

Model Loan Mod – Deed of Trust States

Conditions Precedent to Non Judicial Foreclosure on Primary Residences

(a) This section only applies to sales under a trust of property used as a principal residence.

(b) Before a sale under a trust of property used as a principal residence may be initiated as otherwise authorized by this Act, the trustee shall ascertain that one of the following conditions has been met:

- 1) the home has been abandoned;
- 2) the grantor has voluntarily relinquished the property to the holder in return for valuable consideration;
- 3) the holder, the holder's agent, or the trustee has complied with sub-section (c) of this section, and no loan modification considered pursuant to that section is produced;
- 4) the grantor is at least ninety days in default on a loan modification previously produced pursuant to subsection (c).

(c) As a condition precedent to initiating a sale under a trust of property, the holder, the holder's agent and/or the trustee shall –

- 1) make meaningful efforts to contact the grantor to ascertain the grantor's current income;
- 2) use the loan modification protocol developed and made available to the public by the Federal Deposit Insurance Corporation, known as "Loan Mod in Box," to evaluate whether an affordable and sustainable loan modification will produce a greater net present value to the holder than a foreclosure;
- 3) provide at no cost to the grantor, either the loan modification produced by the FDIC protocol, or if a the grantor is represented by counsel, a different one which is more affordable and sustainable to the grantor, without waiver of any claims.

(d) Nothing in this section prevents a holder or trustee from applying to the court for a judicial foreclosure, notwithstanding the requirements of this section. Upon such an application, the court shall consider the equities of the parties and the principles of equity under the laws of this state.

(e) A sale of property under a trust in violation of this section is void. The {recorder of deeds?} in the county in which the property is located shall not permit the recordation of a deed transferring title pursuant to a foreclosure sale if such deed does not contain a certification from the holder attesting either that (i) this section does not apply, or (ii) the requirements of this section have been met. .

Model Loan Mod – Mortgage States – Non-Judicial

Conditions Precedent to Non Judicial Foreclosure on Primary Residences

- (a) This section only applies to foreclosures of property used as a principal residence.
- (b) Before a foreclosure on real property used as a principal residence may be initiated as otherwise authorized by this Act, the mortgagee, or the mortgagee’s agent shall ascertain that one of the following conditions has been met:
- 1) the home has been abandoned;
 - 2) the mortgagor has voluntarily relinquished the property to the mortgagee in return for valuable consideration;
 - 3) the mortgagee or the mortgagee’s agent has complied with sub-section (c) of this section, and no loan modification considered pursuant to that section is produced;
 - 4) the mortgagor is at least ninety days in default on a loan modification previously produced pursuant to subsection (c).
- (c) As a condition precedent to initiating a sale, the holder shall –
- 1) make meaningful efforts to contact the grantor to ascertain the mortgagor’s current income;
 - 2) use the loan modification protocol developed and made available to the public by the Federal Deposit Insurance Corporation, known as “Loan Mod in Box,” to evaluate whether an affordable and sustainable loan modification will produce a greater net present value to the holder than a foreclosure;
 - 3) provide at no cost to the mortgagor, either the loan modification produced by the FDIC protocol, or if a the mortgagor is represented by counsel, a different one which is more affordable and sustainable to the mortgagor, without waiver of any claims.
- (d) Nothing in this section prevents a mortgagee from applying to the court for a judicial foreclosure, notwithstanding the requirements of this section. Upon such an application, the court shall consider the equities of the parties and the principles of equity under the laws of this state.
- (e) A sale of property after a foreclosure in violation of this section is void. The {recorder of deeds?} in the county in which the property is located shall not permit the recordation of a deed transferring title pursuant to a foreclosure sale if such deed does not contain a a certification from the holder attesting either that (i) this section does not apply, or (ii) the requirements of this section have been met. The certification required by this subsection shall be recorded immediately after the deed transferring title pursuant to the foreclosure sale.

Model Loan Mod – Judicial Foreclosure States

Conditions Precedent to Foreclosure on Primary Residences

(a) This section only applies to foreclosures of property used as a principal residence.

(b) Before a foreclosure on real property used as a principal residence may proceed as otherwise authorized by this Act, the court shall find that one of the following conditions has been met:

- 1) the home has been abandoned;
- 2) the mortgagor has voluntarily relinquished the property to the holder in return for valuable consideration;
- 3) the holder or the holder's agent has complied with sub-section (c) of this section, and no loan modification considered pursuant to that section is produced;
- 4) the mortgagor is at least ninety days in default on a loan modification previously produced pursuant to subsection (c).

(c) As a condition precedent to initiating a foreclosure under this Article, the holder shall

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- 1) make meaningful efforts to contact the mortgagor to ascertain the mortgagor's current income;
- 2) use the loan modification protocol developed and made available to the public by the Federal Deposit Insurance Corporation, known as "Loan Mod in Box," to evaluate whether an affordable and sustainable loan modification will produce a greater net present value to the holder than a foreclosure;
- 3) provide at no cost to the grantor, either the loan modification produced by the FDIC protocol, or if a the grantor is represented by counsel, a different one which is more affordable and sustainable to the grantor.

(d) Nothing in this section prevents a holder from requesting that the court allow a foreclosure notwithstanding the requirements of this section. Upon such an application, the court shall consider the equities of the parties and the principles of equity under the laws of this state.

(e) A sale of property after a foreclosure in violation of this section is void. The {recorder of deeds?} in the county in which the property is located shall not permit the recordation of a deed transferring title after a foreclosure sale without first obtaining a certification from the holder attesting either that (i) this section does not apply, or (ii) the requirements of this section have been met. The certification required by this subsection shall be recorded immediately after the deed transferring title pursuant to the foreclosure sale.