

# [MODEL ABANDONED PROPERTY ACT]

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

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*WITH COMMENTS*

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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[MODEL ABANDONED PROPERTY ACT]

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**[MODEL ABANDONED PROPERTY ACT]**

**SECTION 1. SHORT TITLE.** This [act] may be cited as the [Model Abandoned Property Act].

**SECTION 2. DEFINITIONS.** In this [act]:

(1) “Abandoned property” means mortgaged property with respect to which the homeowner and all persons claiming through the homeowner, including tenants, have relinquished possession. The term does not include unoccupied mortgaged property that is:

(A) undergoing construction, renovation, or rehabilitation that is proceeding with reasonable diligence to completion;

(B) physically secured and used or held for use by the homeowner as a vacation or seasonal home; or

(C) physically secured and the subject of a probate action, action to quiet title, or other litigation in which ownership is contested.

(2) “Common-interest community” means real property with respect to which a person, by virtue of ownership of a unit, is obligated to pay real-property taxes or insurance premiums or for maintenance, improvement of other real property, or services described in a declaration or other governing document, however denominated. The term includes properties held by a cooperative-housing corporation. In this paragraph, “ownership” includes a leasehold interest if the lease term is at least [20] years, including renewal options.

(3) “Creditor” means a person that is entitled to foreclose a mortgage under the law of this state.

(4) “Foreclosure” means a process, proceeding, or action to enforce a mortgage by terminating a homeowner’s interest in mortgaged property or obtaining possession of mortgaged

property. The term does not include a voluntary transfer by the homeowner or a process, proceeding, or action to recover possession of property after a completed foreclosure sale.

“Foreclose” has a corresponding meaning.

(5) “Homeowner” means a person that owns an interest in mortgaged property, other than a mortgage, lien, security interest, easement, servitude, or leasehold with a term of less than [20] years, including renewal options.

(6) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.

(7) “Maintain” means to:

(A) care for the yard and exterior of a building on abandoned property, including removing excessive foliage growth that diminishes the value of surrounding properties;

(B) prevent trespassers from remaining on the property;

(C) prevent mosquito larvae from growing in standing water on the property; and

(D) take any other action needed to prevent conditions on the property which create a public or private nuisance or hazard.

(8) “Mortgage” means a consensual interest in real property which secures an obligation. The term does not include a lien that secures an obligation owed to a homeowners’ association in a common-interest community.

(9) “Mortgage agreement” means a record that creates a mortgage.

(10) “Mortgaged property” means real property improved with not more than four dwelling units which is subject to a mortgage. The term includes:

(i) an attached single-family unit;

(ii) a single-family manufactured-housing unit or a time share in a dwelling unit if either is treated as real property under law of this state other than this [act];

(iii) real property on which construction of not more than four dwelling units has commenced; and

(iv) a single-family unit in a common-interest community.

The term does not include real property that, when the mortgage being foreclosed was created, was used or intended to be used primarily for nonresidential purposes.

[(11) “Nonjudicial foreclosure” means a foreclosure that proceeds without judicial process under [insert statutory reference].]

(12) “Obligation” means a debt or other duty or liability of an obligor secured by a mortgage.

(13) “Obligor” means a person that:

(A) owes payment or performance of an obligation;

(B) has signed a mortgage agreement with respect to mortgaged property; or

(C) is otherwise accountable in whole or in part for payment or performance of the obligation.

(14) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity.

(15) “Public sale” means a sale by auction authorized by law of this state other than this [act].

(16) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

***Legislative Note:*** *In a state that allows one or more types of nonjudicial foreclosure of a residential mortgage, a reference to the relevant statute should be added to the definition of*

*“nonjudicial foreclosure.” In a state that does not allow nonjudicial foreclosure, this definition should be deleted, along with references to “nonjudicial foreclosure” elsewhere in this act. In some states, a land sale installment contract does not constitute a mortgage, with all the attendant consequences for a homeowner and a creditor, until a specified percentage of the original principal amount has been paid to the creditor. In Illinois, for example, that percentage is 50 percent of the original principal amount. In a state in which the issue arises, a statutory drafter should make appropriate revisions to this act to track existing practice in that state.*

### **Comment**

1. The definition of “abandoned property” works in tandem with the factors listed in Section 5(a). Whether mortgaged property is “abandoned property” is determined by the facts of each case. The Section 5(a) factors are not exclusive; they serve an evidentiary purpose. The core question is whether the homeowner is presently in possession of the property. The question must be answered by evaluating the facts related to the homeowner’s use of the property.

2. The terms “homeowner” and “obligor” are separately defined because some provisions of this [act] apply to one rather than to both individuals. For most home mortgage transactions, the same individual (or individuals) will be both a homeowner and an obligor. However, occasionally, an individual will be a homeowner but not an obligor; examples might include a spouse or heir who acquires an ownership interest, but has not assumed the mortgage obligation. Similarly, from time to time an individual will be an obligor but not a homeowner; examples might include a guarantor or a person who conveys an ownership interest to another person after signing a mortgage agreement.

3. The term “mortgage” refers to the lien held by the creditor, which secures payment of the obligation, whereas the term “mortgage agreement” refers to the writing or other record that memorializes the parties’ agreement and creates the mortgage. Depending upon local usage and custom, the mortgage agreement may be denominated as a mortgage, deed of trust, trustee deed, security deed, deed to secure debt, or the like.

4. The definition of “obligor” includes, among other standards, a statement that the person has “signed” a mortgage agreement. The term “sign” in this sense has the same meaning as the same term has in UCC Section 1-201(b)(37).

5. The definition of an obligation includes a non-recourse debt, whether the debt is nonrecourse due to the application of anti-deficiency judgment legislation, agreement of the parties or for other reasons.

6. In Section 2(10), real property is “mortgaged property” if its primary use is residential. It includes but is not limited to owner-occupied principal residences and second or vacation homes.

The definition includes a broad range of structures commonly used for residential purposes, so long as the property does not consist of more than four dwelling units. The

enumerated examples include such common structures as

- “attached single-family units”, which are commonly described as “townhouses” or “row houses”;
- “single-family manufactured housing units” — a broad category of structures ranging from factory-built single family homes to mobile homes or trailers which are permanently located on a foundation and connected to utility lines, so long as they are treated as real estate under state law; and
- “time shares” — often known as “interval ownership” — in single family dwelling units, so long as those interests are treated as real estate under state law.

The definition excludes parcels of real property that are used primarily for non-residential business purposes but which also contain one-to-four dwelling units, such as a farm with a farmhouse or a manufacturing facility that includes a residence for the company’s chief executive officer. Accordingly, this act does not apply to the foreclosure of mortgages on such a property; such mortgages are generally made as commercial mortgage loans with markedly different terms and underwriting standards than those used for home mortgage lending.

Likewise, the term “mortgage” does not include a blanket mortgage that covers multiple parcels containing more than four dwelling units in the aggregate.

### **SECTION 3. DETERMINATION OF ABANDONMENT IN JUDICIAL FORECLOSURE.**

(a) In a judicial foreclosure, a creditor or governmental subdivision in which the mortgaged property is located or, if the property is located in a common-interest community, the community association also may move for a determination that the property is abandoned property.

(b) The moving party under subsection (a) shall deliver by first-class mail and serve in the manner described in subsection (d), separately to each homeowner and obligor, a notice that contains:

- (1) a copy of the motion;
- (2) a copy of any affidavit attesting to abandonment or a governmental agency’s determination that the property is abandoned which the party will submit as evidence;
- (3) a description of the consequences that will follow from a determination of

abandonment; and

(4) if the notice contains an agency determination of abandonment, a statement that the recipient may contact the [applicable government official] to obtain further information or object to the determination of abandonment.

(c) The moving party under subsection (a) shall serve personally, or make two attempts to serve personally, the notice described in subsection (b) on a homeowner at the mortgaged property. The attempts must be at least 72 hours apart at reasonable times. Posting the notice on the property is not required.

(d) The court shall schedule a hearing on a motion under subsection (a) to be held not fewer than [15] nor more than [30] days after filing of the motion.

(e) At the hearing under subsection (d), if no appearance is made to oppose the relief sought and credible evidence is presented supporting the allegations in the motion, the court shall render an order that the mortgaged property is abandoned property.

### **Comment**

1. This Act authorizes an expedited foreclosure procedure for abandoned properties for both judicial foreclosure and for nonjudicial foreclosures. An expedited procedure is appropriate for two reasons. First, the homeowner is no longer making a valuable economic use of the property to provide shelter for the homeowner or the homeowner's family or someone claiming under the homeowner, such as a tenant. A foreclosure sale will not result in a possessor being forced to relocate to other housing. Second, properties that are facing foreclosure and that are vacant have significant negative impacts on neighborhoods and the surrounding communities. Vacancies reduce the market values of neighboring properties. Neighborhood crime increases. The vacant properties tend to suffer from lack of repair and maintenance, creating public health risks, including infestations by vermin, mosquitoes, and other insects. There are fiscal impacts on local governments, who find property taxes on vacant properties often become delinquent; yet the governments are faced with added expenses to provide essential services to blighted neighborhoods, such as police and fire protection. By providing for an expedited foreclosure procedure, this Act seeks to return abandoned properties to the stock of occupied, well-maintained housing as soon as reasonably possible.

2. Subsections (d) and (e) are based in substantial part on Minn. Stat. § 582.032, which provides for expedited foreclosure for abandoned homes. Minnesota generally provides a

statutory right of redemption (post-foreclosure-sale) of six months or one year, which is reduced to five weeks when the lender uses the statutory procedure for abandoned property; this section does not include a comparable right of redemption.

3. If no appearance is made at the hearing to oppose the motion to determine that the mortgaged property is abandoned, under subsection (f) the court may rely on affidavits to render an order that the property is abandoned without taking testimony.

4. Section 2(2) defines “common interest community” in substantially the same language as contained in the Uniform Common Interest Ownership Act (UCIOA). As the comments to UCIOA make clear, the term “common interest community” is a short-hand term to refer to every condominium, cooperative or homes association in an enacting state, and that is the same intention in this Act.

The distinguishing characteristic of any of those forms of shared ownership is that the unit owners in each such community hold exclusive title to their “unit” — as defined in the documents creating the community — and share the ownership of common property.

In every state today, whether or not that state has adopted UCIOA, there is at least one statute (and often several statutes) that regulate at least some aspect of the condominium form of ownership. Invariably, those statutes refer to a “unit owners association” or a “community association.” Section 3-101 of UCIOA uses this language to describe how the association must be organized, and provides in pertinent part as follows:

A unit owners association must be organized no later than the date the first unit in the common interest community is conveyed. The membership of the association at all times consists exclusively of all unit owners....

Most statutes providing for unit owners or community associations contain considerable detail regarding the powers and obligations of those association; see, e.g., Section 3-102 of UCIOA.

The provisions of Section 3 of this Act, enabling the community association to act with regard to the negative effects of abandoned property on the remaining units in that common interest community, are consistent with the general duties imposed under existing state law on these associations.

#### **[SECTION 4. DETERMINATION OF ABANDONMENT IN NONJUDICIAL FORECLOSURE.**

(a) In a nonjudicial foreclosure, a creditor or governmental subdivision in which the mortgaged property is located or, if the property is located in a common-interest community, the community association also may submit a request to the [building-code appeals board] for a

determination that the property is abandoned property. The request must be accompanied by an affidavit attesting to facts indicating abandonment.

(b) A person that submits a request under subsection (a) shall send by first-class mail in the manner described in subsection (d) separately to each homeowner and obligor a notice that contains:

(1) a copy of the request;

(2) a copy of the affidavit attesting to abandonment;

(3) a description of the consequences that will follow from a determination of abandonment;

(4) a statement that the recipient may contact the [building-code appeals board] to obtain further information;

(5) a statement that the recipient has the right to object to the proposed determination of abandonment by making an objection to the [building-code appeals board]; and

(6) a statement that the objection must be received not later than 30 days after the notice was sent, and that if the objection is timely received, the [building-code appeals board] will not issue a determination of abandonment.

(c) A person that submits a request under subsection (a) shall deliver personally, or make two attempts to deliver personally, the notice described in subsection (b) on a homeowner at the mortgaged property. The attempts must be at least 72 hours apart at reasonable times. Posting the notice on the mortgaged property is not required.

(d) Not earlier than 30 days after sending the notice required by subsection (b), the [building-code appeals board] may determine in a record that the property is abandoned property if:

(1) the [building-code appeals board] receives evidence that notice under subsection (b) was sent to each homeowner and obligor;

(2) during the 30-day period after notice was sent to a person entitled to notice under subsection (b), the [building code-appeals board] did not receive an objection to the proposed determination from the person;

(3) the [building-code appeals board] has received an affidavit attesting to facts indicating abandonment; and

(4) a representative of the [building-code appeals board] has personally inspected the property.

(e) In a proceeding under subsection (d), if no objection is made to the proposed determination and credible evidence is presented supporting the allegations of abandonment, the [building-code appeals board] shall determine in a record that the mortgaged property is abandoned property.

(f) The [building-code appeals board] shall send a determination of abandonment under subsection (d) or (e) to the creditor and each homeowner and obligor.

(g) A determination of abandonment or the refusal of the [building-code appeals board] to issue a determination under subsection (d) or (e) is subject to de novo judicial review.]

***Legislative Note:*** *Because subsection (g) provides for de novo judicial review, a state should consider whether the requirements of this section are compatible with existing statutes or rules governing appeals from administrative bodies such as the body designated in this section, and make changes if appropriate.*

### **Comment**

1. In a nonjudicial foreclosure, the creditor may treat the mortgaged property as abandoned only by submitting evidence of abandonment to a governmental board, department, or other entity for its review and consideration.

2. Subsection (d)(4) requires that a person acting on behalf on the governmental board

personally visit the property as part of the decision-making process. That person may be an employee of local government, such as a building inspector, who is responsible for evaluating the physical condition of dwelling units.

3. Judicial review of the decision is available to any interested person. Subsection (g) does not specify the nature of that action, which in many jurisdictions will be a mandamus action. De novo judicial review is appropriate to protect the homeowner from the significant limitations on the homeowner's rights under this Act that follow from a determination of abandonment.

## **SECTION 5. PRESUMPTION OF ABANDONMENT.**

(a) In a proceeding under Section 3 or 4, mortgaged property is presumed to be abandoned property if:

(1) a [building inspector] determines that the property is abandoned; or

(2) three or more of the following subparagraphs apply to the property:

(A) There are:

(i) one or more doors on the property that are boarded up, broken off, or continuously unlocked;

(ii) multiple windows that are boarded up or closed off; or

(iii) multiple window panes that are broken.

(B) Gas, electric, or water service to the property has been terminated or utility consumption is so low that it indicates the property is not regularly occupied.

(C) Rubbish, trash, or debris has accumulated on the property.

(D) A governmental agency has determined that the property is unfit for occupancy or poses a threat to public health or safety.

(E) A creditor has changed the locks or otherwise secured the property and, for at least 30 days thereafter, the homeowner has not contacted the creditor to request entrance to the property or re-entered the property.

(F) One or more written statements signed by the homeowner indicate a clear intent to abandon the property.

(G) A law-enforcement agency has received reports of at least two separate incidents of trespass, vandalism, or other illegal acts being committed on the property in the 180 days before determination of abandonment is sought.

(H) The homeowner is dead and there is no evidence that a household member or heir of the homeowner is in actual possession of the property.

(b) An affidavit attesting to the conditions described in subsection (a) and any other facts evidencing abandonment must be signed by and based on personal knowledge of the affiant and state the basis for that personal knowledge. A person may submit one or more affidavits as evidence of abandonment.

### **Comment**

1. The conditions giving rise to a presumption of abandonment set forth in subsection (a) closely track the criteria set forth in Ind. Code § 32-30-10.6-5(a). A government agency's issuance of a determination that the mortgaged property is abandoned by itself constitutes prima facie evidence of abandonment. In some localities, after such a determination the government will mark the property as abandoned. The government's determination, finding, or order might not use the word "abandoned"; it might, for example, refer to the property as vacant. Of course, the homeowner or another person has the right to challenge the correctness of the governmental determination.

With respect to the statutory conditions listed in the subparagraphs to subsection (a)(2), the presence of three or more of such conditions constitutes prima facie evidence, giving rise to a presumption of abandonment. Such conditions are not conclusive on the issue of abandonment. Many residential properties will exhibit at least one such condition, when the homeowner is still in possession of the property. If the homeowner or another person holding under the homeowner is in actual possession of the mortgage property, the property is not abandoned notwithstanding the existence of such conditions. Likewise, mortgaged property may be abandoned under this Section notwithstanding the absence of any of the statutory conditions.

2. A governmental agency's determination of abandonment under subsection (a)(1) is distinct from the procedure established by Section 4 for a creditor or another person to request a determination of abandonment in nonjudicial foreclosure. In many states other law authorizes a government agency or employee to issue an order, citation, or determination that residential

property is abandoned, often without a prior hearing. Such an order or determination creates a presumption of abandonment under this Section. Likewise, a governmental determination that the property is unfit for occupancy or constitutes a serious threat to public health or safety under subsection (a)(2)(D) is not subject to the procedures established by Section 4.

3. Mortgaged property often becomes vacant, both under standard mortgage and reverse mortgage transactions, when the homeowner dies. Under subparagraph (a)(2)(H) proof of death of the homeowner is one of the conditions that may give rise to a presumption that the mortgaged property is abandoned, provided that there is no evidence that an heir or other beneficiary of the homeowner's estate is in actual possession. Of course if there are multiple homeowners, this condition is met only if all the homeowners have died.

4. An affidavit under subsection (b) may be given by any individual having personal knowledge, including a contractor, government employee, or neighbor of the mortgaged property.

#### **SECTION 6. WITHDRAWAL OF ABANDONED-PROPERTY PROCEEDING.**

[(a)] In a judicial foreclosure, after a party has moved for a determination that the property is abandoned property, the motion may be withdrawn only by leave of court.

[(b) In a nonjudicial foreclosure, after a person has requested a determination that the property is abandoned property, the request may be withdrawn only with consent of the person submitting the request and each homeowner and obligor.]

#### **Comment**

Once a party has filed a motion in a judicial foreclosure for a determination that the mortgaged property is abandoned, withdrawal of the motion is allowed only by leave of court. This allows for judicial control over the imposition of maintenance responsibilities under Section 8.

#### **SECTION 7. FORECLOSURE OF ABANDONED PROPERTY.**

(a) In a judicial foreclosure, if the court determines that the mortgaged property is abandoned property and the court previously rendered or at the same time renders a judgment of foreclosure, the court shall:

(1) order public sale of the abandoned property not earlier than [30] days but not later than [45] days after entry of the order; or

(2) on motion of the foreclosing creditor, if the court determines there is no equity in the mortgaged property available to satisfy the interests of subordinate creditors, order transfer of the abandoned property directly to the foreclosing creditor without public sale. The transfer of the property extinguishes the rights of all interests subordinate to the interest of the foreclosing creditor.

(b) [In a nonjudicial foreclosure, if a governmental agency determines that the mortgaged property is abandoned property, the creditor may conduct an expedited public sale of the property. Unless an action for judicial review of the determination is pending, the sale may take place not earlier than [30] days but not later than [60] days after issuance of the determination.

(c) After a judicial order or determination by a governmental agency that mortgaged property is abandoned property, the creditor shall cause the public sale or transfer of the mortgaged property to the creditor to be completed not later than 120 days after the order is rendered or determination is made, unless the creditor releases its mortgage and the release is filed in the [real-property records]. Unless the creditor releases its mortgage, the creditor may not seek to end its obligation under Section 8 to maintain the property by dismissing, terminating, or suspending the foreclosure.

(d) On a public sale or transfer of the mortgaged property to the creditor under subsection (a) [or (b)], any personal property remaining on the abandoned property is deemed to have been abandoned by the owner of the personal property and may be disposed of by the purchaser or transferee of the property [60] days after the sale or transfer. Neither the creditor, purchaser nor transferee is liable to the homeowner or obligor for disposal of personal property pursuant to this subsection.

(e) Completion of a public sale or transfer of mortgaged property to the creditor under

subsection (a) [or (b)] terminates the right of the homeowner and any other person to redeem the property under law of this state other than this [act].

### **Comment**

1. This Section provides for an expedited public sale of the mortgaged property after a determination that the mortgaged property is abandoned. In a judicial foreclosure, the court must order the sale to take place no longer than [\_\_] days after the court enters its order finding the property to be abandoned, unless the creditor agrees to a later sale date. In a nonjudicial foreclosure, the creditor may select the date, provided it is no sooner than [\_\_] days after the written determination of abandonment.

2. This Section does not authorize a disposition of abandoned property other than public sale, but other dispositions may be available under other law. For example, in a state that has enacted the Model Negotiated Alternative to Foreclosure Act, the homeowner and creditor may agree to a negotiated transfer to the creditor in lieu of foreclosure.

3. Once a creditor decides to take advantage of the expedited foreclosure procedure allowed by this Section, there is a public interest in ensuring that the property becomes occupied as soon as reasonably possible. For this reason subsection (c) does not allow the creditor to suspend indefinitely its efforts to consummate the foreclosure. There may be exceptional circumstances in which it is not feasible to hold the foreclosure sale within 60 days of the judicial order or written determination finding the property to be abandoned, as required by subsection (a) and (b).

Subsection (c) poses the substantial question of what consequences should flow from the failure of the creditor to comply with its requirements. On the one hand, it would clearly be inappropriate to impose an obligation on a creditor to repair the property subject to the mortgage before the creditor has taken possession or an official determination is made that the property is abandoned. Certainly, the lending community would object to a statutory duty to maintain property on which it holds a mortgage in those instances where the lender would prefer to release its mortgage and forego any interest in that property.

On the other hand, the consequences of a creditor's failure either to commence and complete a foreclosure action or to release its mortgage on other stakeholders in the abandoned property — including the fee owner, the municipality and neighbors in which the abandoned property is located, and where appropriate, a homeowners association — are very real. The Act as drafted resolves these conflicting policies by offering the lender a choice of how it wishes to proceed.

4. In some states, homeowners have a statutory right of redemption for a period of time after the completion of a public sale. Some of those states also extend redemption rights to third parties, such as subordinate lien holders. In states with statutory redemption, subsection (e) eliminates those rights after a public sale or transfer to the creditor of the mortgaged property. After a homeowner abandons the property, it serves no useful purpose to allow the homeowner

an option to reacquire the property after the completion of foreclosure.

**SECTION 8. MAINTENANCE OF ABANDONED PROPERTY.**

(a) If a creditor commences a judicial foreclosure, the creditor shall maintain the mortgaged property beginning when the court renders an order under Section 3 determining that the property is abandoned property.

(b) [If a creditor commences a nonjudicial foreclosure, the creditor shall maintain the mortgaged property beginning when the [building-code appeals board] determines under Section 4 that the property is abandoned property.

(c) [Absent a judicial order under Section 3 [or a determination under Section 4], a creditor that has commenced a foreclosure has no obligation under this [act] to maintain the mortgaged property unless the creditor receives notice that the [building-code appeals board] has determined that the property is abandoned property and is in a condition that poses a threat to public health or safety.

(d) A creditor's duty under this section to maintain abandoned property continues until the property is conveyed to a purchaser or the creditor records a release of its mortgage.

(e) A creditor that has a duty under this section to maintain abandoned property may enter and permit others to enter the property peacefully for the limited purpose of maintenance required by this section and inspection and repair. All reasonable expenses incurred by a creditor in complying with this section are obligations of the homeowner and secured by the mortgage.

(f) A person that enters abandoned property for a purpose described in subsection (e) is not liable to the homeowner for trespass or for damage to the property resulting from a cause other than the person's negligence or willful misconduct.

(g) The obligations created by this section may be enforced by:

- (1) a governmental subdivision in which the mortgaged property is located; or
- (2) if the property is located in a common-interest community, the community

association.

(h) The duty of a creditor to maintain abandoned property is limited to the duty created by this section. If the creditor becomes the owner of the property, the creditor's duty with respect to the property is determined by law of this state other than this [act]. The creditor does not become a mortgagee in possession of the property solely by virtue of the creditor's performance of the duty created by this section.

### **Comment**

1. This Section requires creditors to maintain abandoned properties under certain circumstances. The obligation may arise based upon action of the creditor or action of the municipality or other governmental entity where the property is located.

However, it is clear under this Act that the creditor has no obligation to maintain the property before the creditor commences a foreclosure. Moreover, the creditor does not become obligated to maintain merely by commencing foreclosure at a time when the dwelling unit is vacant. Rather, the obligation arises when the creditor seeks to use the expedited foreclosure procedure authorized by Section 7 and obtains either a judicial order or official determination that the property is abandoned. Under subsection (c), the obligation may also arise any time after the creditor has commenced foreclosure if the municipality or other local governmental entity cites the property as both abandoned and presenting a threat to public safety or health.

2. Sections 2(7) and 8(d) defines the scope of the creditor's obligation to maintain abandoned property. The focus is on the outward appearance of the property, including yards and other exterior spaces, and other conditions that are likely to have significant impacts on the neighborhood, such as interior spaces frequented by squatters or persons engaged in criminal activities. These subsections are modeled closely on Cal. Civ. Code § 2929.3(b), enacted in 2008.

3. Subsection (e) grants a license to the creditor and to its agents or contractors to enter abandoned property for the purpose of inspection, repair, and maintenance, regardless of whether that right is reserved in the mortgage. Similarly, this subsection authorizes the addition of the creditor's reasonable maintenance expenses under this section to the debt secured by the mortgage, regardless of whether the mortgage contains a provision to that effect.

4. Subsection (g) provides for enforcement by the local government that has jurisdiction over the abandoned property. When the property is located in a common-interest community, it

also provides standing for the association as a means to protect neighboring property owners whose interests are likely to be harmed by the creditor's failure to maintain the property. In conferring standing both to the local government and to owners' associations, this subsection follows the approach taken by N.Y. Real Prop. Acts. § 1307(3), enacted in 2009. This subsection does not grant a direct enforcement right to neighbors. If negatively impacted, such persons may have a remedy under other laws, such as public or private nuisance.

5. At common law a creditor who takes possession of mortgaged property prior to the completion of foreclosure becomes a "mortgagee in possession," who by virtue thereof undertakes a number of obligations to the homeowner with respect to maintenance and care of the property. Subsection (h) expressly provides that a creditor who enters the property solely for the purpose of complying with its obligations under this Section does not assume the liabilities of a mortgagee in possession.

**SECTION 9. GENERAL PRINCIPLES OF LAW APPLICABLE.** The principles of law and equity, including the law of principal and agent, supplement this [act] unless displaced by its particular provisions.

#### **Comment**

The provisions of this Act are to be supplemented by general principles of law and equity. In mortgage loan transactions, a creditor often acts through agents, and sometimes the creditor is an agent for a principal. The law of agency often will determine when a person has rights or duties under this Act. The text is a shortened version of Revised UCC § 1-103(b), which provides:

Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

**SECTION 10. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

**SECTION 11. TRANSITION.** This [act] applies only to proceedings to determine whether mortgaged property has been abandoned that were commenced on or after [the effective date of this [act]].

**SECTION 12. EFFECTIVE DATE.** This [act] takes effect . . . .