

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/30/17  
**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Cook **HB** 182

**SHORT TITLE** Uniform Property Note Transfer Enforcement **SB** \_\_\_\_\_

**ANALYST** Amacher

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	See Fiscal Impacts

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Bernalillo County Metro Court (BCMC)

### SUMMARY

#### Synopsis of Bill

House Bill 182 amends the Uniform Commercial Code (Chapter 55 NMSA 1978) relating to property, allows for enforcement by the transferee of a note in the event a direct or indirect transferor could have enforced it. Furthermore, HB 182 provides for a lost-note affidavit, and the form, in action to foreclose a lien on real property that is secured by the instrument. HB 182 has an effective date of January 1, 2018.

### FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) indicates there will be minimal costs for statewide update, distribution and documentation of statutory changes. The impact may be proportional to the enforcement of this law and the evidentiary effect given to a lost-note affidavit in a proceeding – whether additional evidence is needed in support or rebut-and whether additional appeals will be filed in response to rulings hinging upon the introductions of lost-note affidavits. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, which require additional resources.

## **SIGNIFICANT ISSUES**

HB 182 permits enforcement to foreclose a lien on real property of an instrument (note) to by a person who has directly or indirectly acquired it from a person who was entitled to enforce the instrument when loss of possession occurred. HB 182 requires a creditor to attest to the required facts in a verified complaint, affidavit, or statement affirmed under penalty of perjury, in any action to foreclose a lien on real property secured by the instrument. HB 182 provides the form for a lost-note affidavit.

HB 182 is applicable in the following instances:

- to an instrument if the loss of possession occurred before, on or after January 1, 2018;
- to an instrument if the right to enforce was acquired before, on or after January 1, 2018;
- a judicial proceeding commenced on or after January 1, 2018; and,
- a judicial proceeding commenced before January 1, 2018 unless the court finds that a provision of this act would interfere with the conduct of the judicial proceeding or would prejudice the rights of a party, in which case the superseded law applies.

## **PERFORMANCE IMPLICATIONS**

The AOC highlights the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in cases disposed of as a percent of cases filed and in the percentage change in case filing by case type.

## **OTHER SUBSTANTIVE ISSUES**

The AOC notes the provisions in HB 182 track 2002 amendments to Section 3-309 by the Uniform Law Commission. In 2015, in approving the Uniform Home Foreclosures Procedures Act (UHFPA), the Uniform Law Commissioners noted Section 403 (a) tracked U.C.C. Section 3-309 as amended in 2002.

Furthermore, the AOC indicates the subject of lost-note affidavits has been under significant review and discussion by the Uniform Law Commission. The commissioners have noted there is a split authority in the event a successor ‘holder’ may execute a lost-note affidavit when it never had the possession of the note. In the case a note has legitimately been lost or destroyed it may not be possible for the foreclosing creditor to get the predecessor to execute an appropriate lost-note affidavit. A model form of the lost-note affidavit follows U.C.C. Section 403. It does not require the when, where, and how the loss took place. Thusly, if someone were to say they looked for such a note and could not find one would be in the acceptable parameters of due diligence on behalf of the affiant (the person who swears to an affidavit). The AOC states the HB 182 lost-note affidavit form is a duplicate of the same form contained in U.C.C. Section 403.

The Bernalillo County Metropolitan Court (BCMC) is a court of limited jurisdictions and as such does not have jurisdiction over foreclosure proceedings. Nevertheless, as BCMC indicates, it does have general civil jurisdiction where the debt or sum does not exceed \$10 thousand dollars exclusive of interest and costs. BCMC notes it is possible that someone could bring a claim before the court on a lost promissory note (that is note secured by real property) provided the face amount of the note is \$10 thousand dollars or less. BCMC does not anticipate any fiscal or other material impact in such proceedings by this amendment.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Uniform Commercial Code will not have a provision allowing the transferee of a note to enforce it, and will not provide for lost-note affidavits.

JMA/jle