

UNIFORM NONJUDICIAL FORECLOSURE ACT *

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-ELEVENTH YEAR
TUCSON, ARIZONA

JULY 26 - AUGUST 2, 2002

UNIFORM NONJUDICIAL FORECLOSURE ACT

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ON UNIFORM STATE LAWS

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**DRAFTING COMMITTEE ON
UNIFORM NONJUDICIAL FORECLOSURE ACT**

CARL H. LISMAN, 84 Pine Street, P.O. Box 728, Burlington, VT 05402, *Chair*

RHODA B. BILLINGS, Wake Forest University, School of Law, P.O. Box 7206,
Winston-Salem, NC 27109, *Committee on Style Liaison*

JOHN P. BURTON, P.O. Box 1357, Suite 101, 123 E. Marcy Street, Santa Fe, NM 87501,
Enactment Plan Coordinator

LANI LIU EWART, Suite 1800, Alii Place, 1099 Alakea Street, Honolulu, HI 96813

DALE G. HIGER, Suite 1900, 101 S. Capitol Blvd., Boise, ID 83702-5958

REED L. MARTINEAU, P.O. Box 45000, 10 Exchange Place, Salt Lake City, UT 84145

ROBERT L. McCURLEY, JR., P.O. Box 861425, Tuscaloosa, AL 35486

LISA KELLY MORGAN, City Place II, 185 Asylum St., Hartford, CT 06103

WILLIS E. SULLIVAN, III, P.O. Box 359, 1423 Tyrell Lane, Boise, ID 83701

DALE WHITMAN, University of Missouri-Columbia, 216 Hulston Hall, Columbia, MO 65211,
Reporter

EX OFFICIO

K. KING BURNETT, P.O. Box 910, Salisbury, MD 21803-0910, *President*

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AMERICAN BAR ASSOCIATION ADVISOR

IRA WALDMAN, 28th Floor, 2049 Century Park East, Los Angeles, CA 90067, *American Bar
Association Advisor*

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Missouri-Columbia, School of Law, 313 Hulston Hall,
Columbia, MO 65211, *Executive Director*

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Road, Norman,
OK 73019, *Executive Director Emeritus*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

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[ARTICLE] 1
PART 1
DEFINITIONS AND OTHER GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Nonjudicial Foreclosure Act.

SECTION 102. DEFINITIONS. In this [Act]:

(1) "Collateral" means property, real or personal, subject to a security interest.

(2) "Common interest community" means real property with respect to which a person, by virtue of ownership of a unit, is obligated to pay for real property taxes, insurance premiums, maintenance, or improvement of other real property described in a declaration or other governing documents, however denominated. In this paragraph, "ownership" includes a leasehold interest of at least [20] years, including renewal options.

(3) "Day" means calendar day.

(4) "Debtor" means a person that owes payment or other performance of an obligation, whether absolute or conditional, secured under a security instrument. The term includes a person that guarantees such an obligation and a person that owns property securing such an obligation, whether or not the person is personally liable on the obligation.

(5) "Document" means information that is inscribed on a tangible medium.

(6) "Expenses of foreclosure" means the lesser of the reasonable expenses incurred by a foreclosing creditor or the maximum amounts permitted by other law of this State for expenses in connection with a foreclosure, including a foreclosure discontinued under Section 601. These

expenses include costs of transmission of notices, advertising, title evidence, inspections and examinations of the collateral, management and securing of the collateral, insurance, filing and recording fees, attorney's fees and litigation expenses incurred to the extent provided in the security instrument or authorized by law, appraisal fees, the fee of the person conducting the sale in the case of a foreclosure by auction, fees of court-appointed receivers, and other expenses reasonably necessary to the foreclosure.

(7) "Foreclosing creditor" means a secured creditor that is engaged in a foreclosure under this [Act].

(8) "Guarantor" means a person that is liable for the debt of another or that owns collateral securing the debt of another. The term includes a surety and an accommodation party.

(9) "Interest holder" means a person that holds a legally-recognized interest in real or personal property that is subordinate in priority to a security interest foreclosed under this [Act].

(10) "Original notice of foreclosure" means the first notice of foreclosure given pursuant to Section 204 instituting a foreclosure under this [Act].

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(12) "Real property" means any estate or interest in, over, or under land, including minerals, structures, fixtures, and other things that by custom, usage, or law pass with a conveyance of land whether or not described or mentioned in the contract of sale or instrument of conveyance. The term includes the interest of a landlord or tenant and, unless the interest is personal property under the law of the state in which the property is located, an interest in a

common interest community.

(13) "Record" means to submit a document complying with appropriate legal standards, with required fees and taxes paid, to the appropriate governmental office property under [the recording act of this State].

(14) "Recording data" means the date and [book and page number] [document number] at which a document is recorded in the [office of the county recorder].

(15) "Residential debtor" means a debtor who is an individual and who owns, or is obligated on an obligation secured in whole or in part by, residential real property. The term includes a person that is owned or controlled by such an individual.

(16) "Residential real property" means real property that, when a security instrument is entered into with respect to that property, is used or is intended by its owner to be used primarily for the personal, family, or household purposes of its owner and is improved, or is intended by its owner to be improved, by one to [four] dwelling units.

(17) "Secured creditor" means a creditor that has the right to foreclose a security interest in real property.

(18) "Security instrument" means a mortgage, deed of trust, security deed, contract for deed, land sale contract, lease, or other document that creates or provides for an interest in real property to secure payment or performance of an obligation, whether by acquisition or retention of a lien, a lessor's interest under a lease, or title to the real property. A document is a security instrument even if it also creates or provides for a security interest in personal property. If a security instrument provides that a default under any other agreement is a default under the security instrument, the security instrument includes the other agreement. The term includes a

modification or amendment of a security instrument and a document creating a lien on real property to secure an obligation owed by an owner of the real property to an association in a common interest community or under covenants running with the real property.

(19) "Security interest" means an interest in real or personal property created by a security instrument that secures payment or performance of an obligation.

(20) "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.

(21) "Title evidence" means a title insurance policy, a preliminary title report or binder, a title insurance commitment, an attorney's opinion of title based on examination of the public records or an abstract, or any other means of reporting the state of title to real property that is customary in the locality.

SECTION 103. APPLICATION.

(a) Except as otherwise provided in subsection (b), this [Act] applies to, and authorizes the nonjudicial foreclosure of, every security interest in real property located in this State created on or after the effective date of this [Act], if the security instrument provides in substance that:

- (1) the security interest may be foreclosed pursuant to this [Act]; or
- (2) the security interest may be foreclosed by nonjudicial process.

(b) This [Act] may not be used to foreclose:

- (1) a security interest in property in a common interest community if under the law of this State that interest is personal property;

(2) a security interest in rents or proceeds of real or personal property; or

(3) a lien created by statute or operation of law, except a lien of an owners' association on property in a common interest community.

(c) This [Act] does not preclude or govern foreclosure or other enforcement of a security interest in real property by judicial or other action permitted by other law. A secured creditor may not give an original notice of foreclosure under this [Act] if a judicial proceeding is pending to foreclose the security interest or to enforce the secured obligation against a person primarily liable for the obligation. An original notice of foreclosure under this [Act] may be given even if a judicial proceeding is pending or a judicial order has been obtained for appointment or supervision of a receiver of the collateral, possession of the collateral, enforcement of an assignment of rents or other proceeds of the collateral, collection or sequestration of rents or other proceeds of the collateral, or enforcement of the secured obligation against a guarantor or a guarantor's property.

(d) If a security instrument covers both real property and personal property, a secured creditor foreclosing under this [Act] with respect to the real property may also proceed in the foreclosure against the personal property to the extent permitted by [Article 9 of the Uniform Commercial Code].

SECTION 104. VARIATION BY AGREEMENT.

(a) Except as otherwise provided in subsections (b) through (d), the parties to a security instrument may not by agreement vary the effect of a provision of this [Act].

(b) The time within which a person must respond to a notice given by a secured creditor

may be extended by agreement.

(c) The parties to a security instrument may vary the effect of a provision of this [Act] that by its terms permits the parties so to do.

(d) If no debtor under a security instrument is a residential debtor, the parties by agreement may determine the standards by which performance of an obligation under this [Act] is to be measured if those standards are not manifestly unreasonable.

(e) If no debtor under a security instrument is a residential debtor, an agreement by a guarantor waiving the right to receive notices under this [Act] with respect to the foreclosure of the property of a debtor whose obligation the guarantor has guaranteed is enforceable unless enforcement is prohibited by other law.

SECTION 105. SUPPLEMENTAL PRINCIPLES OF LAW AND EQUITY

APPLICABLE. Unless displaced by a particular provision of this [Act], the principles of law and equity supplement this [Act].

SECTION 106. DAY OF PERFORMANCE. If this [Act] or a notice given pursuant to this [Act] requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday, the performance is sufficient if done on the next day that is not a Saturday, Sunday, or legal holiday.

[ARTICLE] 1

PART 2

NOTICE AND KNOWLEDGE

SECTION 107. DEFINITIONS. In this Part:

(1) “Address for notice” means:

(A) with respect to a notice given by a secured creditor:

(i) if the intended recipient has given to the secured creditor a security instrument or other document in connection with a security instrument that contains an address, the most recent address in the security instrument or document or the most recent address of which the secured creditor has knowledge;

(ii) if the sources described in subparagraph (i) do not disclose an address, the most recent address that is identifiable from examination of the public records in [the office of the county recorder] and, if personal property is being foreclosed together with real property, the public records containing filings of title transfers and security interests in the type of personal property being foreclosed;

(iii) if the sources described in subparagraphs (i) and (ii) do not disclose an address and the secured creditor knows the intended recipient is a tenant, subtenant, or assignee of a leasehold in all or part of the real property collateral, the address of the real property collateral or some portion thereof, including the designation of any office, apartment, or other unit that the secured creditor knows is possessed by the recipient, with the notice directed to the recipient by name, if known, or otherwise “To person occupying property at” followed by the physical address or description of the real property collateral;

(iv) if the secured creditor does not know that the intended recipient is a tenant,

subtenant, or assignee of a leasehold in all or part of the real property collateral and the sources described in subparagraphs (i) and (ii) do not disclose an address, an address, if any, determined by reasonable efforts of the secured creditor to be a correct address for the recipient or, if none can be determined, the address of the real property collateral or some portion thereof; or;

(B) with respect to a notice given by a person other than a secured creditor, the most recent address stated in a document provided by the recipient to the person giving notice.

(2) “Notice” means a document containing required information and signed by the person required to provide the information.

(3) “Recipient” means a person to which a notice is given.

(4) “Sign” means to execute or adopt a tangible symbol with the present intent to authenticate a document.

SECTION 108. MANNER OF GIVING NOTICE.

(a) Subject to subsections (b) through (e), notice is given by:

(1) handing it to the recipient;

(2) if the recipient’s address for notice is an office, leaving it at the office with an individual in charge or, if no one is in charge, leaving it in a conspicuous place in the office;

(3) if the recipient’s address for notice is a dwelling, leaving it at the dwelling with an individual of suitable age and discretion residing therein; or

(4) subject to subsection (b), depositing it with the United States Postal Service or a commercially reasonable delivery service, properly addressed to the recipient’s address for

notice, with costs of delivery paid.

(b) If the recipient is a residential debtor, and the notice is given as provided in subsection (a)(4), an additional copy of each of the following notices must be deposited with the United States Postal Service, registered or certified mail, properly addressed to the recipient's address for notice, with costs of delivery paid

- (1) a notice of default;
- (2) a notice of foreclosure;
- (3) an advertisement of an auction sale pursuant to Section 303(b);
- (4) a notice of proposed negotiated sale pursuant to Section 403; or
- (5) a notice of appraisal pursuant to Section 503.

(c) If a person giving a notice pursuant to this [Act] and the recipient have agreed to limit the methods for giving notice otherwise permitted by subsection (a), that limitation is enforceable.

(d) If at the time of giving a notice, the person giving the notice knows that the notice, if directed to the recipient's address for notice, will not be received by the recipient, the person giving the notice shall make a reasonable effort to determine an address for the recipient at which the notice is likely to be received and direct the notice to that address, if any, in addition to the recipient's address for notice. If an address at which the notice is likely to be received cannot be determined by a reasonable effort, notice is sufficient if directed to the recipient's address for notice.

(e) If, after giving a notice, a person acquires knowledge that the notice will not be received at the address to which the notice was directed, the person shall promptly make a

reasonable effort to determine an address for the recipient at which the notice is likely to be received and direct a copy of the notice to that address, if any. If no debtor is a residential debtor, the first notice, if timely and properly directed to the recipient's address for notice, satisfies the requirements of this [Act] for the time for giving notice and operates to commence the running of any period that under this [Act] commences upon the giving of notice. If any debtor is a residential debtor, any period that under this [Act] commences upon the giving of notice runs from the date on which the subsequent notice is given, but ends no later than 45 days after the date it would have ended if counted from the date of the first notice.

(f) A notice to a foreclosing creditor is sufficiently addressed if addressed to the individual identified in a notice of default pursuant to Section 202(b)(6) or a notice of foreclosure pursuant to Section 204(b)(11).

SECTION 109. RECEIPT OF NOTICE.

(a) Receipt of a notice within the time it would have been received if properly given has the effect of a proper giving of notice.

(b) If a recipient is an individual, a notice is received when it:

(1) comes to the recipient's attention;

(2) is delivered to and available at the recipient's address for notice if, at the time of giving the notice, the person giving notice:

(A) did not know that it would not be received by the recipient at the address for notice; or

(B) knew that it would not be received by the recipient but was unable to

determine by a reasonable effort an address at which the notice was likely to be received; or

(3) is delivered to and available at an address determined pursuant to Section 108(d) as an address at which the notice was likely to be received.

(c) If a recipient is an organization, a notice is received when it is brought to the attention of the individual conducting the transaction involving the security instrument or when it would have been brought to the individual's attention if the organization had exercised due diligence.

SECTION 110. SUFFICIENCY OF NOTICE. A notice that contains information not required by law or minor errors is sufficient if the information does not obscure the required information and the errors are not misleading.

SECTION 111. REVOCATION OF NOTICE. Except as provided in Section 601, a person that has given a notice may revoke it by a subsequent notice unless the recipient materially changed its position in reliance on the notice before receiving the revocation.

SECTION 112. KNOWLEDGE.

(a) To know, or to have knowledge of, a fact means:

(1) the person has actual knowledge of the fact;

(2) the person has received a notice or notification of the fact; or

(3) from all of the facts and circumstances known to the person at the time in

question, the person has reason to know the fact exists.

(b) If a foreclosing creditor would have reason to know a fact only through an inspection

of the collateral, knowledge of the fact is imputed to the creditor only to the extent that the creditor has made an inspection.

[ARTICLE] 2

PROCEDURES BEFORE FORECLOSURE

SECTION 201. RIGHT TO FORECLOSE. A secured creditor has a right to foreclose under this [Act] if all conditions required by law and the security instrument as prerequisites to foreclosure are satisfied. A foreclosing creditor may pursue foreclosure by auction, negotiated sale, or appraisal or may simultaneously pursue more than one of these methods. If the foreclosing creditor pursues more than one method of foreclosure the notice of foreclosure must so state.

SECTION 202. NOTICE OF DEFAULT AND RIGHT TO CURE.

(a) Before notice of foreclosure may be given, a foreclosing creditor must give a notice of default to each debtor and any period allowed for cure by this section and by the security instrument must expire without cure being made.

(b) A notice of default must state:

- (1) with particularity, the facts establishing that a default has occurred;
- (2) if the default is curable and cure requires the payment of money, the amount to be paid, including the daily rate of accrual for amounts accruing over time;
- (3) if the default is curable and cure does not require the payment of money, the performance required to cure the default;
- (4) if the default is not curable, that the default cannot be cured;
- (5) the time within which cure must be made in order to prevent accrual of the

secured creditor's right to foreclose;

(6) the name, street and mailing addresses, and telephone number of the foreclosing creditor if the foreclosing creditor is an individual, or if the foreclosing creditor is not an individual, the name, street and mailing addresses, and telephone number of an individual who is a representative of the foreclosing creditor, with whom to communicate for further information concerning the default; and

(7) that foreclosure may be commenced on account of the default, and if the default is curable, that foreclosure will not be commenced if the default is cured in a timely manner.

(c) Subject to subsection (e) and any additional right to cure provided in the security instrument, within 30 days after notice of default is given to the last person entitled to the notice, any person may:

(1) if the default is curable by the payment of money, cure the default; or

(2) if the default is curable but cannot be cured by the payment of money, promptly commence to cure the default, diligently proceed to cure the default, and complete the cure of the default within [90] days after the notice of default is given to the last person entitled to the notice.

(d) If no person is proceeding diligently to cure a default that is curable but cannot be cured by the payment of money, 30 days after the date the notice of default was given to the last person entitled to the notice, the secured creditor may immediately terminate the period allowed for cure by this section by accelerating payment of the principal amount owing on the secured obligation or giving an original notice of foreclosure.

(e) If none of the real property collateral is residential real property, the 30-day period specified in subsection (c) for cure of a monetary default may be reduced by a provision of the

security instrument but may not be less than 10 days.

(f) A secured creditor may give a notice of default even if a previous notice of default for a different default is pending.

(g) The rights to notice of default and to cure a default provided by this section do not impair or limit any right to notice of default or to cure a default provided by the security instrument. The period for cure provided by this section and any period for cure provided by the security instrument run concurrently unless the security instrument provides otherwise.

(h) If a default is cured within the time for cure provided by this section, or after expiration of that time but before acceleration of the principal amount owing on the secured obligation or the giving of an original notice of foreclosure, the secured creditor may not give a notice of foreclosure or accelerate the principal amount owing on the secured obligation on account of that default, and any acceleration on account of that default is ineffective.

(i) During a period allowed for cure of a default under this section, a secured creditor may enforce any remedy other than foreclosure provided for by the security instrument and enforceable under law other than this [Act] if enforcement does not unreasonably interfere with the ability of the debtor against which enforcement is sought to cure a default under this section.

SECTION 203. NOTICE OF FORECLOSURE: MANNER OF GIVING

(a) If a secured creditor has a right to foreclose under Section 201, the secured creditor may commence foreclosure by giving notice of foreclosure. The notice is a prerequisite to foreclosure and must comply with subsections (b) and (c) and Section 204.

(b) A foreclosing creditor shall record a copy of the notice of foreclosure in [the office of

the county recorder] of each [county] in which the real property collateral is located. All persons acquiring an interest in the real property collateral after the notice of foreclosure is recorded have knowledge of its existence and contents. If a notice of foreclosure is not recorded, a foreclosure under this [Act] is void.

(c) Except as otherwise provided in subsection (d), a foreclosing creditor shall give a notice of foreclosure to each of the following persons no later than five days after recording the notice of foreclosure pursuant to subsection (b) if the person can be identified as of the time of recording of the notice of foreclosure:

(1) any person that the foreclosing creditor knows is a debtor;

(2) any person specified by a debtor in the security instrument to receive notice on the debtor's behalf;

(3) any person shown by the public records in [the office of the county recorder] of the [county] in which any part of the real property collateral is located to be an interest holder in the real property collateral;

(4) any person the foreclosing creditor knows is an interest holder in the real property collateral; and

(5) any person that has recorded in the public records in [the office of the county recorder] of the [county] in which any part of the real property collateral is located a request for notice of foreclosure satisfying the requirements of Section 205.

(d) If, after recording the notice of foreclosure, the foreclosing creditor acquires knowledge of an interest holder whose interest existed at the time the notice of foreclosure was recorded, the foreclosing creditor shall give a notice of foreclosure to that interest holder no later

than five days after acquiring the knowledge.

(e) A foreclosing creditor, within 10 days before or after recording a notice of foreclosure, shall affix a conspicuous sign on the real property collateral stating that foreclosure has been commenced and identifying the foreclosing creditor.

(f) An original notice of foreclosure is ineffective if given after the expiration of the period of limitation for foreclosure of a security interest in real property by judicial proceeding.

SECTION 204. NOTICE OF FORECLOSURE: CONTENT.

(a) The heading of a notice of foreclosure must be conspicuous and must contain the following: “NOTICE OF FORECLOSURE. YOU ARE HEREBY NOTIFIED THAT YOU MAY LOSE YOUR RIGHTS TO CERTAIN PROPERTY. READ THIS NOTICE IMMEDIATELY AND CAREFULLY.”

(b) A notice of foreclosure must contain:

(1) a statement that the foreclosing creditor is commencing foreclosure;

(2) a statement that the foreclosure will terminate the rights in the collateral of the person given the notice of foreclosure unless the foreclosing creditor elects to give a subsequent notice of preservation of interest to that person under Section 210;

(3) the date of the notice, the name of the owner of the collateral as identified in the security instrument, a description of the real property collateral as stated in the security instrument, the interest in or portion of the collateral being foreclosed, a description of any personal property collateral to be included in the foreclosure, and, at the secured creditor’s option, the street address of the real property collateral, if any;

(4) the recording data for the security instrument;

(5) a statement that a default exists under the security instrument and the facts establishing the default;

(6) a statement that the foreclosing creditor has accelerated or, by virtue of the notice, is accelerating the due date of the principal amount owing on the secured obligation, making that amount immediately due, or a statement that the foreclosing creditor elects not to accelerate the due date;

(7) a statement that the collateral may be redeemed from the security interest by payment or performance of the obligation in full before foreclosure and the amount to be paid or other action necessary to redeem, including a daily amount that will allow calculation of the total balance owed as of future dates and an estimate of any further amount the foreclosing creditor anticipates expending to protect the collateral;

(8) a statement of the method or methods of foreclosure the foreclosing creditor elects to use and the earliest date on which foreclosure will occur if redemption is not made;

(9) if applicable, an explanation of what a residential debtor can do avoid a claim for a deficiency under Section 607;

(10) if applicable, a statement that the debtor may request a meeting with a representative of the foreclosing creditor to object to the foreclosure as provided by Section 206, may bring a person to advise or assist the debtor at the meeting, and the last date on which the request must be received by the foreclosing creditor; and

(11) the name, street and mailing addresses, and telephone number of the foreclosing creditor if the foreclosing creditor is an individual, or if the foreclosing creditor is not an

individual, the name, street and mailing addresses, and telephone number of an individual who is a representative of the foreclosing creditor, with whom to communicate for further information concerning the foreclosure.

(12) an explanation of any workout or loss mitigation plans generally available from the foreclosing creditor.

SECTION 205. REQUEST FOR NOTICE OF FORECLOSURE.

(a) Any person may record in [the office of the county recorder] of the [county] in which the security instrument is recorded a request for notice of foreclosure of a recorded security instrument. The request must state:

- (1) the recording data for the security instrument;
- (2) the names of the parties to the security instrument;
- (3) the name and mailing address of the person requesting notice of foreclosure; and
- (4) a legally sufficient description of the real property collateral affected by the security instrument.

(b) A person that records a request under subsection (a) before a notice of foreclosure is recorded is entitled to be given notice of foreclosure under Section 203(a). Recording a request does not affect the title to the real property collateral and does not impute knowledge to any person of an interest in the real property collateral held or claimed by the person requesting notice. A person that records a request for notice under this section may subsequently record an amendment withdrawing the request or supplementing or correcting the person's name, address, or other information in the request.

(c) If a foreclosure is completed and a person that recorded a proper request under subsection (a) was not given timely notice of foreclosure, the person is entitled to recover \$500 from the foreclosing creditor. No other remedy or sanction may be imposed against the foreclosing creditor on behalf of the person for failure to give timely notice of foreclosure.

SECTION 206. MEETING TO OBJECT TO FORECLOSURE.

(a) A residential debtor may request a meeting to object to a foreclosure. The request must be made by a notice received by the foreclosing creditor within 30 days after the notice of foreclosure is given to that debtor.

(b) If the foreclosing creditor receives a timely request for a meeting, the foreclosing creditor or a responsible representative of the foreclosing creditor shall schedule and attend a meeting with the person requesting it at a mutually agreeable time, and may not complete the foreclosure until the meeting is held or the debtor requesting the meeting fails without reasonable cause to appear at the scheduled meeting. The representative may be an employee, agent, servicer, or attorney of the foreclosing creditor. The meeting may be held in person or by telephone, video conferencing, or other reasonable means at the election of the foreclosing creditor. If the meeting is held in person, it must be held at a location reasonably convenient to a parcel of the real property collateral unless the person requesting the meeting and the creditor or representative mutually agree on a different location. If the foreclosing creditor receives requests from more than one person, the creditor or representative may attempt to arrange a consolidated meeting, and the persons requesting meetings shall cooperate with the foreclosing creditor's effort to do so.

(c) A meeting held pursuant to this section is informal, and the rules of evidence do not apply. The parties may be represented by legal counsel and the debtor may bring a person to the meeting to assist or advise the debtor. Documents that provide evidence of the grounds for foreclosure must be available to the foreclosing creditor or representative and provided to the debtor at or before at the meeting. The creditor or representative shall consider the objections to foreclosure stated by the person requesting the meeting. No later than 10 days after the meeting, the creditor shall give to each individual who requested the meeting a written statement indicating whether the foreclosure will be discontinued or will proceed and the reasons for the determination. Neither the objections to foreclosure stated by the person requesting the meeting nor the reasons stated by the creditor or representative preclude any person from raising those or other grounds for objecting to or supporting foreclosure in any judicial proceeding. A statement or representation made by a person at the meeting may not be introduced as evidence in any judicial proceeding. Each party bears its own expenses in connection with the meeting.

(d) Neither the foreclosing creditor nor its representative is subject to liability for making a determination that is adverse to an individual who requested a meeting under this section. A debtor is not subject to liability for requesting or attending a meeting under this section.

SECTION 207. PERIOD OF LIMITATION FOR FORECLOSURE. The time of foreclosure may not be less than 90 days nor more than one year after an original notice of foreclosure is recorded under Section 203 and not less than 30 days after any subsequent notice of foreclosure is recorded. The one-year period of limitation may be extended by agreement of the foreclosing creditor and all persons to which notice of foreclosure was required to be given, other

than persons having interests that have been preserved from foreclosure by a notice of preservation pursuant to Section 210. All periods provided by this section are tolled for not more than 180 days while a court order expressly enjoining or staying the foreclosure is in effect and for a period of 45 days after the end of an automatic stay under Section 362 of the Bankruptcy Code, Title 11 of the United States Code.

SECTION 208. JUDICIAL SUPERVISION OF FORECLOSURE. An aggrieved person may commence a proceeding in a court having jurisdiction for a violation of this [Act] or of other law or principle of equity in the conduct of the foreclosure. If the person commencing the proceeding is a residential debtor, no bond or other security may be required as a condition for the granting of injunctive relief. The court may issue any order within the authority of the court in a foreclosure of a mortgage by judicial action, including injunction and postponement of the foreclosure.

SECTION 209. REDEMPTION. A person having the right to redeem collateral from a security interest may not redeem after the time of foreclosure. Unless precluded from doing so by law other than this [Act], upon request a foreclosing creditor shall cooperate with a person that attempts to redeem the collateral from the security interest before the time of foreclosure by promptly providing information concerning the amount due or performance required to redeem.

SECTION 210. NOTICE OF PRESERVATION. A foreclosing creditor may give to any interest holder a notice stating that the interest of the recipient in the collateral will be preserved

from and will not be affected by the foreclosure. The notice must be given no later than 30 days before the time of foreclosure unless a later notice is authorized by a specific provision of this [Act]. A notice complying with this section preserves the interest from termination by foreclosure. A foreclosing creditor that gives a notice of preservation under this section may not later revoke the notice or foreclose against the interest of the person to which notice of preservation was given.

[ARTICLE] 3

FORECLOSURE BY AUCTION

SECTION 301. FORECLOSURE BY AUCTION. To foreclose by auction, the secured creditor must comply with the requirements of this [article] and [Articles] 1, 2 and 6.

SECTION 302. TITLE EVIDENCE; OTHER INFORMATION.

(a) If a secured creditor elects to foreclose by auction, the foreclosing creditor shall obtain title evidence and make a copy thereof available upon request to any person. The title evidence must have an effective date no earlier than the time of recording of the original notice of foreclosure and must be issued no later than [30] days after the time of recording. Unless the title evidence is an attorney's opinion, the title evidence must state that the issuer is willing to provide a policy of title insurance to a person that acquires title to the real property by virtue of the foreclosure and the exceptions and exclusions from coverage to which the policy issued to that person will be subject.

(b) A foreclosing creditor may make reports and information concerning the collateral other than title evidence available to prospective bidders at the foreclosure.

(c) A foreclosing creditor is not subject to liability because of error in any information disclosed to prospective bidders unless the foreclosing creditor had actual knowledge of the error when the information was disclosed.

SECTION 303. ADVERTISEMENT OF AUCTION.

(a) After giving notice of foreclosure, a foreclosing creditor shall advertise a foreclosure auction under this [Article]

ALTERNATIVE A

[in a manner that complies with the publication requirements of the law of this State for judicial foreclosure of security interests in real property.]

ALTERNATIVE B

[by placing an advertisement in a newspaper having general circulation in each [county] where some part of the real property collateral is located. The advertisement must be published at least once per week for three consecutive weeks, and the last publication date must not be less than seven nor more than 30 days before the advertised date of auction.]

(b) No later than 21 days before the advertised date of auction, the foreclosing creditor shall send a copy of the advertisement required by subsection (a) to the persons to which notice of foreclosure was required to be given pursuant to Section 203. The advertisement may be sent with the notice of foreclosure or may be sent separately in the manner prescribed for giving notices by [Article] 1, Part 2. The foreclosing creditor may post on the real property collateral a copy of the advertisement or a sign containing information about the auction.

(c) An advertisement required by subsection (a) must contain:

(1) the date, time, and location [by street address and, if applicable, by floor and office number,] of the foreclosure auction;

(2) a statement that sale will be made to the highest qualified bidder;

(3) the amount or percentage of the bid that will be required of the successful bidder at the completion of the auction as a deposit and the form in which the deposit may be made if payment other than by cash or certified check will be accepted;

(4) a legally sufficient description, [the property tax map number] [the parcel identifier number], and the street address or, if there is no street address, the location of the real property to be sold;

(5) a brief description of any improvements on the real property and any personal property collateral to be sold;

(6) the name, street and mailing addresses, and telephone number of the foreclosing creditor if the foreclosing creditor is an individual, or if the foreclosing creditor is not an individual, the name, street and mailing addresses, and telephone number of an individual who is a representative of the foreclosing creditor, with whom to communicate for further information concerning the collateral and the foreclosure;

(7) a statement that a copy of the title evidence and any applicable reports concerning the collateral or additional information are available from the person identified pursuant to paragraph (6); and

(8) a statement as to whether access to the collateral for the purpose of inspection before foreclosure is available to prospective bidders and, if applicable, how to obtain access.

(d) An advertisement required by subsection (a) may contain any other information concerning the collateral or the foreclosure that the foreclosing creditor elects to include.

SECTION 304. ACCESS TO COLLATERAL. If a creditor foreclosing by auction has authority to grant access to the real property collateral, the creditor shall reasonably accommodate a person that contacts the creditor, expresses an interest in bidding at the foreclosure auction, and requests an opportunity to inspect the collateral.

SECTION 305. LOCATION AND TIME OF AUCTION. An auction under this [Article] must be conducted:

(1) at a date and time permitted for an auction under judicial foreclosure of a security interest in real property;

(2) in a [county] where some of the real property collateral to be auctioned is located; and

ALTERNATIVE A

[(3) at a location where an auction under judicial foreclosure of a security interest in real property may be held.]

ALTERNATIVE B

[(3) at:

(A) a main door of the [county] courthouse, or other location in the courthouse if prominent signs near a main door identify that location; [or]

(B) the site of the real property collateral [; or] [.]

[(C) a location that is readily accessible to the public and bears a standard street address.]]

SECTION 306. FORECLOSURE OF TWO OR MORE PARCELS.

(a) Collateral consisting of two or more parcels of real property may be foreclosed by auction separately or in combination as provided in the security instrument. If the security instrument does not specify the manner of sale of two or more parcels, the auction may be conducted:

(1) by a separate auction of each of the parcels; or

(2) if at the time notice of foreclosure is recorded two or more parcels are contiguous, being used in a unitary manner, part of a unitary plan of development, or operated under integrated management:

(A) by combining the parcels in a single auction; or

(B) by conditionally offering the parcels at auction both in combination and separately and accepting the higher of the two aggregate bids.

(b) If the entire real property collateral is not made the subject of a single auction, the foreclosing creditor shall discontinue sales of parcels or combinations of parcels when the total amount of bids received is sufficient to pay the secured obligation and the expenses of foreclosure.

SECTION 307. POSTPONEMENT OF AUCTION.

(a) An individual conducting an auction under this [Article] may postpone the auction for no more than 30 days for any cause the foreclosing creditor considers appropriate. Announcement of the postponement, and the time and location of the rescheduled auction, must be given orally at

the place and time advertised for commencement of the auction. No other advertisement or notice of the postponed time and place of auction is required. Subsequent postponements of the auction may be made in the same manner.

(b) If an auction cannot be held at the time stated in the advertisement of auction because of an automatic stay under Section 362 of the Bankruptcy Code, Title 11 of the United States Code, or an express stay order issued by a court having jurisdiction, the foreclosing creditor may reschedule the auction. The rescheduled auction must be advertised and a copy of the advertisement given to each person entitled to a copy as provided by Section 303.

SECTION 308. CONDUCT OF AUCTION.

(a) An auction under this [Article] must be conducted by a person designated by the foreclosing creditor.

(b) The person conducting an auction, before commencing the auction:

(1) shall make available to prospective purchasers copies of the title evidence;

(2) may make available to prospective purchasers other reports and information concerning the collateral; and

(3) may verify that a person intending to bid has the present ability to make the deposit stated in the advertisement, but shall not disclose the amount that a bidder is prepared to deposit.

(c) The auction must be conducted

ALTERNATIVE A

[under the following rules:

(1) Any person, including a debtor and the foreclosing creditor, may bid at the auction. If authorized, the individual conducting the auction may bid on behalf of the foreclosing creditor, but may not bid for his or her own account. The foreclosing creditor may bid by credit any amount up to the balance owing on the secured obligation, including the expenses of foreclosure.

(2) A person may submit a fixed bid by a document received at least 24 hours before the scheduled time of the auction by the person designated in the advertisement of auction to provide information about the property. The bid must be accompanied by a deposit satisfying the requirements of Section 309. The bid must be read aloud by the person conducting the auction before the auction is opened to oral bids.

(3) The property must be sold to the person that complies with this section and bids the highest amount.

(4) The auction is completed by the announcement of the person conducting the auction that the property is “sold.”]

ALTERNATIVE B

[in the manner prescribed by law in this State for the judicial foreclosure by auction of a mortgage on real property.]

SECTION 309. DEPOSIT BY SUCCESSFUL BIDDER. Immediately after the auction is completed, the successful bidder, if other than the foreclosing creditor or the creditor’s agent, shall pay a deposit to the person conducting the auction. The deposit must be at least 10 percent of the amount of the bid or such lower amount as the advertisement of auction stated would be accepted.

The deposit must be in the form of cash, certified check, or in such other form of payment as was stated in the advertisement of auction to be acceptable or is acceptable to the person conducting the auction.

SECTION 310. PAYMENT OF REMAINDER OF BID.

(a) The successful bidder at an auction under this [Article] shall pay the remainder of the bid to the foreclosing creditor within seven days after the date of completion of the auction.

(b) If payment of the remainder of the bid is timely made, the foreclosing creditor shall complete the foreclosure pursuant to Section 602.

(c) If payment of the remainder of the bid is not timely made, the foreclosing creditor shall discontinue the foreclosure pursuant to Section 601, and the deposit of the successful bidder is forfeited and must be distributed by the foreclosing creditor pursuant to Section 604. The defaulting bidder is not subject to any other liability on account of the default.

SECTION 311. FORECLOSURE AMOUNT; DISTRIBUTION OF PROCEEDS. If foreclosure by auction under this [Article] is completed pursuant to Section 602, the highest amount bid at the auction is the foreclosure amount. The foreclosure amount must be applied and distributed by the foreclosing creditor pursuant to Section 604.

[ARTICLE] 4

FORECLOSURE BY NEGOTIATED SALE

SECTION 401. FORECLOSURE BY NEGOTIATED SALE. To foreclose by negotiated sale, the secured creditor must comply with the requirements of this [article] and [Articles] 1, 2 and 6.

SECTION 402. ADVERTISEMENT AND CONTRACT OF SALE

(a) A creditor foreclosing by negotiated sale may enter into a contract of sale with a prospective purchaser or, if the collateral is sold in parcels, with more than one purchaser. The contract must state the gross sale price, before deduction of expenses of sale, that the purchaser will pay for the collateral. The foreclosing creditor's obligation to sell under the contract is subject to the following conditions, which must be stated in the contract:

(1) that no objection to the foreclosure amount is made under Section 404; and

(2) that no redemption of the collateral from the security interest is made before the time of foreclosure.

(b) The foreclosing creditor may advertise the collateral for sale to prospective purchasers by whatever method the foreclosing creditor considers appropriate and may list the collateral for sale with a broker. The foreclosing creditor may post on the real property collateral a sign containing information about the sale.

SECTION 403. NOTICE OF PROPOSED NEGOTIATED SALE; FORECLOSURE AMOUNT.

(a) If a foreclosing creditor enters into a contract of sale as provided in Section 402, the foreclosing creditor shall give notice of the proposed sale at least 30 days before the date of the proposed sale to the persons specified in Section 203(c). The notice of proposed sale must state:

- (1) the date on or after which the foreclosing creditor proposes to sell the collateral;
- (2) the gross sale price stated in the contract of sale;
- (3) the foreclosure amount that the foreclosing creditor offers to credit against the secured obligation and distribute to other persons entitled thereto;
- (4) that if the sale is completed, title to the collateral will be transferred to the purchaser under the contract as of the time of foreclosure;
- (5) the manner in which the stated foreclosure amount will be applied, which must be consistent with the provisions of Section 604;
- (6) the name, street and mailing addresses, and telephone number of the foreclosing creditor if the foreclosing creditor is an individual, or if the foreclosing creditor is not an individual, the name, street and mailing addresses, and telephone number of an individual who is a representative of the foreclosing creditor, with whom to communicate for further information concerning the foreclosure or to inspect a copy of the contract of sale; and
- (7) that if a debtor or person holding a lien on the collateral subordinate in priority to the foreclosing creditor's security interest objects to the sale and gives the foreclosing creditor a notice so stating, which notice is received by the foreclosing creditor no later than seven days before the date of proposed sale, the foreclosing creditor will discontinue the foreclosure by

negotiated sale, give the objecting person a notice of preservation under Section 210 or, if the objecting person's interest is a lien, discharge the objecting person's interest.

(b) The foreclosure amount stated in the notice of proposed sale need not be identical to, but must be at least 85 percent of, the gross sale price stated in the contract of sale.

SECTION 404. NOTICE OF OBJECTION TO NEGOTIATED SALE.

(a) If, seven or more days before the date of proposed sale under this [Article], a foreclosing creditor receives notice of objection to the sale from a debtor or a person that holds a lien on the real property collateral subordinate in priority to the foreclosing creditor's security interest, the foreclosing creditor shall:

(1) discontinue the foreclosure pursuant to Section 601, in which case the notice of objection has no further effect;

(2) give notice pursuant to Section 210, at any time before the time of foreclosure, to the person that made the objection that the person's interest in the collateral will be preserved from termination by the foreclosure; or

(3) if the person that made the objection holds a lien on the real property collateral that can be discharged by payment of a sum of money, tender that sum or other consideration acceptable to the person and thereby discharge the interest.

(b) If the foreclosing creditor gives notice pursuant to subsection (a)(2):

(1) the foreclosing creditor may disregard the objection of the person to which such notice is given;

(2) the foreclosure by negotiated sale may be completed as provided in Section 602;

(3) the affidavit recorded pursuant to Section 602 must state that the objecting person's interest in the collateral is not terminated by the foreclosure; and

(4) the person notified is not entitled to any of the foreclosure amount.

(c) If the foreclosing creditor pays the consideration or makes a tender as provided in subsection (a)(3) and keeps the tender in effect, the person to which the tender is made must provide the foreclosing creditor with a suitable document in recordable form evidencing that the person's interest has been discharged.

(d) After expiration of the time for objection specified in subsection (a), a person given notice of foreclosure pursuant to Section 203 and notice of proposed sale pursuant to Section 403 may assert that the foreclosure amount was inadequate only if it was less than 85 percent of the gross sale price stated in the contract of sale.

SECTION 405. COMPLETION OF SALE. Unless the foreclosing creditor discontinues the foreclosure by negotiated sale pursuant to Section 404(a)(1), the foreclosing creditor may complete the sale as provided in Section 602 pursuant to the contract of sale.

[ARTICLE] 5

FORECLOSURE BY APPRAISAL

SECTION 501. FORECLOSURE BY APPRAISAL. To foreclose by appraisal, the secured creditor must comply with the requirements of this [article] and [Articles] 1, 2 and 6.

SECTION 502. APPRAISAL. A creditor foreclosing by appraisal shall obtain a written appraisal of the collateral. The debtor and other persons in possession of the collateral shall provide reasonable access to the collateral to the appraiser. The appraisal report must state the appraiser's conclusion as to the fair market value of the collateral as of a date not more than 60 days before the date of proposed foreclosure stated in the notice of appraisal. The appraisal must be made by an independent appraiser who is not an employee or affiliate of the foreclosing creditor or its servicer and who is designated as a certified or licensed appraiser by the [Appraisal Certification Board] of this State with respect to the type of real property to be appraised. If the real property collateral is residential real property, the appraisal must conform to the underwriting requirements of institutional lenders that regularly lend money secured by first mortgages on residential real estate or regularly purchase those mortgages.

SECTION 503. NOTICE OF APPRAISAL; APPRAISAL AMOUNT.

(a) The foreclosing creditor shall give notice of the appraisal at least 30 days before the date of proposed foreclosure to the persons specified in Section 203(c). The notice of appraisal must be accompanied by a copy of the appraisal report and must state:

(1) the date on or after which the foreclosing creditor proposes to foreclose the collateral;

(2) the appraised value of the collateral as stated in the appraisal report;

(3) the foreclosure amount that the foreclosing creditor offers to credit against the secured obligation and distribute to other persons entitled thereto;

(4) that if the foreclosure is completed, title to the collateral will be transferred to the foreclosing creditor as of the time of foreclosure;

(5) the manner in which the stated foreclosure amount will be applied, which must be consistent with the provisions of Section 604;

(6) the name, street and mailing addresses, and telephone number of the foreclosing creditor if the foreclosing creditor is an individual, or if the foreclosing creditor is not an individual, the name, street and mailing addresses, and telephone number of an individual who is a representative of the foreclosing creditor, with whom to communicate for further information concerning the foreclosure; and

(7) that if a debtor or person holding a lien on the collateral subordinate in priority to the foreclosing creditor's security interest objects to the foreclosure and gives the foreclosing creditor a notice so stating, which notice is received by the foreclosing creditor no later than seven days before the date of proposed foreclosure, the foreclosing creditor will discontinue the foreclosure by appraisal, give the objecting person a notice of preservation under Section 210 or, if the objecting person's interest is a lien, discharge the objecting person's interest.

(b) The foreclosure amount stated in the notice of appraisal need not be identical to, but must be at least 85 percent of, the value of the collateral as stated in the appraisal report

SECTION 504. NOTICE OF OBJECTION TO FORECLOSURE BY APPRAISAL

(a) If, seven or more days before the date of proposed foreclosure under this [Article], a foreclosing creditor receives notice of objection to the foreclosure from a debtor or a person that holds a lien on the real property collateral subordinate in priority to the foreclosing creditor's security interest, the foreclosing creditor shall:

(1) discontinue the foreclosure pursuant to Section 601, in which case the notice of objection has no further effect;

(2) give notice pursuant to Section 210, at any time before the time of foreclosure, to the person that made the objection that the person's interest in the collateral will be preserved from termination by the foreclosure; or

(3) if the person that made the objection holds a lien on the real property collateral that can be discharged by payment of a sum of money, tender that sum or other consideration acceptable to the person and thereby discharge the interest.

(b) If the foreclosing creditor gives notice pursuant to subsection (a)(2):

(1) the foreclosing creditor may disregard the objection of the person to which such notice is given;

(2) the foreclosure by appraisal may be completed as provided in Section 602;

(3) the affidavit recorded pursuant to Section 602 must state that the objecting person's interest in the collateral is not terminated by the foreclosure; and

(4) the person notified is not entitled to any of the foreclosure amount.

(c) If the foreclosing creditor pays the consideration or makes a tender as provided in subsection (a)(3) and keeps the tender in effect, the person to which the tender is made must

provide the foreclosing creditor with a suitable document in recordable form evidencing that the person's interest has been discharged.

(d) After expiration of the time for objection specified in subsection (a), a person given notice of foreclosure pursuant to Section 203 and notice of appraisal pursuant to Section 503 may assert that the foreclosure amount was inadequate only if it was less than 85 percent of the appraised value of the collateral as stated in the appraisal report.

SECTION 505. COMPLETION OF FORECLOSURE. Unless the foreclosing creditor discontinues the foreclosure by appraisal pursuant to Section 504(a)(1), the foreclosing creditor may complete the foreclosure as provided in Section 602 on or after the date of proposed foreclosure.

[ARTICLE] 6

DISCONTINUANCE AND COMPLETION OF FORECLOSURE;

RIGHTS AFTER FORECLOSURE

SECTION 601. DISCONTINUANCE OF FORECLOSURE.

(a) A foreclosing creditor may discontinue foreclosure at any time before:

- (1) the completion of the auction in the case of a foreclosure by auction; or
- (2) the time of foreclosure, in the case of a foreclosure by negotiated sale or by

appraisal.

(b) To discontinue foreclosure, the foreclosing creditor shall give notice to the persons to which notice of foreclosure was required to be given under Section 203(b), advising them that the foreclosure has been discontinued and whether the foreclosing creditor will:

(1) pursue another foreclosure by the same method pursuant to a new notice of foreclosure;

(2) continue to foreclose by another method under this [Act] pursuant to a notice of foreclosure previously given;

(3) commence foreclosure by a different method authorized by this [Act] pursuant to a new notice of foreclosure;

(4) commence foreclosure by judicial proceeding; or

(6) abandon foreclosure.

(c) If a notice given by a foreclosing creditor under subsection (b)(1) or (3) includes all elements required for a notice of foreclosure under Sections 203 and 204, it constitutes a notice of

foreclosure and no additional notice of foreclosure is necessary to pursue a further foreclosure under this [Act].

SECTION 602. DEED TO SUCCESSFUL BIDDER; AFFIDAVIT.

(a) The foreclosing creditor shall complete the foreclosure as provided in subsection (b):

(1) after payment by the successful bidder of the full amount of the bid as provided in Section 310 in the case of a foreclosure by auction;

(2) as provided in the contract of sale in the case of a foreclosure by negotiated sale; or

(3) on or after the date of proposed foreclosure as stated pursuant to Section 503(a)(1) in the case of a foreclosure by appraisal.

(b) To complete the foreclosure the foreclosing creditor shall:

(1) execute and deliver a deed without warranty of title, a bill of sale or other appropriate document of transfer with respect to personal property if applicable, and any other documents that the foreclosing creditor must provide in order to record any of the foregoing, conveying the collateral:

(A) to or as directed by the successful bidder in the case of a foreclosure by auction;

(B) to or as directed by the contract purchaser in the case of a foreclosure by negotiated sale;

(C) to the foreclosing creditor in its own capacity or to its nominee, in the case of a foreclosure by appraisal.

(2) execute and record in [the office of the county recorder] an affidavit containing:

(A) the recording data for the security instrument;

(B) identification of the foreclosing creditor and the debtor;

(C) a legally sufficient description of the real property collateral;

(D) the recording data for the notice of foreclosure;

(E) identification of the persons to which notice of foreclosure was given and the recording data for documents reflecting their interests in the collateral;

(F) the method of foreclosure employed, and if the foreclosure was by negotiated sale or by appraisal, a statement that no person entitled to object to the foreclosure made a timely objection, or identifying any person that made a timely objection and stating whether the person's interest was discharged by the secured creditor or was preserved from the effect of the foreclosure by the giving of a notice of preservation under Section 210;

(G) identification of any additional persons to which notices of preservation under Section 210 were given;

(H) a statement that the foreclosing creditor has complied with all provisions of this [Act] for a valid foreclosure; and

(I) identification of the person acquiring title to the collateral by virtue of the foreclosure.

(c) The recording of the documents listed in subsection (b) transfers the title to the collateral to the persons identified therein as required by Section 603. The time of recording of the deed is the time of foreclosure.

SECTION 603. TITLE TRANSFERRED BY FORECLOSURE. At the time of

foreclosure, the deed executed pursuant to Section 602(b) transfers the title to the collateral held by the person that granted the security interest, subject only to:

(a) interests in the collateral having priority over the security interest foreclosed;

(b) interests of persons entitled to notice of foreclosure under Section 203(c) that were not given notice of foreclosure; and

(c) interests which were preserved from foreclosure by notice of preservation given pursuant to Section 210.

SECTION 604. APPLICATION OF PROCEEDS OF FORECLOSURE.

(a) After receiving the proceeds of sale, but before applying them, the foreclosing creditor may, but is not required to, invest them in a reasonable manner. Within seven days after the time of foreclosure or such longer time as may be permitted by court order, the foreclosing creditor shall apply and distribute the foreclosure amount and investment earnings thereon in the following order:

(1) in the case of a foreclosure by auction, to pay or reimburse the expenses of foreclosure;

(2) to pay the obligation secured by the foreclosed security instrument;

(3) to pay, in the order of their priority, the amounts secured by all liens terminated by the foreclosure; and

(4) to pay the remainder to the person that owned the collateral at the time of foreclosure.

(b) If the foreclosing creditor, in applying the proceeds of the sale, acts in good faith and

without actual knowledge of the invalidity or lack of priority of the claim of a person to which distribution is made, the foreclosing creditor is not liable for an erroneous distribution. The foreclosing creditor may maintain an action in the nature of interpleader, in a court having jurisdiction, for an order directing the order of distribution of the proceeds of the sale.

SECTION 605. CONCLUSIVE EFFECT OF FORECLOSURE. Recording of the notice of foreclosure pursuant to Section 203(b) and recording of the documents pursuant to Section 602 conclusively establishes compliance with all provisions of this [Act] in favor of purchasers of the collateral in good faith for value.

SECTION 606. POSSESSION AFTER FORECLOSURE. If the rights acquired by a person by a foreclosure under this [Act] include the right of possession, that person may gain possession of the real property by an action under the [forcible entry and detainer] statute of this State or other appropriate judicial proceeding, but may not dispossess persons in possession of the real property without a judicial order or judgment.

SECTION 607. ENTITLEMENT TO DEFICIENCY.

(a) Except as otherwise provided in subsection (b), a foreclosing creditor that held a security interest that was terminated by a foreclosure under this [Act] may obtain a judgment for a deficiency, as determined by Section 608, against a debtor that is liable for the secured debt owed to the person seeking the deficiency.

(b) A debtor is not liable for a deficiency after a foreclosure under this [Act] if:

(1) the person seeking the deficiency waived the right to a deficiency; or

(2) the debtor is a residential debtor, unless the debtor is found by the court not to have acted in good faith and the debtor's conduct caused significant loss or damage to the foreclosing creditor or the collateral.

(c) For purposes of this section, a residential debtor acted in good faith if the debtor:

(1) peaceably vacated the real estate collateral and relinquished any personal property collateral within 21 days after the time of foreclosure and the receipt of a notice demanding possession by the person entitled to possession by virtue of the foreclosure;

(2) did not engage in activity, unauthorized by the foreclosing creditor, that significantly reduced the value of the collateral as of the time possession was relinquished to the person entitled to possession by virtue of the foreclosure;

(3) did not commit fraud against the foreclosing creditor;

(4) did not permit significant uncured damage to the collateral by other persons or natural causes as a consequence of the debtor's failure to take reasonable precautions against such damage; and

(5) provided reasonable access to the collateral for inspection by the foreclosing creditor and prospective purchasers if the debtor had the right of possession of the collateral.

(d) The burden of persuasion as to the absence of good faith is on the person seeking a deficiency judgment against a residential debtor and shall be established at a judicial hearing. A residential debtor who does not satisfy the standards of subsection (c) may nonetheless have acted in good faith. The absence of good faith by one residential debtor does not make any other residential debtor liable for a deficiency.

(e) If liability of a residential debtor for a deficiency is barred by subsection (b)(2), liability of a guarantor of the residential debtor's obligation also is barred.

(f) An action to recover a deficiency against a residential debtor must be commenced within 90 days after the time of foreclosure.

SECTION 608. DETERMINING AMOUNT OF DEFICIENCY.

(a) Subject to subsections (b) and (c), the deficiency to which a creditor is entitled after a foreclosure under this [Act] is the balance remaining, if any, after subtracting the amount applied to the creditor pursuant to Section 604(a) from the balance owing on the secured obligation to the creditor, including principal, interest, and legally recoverable fees and charges.

(b) In an action for a deficiency:

(i) following a foreclosure by negotiated sale or by appraisal, a residential debtor against which the action is filed may offer proof that the foreclosure amount was less than 90 percent of the fair market value of the collateral as of the time of the foreclosure; or

(ii) following a foreclosure by auction, a debtor against which the action is filed may offer proof that the bid accepted at the auction was less than 90 percent of the fair market value of the collateral as of the time of the auction.

If the court, after a hearing, so finds, the court shall determine the fair market value of the collateral as of the time of foreclosure and shall substitute 90 percent of the fair market value for the foreclosure amount in making the calculation required by subsection (a) with respect to the deficiency owed to the foreclosing creditor.

[ARTICLE] 7

MISCELLANEOUS PROVISIONS

SECTION 701. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 702. EFFECTIVE DATE. This [Act] takes effect on _____.

SECTION 703. REPEALS. The following acts are repealed: [Here should follow the statutes to be specifically repealed. Statutes governing judicial foreclosure should not be repealed.]