Impact of UCOTA on the Title Office

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By Alvin C. Harrell and Fred H. Miller

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I. Introduction

Certificate of title (CT) administrators have a lot on their plates right now. The REAL ID Act is causing much consternation in the offices that issue drivers' licenses,1 and nationwide concerns relating to CT fraud, title brands, transfers of ownership, stolen vehicles, and perfection of security interests continue to proliferate. Despite its benefits, the movement towards electronic CTs adds some complexity, particularly in states where the CT law does not provide an adequate foundation for title office practices and technology.

In these circumstances, a CT administrator may be tempted to consider the new Uniform Certificate of Title Act (UCOTA)2 as merely another layer of challenges, perhaps even a nuisance to be ignored or resisted as attention is focused on more pressing concerns. This would be a mistake for at least two fundamental reasons: First, UCOTA is the solution to many of these problems; and second, UCOTA (unlike the REAL ID Act) was designed in large measure with the needs of the CT office in mind. A review of UCOTA, and a comparison to federal initiatives such as the REAL ID Act, will clearly reveal the benefits of UCOTA to CT administrators nationwide. Despite this, UCOTA has been the subject of criticism, some of it seemingly not knowledgeable. A purpose of this article is to address the criticisms and demonstrate that UCOTA is part of the solution, not the problem—a rather significant difference.

As discussed here, there are many reasons for a state to enact UCOTA. This article cannot describe every benefit, but will note illustrative examples. While at this writing no state has enacted UCOTA, there is no reason for any state to be a follower in taking advantage of these benefits, and in forming its own judgement on these important matters. States that consider and enact UCOTA will find it helpful in a variety of ways, and will find that the UCOTA drafting committee is capable of undertaking the CT office. It has been said by some critics that UCOTA is "quite complex," and for some this broad statement is all they need to hear in order to oppose UCOTA. This is disingenuous, in that the issues that UCOTA addresses and resolves already exist, and are already complex. Without UCOTA, they will be much more complex and difficult to resolve. By addressing and resolving difficult issues that are unclear under current law, and including significant improvements in this resolution, UCOTA may seem complex. But by providing answers where today there are none, ultimately UCOTA greatly clarifies and simplifies law. Without UCOTA, the law will be much more unclear, and will be found in scattered cases, and resolutions of these issues may require years of litigation (always with an uncertain outcome). UCOTA is clearly preferable. Moreover, UCOTA is designed to largely follow and support current CT office practices in most states, while providing a uniform national legal foundation for those practices. This is desirable for every state and for the national economy. For example, UCOTA provides for the enacting state to be a "title holding" state, which is regulated (as opposed to being secured by the secured creditor rather than the vehicle owner). In most states this is already the practice, and in the others it will mean a relatively simple change, i.e., a change in the mailing address for delivery of the CT. Moreover, this is an issue concerning title, which is currently out of step with the rest of the country, and the UCOTA Drafting Committee was advised that this nonuniformity contributes significantly to CT fraud losses. Thus, this change appears to be both modest and necessary—a simple step that the states can take in order to avoid an emerging national problem. UCOTA deals only with a discrete range of CT issues and will not conflict with the remainder of a state's laws.

In short, a smooth integration of existing laws into other state law is a hallmark of the uniform law process, and UCOTA has required only modest efforts in this regard. This is true in this state where it has been implemented. Importantly, the difficult aspect of this integration, namely the relation of UCOTA to other state commercial statutes and regulations of the Uniform Commercial Code (UCC) and related federal laws, has been accomplished by the UCOTA Drafting Committee. The resulting ease of integration of UCOTA into state law is a major accomplishment of UCOTA; in this respect it is vastly superior to most existing CT laws—it is ironic to see UCOTA criticized on this basis. It is also ironic that some who complain that UCOTA is too complex then complain that the UCOTA Drafting Committee addressed issues, e.g., fees and licensing, the creation of new title brands, and criminal law.

III. UCOTA Section 2

The definitions in section 2 are descriptive, and intended to accurately describe the defined terms. This is an example of the integration of UCOTA with other laws, noted above. Some definitions are odd indeed. For example, the definition in UCOTA section 2a(18) of the term "owner" (i.e., a person who has legal title to a vehicle) is clear and accurate, but has been criticized as contradicting other law (including a state statute that defines "owner" as "any person owning, operating or possessing any vehicle...)".

Of course, the UCOTA definition applies only to UCOTA and does not purport to change other definitions applicable to other laws, such as that just quoted. There is no conflict with such definitions. Beyond the clear statement that a definition of "owner" as any person driving or in possession of a vehicle is highly questionable in a broad sense, for example, does this mean that a thief becomes the owner? A friend who borrows the car? This odd definition may or may not be appropriate to serve some limited purpose, e.g., taxation, but the UCOTA definition, which as noted does not interfere with taxation, is legally correct and this is essential for addressing CT issues.

IV. UCOTA Section 3

Section 3 merely states that UCOTA is supplemented by other principles of law and equity unless those principles are displaced by UCOTA. Section 3 is clearly the result of the process under the Uniform Commercial Code (UCC) and related federal laws, has been accomplished by the UCOTA Drafting Committee. The resulting ease of integration of UCOTA into state law is a major accomplishment of UCOTA; in this respect it is vastly superior to most existing CT laws—it is ironic to see UCOTA criticized on this basis. It is also ironic that some who complain that UCOTA is too complex then complain that the UCOTA Drafting Committee addressed issues, e.g., fees and licensing, the creation of new title brands, and criminal law.

V. UCOTA Section 4

The basic choice of laws govern the relation between UCOTA and other laws is the same as described in section 4. For example, section 4 conforms to the required requirements in UCC Article 9 section 9-303, which is already the law in every state. UCOTA section 4 essentially updates and clarifies the CT law to be consistent with, existing law. This language is important in order to bring the state's CT law into conformity with existing law and to clarify the relation between it and the UCC. This resolves inconsistencies and uncertainties in the current laws of some states. Some have objected that no fee is established. That is intentional; as noted, UCOTA is a uniform act, (and CT office and legislative discretion) the setting of fees and taxes.

VI. UCOTA Section 5

This section states certain standard exclusions from the CT law. To your knowledge, this has generated no criticism.

VII. UCOTA Section 6

This section merely reflects the role of a vehicle identification number (VIN), and is uncontroversial.

VIII. UCOTA Section 7

Section 7 authorizes the transfer of ownership of a vehicle covered by a certificate of origin (CO) to be accomplished by having the CO signed and delivered directly to the CT office, is lieu of delivering the CO to the transferee. This allows, e.g., an auto dealer selling a vehicle to deliver the title documentation (including the CT) directly to the CT office (electronically if desired). This increasingly is the practice nationwide, and offers important benefits to all parties, including the CT office. UCOTA section 7 provides the needed legal foundation for this practice.

Section 7 imposes no resulting duty on the CT office, unless the CO is delivered as part of an application for a CT pursuant to section 7(2). This is a major concern for section 9. If the CO is part of a CT application delivered pursuant to CT office procedures, the CT office processes as usual to process the application. If the vehicle is delivered "out of the blue," outside of procedures acceptable to the office, it may be treated like any other unacceptable submission— the CT office can reject or ignore it. Thus, section 7 conforms to current practice, while authorizing (but not mandating) emerging practices and efficiencies. Critics that this somehow imposes additional and unnecessary burdens on the CT office are inaccurate. The sử dụng của bạn có thể tạo ra sự hiểu lầm và gây ra sự phức tạp. Không có quy tắc nào mới được tạo ra. Quy tắc tương tự đã được đưa ra trong cáo ở các하시, không có quy tắc nào mới được tạo ra. Quy tắc tương tự đã được đưa ra trong cáo ở các.
XI. UCOCT Section 10

This section of UCOCT governs the creation of CIs (and their cancellation). Concern has been expressed regarding the section 10 authorization for the CT to reject an application on the basis of fraud or illegality. Again, this criticism is puzzling. As with all of UCOCT section 10 was carefully crafted and extended to reflect the needs of the industry. Not again the language is discretionary the CT office may reject an application if it wants to do so based on perceived evidence of wrongdoing. It is not clear why a CT office would object to this provision, as it is intended to protect the CT office. It does not impose any affirmative duty to reject, but if the CT office staff have reason to believe that the application is fraudulent or otherwise illegal and want to reject it, they have the authority to do so. This was drafted with the help of CT office representatives from various states and is intended largely to clarify and bolster the authority of the CT office.

Section 10(10) authorizes cancellation of a CT on the basis of any reason that would have precluded its creation. It seems apparent that there should be similarity between the requirements for creation and cancellation. If there is a reason to permit cancellation, it should also be a basis for refusing to create the CT in the first place, as there is no point in requiring the office to create a CT if there is a reason to immediately cancel it.

The reasons for cancellation (or refusal to create a CT in section 10 include a failure of the CT application to comply with the regulations of the state (as well as facilitation of an illegal act). Under section 9 this includes a failure to pay any fees or taxes. These provisions permit cancellation (or rejection of an application) for the usual variety of reasons that are already common and appropriate office practice. UCOCT section 10 also allows cancellation (discretionary) power language providing a hearing procedure, with optional time periods (three weeks or before). This bracketed language is optional for each state. The language is intended to satisfy constitutional due process requirements. The bracketed time periods were established by the Drafting Committee (with the participation of CT office representatives), but are in brackets in the final text to indicate that these time periods can be considered and adjusted in each state as needed. If the state believes that these time periods should be greater than proposed, UCOCT invites this to be done, though it should be noted that there is some utility in following the uniform text, about a genuine need for nonuniformity.

UCOCT is clear in providing that the CT office can cancel the CT with no further restriction if no hearing is requested. This satisfies due process standards and clarifies the authority of the office. Thus there are multiple reasons (from all perspectives) for including the hearing procedure. But if a state is opposed to the hearing procedure, the bracketed language can be omitted.

XII. UCOCT Section 11

This section governs the contents of the CT. UCOCT section 11 requires that the name and address of the secured creditor to be indicated on the CT. Currently this address is not indicated on CIs created in some states, and thus the address line will be an addition to the CT requirements in those states, though surely not a major one. As the states move toward the designation of a computer file as an "electronic CT" (see the definition at UCOCT section 2(a)(10)), this burden will be minimal (and should be offset by savings in printing costs). In the meantime, this information already is being retained in CT office files, so including it in the CT will not be difficult. This information is deemed essential to helping vehicle buyers confirm and satisfy any outstanding security interest at the time of sale, thereby discouraging fraud.

XIII. UCOCT Section 12

Some critics have argued that UCOCT section 12 conflicts with section 19. This reflects a fundamental misunderstanding.--UCOCT section 12 has no relation to section 19. Section 19 reflects the UCC buyer in ordinary course of business rules. Section 12 relates to debtor-creditor law and merely states that a person cannot repose a vehicle by taking possession of the vehicle because the CT does not represent possession of the vehicle. Thus the use of the vehicle must be enjoined against the vehicle through other, customary creditor remedies (e.g., replevin), and UCOCT makes clear that the CT law and procedures do not interfere with or change that. Section 12 also states specifically that it does not interfere with possession or statutory liens. Thus section 12 resolves, rather than causes, the kinds of issues and problems asserted in some of the criticisms of UCOCT.

XIV. UCOCT Section 13

This section of UCOCT authorizes the CT office to accept and compile data related to CIs, at its discretion. It also authorizes the office to require bonds as desired. All of this is entirely optional at the discretion of the CT office. It does not impose any duty on the CT office, but rather provides authority that some CT office representatives have deemed important. Again this essentially follows similar current practices. For example, additional information (not on the CT) might be relevant to the use and/or taxation of a vehicle, an undocumenteled sale, a lease or bail ment, or a theft. The CT office might wish to demand a bond from someone providing such information. As noted, this is entirely discretionary: UCOCT leaves maximum discretion in the hands of the CT office, and does not mandate any related policies or procedures for the CT office. If the CT office does not want the authority provided in UCOCT section 13, it need not be utilized.

XV. UCOCT Section 14

This section provides a legal framework for the CT office files. Contrary to what some critics have alleged, it does not define "file" to include all records received by the CT office. Thus it does not require maintenance of unrecorded records. The only record retention requirement, at section 14(6), covers the "record retention requirements of the CT office. All CT offices retain such information in any event. As noted above at Part I, the suggestion that UCOCT creates a public record that violates other law is also incorrect. The required public record includes only the information contained on the CT. The CT has no need for public notice and is not prohibited by other law. This information is essential to the functioning of electronic (and written) CIs, to the basic role of the CT office in providing public notice of security interests and vehicle ownership, and to combat title fraud. This public notice function is also consistent with current and emerging law enforcement initiatives, at both state and federal levels, to combat title fraud by creating interconnected public databases allowing following of ownership, security interests, theft, etc. UCOCT states that the privacy of such information is governed by other applicable law. There is no conflict between section 14 and any other state or federal law. The deference to such other law as specifically stated at UCOCT section 14(6) is clear, and also referenced in an accompanying Justice Department opinion letter to section 14. Thus, there is no conflict between UCOCT and any privacy law.

The requirement to include stolen property reports in the CT office files will be new, in some states, but is compelling: presumably the office responsible for maintaining the files that determine vehicle ownership will not wish to disregard information indicating vehicle theft and related title fraud. Because the UCC, and generally are not created by the CT office is free to develop its own policies and procedures on this issue, again providing maximum flexibility to the CT office within its broad usual mandate.

XVI. UCOCT Section 15

As noted above at Part I, UCOCT section 15 will require a "title holding" system, whereby the CT is mailed to and held by the secured creditor rather than the vehicle owner. This is the majority rule nationwide, and the UCOCT Drafting Committee was advised that it is important in combating title fraud. Without this change, the majority states risk becoming a haven for title "washing" and other types of title fraud. CT office advisors and observers to the UCOCT Drafting Committee cited this risk time and time again. The relatively simple change to a title holding system is the majority of states is the easiest way for the states to address this problem. Section 15 also includes some timing requirements, but they are based on prior comments are equally applicable.

XX. UCOCT Section 19

The discussion immediately above is also applicable here. UCOCT section 19 deals with private party transactions issues that do not affect the CT office. This is part of a "package" of provisions at UCOCT sections 16-20, designed to clarify the relationship of UCOCT to other laws (and existing CT law). While some of these issues (and the intersections between them) are inherently complex, none of this concerns the CT office. Strangely, some critics have asserted that section 19 is contrary to other law. This is simply not the case, and the opposite of the case. Rather, section 19 brings the CT law into conformity with long-existing applicable laws such as the UCC (and prevailing case law). This does not change existing law, but is a confirmation and clarification of it. In any event, as noted, the issues do not pertain to the CT office. Once again, it is ironic that the problems and complexities of current law, which are addressed and resolved by UCOCT and in any event do not involve the CT office, are said by some critics to mean that UCOCT creates new burdens and serious legal confusion. It does not. Rather, it reflects a fundamental misunderstanding of UCOCT and the legal environment in which CT law must operate.
QUARTERLY REPORT

XXI. UCTA Section 20

Again much of the discussion immediately above applies here; UCTA section 20 does not relate to the CT office in any significant way. The purpose of section 20 is to conform to other laws governing self-help processes. Quite the contrary, it is a section that is arrived through private negotiations or in a court of law, and need not involve the CT office at all. Quite the contrary, UCTA’s “court process” for UCTA and private parties in these situations is a significant improvement. Some critics have argued that this imposes additional responsibilities and duties on the CT office. Quite the contrary, these responsibilities already exist, and their parameters are often unclear. Rather than creating a new proceeding or requiring these uncertainties to be sorted out on a case-by-case basis in the court, it is preferable for UCTA to provide simple standards to guide the CT office and private parties seeking to enforce their rights through public process. It is true that section 21 includes a requirement to give notice and an opportunity to object to persons whose ownership rights or security interests are being terminated without any other notice or consent. This is designed to comply with the due process standard required by state and federal constitutions. This is not the place for a full discussion of constitutional standards in federal or state law, but it is appropriate to give consideration to these issues with regard to laws that terminate private property rights without any notice or consent by the owner. The notice requirement in section 21 is intended to comply with this fundamental legal standard.

Overall, UCTA section 21 greatly simplifies the law and clarifies the responsibilities of the CT office; it does not add any new legal burdens that do not already exist.

XXIV. UCTA Section 23

UCOTA section 23 accommodates the common scenarios where a person buys a vehicle and then the seller fails or refuses to execute a CT. The UCTA Drafting Committee was presented with evidence indicating that this problem is surprisingly prevalent; it leaves the buyer financially a consumer with possession of a vehicle that he or she has purchased but cannot legally drive. The buyer is unable to obtain a current license tag or insurance, and therefore cannot pay taxes and registration fees, otherwise subject to penalty under section 25(a).

If it is received by the office (e.g., accepted and filed), its sufficiency for Article 9 perfection purposes is governed by section 25(b). This parallels a similar distinction recognized in Article 9 (compare Article 9 sections 9-302 and 9-519). It is not necessary to be able to prove that the security interest affects or is of interest to the CT office, except the specific grounds for rejection which are stated in UCTA section 25(c).

Some critics have noted that UCTA section 25 requires the CT office to maintain files showing the date of perfection of each security interest, a requirement which is likely to become even more important, and also easier to satisfy, as the states move toward electronic filing and computerized recordkeeping systems.

The relation between CT law and UCC Article 9 can be difficult, and UCTA sections 25-26 necessarily reflect this. In a cursory examination of these issues, some have raised concerns about a “lien” form in the states under current law, since the states may not accept or maintain any form of filing. This is not a reason for anyone to oppose UCTA.

The CT office responsibilities associated with the several security-interest statements are essentially the same as what is commonly called a “lien entry form” in the states under current law; the states may not accept or maintain any form of filing. This is not a reason for anyone to oppose UCTA.

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of the security interest under Article 9 relates entirely to perfection of priority issues between private parties outside the UCC, matters entirely outside the purview of the CT office. The CT office should have no interest in this issue.

XXVIII. UCOTA Section 27
This provision (governing termination statements) is consistent with current law and universal practice, and should cause no cognitive issue for the office. Again, this issue primarily implicates perfection issues under Article 9.

XXIX. UCOTA Section 28
This section of UCOTA deals with the listing and responsibilities of the CT office with regard to its security interest files. Some basic uniformity is needed as to the information retained in the files, for purposes of the relation to UCC Article 9 and interaction with other states and national credit markets. UCOTA seeks to require only the most basic CT information relating to security interests required by the CT offices nationwide and required with respect to Article 9. This minimizes the burden on the office while conforming to necessary UCC and national standards. It should be emphasized that UCOTA section 28 deals only with the CT office files relating to security interests and information relating to CTs generally is governed by UCOTA section 14, which requires only that the information contained in CTs be maintained. Section 28 similarly requires only that the information contained in security-interest statements and termination statements be retained, along with a record of the date of receipt. This is self-evident in the basic function of the CT office and is required for the purposes of Article 9. Some CT offices have expressed concern that the ten-year record retention period provided in section 28 could be problematic and that the record retention period may be affected in the future due to impending technology changes. If needed, longer transition periods may be considered on a state-by-state basis. This subsection presents a basic benefit of the uniform law process, as compared to the alternative of a federal rule. Concerns also have been expressed about maintaining the files of security-interest statements as a public record. This is inherent in any lien-registration system, such as real property recording systems and the UCC Article 9 filing system. Such a public record is essential in order to provide notice of security interests to interested parties. It is essentially contemplated by UCOTA Article 9 and other law in all states. Related laws, e.g., privacy laws, are not repealed by UCOTA. As noted, the fee-setting provisions of other law also are not displaced by UCOTA. Concerns have been expressed about the two-day response requirement for requests from the public about security interests. This number is bracketed in the uniform text, indicating that each state should be given an appropriate time limit. The states that your authors are familiar with should be able to meet this time limit, but if not it can be adjusted in each state as needed (that is the point of the brackets in the uniform text). The obvious concern is that the state will have complete control over the time to complete the detail that is required. This is one of the ways that the uniform system is important and inappropriate, as the CO is essentially contractual documentation created by and between private parties that does not pertain to a product of the CT office. If the validity or sufficiency of a CO is in doubt, ample bases exist for the CT office to request more documentation or reject the application for a CO, as provided in UCOTA sections 9 and 10.

The documentation requirements of federal law are not reproduced in UCOTA (though the federal UCC requirement is incorporated into the application process at UCOTA section 9(b)(6)); there would be no reason otherwise to reiterate the requirements of federal law, as they preempt state law, and such requirements are subject to change. UCOTA does not repeat existing law in some states relating to reassignments of CTs by dealers and charitable organizations. This is a difficult matter to consider in a state-by-state basis, as it is always the case when a law is updated or a uniform law is enacted. See also discussion supra at Part II.

XXI. Summary and Conclusion
This discussion suggests seven specific ways in which UCOTA may impact the operations of the CT office:

- A majority of the states will need to convert to a "title holding system," which will require a change to the address line when mailing out a written CT.
- The secured party's address will need to be added to the face of the CT in states where that is not currently done.
- The CT office will need to accept and file stolen property reports if it does not already so do.
- The CT office must maintain files indicating the date of receipt of security-interest statements (essentially the same as a lien entry form under current law).
- The CT office must maintain such files for ten years and respond to inquiries within two days (subject to state variances, transition periods, etc.).
- Certain notices must be provided to persons whose property interests are being terminated without other notice or consent.
- Existing title brands must be carried forward onto new CTs. This appears to be the primary change required with respect to current CT law and CT office behavior will not all affect every state; many if not most states already conform to these minimal UCOTA requirements. The other UCOTA provisions discussed in this article either reflect current CT law and practice, or are discretionary with the CT office. Moreover, each of the above seven changes probably will be necessary and appropriate in every state at some point in time, given the need to provide due process, combat title fraud, clarify ownership issues, and conform to other laws. UCOTA addresses these issues in ways that consider and accommodate the needs and constraints of the CT office. This reflects the direct and active participation of CT office representatives in the UCOTA drafting process, and the active commitment of the UCOTA Drafting Committee to achieve a broad consensus by accommodating that perspective. While there may be some interregional tendency to resist new laws, it is important for interested parties to consider these issues carefully, so as to identify genuine problems and the optimal solution to those problems. Hopefully this will lead to support for local initiatives to update state law by analogy to UCOTA, and thus minimize the need for updating state law than the states' own uniform law process, and UCOTA is a prime example of the resulting benefits.

Homeownership Preservation Summit
(Concluded from page 271)

To provide long-term affordability, the statement indicates that the Federal Housing Administration should provide resources for such a program if feasible and desirable. The CBLs are also urged to explore opportunities to buy subprime portfolios and modify them according to these principles.

F. Limitations on Mortgage Servicing

There is also a critical role for the secondary market in homeownership preservation. This can be achieved through a variety of means, including the use of government-sponsored mortgage insurers, such as Fannie Mae and Freddie Mac, to provide mortgage insurance for conforming loans. In such a case, the servicer would be able to use its existing servicing agreements and foreclosure processes to modify the terms of the loan, as necessary, in order to ensure the successful completion of the homeownership preservation efforts. In addition, the servicer would be able to use its existing collection and foreclosure processes to modify the terms of the loan, as necessary, in order to ensure the successful completion of the homeownership preservation efforts. This is an important consideration for the servicer, as it allows for the rapid resolution of any issues that may arise during the homeownership preservation process.

III. Impact on Servicing

Your readers would like to know that there are no legal restrictions for consumers in situations for cases that have been serviced, due to current tax rules and the requirements of current servicing agreements. Like servicing agreements in mortgage securitizations do not permit servicers to modify a mortgage loan unless that loan is in default or is in the process of being modified. Therefore, the servicer would go to the court to conduct a meaningful review of the facts and circumstances of the borrower and determine if the loan is a hardship. Therefore, this would only be an option available to a loan that is in arrears and the servicer has determined that the borrower has lost a reasonable opportunity to cure the default or that the borrower is unable to cure the default. Therefore, this would only be an option available to a loan that is in arrears and the servicer has determined that the borrower has lost a reasonable opportunity to cure the default or that the borrower is unable to cure the default. Therefore, this would only be an option available to a loan that is in arrears and the servicer has determined that the borrower has lost a reasonable opportunity to cure the default or that the borrower is unable to cure the default. Therefore, this would only be an option available to a loan that is in arrears and the servicer has determined that the borrower has lost a reasonable opportunity to cure the default or that the borrower is unable to cure the default. Therefore, this would only be an option available to a loan that is in arrears and the servicer has determined that the borrower has lost a reasonable opportunity to cure the default or that the borrower is unable to cure the default. Therefore, this would only be an option available to a loan that is in arrears and the servicer has determined that the borrower has lost a reasonable opportunity to cure the default or that the borrower is unable to cure the default. Therefore, this would only be an option available to a loan that is in arrears and the servicer has determined that the borrower has lost a reasonable opportunity to cure the default or that the borrower is unable to cure the default.