

Mortgage Modifications Act
Summary of the Principal Recommendations of the Study Committee
February 8, 2022

This is a very preliminary draft of a summary of the principal recommendations of the Study Committee. The Drafting Committee may find it convenient as a reference. It may also be used to prepare an explanation of the scope of the act when the act is presented to the annual meetings of the Uniform Law Commission and to the states for enactment.

This is necessary because the title of the act, “Mortgage Modifications,” could lead a reader to assume that the act covers any kind of modification. These modifications could include usury, mortgage or intangible taxes, recording fees, the statute of limitations, and other controversial modifications, which could hinder enactment. We have already received comments from at least one commissioner expressing this broad view of the act.

We needed to inform the reader about the narrow scope of the act. This type of summary could help to provide that information. This is not to preclude other ideas. Additional and alternative ideas are welcome.

Here is a summary of the principal recommendations and reasons. The report of the Study Committee contains the other recommendations and reasons. Of course, the Drafting Committee is free to disregard or modify these recommendations.

1. The act should be a narrowly drawn act, based on the legislation recently enacted in Virginia.

2. The act should provide a safe harbor for mortgage modifications that secure amended loan documents. Specifically, a recorded mortgage need not be amended for the mortgage to secure amended loan documents and retain its priority unless a few specified fundamental changes are made to the loan documents.

3. If any of these fundamental changes is made, the recorded mortgage is governed by existing law without regard to the safe harbor and the act does not require either that the mortgage must be amended or that the amendment must be recorded, but leaves both of those matters to other law.

4. The purpose of listing the exceptions from the safe harbor was not to list every type of modification to the mortgage but was to list only the modifications that would require an exception from the safe harbor because they might prejudice a subsequent consensual lienholder. Other modifications, such as when collateral is modified, should be left to the agreement of the parties and other law.

5. The act should not include the subjects of future advances and the requirements for the contents of mortgages because, among other things, the law in those areas is so varied that a uniform law would be unenactable. Further, the act should not attempt to restate the law of mortgage or loan modifications, but should leave those subjects to the agreement of the parties and other law because the ULC is not known for enacting laws covering broad real estate

subjects. Finally, the act should not follow Sections 7.3(c)&(d) of the Restatement (Third) of Property: Mortgages (1997), because they have been followed by few, if any, states.

6. The drafting committee should be allowed to consider whether the act should or should not include residential mortgages as well as commercial mortgages, whether any residential mortgage provisions should or should not be bracketed (and thus optional for enactment by each state), and how to define the term “residential mortgage.”

Please let me know if you have questions or if you believe that this summary is incorrect or incomplete.

Equally important, please let me know if you have other ideas for letting others know about the narrow coverage of the Mortgage Modifications Act.

Thanks,

Jack Burton
Chair