

FIRST REGULAR SESSION

SENATE BILL NO. 425

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Read 1st time February 27, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1782S.011

AN ACT

To amend chapter 443, RSMo, by adding thereto twenty-four new sections relating to real estate foreclosure, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 443, RSMo, is amended by adding thereto twenty-four
2 new sections, to be known as sections 443.328, 443.460, 443.465, 443.470,
3 443.475, 443.480, 443.485, 443.490, 443.495, 443.500, 443.505, 443.510, 443.515,
4 443.520, 443.525, 443.530, 443.535, 443.540, 443.545, 443.550, 443.560, 443.570,
5 443.575, and 443.580, to read as follows:

443.328. 1. All terms in this section shall have the same meaning
2 as in section 443.465.

3 2. When a foreclosing mortgagee intends to conduct a power of
4 sale foreclosure under sections 443.290 to 443.440, of residential real
5 property that is occupied by one or more mortgagors who are owner-
6 occupants, the foreclosing mortgagee shall prepare a written notice of
7 default and intention to foreclose addressed to all mortgagors. The
8 notice of default and intention to foreclose shall state:

9 (1) The name and address of any current mortgagee;

10 (2) The name and last known address of all mortgagors;

11 (3) The address or a description of the location of the property
12 subject to foreclosure, and the legal description of the property;

13 (4) The description of the default or, if the default is a monetary
14 default, an itemization of the defaulted amount;

15 (5) The action required to cure the default, including the
16 defaulted amount and the estimated amount of the foreclosing
17 mortgagee's attorney's fees and costs, and all other fees and costs
18 related to the default estimated to be incurred by the foreclosing

19 mortgagee by the deadline date;

20 (6) The date by which the default must be cured, which shall be
21 at least sixty days after the date of the notice of default and intention
22 to foreclose;

23 (7) A statement that if the default is not cured by the deadline
24 date stated in the notice of default and intention to foreclose, the entire
25 unpaid balance of the moneys owed to the mortgagee under the
26 security instrument will become due, that the mortgagee intends to
27 conduct a power of sale foreclosure to sell the property at a public sale
28 without any court action, and that the mortgagee or any other person
29 may acquire the property at the public sale;

30 (8) The name, address, electronic address, and telephone number
31 of the attorney who is representing the foreclosing mortgagee; provided
32 that the attorney shall be licensed to practice law in the state and
33 physically located in the state;

34 (9) Notice of the right of the owner-occupant to elect to
35 participate in any other process as established by law; and

36 (10) Contact information for local approved housing counselors
37 and approved budget and credit counselors as those terms are defined
38 in section 443.465.

39 3. The notice of default and intention to foreclose shall also
40 contain wording substantially similar to the following in all capital
41 letters and printed in not less than fourteen-point font:

42 "IF THE DEFAULT CONTINUES AFTER THE
43 DEADLINE DATE IN THIS NOTICE, THE PROPERTY MAY
44 BE FORECLOSED AND SOLD WITHOUT ANY COURT
45 ACTION.

46 YOU MAY HAVE CERTAIN LEGAL RIGHTS OR
47 DEFENSES. FOR ADVICE, YOU SHOULD CONSULT AN
48 ATTORNEY LICENSED IN THIS STATE.

49 AFTER THE DEADLINE DATE IN THIS NOTICE,
50 TWO PUBLIC SHOWINGS (OPEN HOUSES) OF THE
51 PROPERTY BY THE LENDER WILL BE HELD, BUT ONLY
52 IF ALL MORTGAGORS (OWNERS) OF THE PROPERTY
53 WHO ALSO CURRENTLY RESIDE AT THE PROPERTY SO
54 AGREE. TO SHOW THAT ALL OWNERS RESIDING AT
55 THE PROPERTY AGREE TO ALLOW TWO OPEN HOUSES

56 BY THE LENDER, THEY MUST SIGN A LETTER SHOWING
57 THEY AGREE. THE SIGNED LETTER MUST BE SENT TO
58 THIS OFFICE AT THE ADDRESS GIVEN IN THIS NOTICE.

59 THIS OFFICE MUST ACTUALLY RECEIVE THE
60 SIGNED LETTER BY THE DEADLINE DATE IN THIS
61 NOTICE. THE SIGNED LETTER MUST BE SENT TO THIS
62 OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR
63 EXPRESS MAIL, POSTAGE PREPAID AND RETURN
64 RECEIPT REQUESTED.

65 IF THE SIGNED LETTER IS NOT RECEIVED BY
66 THIS OFFICE BY THE DEADLINE DATE, THE PROPERTY
67 WILL THEN BE SOLD WITHOUT ANY OPEN HOUSES
68 BEING HELD.

69 EVEN IF THIS OFFICE RECEIVES THE SIGNED
70 LETTER TO ALLOW THE LENDER TO HOLD TWO OPEN
71 HOUSES OF THE PROPERTY, IF ALL OWNERS LATER DO
72 NOT COOPERATE TO ALLOW THE OPEN HOUSES, THE
73 PROPERTY WILL BE SOLD WITHOUT ANY OPEN HOUSES
74 BEING HELD.

75 ALL FUTURE NOTICES AND CORRESPONDENCE
76 WILL BE MAILED TO YOU AT THE ADDRESS AT WHICH
77 YOU RECEIVED THIS NOTICE UNLESS YOU SEND
78 WRITTEN INSTRUCTIONS TO THIS OFFICE INFORMING
79 THIS OFFICE OF A DIFFERENT ADDRESS. THE
80 WRITTEN INSTRUCTIONS MUST BE SENT TO THIS
81 OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR
82 EXPRESS MAIL, POSTAGE PREPAID AND RETURN
83 RECEIPT REQUESTED."

84 4. The notice of default and intention to foreclose shall include
85 a copy of:

86 (1) The original security instrument, and copies of any
87 subsequent agreements and assignments;

88 (2) Any other documents that amend or alter the terms of the
89 original agreement that were signed by the mortgagor and the
90 mortgagee or any successors or assigns of such parties.

91 5. The foreclosing mortgagee shall have the notice of default and
92 intention to foreclose served on all mortgagors and any prior or junior

93 creditors who have a recorded lien on the property.

94 6. As used in this section, unless the context clearly indicates
95 otherwise, the notice of default and intention to foreclose shall also
96 include any amended notice that results from participation in the
97 mortgage foreclosure dispute resolution program under section 443.470.

 443.460. Sections 443.460 to 443.575 shall apply to nonjudicial
2 foreclosures conducted by power of sale pursuant to Sections 443.290
3 to 443.440, of residential real property that is occupied by one or more
4 mortgagors who are owner-occupants, but shall not apply to power of
5 sale foreclosures that have been converted to judicial foreclosure
6 actions pursuant to sections 443.540 to 443.550.

 443.465. As used in section 443.326 and sections 443.460 to
2 443.575, the following terms shall mean:

3 (1) "Approved budget and credit counselor", a budget and credit
4 counseling agency that has received approval from a United States
5 trustee or bankruptcy administrator to provide instructional courses
6 concerning personal financial management pursuant to 11 U.S.C. 111;

7 (2) "Approved housing counselor", a housing counseling agency
8 that has received approval from the United States Department of
9 Housing and Urban Development to provide housing counseling
10 services pursuant to 12 U.S.C. 1701x;

11 (3) "Division", the division of finance within the department of
12 insurance, financial institutions, and professional registration;

13 (4) "Director", the director of the division of finance;

14 (5) "Dispute resolution", a facilitated negotiation between an
15 owner-occupant and mortgagee for the purpose of reaching an
16 agreement for a mortgage loan modification or other agreement in an
17 attempt to avoid foreclosure or to mitigate damages if foreclosure is
18 unavoidable;

19 (6) "Mortgagee", the lender of secured party and current holder
20 of record of an interest in a security instrument;

21 (7) "Mortgagor", all borrowers and debtors named in the security
22 instrument and includes the current owner of record of the property
23 whose interest is subject to the security instrument;

24 (8) "Neutral party", a person who is a dispute resolution
25 specialist assigned by the division to facilitate the dispute resolution
26 process;

27 **(9) "Nonjudicial foreclosure", foreclosure under power of sale**
28 **pursuant to sections 443.290 to 443.440;**

29 **(10) "Owner-occupant", a person, at the time that a notice of**
30 **default and intention to foreclose is served upon the mortgagor under**
31 **a power of sale:**

32 **(a) Who owns an interest in the residential property, whereby**
33 **the interest is encumbered by the security instrument being foreclosed**
34 **upon; and**

35 **(b) For whom the residential property is and has been the**
36 **person's primary residence for a continuous period of not less than two**
37 **hundred days immediately preceding the date on which the notice is**
38 **served.**

443.470. 1. A foreclosure dispute resolution program shall be
2 **established within the division to provide owner-occupants facing**
3 **foreclosure an opportunity to negotiate an agreement to avoid**
4 **foreclosure or mitigate damages in cases where foreclosure is**
5 **unavoidable.**

6 **2. The office of state courts administrator shall provide**
7 **assistance to the division in matters including:**

8 **(1) Contract procurement;**

9 **(2) Performance oversight, such as monitoring compliance with**
10 **program requirements; and**

11 **(3) Management services to oversee any contract between the**
12 **division and a private organization retained by the division to provide**
13 **dispute resolution services or personnel, including providing the**
14 **division with monthly status reports and evaluations.**

15 **3. The division and the office of state courts administrator shall**
16 **execute a memorandum of understanding that establishes their rights**
17 **and responsibilities relating to the foreclosure dispute resolution**
18 **program, which may be amended from time to time.**

19 **4. The division is authorized to contract with county, state, or**
20 **federal agencies, and private organizations in order to carry out the**
21 **requirements of sections 443.470 to 443.535.**

443.475. Before a public sale may be conducted pursuant to
2 **sections 443.290 to 443.440 for owner-occupied residential property, the**
3 **foreclosing mortgagee shall, at the election of the owner-occupant,**
4 **participate in the foreclosure dispute resolution program pursuant to**

5 sections 443.470 to 443.535 to attempt to negotiate an agreement that
6 avoids foreclosure or mitigates damages where foreclosure is
7 unavoidable.

443.480. 1. A notice of default and intention to foreclose served
2 pursuant to section 443.326 shall include notice that the mortgagee is
3 required, at the election of the owner-occupant, to participate in the
4 foreclosure dispute resolution program pursuant to sections 443.470 to
5 443.535 to attempt to avoid foreclosure or to mitigate damages where
6 foreclosure is unavoidable.

7 2. The notice required by subsection 1 of this section shall be
8 printed in not less than fourteen-point font and include:

9 (1) The name and contact information of any mortgagor and any
10 mortgagee;

11 (2) The subject property address and legal description of the
12 property;

13 (3) The name and contact information of a person or entity
14 authorized to negotiate a loan modification on behalf of the mortgagee;

15 (4) A statement that the mortgagor shall consult with an
16 approved housing counselor or an approved budget and credit
17 counselor at least thirty days prior to the first day of a scheduled
18 dispute resolution session;

19 (5) Contact information for all local approved housing
20 counselors;

21 (6) Contact information for all local approved budget and credit
22 counselors;

23 (7) A statement that the mortgagor electing to participate in the
24 mortgage foreclosure dispute resolution program shall provide a
25 certification under penalty of perjury to the department that the
26 mortgagor is an owner-occupant of the subject property, including
27 supporting documentation;

28 (8) A general description of the information that an owner-
29 occupant electing to participate in the foreclosure dispute resolution
30 program is required to provide a statement that the owner-occupant
31 shall elect to participate in the program no later than thirty days after
32 the department's mailing of the notice under section 443.470, or the
33 right shall be waived.

443.485. 1. Within three days after a mortgagee serves a notice

2 of default and intention to foreclose pursuant to section 443.326, the
3 mortgagee shall file the same notice with the division and pay a filing
4 fee of five hundred fifty dollars, which shall be deposited into the
5 mortgage foreclosure dispute resolution fund established under section
6 443.535.

7 2. Violation of this section shall constitute an unlawful
8 merchandising practice under section 407.020.

443.490. 1. Within ten days after the mortgagee's filing of a
2 notice of default and intention to foreclose with the division, the
3 division shall mail a written notification by registered or certified mail
4 to the mortgagor that a notice of default and intention to foreclose has
5 been filed with the division. The notification shall inform the
6 mortgagor of an owner-occupant's right to elect to participate in the
7 foreclosure dispute resolution program and shall include:

8 (1) Information about the foreclosure dispute resolution
9 program;

10 (2) A form for an owner-occupant to elect or to waive
11 participation in the foreclosure dispute resolution program that shall
12 contain instructions for the completion and return of the form to the
13 division and the division's mailing address;

14 (3) A statement that the mortgagor electing to participate in the
15 foreclosure dispute resolution program shall provide a certification
16 under penalty of perjury to the division that the mortgagor is an
17 owner-occupant of the subject property, including a description of
18 acceptable supporting documentation;

19 (4) A statement that the owner-occupant shall elect to participate
20 in the foreclosure dispute resolution program no later than thirty days
21 after the division's mailing of the notice or the owner-occupant shall be
22 deemed to have waived the option to participate in the program;

23 (5) A description of the information required under subdivision
24 (2) of subsection 3 of section 443.505 that the owner-occupant shall
25 provide to the mortgagee and division;

26 (6) A statement that the owner-occupant shall consult with an
27 approved housing counselor or approved budget and credit counselor
28 at least thirty days prior to the first day of a scheduled dispute
29 resolution session;

30 (7) Contact information for all local approved housing

31 **counselors;**

32 **(8) Contact information for all local approved budget and credit**
33 **counselors; and**

34 **(9) Contact information for the division.**

35 **2. The notification required under subsection 1 of this section**
36 **shall be mailed to the subject property and any other addresses for the**
37 **mortgagor as provided in the mortgagee's notice of default and**
38 **intention to foreclose under section 443.485.**

443.495. 1. An owner-occupant elects to participate in the
2 **mortgage foreclosure dispute resolution program by returning to the**
3 **division:**

4 **(1) The completed program election form provided under section**
5 **443.490;**

6 **(2) Certification under penalty of perjury that the mortgagor is**
7 **an owner-occupant, accompanied with any supporting documentation,**
8 **including copies of recent utility billing statements, voter registration**
9 **records, real estate property tax records, or state identification forms.**

10 **2. The completed form and fees shall be received by the division**
11 **no later than thirty days after mailing of the division's notification**
12 **under section 443.490. If the completed form and fee are not received**
13 **within the required time period, the owner-occupant shall be deemed**
14 **to have waived any right to participate in the foreclosure dispute**
15 **resolution program with respect to the subject property.**

16 **3. If the owner-occupant does not elect to participate in dispute**
17 **resolution, the division shall notify the mortgagee within ten days of**
18 **receiving an election form indicating nonelection or the termination of**
19 **the thirty-day time period for election. After receiving the division's**
20 **notification, the mortgagee may proceed with the nonjudicial**
21 **foreclosure.**

443.500. 1. If an owner-occupant elects to participate in the
2 **foreclosure dispute resolution program, the division shall open a**
3 **dispute resolution case within twenty days of receipt of the owner-**
4 **occupant's election form and fee in accordance with section 443.495,**
5 **and the division shall mail written notification of the case opening to**
6 **the parties by registered mail, return receipt requested, which shall**
7 **include:**

8 **(1) Notification of the date, time, and location of the dispute**

9 resolution session;

10 (2) An explanation of the dispute resolution process;

11 (3) Information about the dispute resolution program
12 requirements; and

13 (4) Consequences and penalties for noncompliance.

14 2. The dispute resolution session shall be scheduled for a date no
15 less than thirty and no more than sixty days from the date of the
16 notification of case opening, unless mutually agreed to by the parties
17 and the neutral party.

18 3. The written notification of a case opening under this section
19 shall operate as a stay of the foreclosure proceeding.

443.505. 1. The parties to a dispute resolution process under
2 sections 443.470 to 443.535 shall consist of the owner-occupant or the
3 owner-occupant's representative, and the mortgagee or the mortgagee's
4 representative; provided that:

5 (1) A representative of the mortgagee who participates in the
6 dispute resolution shall be authorized to negotiate a loan modification
7 on behalf of the mortgagee or shall have, at all stages of the dispute
8 resolution process, direct access by telephone, videoconference, or
9 other immediately available contemporaneous telecommunications
10 medium, to a person who is so authorized;

11 (2) The mortgagee and owner-occupant may be represented by
12 counsel; and

13 (3) The owner-occupant may be assisted by an approved housing
14 counselor or approved budget and credit counselor.

15 2. No fewer than thirty days prior to the first day of a scheduled
16 dispute resolution session, the owner-occupant shall consult with an
17 approved housing counselor or approved budget and credit counselor.

18 3. The parties shall comply with all information requests from
19 the division and neutral party. No less than fifteen days prior to the
20 first day of the scheduled dispute resolution session:

21 (1) The mortgagee shall provide to the division and the
22 mortgagor:

23 (a) A copy of the promissory note, signed by the mortgagor,
24 including any endorsements, amendments, or riders to the note
25 evidencing the debt;

26 (b) A copy of the security instrument and any amendments,

27 riders, or other documentation evidencing the mortgagee's right of
28 nonjudicial foreclosure and interest in the property including any
29 interest as a successor or assignee; and

30 (c) Financial records and correspondence that confirms default.

31 (2) The owner-occupant shall provide to the division and the
32 mortgagee:

33 (a) Documentation showing income qualification for a loan
34 modification, including any copies of pay stubs, W-2 forms, social
35 security or disability income, retirement income, child support income,
36 or any other income that the owner-occupant deems relevant to the
37 owner-occupant's financial ability to repay the debt;

38 (b) Any records or correspondence available which may dispute
39 that the mortgagor is in default;

40 (c) Any records or correspondence available evidencing a loan
41 modification or amendment;

42 (d) Any records or correspondence available that indicate the
43 parties are currently engaged in bona fide negotiations to modify the
44 loan or negotiate a settlement of the default;

45 (e) Names and contact information for housing counselors,
46 approved budget and credit counselors, or representatives of the
47 mortgagee, with whom the owner-occupant may have or is currently
48 working with to address the default; and

49 (f) Verification of counseling by an approved housing counselor
50 or approved budget and credit counselor.

51 4. The dispute resolution session shall consist of at least one
52 meeting lasting no more than three hours, which may be extended by
53 the equivalent of one additional three-hour session on the same or a
54 different day at the neutral party's discretion. The parties shall be
55 present in person at the dispute resolution session provided that a
56 party may submit a written request to the division at least fourteen
57 days prior to the scheduled dispute resolution session to participate
58 through telephone, videoconference, or other contemporaneous
59 telecommunications medium. A request to participate through a
60 telecommunications medium shall be granted only for good cause and
61 upon agreement of the neutral party and the other party to the dispute
62 resolution. For purposes of this subsection, "good cause" means an
63 event or circumstance outside of the requesting party's control that

64 makes in-person participation impossible. The neutral party shall have
65 the discretion to postpone a dispute resolution session in order to allow
66 the requesting party to participate in person.

67 5. A dispute resolution process conducted shall use the
68 calculations, assumptions, and forms established by the Federal Deposit
69 Insurance Corporation Loan Modification Program Guide as set out on
70 the Federal Deposit Insurance Corporation's publicly accessible website
71 or a different program or process if agreed to by both parties and the
72 neutral party.

73 6. The dispute resolution process shall conclude within sixty
74 days from the first scheduled meeting between the parties and the
75 neutral party, provided that the neutral party shall have the authority
76 to extend this period. Nothing in this section shall be construed to
77 require the dispute resolution process to take the full sixty days
78 allotted to reach a negotiated agreement.

443.510. 1. Within ten days from the conclusion of the dispute
2 resolution, the neutral party shall file a closing report with the division
3 which verifies the parties' presence at the session, compliance with the
4 requirements of sections 443.475 to 443.505, and reports whether the
5 parties reached an agreement to resolve the dispute and the date of the
6 dispute resolution's conclusion. Upon receipt of the neutral party's
7 closing report, the division shall close the case. The division shall
8 forward a written copy of the neutral party's closing report by
9 registered or certified mail to the parties within five days after receipt
10 from the neutral party.

11 2. If, despite the parties' participation in the dispute resolution
12 process and compliance thereunder, the parties are not able to come to
13 an agreement, the neutral party shall file a closing report with the
14 division evidencing that the parties met the program requirements but
15 were unable to come to an agreement. The mortgagee may file or
16 record the report with the recorder of deeds in the county where the
17 subject property is situated and non judicial foreclosure may proceed
18 as otherwise provided by law. Nothing in this subsection shall be
19 construed to require the neutral party to wait the full sixty days
20 allotted for dispute resolution to determine that the parties were
21 unable to reach an agreement and file a report.

22 3. If the parties have complied with the requirements of sections

23 443.475 to 443.505 and have reached an agreement, the agreement shall
24 be memorialized in a settlement document signed by the parties or
25 their authorized representatives. If the parties or their authorized
26 representatives participate in the dispute resolution session in person,
27 the settlement document shall be signed in the presence of the neutral
28 party. If any of the parties or their authorized representatives
29 participate in the dispute resolution through telephone,
30 videoconference, or other immediately available contemporaneous
31 telecommunications medium, the settlement document shall be signed
32 and returned to the neutral party no later than ten days after the
33 conclusion of the dispute resolution session. The parties shall be
34 responsible for drafting any agreement reached for filings and
35 recordings, and enforcing the settlement document. The neutral party
36 shall file the settlement document with the neutral party's closing
37 report. The settlement document shall be a contract between the
38 parties and shall be enforceable in a private contract action in a court
39 of appropriate jurisdiction in the event of breach by either party. If
40 the settlement document allows for foreclosure or other transfer of the
41 subject property, the stay of the foreclosure shall be released upon
42 filing or recording the settlement document with the recorder of deeds
43 in the county where the subject property is situated.

44 4. If the parties to a dispute resolution process reach an
45 agreement which resolves the matters at issue in the dispute resolution
46 before the first day of the scheduled dispute resolution session
47 scheduled pursuant to this section, the parties shall notify the neutral
48 party by that date. The neutral party shall thereafter issue a closing
49 report that the parties have reached an agreement prior to the
50 commencement of a dispute resolution session. If the agreement
51 provides for foreclosure, the parties shall memorialize the agreement
52 in a writing signed by both parties and provide it to the neutral
53 party. Any agreement authorizing foreclosure shall be attached to the
54 neutral party's closing report. If the agreement authorizes foreclosure,
55 the stay of the foreclosure shall be released upon filing or recording
56 with the recorder of deeds in the county where the subject property is
57 situated. No fees shall be refunded if the parties come to an agreement
58 prior to a dispute resolution session.

443.515. 1. The neutral party's closing report shall indicate if the

2 mortgagee or the owner-occupant failed to comply with requirements
3 of the mortgage foreclosure dispute resolution program.

4 (1) In the case of the mortgagee, failure to comply with the
5 requirements of the program may consist of:

6 (a) Participation in dispute resolution without the authority to
7 negotiate a loan modification or without access at all stages of the
8 dispute resolution process to a person who is so authorized;

9 (b) Failure to provide the required information or documents;

10 (c) Refusal to cooperate or participate in dispute resolution; or

11 (d) Refusal or failure to pay program fees in a timely manner.

12 (2) In the case of the owner-occupant, failure to comply with the
13 requirements of the program may consist of:

14 (a) Failure to provide the required information or documents; or

15 (b) Refusal to cooperate or participate in dispute resolution.

16 2. If the neutral party determines that the noncompliance was
17 unjustified as a result of circumstances within a party's control,
18 sanctions may be imposed on the noncompliant party as follows:

19 (1) Sanctions against a mortgagee for unjustified noncompliance
20 with the program shall include a stay of the foreclosure and a fine
21 payable to the owner-occupant not to exceed one thousand five hundred
22 dollars; and

23 (2) Sanctions against an owner-occupant for unjustified
24 noncompliance with the program shall include a removal of the stay of
25 the foreclosure and a fine payable to the mortgagee not to exceed one
26 thousand five hundred dollars.

443.520. 1. The written notification of a case opening under
2 section 443.500 shall operate as a stay of the nonjudicial foreclosure
3 proceeding.

4 2. Upon a stay pursuant to subsection 1 of this section, a
5 mortgagee shall not foreclose upon a mortgage or deed of trust:

6 (1) Until the neutral party's report confirming either that the
7 parties have been unable to reach an agreement or have reached an
8 agreement that authorizes foreclosure is filed with the division
9 pursuant to section 443.515;

10 (2) If a statement of noncompliance has been issued against the
11 mortgagee pursuant to section 443.515; or

12 (3) Unless otherwise provided by law or court order.

443.525. Personal financial information and other sensitive
2 personal information, including information describing an individual's
3 finances, income, assets, liabilities, net worth, bank balances, financial
4 history or activities, or credit worthiness which is disclosed by the
5 parties in the course of the foreclosure dispute resolution program,
6 shall be confidential and not subject to public disclosure.

443.530. A neutral party shall possess sufficient knowledge in the
2 areas of law, real estate, or finance and shall receive sufficient training
3 to be able to effectuate the purposes of sections 443.470 to 443.525. A
4 neutral party shall not be liable for any act or omission that occurs in
5 relation to the administration or operation of the foreclosure dispute
6 resolution program. A neutral party shall not be a necessary party to,
7 called as a witness in, or subject to any subpoena duces tecum for the
8 production of documents in any arbitral, judicial, or administrative
9 proceeding that arises from or relates to the foreclosure dispute
10 resolution program.

443.535. There is hereby established in the state treasury a
2 special fund to be known as the "Foreclosure Dispute Resolution Fund"
3 to be administered by the division to implement and operate the
4 foreclosure dispute resolution program established by sections 443.470
5 to 443.535. The state treasurer shall be custodian of the fund. In
6 accordance with sections 30.170 and 30.180, the state treasurer may
7 approve disbursements. The fund shall be a dedicated fund and, upon
8 appropriation, money in the fund shall be used solely for the
9 administration of sections 443.470 to 443.535. Notwithstanding the
10 provisions of section 33.080 to the contrary, any moneys remaining in
11 the fund at the end of the biennium shall not revert to the credit of the
12 general revenue fund. The state treasurer shall invest moneys in the
13 fund in the same manner as other funds are invested. Any interest and
14 moneys earned on such investments shall be credited to the fund.

443.540. 1. An owner-occupant of a residential property that is
2 subject to nonjudicial foreclosure under sections 443.290 to 443.440 may
3 convert the action to a judicial foreclosure under sections 443.190 to
4 443.280 provided that:

5 (1) A petition conforming to section 443.545 shall be filed with
6 the circuit court in any county where any part of the property is
7 situated, stating that the owner-occupant of the property elects to

8 convert the nonjudicial foreclosure to a judicial foreclosure proceeding
9 no later than thirty days after the notice of default and intent to
10 foreclose is served on the owner-occupant as required by section
11 443.326;

12 (2) Within forty-five days of the filing of the petition, all owner-
13 occupants and mortgagors of an interest in the residential property
14 whose interests are pledged or otherwise encumbered by the security
15 instrument that is being foreclosed and all persons who have signed the
16 promissory note or other instrument evidencing the debt secured by
17 the security instrument that is being foreclosed, including without
18 limitation co-obligors and guarantors, shall file a statement in the
19 circuit court stating that they agree to submit themselves to the
20 judicial process and the jurisdiction of the circuit court; provided
21 further that if this condition is not satisfied, the circuit court action
22 may be dismissed with prejudice as to the right of any owner-occupant
23 to convert the action to a judicial proceeding, and the mortgagee may
24 proceed nonjudicially;

25 (3) Filing a petition pursuant to subdivision (1) of this subsection
26 shall automatically stay the nonjudicial foreclosure action unless and
27 until the judicial proceeding has been dismissed;

28 (4) The person filing the petition pursuant to subdivision (1) of
29 this subsection shall have an affirmative duty to promptly notify the
30 attorney who is handling the nonjudicial foreclosure about the filing of
31 the petition for conversion;

32 (5) All parties joined in the converted judicial proceeding may
33 assert therein any claims and defenses that they could have asserted
34 had the action originally been commenced as a judicial foreclosure
35 action.

36 2. This section shall not apply to a foreclosure for which the
37 mortgagor has elected to participate in the mortgage foreclosure
38 dispute resolution program under sections 443.470 to 443.530.

443.545. 1. A petition filed pursuant to section 443.540 shall
2 contain at a minimum:

3 (1) A caption setting forth the name of the court, the title of the
4 action, and the names of the filing party as petitioner and the
5 foreclosing party as the respondent;

6 (2) The name, mailing address, and telephone number of the

7 filing party;

8 (3) The address and legal description of the property subject to
9 the foreclosure action;

10 (4) A statement identifying all other owner-occupants and
11 mortgagors of the property whose interests are pledged or otherwise
12 encumbered by the security instrument that is being foreclosed and all
13 persons who have signed the promissory note or other instrument
14 evidencing the debt secured by the security instrument that is being
15 foreclosed, including without limitation co-obligors and guarantors;

16 (5) A certification under penalty of perjury that the filing party
17 is an owner-occupant of the subject property and seeks to convert the
18 nonjudicial foreclosure to a judicial proceeding;

19 (6) A statement certifying that the filing party served a copy of
20 the petition on the foreclosing party's attorney identified in the notice
21 of default and intent to foreclose under section 443.326 either by
22 personal delivery or by postage prepaid United States mail, to the
23 address of the attorney as set forth in said section; and

24 (7) A copy of the notice of default and intent to foreclose that
25 was served on the filing party pursuant to section 443.328.

26 2. The assignment of parties in the petition for conversion
27 pursuant to subsection 1 of this section shall relate to the petition for
28 conversion only and shall not be construed to affect the assignment of
29 parties in a nonjudicial power of sale foreclosure converted to a
30 judicial foreclosure pursuant to this section.

443.550. 1. The notice of default and intent to foreclose that is
2 served as required under section 443.326 shall include a form
3 containing the contents described in section 443.545 and in addition to
4 all other requirements, a statement printed in not less than fourteen-
5 point font as follows:

6 "IF THE PROPERTY BEING FORECLOSED IS USED
7 FOR RESIDENTIAL PURPOSES, AN OWNER-OCCUPANT
8 OF THE PROPERTY (A PERSON WHO, AT THE TIME THIS
9 NOTICE IS SERVED, OWNS AN INTEREST IN THE
10 RESIDENTIAL PROPERTY THAT IS SUBJECT TO THE
11 MORTGAGE BEING FORECLOSED AND THE
12 RESIDENTIAL PROPERTY HAS BEEN THE PRIMARY
13 RESIDENCE CONTINUOUSLY FOR NOT LESS THAN TWO

14 HUNDRED DAYS) HAS THE RIGHT TO CONVERT A
15 NONJUDICIAL FORECLOSURE PROCEEDING TO A
16 JUDICIAL FORECLOSURE WHERE CLAIMS AND
17 DEFENSES MAY BE CONSIDERED BY A COURT OF
18 LAW. TO EXERCISE THIS RIGHT, THE OWNER-
19 OCCUPANT SHALL COMPLETE AND FILE THE
20 ATTACHED FORM WITH THE CIRCUIT COURT IN ANY
21 COUNTY WHERE ANY PART OF THE PROPERTY IS
22 SITUATED WITHIN THIRTY DAYS AFTER SERVICE OF
23 THIS NOTICE.

24 IN ADDITION, ALL OWNER-OCCUPANTS AND
25 MORTGAGORS OF THE RESIDENTIAL PROPERTY WHOSE
26 INTERESTS HAVE BEEN PLEDGED OR OTHERWISE
27 ENCUMBERED BY THE MORTGAGE THAT IS BEING
28 FORECLOSED AND ALL PERSONS WHO HAVE SIGNED
29 THE PROMISSORY NOTE OR OTHER INSTRUMENT
30 EVIDENCING THE DEBT SECURED BY THE MORTGAGE
31 THAT IS BEING FORECLOSED, INCLUDING, WITHOUT
32 LIMITATION, CO-OBLIGORS AND GUARANTORS, SHALL
33 FILE A STATEMENT IN THE CIRCUIT COURT ACTION
34 THAT THEY AGREE TO SUBMIT TO THE JUDICIAL
35 PROCESS AND THE JURISDICTION OF THE CIRCUIT
36 COURT WITHIN FORTY-FIVE DAYS OF THE FILING OF
37 THE ATTACHED FORM. FAILURE TO SATISFY THIS
38 CONDITION MAY RESULT IN DISMISSAL OF THE
39 CIRCUIT COURT ACTION WITH PREJUDICE.

40 AN OWNER-OCCUPANT SHALL PROMPTLY NOTIFY
41 THE ATTORNEY LISTED IN THIS NOTICE ABOUT THE
42 FILING OF THE CONVERSION FORM.

43 FORECLOSURE DISPUTE RESOLUTION MAY BE
44 AVAILABLE IN NONJUDICIAL FORECLOSURE ACTIONS
45 AS AN ALTERNATIVE FOR OWNER-OCCUPANTS
46 ATTEMPTING TO AVOID FORECLOSURE OR TO
47 MITIGATE THE EFFECTS OF FORECLOSURE ON AN
48 OWNER-OCCUPANT. HOWEVER, IF AN OWNER-
49 OCCUPANT FILES FOR CONVERSION, DISPUTE
50 RESOLUTION MAY NOT BE AVAILABLE UNLESS

51 **ORDERED BY A JUDGE.**

52 **A FORECLOSING LENDER WHO COMPLETES A**
53 **NONJUDICIAL FORECLOSURE OF RESIDENTIAL**
54 **PROPERTY SHALL BE PROHIBITED FROM PURSUING A**
55 **DEFICIENCY JUDGMENT AGAINST A MORTGAGOR**
56 **UNLESS THE DEBT IS SECURED BY OTHER**
57 **COLLATERAL, OR AS OTHERWISE PROVIDED BY LAW. IF**
58 **THIS ACTION IS CONVERTED TO A JUDICIAL**
59 **PROCEEDING, HOWEVER, THEN ALL REMEDIES**
60 **AVAILABLE TO A LENDER MAY BE ASSERTED,**
61 **INCLUDING THE RIGHT TO SEEK A DEFICIENCY**
62 **JUDGMENT."**

63 **2. The statement required by this section shall not be required**
64 **to be included in the notice of sale under section 443.320 or section**
65 **443.325.**

443.560. 1. It shall be a prohibited practice for any foreclosing
2 **mortgagee to engage in any of the following practices:**

3 **(1) Holding a public sale on a date, at a time, or at a place other**
4 **than that described in the public notice of the public sale or a properly**
5 **noticed postponement;**

6 **(2) Specifying a fictitious place in the public notice of the public**
7 **sale;**

8 **(3) Conducting a postponed public sale on a date other than the**
9 **date described in the new public notice of the public sale;**

10 **(4) Delaying the delivery of the recorded, conformed copy of the**
11 **conveyance document to a bona fide purchaser who purchases in good**
12 **faith for more than forty-five days after the completion of the public**
13 **sale;**

14 **(5) Completing nonjudicial foreclosure proceedings during short**
15 **sale escrows with a bona fide purchaser if the short sale offer is at least**
16 **five per cent greater than the public sale price; provided that escrow**
17 **is opened within ten days and closed within forty-five days of the**
18 **public sale; and provided further that a bona fide short sale purchaser**
19 **shall have priority over any other purchaser;**

20 **(6) Completing nonjudicial foreclosure proceedings during bona**
21 **fide loan modification negotiations with the mortgagor; or**

22 **(7) Completing nonjudicial foreclosure proceedings against a**

23 mortgagor who has been accepted or is being evaluated for
24 consideration for entry into a federal loan modification program before
25 obtaining a certificate or other documentation confirming that the
26 mortgagor is no longer eligible or an active participant of that federal
27 program.

28 2. Upon initiation of a foreclosure action by a foreclosing
29 mortgagee, no junior lienholder shall be permitted to initiate a
30 nonjudicial foreclosure during a pendency of a stay.

443.570. 1. Any notices required to be made by a mortgagee
2 under section 443.326 and sections 443.460 to 443.550 shall be issued
3 only by persons authorized by a foreclosing mortgagee or lender
4 pursuant to an affiliate statement signed by that foreclosing mortgagee
5 or lender and recorded at the recorder of deeds identifying the agency
6 or affiliate relationship and the authority granted or conferred to that
7 agent or representative.

8 2. The recorder of deeds document number for the affiliate
9 statement required under subsection 1 of this section shall be included
10 in any notice required to be personally served upon the mortgagor or
11 borrower under section 443.326 and sections 443.460 to 443.550.

443.575. A foreclosing mortgagee shall be bound by all
2 agreements, obligations, representations, or inducements made on its
3 behalf by its agents including but not limited to its employees,
4 representatives, mortgage servicers, or persons authorized by a
5 foreclosing mortgagee or lender pursuant to an affiliate statement
6 recorded pursuant to section 443.570.

443.580. Any foreclosing mortgagee who violates section 443.326
2 or sections 443.460 to 443.570 shall have committed an unlawful
3 merchandising practice under section 407.020.

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