

MEMORANDUM

To: Bill Breetz, Chair, Study Committee on Mortgage Foreclosure
From: ULC Staff
Date: May 16, 2012
Re: **Mortgage Foreclosure Related Legislation Survey**

At the request of Bill Breetz (Chair), Barry Nekritz (ABA-RPTE Advisor), and Martha Walters (Member), ULC staff and law clerks have coordinated a survey of state legislation on mortgage foreclosure and related topics. The goal of this survey is to assist the Drafting Committee on Mortgage Foreclosure in identifying those topics that the states themselves have identified as important in this area and are acting upon (and at what type of success rate).

Bills were located using the legislative websites, and in an attempt to contain volume and maximize relevance, the search was restricted to the previous two sessions. The result is a two-year "look back" except in those states where the legislative session runs for two years, which will provide a three-year look back in those jurisdictions. Results in the accompanying charts are sorted by enactment and failure, and designated "in progress" for bills still active in those states that are still in session.

The successful enactment rate among the legislation surveyed is 25.87%. The enactment rates of included legislation in individual states range from 2.33% (Massachusetts) to 80% (Idaho and Nebraska), with a mean rate of just under 36%. The topics of the legislation introduced vary widely, but a few common or recurring trends emerged, including:

1. Tenant rights (concerning foreclosed rental property).
2. Notice requirements.
3. Strengthening mortgage rights with regard cure and redemption.
4. Foreclosure delay or prevention, in particular mediation and mortgage modification, increased workout periods and/or longer redemption periods, and notice of the availability of such to the borrower, with some targeted at specific groups (seniors, military).
5. Fraud prevention. Bills that fall under this general category include the regulation and licensing of entities such as mortgage brokers, real estate appraisers, and loan originators, among others. Some states are also introducing bills that add criminal penalties, civil remedies, and statutory damages for unfair or fraudulent practices. California passed SB 239 that made mortgage fraud a felony. Arizona attempted a similar bill (HB 2309) that made the fraud a misdemeanor, but it failed. From a casual look at the current chart, a good number of the enacted bills fall into this category.
6. Status of the property after foreclosure. Some bills required maintenance on unoccupied foreclosed properties, while others allowed the city or municipality to have some supervision. Other bills helped the buyer in a foreclosure sale. Both Georgia (HB 1460 - failed) and Hawaii (SB 2910 - enacted) had the same idea by preventing a sale conditioned on title insurance or escrow from a particular vendor.

Other bills address financial literacy; implementation of federal laws and efforts (Secure and Fair Enforcement for Mortgage Licensing Act; Nationwide Mortgage Licensing System & Registry, etc.); restrictions on trustee sales; notice to parties other than the borrower (municipal appraisers, town clerks re changes to the terms, etc.) and for specific types of properties (timeshares, etc.); prohibition or restriction on deficiency judgments; fees, forms, and disclosures; expedited non-judicial foreclosure on abandoned property; and more comprehensive, multi-topic legislation. The foregoing is not an exhaustive list

The topics addressed by these bills cover an extremely wide range, and much of the legislation is highly individualized or particular to state codes. Much of the legislation is focused on borrower's rights and assistance to distressed homeowners. The bills are listed by topic and title only, due to the volume of legislation involved – for topics or individual bills of interest, a more detailed examination of such will be necessary.