

FIRST REGULAR SESSION

SENATE BILL NO. 469

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time February 24, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2123S.011

AN ACT

To repeal sections 443.310, 443.325, and 534.030, RSMo, and to enact in lieu thereof three new sections relating to the rights of tenants in cases of foreclosure.

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

Section A. Sections 443.310, 443.325, and 534.030, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 443.310,
3 443.325, and 534.030, to read as follows:

443.310. All sales of real estate under a power of sale contained in any
2 mortgage or deed of trust executed after August 28, 1989, shall be made in the
3 county where the land to be sold is situated, and not less than twenty days' notice
4 of such sale shall be given **to mortgagors of the property, and any tenants**
5 **residing on the property**, whether so provided in such mortgage or deed of
6 trust or not. Where the property to be sold is located in more than one county,
7 the property may be sold in any county where a part of the property is located.

443.325. 1. Any person desiring notice of sale under any deed of trust or
2 mortgage with power of sale upon real property may, at any time subsequent to
3 recordation of such deed of trust or mortgage, cause to be filed for record in the
4 office of the recorder of each county in which any part or parcel of the real
5 property is situated a duly acknowledged request for such notice of sale. This
6 request shall specify the name and address of the person to whom the notice is
7 to be mailed and shall identify the deed of trust or mortgage by stating the names
8 of the parties thereto and the legal description of the land described therein and
9 the book and page where the same is recorded or the recorder's number and shall
10 be in substantially the following form:

11 "In accordance with RSMo, 443.325, request is hereby made that notice of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

12 sale under the deed of trust (or mortgage) recorded the day of, 20., (as
13 recorder's number or in Book, Page) of the records of County,
14 Missouri, the legal description of the property being in County, Missouri,
15 executed by as Grantor (or Mortgagor) in which is named as beneficiary (or
16 Mortgagee) and as Trustee, be mailed to (Name) at, (Address), (City)
17 (State).

18

19 (Signature)

20

21 (Acknowledgment)"

22 A separate request shall be filed for each person desiring notice of sale.

23 2. Upon the filing for record of such request, the recorder shall index the
24 request in a separate index so that the name of the mortgagor or grantor shall be
25 indexed as the grantor, and the name of the requesting party shall be indexed as
26 the grantee.

27 3. In the event of foreclosure under a power of sale, the foreclosing
28 mortgagee or trustee shall, not less than twenty days prior to the scheduled date
29 of the sale, cause to be deposited in the United States mail an envelope certified
30 or registered, **or not certified or registered in the case of notice to a**
31 **tenant whose name is unknown to the foreclosing mortgagee or trustee,**
32 and with postage prepaid, enclosing a notice containing the information required
33 in the published notice of sale referred to in section 443.320, addressed

34 (1) To each person whose name and address is set forth in any such
35 request recorded at least forty days prior to the scheduled date of sale; and

36 (2) To the person shown by the records in the office of the recorder of
37 deeds to be the owner of the property as of forty days prior to the scheduled date
38 of foreclosure sale at the foreclosing mortgagee's last known address for said
39 record owner; and

40 (3) To the mortgagor or grantor named in the deed of trust or mortgage
41 at the foreclosing mortgagee's last known address for said mortgagor or
42 grantor[.]; and

43 (4) **To any tenant dwelling in the property subject to the**
44 **foreclosure. Unless the mortgagee or trustee shall have actual notice**
45 **of the tenant's name, any notice to a tenant required in this section**
46 **shall be sufficient if addressed to "tenant". Notice to the tenant shall**
47 **also include the following text: "Attention Tenant: We are the trustee**

48 for (holder of the promissory note) that holds a mortgage on
49 (address of property). Your landlord has defaulted, and a foreclosure
50 sale has been scheduled on (date of foreclosure sale). If the
51 property is sold on that date, then your landlord may no longer own the
52 property. You can call (phone number for trustee or trustee's
53 representative) on or after (date of foreclosure sale) to find out
54 whether the foreclosure sale occurred and to request the name of the
55 new owner of the property. If the foreclosure sale occurs, your lease
56 may be invalidated."

57 (5) Actual receipt by the addressee of the envelope referred to above shall
58 not be necessary to establish compliance with the notice requirements of
59 subsection 3 hereof. Recording of receipt issued by the United States Post Office
60 for certified or registered mail to evidence that said envelope has been delivered
61 by the sender to the United States Post Office, or in the case of notice to a
62 tenant recording of an affidavit of service executed by a duly
63 authorized representative of the mortgagee or trustee, shall constitute
64 proof of compliance with notice requirements of subsection 3 hereof.

65 4. The foreclosing mortgagee or trustee of a deed of trust or mortgage filed
66 subsequent to a deed of trust or mortgage for which a request has been recorded
67 in accordance with subsection 1 hereof shall give notice to each person named in
68 each such request so long as the prior deed of trust or mortgage identified in such
69 notice has not been released of record.

70 5. The release of a deed of trust or mortgage shall cancel of record all
71 requests for notice which pertain to the deed of trust or mortgage identified in
72 such request.

534.030. 1. Except as provided in subsection 2 of this section,
2 when any person willfully and without force holds over any lands, tenements or
3 other possessions, after the termination of the time for which they were demised
4 or let to the person, or the person under whom such person claims; or after a
5 mortgage or deed of trust has been foreclosed and the person has received written
6 notice [of] that a foreclosure sale has occurred and either such person is
7 in violation of any lease agreement or at least forty-five days have
8 elapsed after the date of the foreclosure sale; or when premises are
9 occupied incident to the terms of employment and the employee holds over after
10 the termination of such employment; or when any person wrongfully and without
11 force, by disseisin, shall obtain and continue in possession of any lands,

12 tenements or other possessions, and after demand made, in writing, for the
13 delivery of such possession of the premises by the person having the legal right
14 to such possession, or the person's agent or attorney, shall refuse or neglect to
15 vacate such possession, such person is guilty of an "unlawful detainer".

16 **2. In any case where a foreclosed property is lawfully occupied**
17 **by a residential tenant who is not in violation of any lease agreement,**
18 **no unlawful detainer action may be commenced against the tenant**
19 **under this chapter within forty-five days following the date the tenant**
20 **is given notice that the foreclosure sale has occurred.**

Unofficial ✓

Bill

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