

Uniform Mortgage Modification Act

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES



WITHOUT PREFATORY NOTE AND COMMENTS

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on Uniform State Laws

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Uniform Mortgage Modification Act

Section 1. Title

This [act] may be cited as the Uniform Mortgage Modification Act.

Section 2. Definitions

In this [act]:

(1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) “Financial covenant” means an undertaking to demonstrate an obligor’s creditworthiness or the adequacy of security provided by an obligor.

(3) “Modification” includes change, amendment, revision, correction, addition, supplementation, elimination, waiver, and restatement.

(4) “Mortgage”:

(A) means an agreement that creates a consensual interest in real property to secure payment or performance of an obligation, regardless of:

(i) how the agreement is denominated, including a mortgage, deed of trust, trust deed, security deed, indenture, and deed to secure debt; and

(ii) whether the agreement also creates a security interest in personal property; and

(B) does not include an agreement that creates a consensual interest to secure a liability owed by a unit owner to a condominium association, owners’ association, or cooperative housing association for association dues, fees, or assessments.

(5) “Mortgage modification” means modification of:

(A) a mortgage;

(B) an agreement that creates an obligation, including a promissory note, loan agreement, or credit agreement; or

(C) an agreement that creates other security or credit enhancement for an obligation, including an assignment of leases or rents or a guaranty.

(6) “Obligation” means a debt, duty, or other liability, secured by a mortgage.

(7) “Obligor” means a person that:

(A) owes payment or performance of an obligation;

(B) signs a mortgage; or

(C) is otherwise accountable, or whose property serves as collateral, for payment or performance of an obligation.

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

(9) “Recognized index” means an index to which changes in the interest rate may be linked that is:

(A) readily available to, and verifiable by, the obligor; and

(B) beyond the control of the person to whom the obligation is owed.

(10) “Record”, used as a noun, means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(11) “Sign” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol,

sound, or process.

Section 3. Scope

(a) Except as provided in subsection (c), this [act] applies to a mortgage modification.

(b) This [act] does not affect:

(1) law governing the required content of a mortgage;

(2) a statute of limitations or other law governing the expiration or termination of a right to enforce an obligation or a mortgage;

(3) a recording statute;

(4) a statute governing the priority of a tax lien or other governmental lien;

(5) a statute of frauds or [cite to state's Uniform Electronic Transactions Act or similar statute]; or

(6) except as provided in Section 4(b)(8), law governing the priority of a future advance.

(c) This [act] does not apply to any of the following modifications:

(1) a release of, or addition to, property encumbered by a mortgage;

(2) a release of, addition of, or other change in an obligor; or

(3) an assignment or other transfer of a mortgage or an obligation.

Section 4. Effect of Mortgage Modification

(a) For a mortgage modification described in subsection (b):

(1) the mortgage continues to secure the obligation as modified;

(2) the priority of the mortgage is not affected by the modification;

(3) the mortgage retains its priority regardless of whether a record of the mortgage modification is recorded in the [public land records]; and

(4) the modification is not a novation.

(b) Subsection (a) applies to one or more of the following mortgage modifications:

(1) an extension of the maturity date of an obligation;

(2) a decrease in the interest rate of an obligation;

(3) if the change does not result in an increase in the interest rate of an obligation as calculated on the date the modification becomes effective:

(A) a change to a different index that is a recognized index if the previous index to which changes in the interest rate were linked is no longer available;

(B) a change in the differential between the index and the interest rate;

(C) a change from a floating or adjustable rate to a fixed rate; or

(D) a change from a fixed rate to a floating or adjustable rate based on a recognized index;

(4) a capitalization of unpaid interest or other unpaid monetary obligation;

(5) a forgiveness, forbearance, or other reduction of principal, accrued interest, or other monetary obligation;

(6) a modification of a requirement for maintaining an escrow or reserve account for payment of an obligation, including taxes and insurance premiums;

(7) a modification of a requirement for acquiring or maintaining insurance;

(8) a modification of an existing condition to advance funds;

(9) a modification of a financial covenant; and

(10) a modification of the payment amount or schedule resulting from another modification described in this subsection.

(c) The effect of a mortgage modification not described in subsection (b) is governed by

other law.

Section 5. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

Section 6. 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.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

***Legislative Note:** It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

Section 7. Transitional Provision

This [act] applies to a mortgage modification made on or after [the effective date of this [act]] regardless of when the mortgage or the obligation was created.

[Section 8. Severability

If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

***Legislative Note:** Include this section only if the state lacks a general severability statute or a decision by the highest court of the state stating a general rule of severability.*

Section 9. Effective Date

This [act] takes effect . . .