

MORTGAGE FORECLOSURE:
RESOLUTION TO CREATE DRAFTING COMMITTEE AND ISSUES LIST

At its January 20, 2012, Midyear Meeting, the ULC Committee on Scope and Program recommended that a drafting committee on mortgage foreclosure be appointed.

The Committee on Scope and Program approved the following resolution:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee Residential Real Estate Mortgage Foreclosure Process and Protections be formed, that the act cover only residential mortgages and be drafted as an overlay to, rather than a replacement of, existing state legislation, that the drafting committee consider the issues on the attached issues list, and that the drafting committee be asked to return to the Scope and Program Committee for approval if it wishes to address additional issues, or if it believes that revisions to UCC Articles 3 or 9 are necessary.

On January 21, 2012, the Executive Committee approved this resolution.

Issues That a Uniform or Model Act Might Address:

1. Who can commence foreclosure?
2. Issues related to assignments.
3. What evidentiary proof (e.g. note, copies, electronic versions) is required to commence a foreclosure, and at what point must certain proofs be produced?
4. What pre-foreclosure notices must the mortgagee provide?
5. What is the appropriate time and place in the foreclosure process for ADR? Can it be made effective for all parties, and offer legitimate relief to the borrower?
6. What is the proper scope of statutory redemption periods, so that foreclosure processes are predictable, but borrowers are still afforded appropriate opportunities to save their homes?
7. To what extent do current foreclosure processes (such as newspaper advertising requirements) impose unwarranted and hidden costs on the borrower?
8. Consumer interests have indicated a number of measures that they feel would be of significant benefit to borrowers, including:

- a. Mandating judicial supervision over foreclosures of all residential mortgages, and over the accounting of foreclosure sale proceeds and a prompt release of any surplus to the borrowers.
 - b. Requiring mortgage holders to consider loss mitigation, including loan modification and other workout alternatives, as a condition to allowing the foreclosure of a home. Aside from the timing of such procedures, this is the thrust of issue # 7 above, in which the Committee might consider mandating a meaningful mortgage modification program –including a single point of contact and authority for the lender’s representative - either before or during foreclosure.
 - c. Requiring that homeowners be given a meaningful notice of their rights before the lender commences foreclosure, and be personally served with the notice of sale or Foreclosure complaint
 - d. In addition to the notice described in c. above, providing borrowers with a substantive right to cure a default by catching up on missed payments without penalty at least 60 days before a mortgage holder demands immediate full payment of the entire mortgage balance, and before beginning any foreclosure proceeding. Homeowners should also be guaranteed the right to re-instate the mortgage by paying the arrearage and costs up to the time of a foreclosure sale, and with a statutory right to redeem and reacquire title to their home, for a fixed period of time after a foreclosure sale.
 - e. Prohibiting mortgage holders from pursuing homeowners for deficiency judgments after foreclosures.
 - f. Empower state foreclosure judges to temporarily restructure mortgage notes on principal residences, so long as (1) a statutorily established percentage of the borrowers’ current income is sufficient to service an ‘A’ note equal to at least the current appraised value of the home based on currently available mortgage terms, and (2) the entire balance of the ‘B’ note is payable upon sale of the home or the borrower’s subsequent default.
 - g. Authorize a ‘keys for cash’ foreclosure process in which the lender and borrower, either before or after commencement of a foreclosure action, might agree to payment of at least a statutorily minimum sum to the borrower, which would then enable the lender to proceed promptly to foreclose junior liens and take title to the property.
9. To what extent, and in what circumstances, may private actors fulfill the role of government officials in the foreclosure process?
 10. What post-sale court process, if any should be required to confirm the sale, and for what purpose?

11. To what extent is the purchaser at a non-judicial sale entitled to a presumption of the sale's validity based upon the trustee's representations of compliance with the state's non-judicial foreclosure statute?
12. Should an act include special foreclosure procedures where the property in question is vacant and derelict?
13. Are there areas in the Uniform Commercial Code that may be affected by any Mortgage Foreclosure Act, and if so, are there any conforming changes that may be necessary?
14. Should an act incorporate a provision similar to Section 3-116 of the Uniform Common Interest Ownership Act, which provides unit owner associations with a senior lien for 6 months of unpaid common charges on a unit, together with legal fees, and thus provides the association the means to collect their common charges in the same manner as a tax lien?