**[MODEL NEGOTIATED ALTERNATIVE TO FORECLOSURE 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

ANNUAL CONFERENCE

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FOURTH YEAR

WILLIAMSBURG, VIRGINIA

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*WithOUT Comments*

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By

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

This act was adapted by the Joint Editorial Board for Uniform Real Property Acts from Article 5 of the Uniform Home Foreclosure Procedures Act.

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**[MODEL NEGOTIATED ALTERNATIVE TO FORECLOSURE ACT]**

SECTION 1. SHORT TITLE. This [act] may be cited as the [Model Negotiated Alternative to Home Foreclosure Act].

SECTION 2. DEFINITIONS. In this [act]:

(1) “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.

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

(3) “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.

(4) “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.

(5) “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.

(6) “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.

(7) “Negotiated transfer” means a transfer of title to mortgaged property pursuant to Section 3.

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

(9) “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.

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

(11) “Record”, used as a noun, means information that is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.

(12) “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.

# SECTION 3. NEGOTIATED TRANSFER OF MORTGAGED PROPERTY IN SATISFACTION OF OBLIGATION.

(a) A homeowner and creditor may negotiate a transfer of mortgaged property to the creditor in full satisfaction of the obligation to the creditor secured by the mortgage if:

(1) all homeowners and the creditor agree to the transfer in a record after default by the homeowner or obligor;

(2) the agreement states it is made pursuant to this section;

(3) the creditor or court sends notice of the proposed negotiated transfer to the persons entitled to notice under Section 4; and

(4) the creditor does not receive an objection in a record to the proposed transfer from a person entitled to notice under Section 4 not later than 20 days after notice was sent to the person.

(b) If a homeowner or person claiming under the homeowner is in possession of the mortgaged property, an agreement under subsection (a) must specify the date and time when the homeowner must surrender possession to the creditor. If a person is entitled to notice under Section 4, the homeowner is not obligated to surrender possession before the 20-day period provided in subsection (a)(4) expires, regardless of the terms of the proposed transfer.

(c) This section does not authorize a transfer of mortgaged property to a creditor in partial satisfaction of the obligation it secures.

(d) A negotiated transfer does not affect the rights of a person holding an interest in mortgaged property, if the interest has priority over the interest of a creditor to whom title to the property is transferred under this section.

# SECTION 4. NOTICE OF NEGOTIATED TRANSFER.

(a) If a homeowner and creditor propose a negotiated transfer when a judicial foreclosure is pending, the homeowner and creditor shall request the court to send notice of the proposed transfer to the parties to the action other than the homeowner and creditor. The court promptly shall send the notice.

(b) If a homeowner and creditor propose a negotiated transfer when a judicial foreclosure is not pending, the creditor shall send notice of the proposed transfer to:

(1) a person from which the creditor received, before the homeowner and creditor agreed to the proposed transfer, notice of a claimed interest in the mortgaged property; and

(2) a person that, [10] days before the homeowner and creditor agreed to the proposed transfer, held a recorded interest in the property subordinate to the mortgage that is the subject of the proposed transfer.

# **SECTION 5. OBJECTION TO NEGOTIATED TRANSFER.**

(a) Except as otherwise provided in this section, if a judicial foreclosure is pending and the court receives an objection from a person holding an interest in the mortgaged property which would be affected by a proposed negotiated transfer, the court shall set a date not later than [30] days after the date of the objection by which the person objecting may tender to the creditor that is a party to the transfer an amount equal to the obligation to be satisfied under Section 3. If the person tenders the amount to the creditor on or before the date set by the court, the person is entitled to the benefit of the proposed transfer, and all interests subordinate in priority to the interest of the creditor that is a party to the proposed transfer are extinguished effective on the date of tender. If the person does not tender the amount to the creditor on or before the date set by the court, the interest of the person objecting and all other interests subordinate to the interest of the creditor that is a party to the proposed negotiated transfer are extinguished, effective on the date set by the court by which the tender could have been made.

(b) If a judicial foreclosure is pending and the court receives an objection from more than one person holding an interest in the mortgaged property which would be affected by a negotiated transfer, the court promptly shall determine the relative priorities of the interests held by each person that filed an objection. The court shall set separate days by which each objecting person holding an interest in the mortgaged property may tender the amounts described in subsection (a) to the creditor proposing the negotiated transfer and the amounts due to other persons holding interests in the mortgaged property which are junior in priority to the interest of the creditor proposing the negotiated transfer. The court shall assign the days to the objecting parties in the reverse order of their priorities, with the objecting party holding the most junior interest receiving the first tender date.

(c) If a judicial proceeding is not pending and a creditor that sends a notice under Section 4(b) receives an objection from a person holding an interest in the mortgaged property which would be affected by the negotiated transfer, the negotiated transfer may not proceed unless the creditor initiates a judicial proceeding to allow the objecting person to tender the amount due to the creditor.  The judicial proceeding must be conducted as provided in this section.

(d) If an objecting person holding the most junior interest in the mortgaged property tenders the amounts described in subsection (b) on or before the date set by the court, the person is entitled to the benefit of the proposed negotiated transfer, and all interests junior in priority to the interest of the creditor that first proposed the negotiated transfer are extinguished effective on the date of tender.

(e) If an objecting person holding the most junior interest in the mortgaged property does not tender the amounts described in subsection (b) on or before the date set by the court, the interests of the person that failed to tender are extinguished, and the objecting party with the next tender date is entitled to tender to all creditors that are senior in priority to the objecting party in the same manner described in subsection (b). This process continues until each objecting person has been paid in full or has its interest extinguished.

# SECTION 6. EFFECT OF NEGOTIATED TRANSFER.

(a) A homeowner’s transfer of mortgaged property pursuant to Section 3 to a creditor in satisfaction of an obligation to the creditor:

(1) discharges the obligation in full;

(2) transfers to the creditor all of the homeowner’s rights in the property, except for a right of the homeowner to continue to occupy the property pursuant to an agreement between the homeowner and creditor which is incorporated in the negotiated-transfer agreement;

(3) discharges the mortgage held by the creditor and any mortgage or other lien subordinate in priority to the mortgage held by the creditor; and

(4) terminates any other subordinate interest except an interest protected from termination by law other than this [act].

(b) A subordinate interest is discharged or terminated under subsection (a) despite the creditor’s or court’s noncompliance with this [act]. A creditor that fails to comply with this [act] is liable to a person damaged by that failure for damages in the amount of any loss caused by the creditor’s failure.

(c) If a homeowner and creditor agree that the homeowner may continue to occupy mortgaged property for a fixed time after a negotiated transfer, the agreement creates a license unless the parties agree in a record to enter into a landlord and tenant relationship.

(d) Transfer of mortgaged property under Section 3 terminates any right of the creditor to obtain a personal judgment against the homeowner and any other person liable for the obligation secured by the property, including attorney’s fees, costs, and other expenses.

(e) Transfer of mortgaged property under Section 3 terminates any right of the homeowner and other persons to redeem the property.

(f) This [act] does not prevent a homeowner and creditor from entering into an agreement other than a negotiated transfer, but the consequences of a negotiated transfer described in this section do not apply to an agreement that does not state it is made pursuant to Section 3.

SECTION 7. 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.

SECTION 8. 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 9. TRANSITION. This [act] applies to a negotiated transfer of property subject to a mortgage created before, on, or after [the effective date of this [act]], unless the creditor commenced a foreclosure before [the effective date of this [act]].

# SECTION 10. REPEALS; CONFORMING AMENDMENTS.

(a) . . . .

(b) . . . .

(c) . . . .

SECTION 11. EFFECTIVE DATE. This [act] takes effect . . . .