure proceedings under current law rather than negotiate an agreement.

- ***MNAFA is flexible.*** If the lender agrees to accept the property in full satisfaction of the mortgage debt, the parties to the agreement can include any other terms they negotiate. This allows for creative solutions that allow the borrower to continue occupation of the property as a tenant, or receive a payment from the lender to defray the costs of moving.

- ***MNAFA protects everyone with an interest in the property.*** Junior lienholders must receive notice of a proposed negotiated transfer agreement and have 20 days to object. Lienholders who determine their lien has value can redeem the property by tendering the negotiated amount to the senior lienholder. Transferees take the property subject to any senior liens.

For further information about MNAFA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.