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Understanding the Uniform Mortgage Modification Act: What You Need to Know

One common question that arises whenever a lender modifies a mortgage loan is whether the modifications require that lender to record a modification of its recorded mortgage. The determination is rooted in state law, meaning (among other things) that the answer could be different in different jurisdictions.

The Uniform Law Commission (ULC) recently approved the Uniform Mortgage Modification Act, which states will begin considering this year. The act is intended to simplify the analysis of whether one must record a mortgage modification.

Modifying a Mortgage

As a general rule, a mortgage should be modified if the changes to the loan would materially prejudice a party (such as a prospective lender or purchaser) searching the mortgage records. If the modification of the loan materially prejudiced the holder of a subsequent interest, the underlying mortgage would lose its priority (at least with respect to the modified terms of the loan) as to the holder of such subsequent interest. While certain circumstances clearly require a modification, such as an increase in the principal amount of the underlying loan, most analyses are not so simple. Further, documentation changes over time, whereby recorded documents include very little information and instead refer back to unrecorded loan documents for key terms, have made determining whether to modify a mortgage even less clear.

Overview of the Act

The Uniform Mortgage Modification Act hopes to clarify common law principles that govern modifications to mortgage loans, particularly focusing on the impact of such modifications on the priority of the mortgage. The act specifies that certain modifications — referred to as “safe harbors” — continue to secure the modified obligation and that the priority of the mortgage is not affected by the modifications.

The act’s safe-harbor provisions include:

- Extending the maturity date of the obligation.
- Decreasing the interest rate of the obligation.
- Changing the interest rate if the change does not increase the interest rate of the obligation as calculated on the date upon which the modification becomes effective, and: (1) the change is to a different, nationally recognized index if the previous index is no longer available; (2) the change

is to the differential between the index and the interest rate; (3) the change is from a floating or adjustable rate to a fixed rate; and/or (4) a change is from a fixed rate to a floating or adjustable rate based on a nationally recognized index.

- Capitalization of unpaid interest or other monetary obligation.
- Forgiveness, forbearance or other reduction of principal, accrued interest or other monetary obligation.
- A modification to requirements to maintain tax or insurance escrows.
- Modifications to insurance requirements.
- Modifications to advance conditions.
- Modifications to financial covenants.
- A modification to the payment amount or schedule resulting from another modification of a type set forth above.

If all of the modifications to an underlying loan satisfy one of the foregoing safe-harbor provisions, then the lender does not need to record a mortgage modification in order to maintain the priority of such mortgage.

Potential Benefits for Real Estate Finance Industry

The Uniform Mortgage Modification Act represents a significant step forward in simplifying and streamlining the process of mortgage modifications. For states that adopt the act, both borrowers and lenders can save time and expense by reducing the need for preparing, negotiating, and recording mortgage modifications, obtaining endorsements to mortgagee title insurance policies, and issuing legal opinions on the modifications. The ability to modify loans without affecting their priority can provide greater flexibility in managing distressed loans and avoiding foreclosure.

It is important to note that the act has not yet been adopted in any state (although some states, such as Virginia, have adopted their own rules intended to cover the same territory as the act). Until the act is adopted in a state, parties must continue to rely on that state's common law to determine whether it is necessary to modify a mortgage in that state.

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