

FIRST REGULAR SESSION

SENATE BILL NO. 370

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time February 12, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1412S.02I

AN ACT

To amend chapters 361 and 443, RSMo, by adding thereto three new sections relating to foreclosures, with an emergency clause.

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

Section A. Chapters 361 and 443, RSMo, is amended by adding thereto
2 three new sections, to be known as sections 361.107, 443.186, and 443.285, to
3 read as follows:

**361.107. 1. The division of finance shall be charged with
2 administering free mediation services as described in section 443.186,
3 RSMo, between creditors and debtors in default in the performance
4 required by the terms of a security instrument securing real property,
5 in an attempt to restructure the loan payment schedule or otherwise
6 agree to cure the default before foreclosure.**

**7 2. The division shall maintain a list of approved housing
8 counseling agencies organized regionally which shall be provided to
9 consumers upon request.**

**10 3. The department of insurance, financial institutions and
11 professional registration may promulgate rules to administer this
12 section and the requirements of section 443.186, RSMo. Any rule or
13 portion of a rule, as that term is defined in section 536.010, RSMo, that
14 is created under the authority delegated in this section shall become
15 effective only if it complies with and is subject to all of the provisions
16 of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
17 section and chapter 536, RSMo, are nonseverable and if any of the
18 powers vested with the general assembly pursuant to chapter 536,
19 RSMo, to review, to delay the effective date, or to disapprove and annul
20 a rule are subsequently held unconstitutional, then the grant of**

21 rulemaking authority and any rule proposed or adopted after August
22 28, 2009, shall be invalid and void.

443.186. 1. When a debtor defaults in the performance required
2 by the terms of a security instrument securing real property under this
3 chapter, the creditor shall, before commencing any suit, action, or
4 proceeding or publishing notice under section 443.320 or sections
5 493.100 to 493.120, RSMo, in an attempt to foreclose by judicial or non-
6 judicial means, inform the debtor of the debtor's right to free mediation
7 services administered by the division of finance.

8 2. The notice required in subsection 1 of this section shall be in
9 writing, and:

10 (1) Be sent by certified mail to the debtor's last known address
11 no earlier than sixty days after the debtor defaults;

12 (2) State that the debtor is in default and that unless the debtor
13 participates in free mediation services administered by the division of
14 finance in a face-to-face meeting with the creditor supplying the notice
15 in an attempt to restructure the loan payment schedule or otherwise
16 agree upon a method to cure the default within sixty days of the date
17 of the notice, the creditor supplying the notice may proceed to
18 foreclosure;

19 (3) Include the phone number and web address, if available, of
20 the office within the division of finance administering mediation
21 services;

22 (4) Advise debtors that while counsel is not required, debtors are
23 encouraged to consult a counselor prior to the mediation and that a list
24 of government-approved housing counseling agencies in the regional
25 area of the debtor will be provided by the division of finance;

26 (5) Advise debtors that while legal counsel is not required,
27 debtors are encouraged to contact an attorney or local legal aid office
28 for legal assistance.

29 3. A creditor shall not commence any suit, action, or proceeding
30 or publish notice under section 443.320 or sections 493.100 to 493.120,
31 RSMo, in an attempt to foreclose by judicial or non-judicial means until
32 sixty days after sending notice to the debtor under subsection 1 of this
33 section or thirty days after the debtor and creditor first meet with a
34 representative of the division of finance to mediate the dispute,
35 whichever is later.

36 4. In cases where the debtor chooses to participate in free
37 mediation services, the creditor and debtor shall be required to have
38 present, at the time of mediation, individuals with authority to settle
39 the dispute. The creditor and the debtor shall negotiate in good faith
40 in the mediation.

41 5. This section shall not apply in instances where the debtor dies
42 owning real property on which there is an outstanding deed of trust or
43 mortgage. In such instances, the timing of the sale shall proceed as
44 described in section 443.300.

 443.285. No suit, action, or proceeding to foreclose any security
2 instrument by judicial or non-judicial means shall be had or maintained
3 from the enactment of this section until one year thereafter.

 Section B. Because of the need to ensure that property owners are given
2 time to cure mortgage defaults prior to foreclosure, section A of this act is deemed
3 necessary for the immediate preservation of the public health, welfare, peace and
4 safety, and is hereby declared to be an emergency act within the meaning of the
5 constitution, and section A of this act shall be in full force and effect upon its
6 passage and approval.

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