

FIRST REGULAR SESSION

# SENATE BILL NO. 183

98TH GENERAL ASSEMBLY

---

---

INTRODUCED BY SENATOR CURLS.

Pre-filed January 5, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0811S.011

---

---

## AN ACT

To repeal sections 50.340, 95.535, 204.628, 407.935, 428.019, 442.018, 443.290, 443.300, 443.310, 443.320, 443.325, 443.327, 443.355, 443.380, 443.390, 443.410, 448.080, 448.3-116, 456.003, 493.055, 493.100, and 516.150, RSMo, and to enact in lieu thereof twelve new sections relating to nonjudicial foreclosure proceedings.

---

---

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

Section A. Sections 50.340, 95.535, 204.628, 407.935, 428.019, 442.018, 443.290, 443.300, 443.310, 443.320, 443.325, 443.327, 443.355, 443.380, 443.390, 443.410, 448.080, 448.3-116, 456.003, 493.055, 493.100, and 516.150, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 50.340, 95.535, 204.628, 407.935, 428.019, 442.018, 443.285, 448.080, 448.3-116, 456.003, 493.055, and 516.150, to read as follows:

50.340. All county officers, excepting public administrators and notaries public, in all counties of class one shall be compensated for their services by salaries only. It shall be the duty of any such county officer in any such county to charge on behalf of the county every fee that accrues in or to his office and to receive the same and all fees, fines, costs, commissions, penalties and charges that may be taxed in his office. All such fees, fines, costs, commissions, penalties and charges imposed by law and collected by such officer shall be paid into the county treasury and become the property of the county. The county commission of such counties shall determine by a proper order when such fees, fines, costs, commissions, penalties or charges so collected by any of the officers of said county shall be paid and turned over to the county treasury and how they shall be accounted for. The county commission shall require a sworn or affirmed

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

13 statement by each county officer, showing such items collected in detail, their  
14 source, character and the aggregate amount thereof, and shall require a copy of  
15 such sworn or affirmed statement to be filed in the office of the county clerk in  
16 said county. [Nothing herein contained shall be construed to include the  
17 performance by the sheriff of his duties as trustee in any deed of trust or  
18 mortgage with power of sale, within the term "services" used herein.]

95.535. All public officers, excepting the public administrator and notaries  
2 public, in the city of St. Louis shall be compensated for their services by salaries  
3 only. It shall be the duty of any public officer in such city to charge on behalf of  
4 the city every fee that accrues in or to his office and to receive the same and all  
5 fees, fines, costs, commissions, penalties and charges that may be taxed in his  
6 office. All such fees, fines, costs, commissions, penalties and charges imposed by  
7 law and collected by such officer shall be paid into the city treasury and become  
8 the property of the city. The comptroller of such city shall determine by a proper  
9 order the current or future dates or periods when such fees, fines, costs,  
10 commissions, penalties or charges so collected by any of the officers in said city  
11 shall be paid and turned over to the city treasury and how they shall be  
12 accounted for. The comptroller shall require a sworn or affirmed statement by  
13 each public officer, showing such items collected in detail, their source character  
14 and the aggregate amount thereof, and shall require a copy of such sworn or  
15 affirmed statement to be filed in the office of the city register. [Nothing herein  
16 contained shall be construed to include the performance by the sheriff of his  
17 duties as trustee in any deed of trust or mortgage with power of sale, within the  
18 term "services" used herein.]

204.628. Any user fees or charges, connection fees, or other charges levied  
2 by the reorganized common sewer district to fund its general or special  
3 operations, maintenance, or payment of bonded indebtedness or other  
4 indebtedness shall be due at such time or times as specified by the reorganized  
5 common sewer district, and shall, if not paid by the due date, become delinquent  
6 and shall bear interest from the date of delinquency until paid. In addition to  
7 and consistent with any other provision of applicable law, if such fees or charges  
8 or other amounts due become delinquent, there shall be a lien upon the land, and  
9 a notice of delinquency shall be filed with the recorder of deeds in the county  
10 where the land is situated. The reorganized common sewer district shall file with  
11 the recorder of deeds a similar notice of satisfaction of debt when the delinquent  
12 amounts, plus interest and any recording fees or attorneys' fees, have been paid

13 in full. [The lien created may be enforced by foreclosure by power of sale vested  
14 in the reorganized common sewer district if the reorganized common sewer  
15 district adopts written rules for the exercise of power of sale consistent with the  
16 provisions of sections 443.290 to 443.325 which are recorded in the land records  
17 of the office of the recorder of deeds in each county in which the district is  
18 located. Otherwise,] Such lien shall be enforced by suit in the circuit court  
19 having jurisdiction against the property subject to the lien for judicial foreclosure  
20 and sale by special execution. Such suit may include a request for judgment  
21 against the persons responsible for payment of such delinquency as well as the  
22 person or persons owning the property to which services were provided, if  
23 different, including post-sale deficiency, and as a part of the relief, may include  
24 award of the district's reasonable attorney's fees, court costs, and other expenses  
25 reasonably incurred by the district for collection.

407.935. As used in sections 407.935 to 407.943, the following words and  
2 phrases shall mean:

3 (1) "Contract", any agreement, or any term thereof, between a foreclosure  
4 consultant and an owner for the rendition of any service as defined in subdivision  
5 (6) of this section;

6 (2) "Foreclosure consultant":

7 (a) Includes any person who makes any solicitation, representation, or  
8 offer to any owner to perform for compensation or who, for compensation,  
9 performs any service which the person in any manner represents will do in any  
10 manner any of the following:

11 a. Stop or postpone the foreclosure sale;

12 b. Obtain any forbearance from any beneficiary or mortgagee;

13 c. Assist the owner to exercise any right of redemption;

14 d. Obtain any extension of the period within which the owner may  
15 reinstate his obligation;

16 e. Obtain any waiver of an acceleration clause contained in any  
17 promissory note or contract secured by a deed of trust or mortgage on a residence  
18 in foreclosure or contained in any such deed of trust or mortgage;

19 f. Assist the owner in obtaining a loan or advance of funds;

20 g. Avoid or ameliorate the impairment of the owner's credit resulting from  
21 the recording of a notice of default or the conduct of a foreclosure sale;

22 h. Save the owner's residence from foreclosure;

23 (b) A foreclosure consultant does not include any of the following:

24 a. A person licensed to practice law in this state when the person renders  
25 service in the course of his practice as an attorney at law;

26 b. A person licensed as a real estate broker pursuant to chapter 339 when  
27 the person makes a direct loan or when the person:

28 (i) Engages in acts, the performance of which require licensure under that  
29 chapter;

30 (ii) Is entitled to compensation for the act performed in connection with  
31 the sale of a residence in foreclosure or with the arranging of a loan secured by  
32 a lien on a residence in foreclosure;

33 (iii) Does not claim, demand, charge, collect, or receive any compensation  
34 until the acts have been performed or cannot be performed because of the failure  
35 of the owner to accept an offer from a purchaser or lender ready, willing, and able  
36 to purchase a residence in foreclosure or make a loan secured by a lien on a  
37 residence in foreclosure on the terms prescribed in a listing or a loan agreement;  
38 and

39 (iv) Does not acquire any interest in a residence in foreclosure directly  
40 from an owner for whom the person agreed to perform the acts other than as a  
41 trustee or beneficiary under a deed of trust given to secure the payment of a loan  
42 or that compensation;

43 (v) For the purposes of this subdivision, a "direct loan" means a loan of  
44 a real estate broker's own funds secured by a deed of trust on the residence in  
45 foreclosure, which loan and deed of trust the broker in good faith attempts to  
46 assign to a lender, for an amount at least sufficient to cure all of the defaults on  
47 obligations which are then subject to a notice of default, provided that: if a  
48 foreclosure sale is conducted with respect to the deed of trust, the person  
49 conducting the foreclosure sale has no interest in the residence in foreclosure or  
50 in the outcome of the sale and is not owned, controlled, or managed by the  
51 lending broker; the lending broker does not acquire any interest in the residence  
52 in foreclosure directly from the owner other than as a beneficiary under the deed  
53 of trust; and the loan is not made for the purpose or effect of avoiding or evading  
54 the provisions of this act;

55 c. A person or his authorized agent acting under the express authority or  
56 written approval of the department of housing and urban development or other  
57 department or agency of the United States or this state to provide services;

58 d. A person who holds or is owed an obligation secured by a lien on any  
59 residence in foreclosure when the person performs services in connection with the

60 obligation or lien;

61 e. Any person licensed to make loans pursuant to sections 367.100 to  
62 367.215, subject to the authority of the director of finance to terminate this  
63 exclusion, if after notice and hearing, any such licensee is found to have engaged  
64 in practices described in section 407.938;

65 f. Any person or entity doing business under any law of this state, or of  
66 the United States relating to banks, trust companies, savings and loan  
67 associations, credit unions, or any person or entity authorized under the laws of  
68 this state to conduct a title or escrow business, or a mortgagee which is a United  
69 States department of housing and urban development approved mortgagee and  
70 any subsidiary or affiliate of the above, and any agent or employee of the above  
71 while engaged in business of these persons or entities;

72 (3) "Owner", the record owner of any residence in foreclosure;

73 (4) "Person", any individual, partnership, corporation, association or other  
74 group, however organized;

75 (5) "Residence in foreclosure", any real property improved by a residential  
76 structure used or intended to be used as a residence by not more than four  
77 families, and occupied by the owner, which is the subject of any attempt by any  
78 person to enforce an obligation, the performance of which is secured by a  
79 mortgage or deed of trust encumbering the real property;

80 (6) "Service" includes, but is not limited to, any of the following:

81 (a) Debt, budget, or financial counseling of any type;

82 (b) Receiving money for the purpose of distributing it to creditors in  
83 payment or partial payment of any obligation secured by a lien on a residence in  
84 foreclosure;

85 (c) Contacting creditors on behalf of an owner of a residence in  
86 foreclosure;

87 (d) Arranging or attempting to arrange for an extension of the period  
88 within which the owner of a residence in foreclosure may cure his default and  
89 reinstate his obligation;

90 (e) Arranging or attempting to arrange for any delay or postponement of  
91 the time of sale of the residence in foreclosure;

92 (f) Advising the filing of any document or assisting in any manner in the  
93 preparation of any document for filing with any bankruptcy court;

94 (g) Giving any advice, explanation or instruction to an owner of a  
95 residence in foreclosure which in any manner relates to the cure of a default in

96 or the reinstatement of an obligation secured by a lien on the residence in  
97 foreclosure, **or** the full satisfaction of that obligation[, or the postponement or  
98 avoidance of a sale of a residence in foreclosure pursuant to a power of sale  
99 contained in any deed of trust].

428.019. 1. Value is given for a transfer or an obligation if, in exchange  
2 for the transfer or obligation, property is transferred or an antecedent debt is  
3 secured or satisfied, but value does not include an unperformed promise made  
4 otherwise than in the ordinary course of the promisor's business to furnish  
5 support to the debtor or another person.

6 2. [For the purposes of subdivision (2) of subsection 1 of section 428.024  
7 and section 428.029, a person gives a reasonably equivalent value if the person  
8 acquires an interest of the debtor in an asset pursuant to a regularly conducted,  
9 noncollusive foreclosure sale or execution of a power of sale for the acquisition or  
10 disposition of the interest of the debtor upon default under a mortgage, deed of  
11 trust, or security agreement.

12 3.] A transfer is made for present value if the exchange between the  
13 debtor and the transferee is intended by them to be contemporaneous and is in  
14 fact substantially contemporaneous.

442.018. All public advertisements and orders of publication required by  
2 law to be made, including but not limited to amendments to the Missouri  
3 Constitution[, legal publications affecting all sales of real estate under a power  
4 of sale contained in any mortgage or deed of trust,] and other legal publications  
5 affecting the title to real estate, shall be published in a newspaper of general  
6 circulation, qualified under the provisions of section 493.050, and persons  
7 responsible for orders of publication described in sections 443.310 and 443.320  
8 shall be subject to the prohibitions in sections 493.130 and 493.140.

**443.285. Beginning August 28, 2015, all foreclosure proceedings  
2 shall be handled judicially as provided in sections 443.190 to 443.280.**

448.080. 1. Every unit owner shall pay his proportionate share of the  
2 expenses of administration, maintenance and repair of the common elements and  
3 of any other expense lawfully agreed upon. Such proportionate share shall be in  
4 the same ratio as his percentage of ownership in the common elements as set  
5 forth in the declaration. Payment thereof shall be in the amounts and at the  
6 times as determined by the unit owners or the board of managers, as hereinafter  
7 provided.

8 2. If any unit owner fails or refuses to make any payment of the common

9 expenses when due, the amount thereof shall constitute a lien on the interest of  
10 such unit owner in the property, and upon the recording of notice thereof by the  
11 manager or board of managers shall be a lien upon such unit owner's interest in  
12 the property prior to all other liens and encumbrances, recorded or unrecorded;  
13 except only taxes, special assessments and special taxes theretofore or thereafter  
14 levied by any political subdivision or municipal corporation of this state and other  
15 state or federal taxes which by law are a lien on the interest of such unit owner  
16 prior to preexisting recorded encumbrances thereon, and encumbrances on the  
17 interest of such unit owner recorded prior to the date such notice is recorded  
18 which by law would be a lien thereon prior to subsequently recorded  
19 encumbrances, but only if such prior recorded encumbrance contains a statement  
20 of a mailing address in the state of Missouri where notice may be mailed to the  
21 encumbrancer thereunder. Any encumbrancer whose lien is junior to the lien of  
22 the common expenses herein provided may from time to time request in writing  
23 a written statement from the manager or board of managers setting forth the  
24 unpaid common expenses with respect to the unit covered by his encumbrance  
25 and unless the request is complied with within twenty days, all unpaid common  
26 expenses which became due prior to the date of the making of such request shall  
27 be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien  
28 on a unit may pay any unpaid common expenses payable with respect to such  
29 unit and upon such payment such encumbrancer shall have a lien on such unit  
30 for the amounts paid at the same rank as the lien of his encumbrance.

31 3. The lien to secure payment of common expenses shall be in favor of the  
32 members of the board of managers and their successors in office and shall be for  
33 the benefit of all other unit owners, and may be foreclosed by an action brought  
34 in the name of the board of managers in like manner as a mortgage of real  
35 property, as provided in sections 443.190 to [443.310] **443.280**. Unless otherwise  
36 provided in the declaration, the members of the board of managers and their  
37 successors in office, acting on behalf of the other unit owners, shall have the  
38 power to bid in the interest so foreclosed at foreclosure sale, and to acquire and  
39 hold, lease, mortgage and convey the same.

40 4. In the event any person acquires or is entitled to the issuance of a  
41 sheriff's or other official deed in foreclosure of the lien for common expenses above  
42 provided, the deed conveying the interest of any unit owner and the interest so  
43 acquired shall be subject to all of the provisions of sections 448.005 to 448.210  
44 and to the terms, provisions, covenants, conditions and limitations contained in

45 the declaration, the plat, the bylaws or any deed affecting such interest then in  
46 force.

448.3-116. 1. The association has a lien on a unit for any assessment  
2 levied against that unit or fines imposed against its unit owner from the time the  
3 assessment or fine becomes due. The association's lien may be foreclosed in like  
4 manner as a mortgage on real estate [or a power of sale pursuant to chapter  
5 443]. Unless the declaration otherwise provides, fees, charges, late charges, fines,  
6 and interest charged pursuant to subdivisions (10), (11), and (12) of subsection  
7 1 of section 448.3-102 are enforceable as assessments pursuant to this section. If  
8 an assessment is payable in installments, the full amount of the assessment is  
9 a lien from the time the first installment thereof becomes due.

10 2. A lien pursuant to this section is prior to all other liens and  
11 encumbrances on a unit except:

12 (1) Liens and encumbrances recorded before the recordation of the  
13 declaration;

14 (2) Any mortgage or deed of trust securing a purchase money loan for the  
15 unit recorded prior to August 28, 2014;

16 (3) Any mortgage or deed of trust on a unit recorded before the date on  
17 which the assessment sought to be enforced became due except that a lien under  
18 this section has limited priority over the mortgage or deed of trust for common  
19 expense assessments in an amount not to exceed six months of the delinquent  
20 common expense assessments based on the periodic budget adopted by the  
21 association under subsection 1 of section 448.3-115 which would have become due  
22 in the absence of acceleration during the six months immediately preceding the  
23 date of filing of a petition to enforce the association's lien or the date of sale by  
24 the holder of a mortgage or deed of trust;

25 (4) Liens for real estate taxes and other governmental assessments or  
26 charges against the unit;

27 (5) If the association forecloses its lien under this section in a nonjudicial  
28 manner under chapter 443, the association shall not be entitled to the limited lien  
29 priority for common expense assessments provided under subdivision (3) of  
30 subsection 2 of this section;

31 (6) This subsection does not affect the priority of mechanics' or  
32 materialmen's liens, or the priority of liens for other assessments made by the  
33 association. The lien pursuant to this section is not subject to the provisions of  
34 section 513.475.



35           3. Unless the declaration provides otherwise, if two or more associations  
36 have liens for assessments created at any time on the same real estate, those  
37 liens have equal priority.

38           4. Recording of the declaration constitutes record notice and perfection of  
39 the lien. No further recordation of any claim of lien for assessment pursuant to  
40 this section is required.

41           5. A lien for unpaid assessments is extinguished unless proceedings to  
42 enforce the lien are instituted within three years after the full amount of the  
43 assessments becomes due.

44           6. This section shall not prohibit actions to recover sums for which  
45 subsection 1 of this section creates a lien, or prohibit an association from taking  
46 a deed in lieu of foreclosure.

47           7. The association shall be entitled to recover any costs and reasonable  
48 attorneys' fees incurred in connection with the collection of delinquent  
49 assessments. A judgment or decree in any action brought pursuant to this section  
50 shall include costs and reasonable attorney's fees for the prevailing  
51 party. Attorneys' fees and costs shall not be included in the association's lien  
52 under subdivision (3) of subsection 2 of this section.

53           8. The association shall furnish to a unit owner or any holder of a  
54 mortgage or deed of trust, upon written request, a recordable statement setting  
55 forth the amount of unpaid assessments against the unit owner's unit. The  
56 statement shall be furnished within ten business days after receipt of the request  
57 and is binding on the association, the executive board, and every unit owner  
58 unless it is known by the recipient to be false.

59           9. If a unit is occupied by a tenant and the record owner is delinquent in  
60 payment of assessments in excess of sixty days, the association may demand  
61 payment of subsequent rental payments until the record owner is no longer  
62 delinquent, the association releases the tenant, or the tenant is no longer in  
63 possession of the unit. The demand to the tenant shall be in writing, with a copy  
64 to the record owner, sent via first class United States mail, postage prepaid, or  
65 hand delivery. A tenant is immune from any claim by the record owner related  
66 to the rent timely paid to the association after the association has made written  
67 demand. If the tenant fails to make payment to the association, the association  
68 may issue notice and evict under chapter 534. The tenant does not, by virtue of  
69 payment, have any rights of a record owner to vote in an election or examine the  
70 books and records of the association.

456.003. When the terms of an instrument creating a trust manifest  
2 intention that the trustee shall have the legal fee simple in land, the full legal  
3 ownership of an estate for years, or the absolute legal ownership of chattels  
4 personal, **or** investment securities or choses in action, an exercise by the trustee  
5 or a successor trustee of [an express or implied power of sale,] a mortgage,  
6 leasing, improvement or conducting any other transaction incident to the  
7 administration of the trust, shall bind the fee simple, term of years or absolute  
8 ownership notwithstanding the execution of a future interest under the trust into  
9 a legal estate or interest by the operation of the Statute of Uses, or former section  
10 456.003, or a judicial doctrine imposing such execution on dry or passive trusts.

493.055. All public advertisements and orders of publication required by  
2 law to be made, including but not limited to amendments to the Missouri  
3 Constitution[, legal publications affecting all sales of real estate under a power  
4 of sale contained in any mortgage or deed of trust,] and other legal publications  
5 affecting the title to real estate, shall be published in a newspaper of general  
6 circulation, qualified under the provisions of section 493.050, and persons  
7 responsible for orders of publication described in sections 443.310 and 443.320  
8 shall be subject to the prohibitions in sections 493.130 and 493.140.

516.150. No suit[,] **or** action [or proceeding under power of sale] to  
2 foreclose any mortgage or deed of trust, to secure any obligation to pay money or  
3 property, shall be had or maintained after such obligation has been barred by the  
4 statutes of limitation of this state; nor in any event after the lapse of twenty  
5 years from the date at which the last maturing obligation secured by the  
6 instrument sought to be foreclosed is due on the face of such instrument, unless  
7 such termination of said period falls within two years after the passage of this  
8 section, or has heretofore happened, in which event such suit, action or  
9 proceeding may be begun within two years after the passage of this section  
10 without regard to the date of the instrument or the maturity of the obligation,  
11 unless otherwise barred under the provisions of the general statutes of limitation,  
12 unless before the lapse of said twenty years the owner of the debt thereby secured  
13 or some person for him shall file an affidavit duly verified, or file an instrument  
14 in writing acknowledged as deeds are required to be acknowledged in order to  
15 entitle them to record in this state, showing the amount due and owing thereon.

[443.290. All mortgages of real property or security  
2 agreements providing for a security interest in personal property,  
3 or both, with powers of sale in the mortgagee or secured party, and

4 all sales made by such mortgagee, secured party or his personal  
5 representatives, in pursuance of the provisions of the mortgages or  
6 security agreements, shall be valid and binding by the laws of this  
7 state upon the mortgagors and debtors, and all persons claiming  
8 under them, and shall forever foreclose all right and equity of  
9 redemption of the property so sold. Nothing herein shall be  
10 construed to affect in any way the rights of a tenant to the growing  
11 and unharvested crops on lands foreclosed as aforesaid, to the  
12 extent of the interest of the tenant under the terms of contract or  
13 lease between the tenant and the mortgagor or his personal  
14 representatives.]

[443.300. If any person shall die owning real estate on  
2 which there is an outstanding deed of trust or mortgage of real  
3 estate, or having subjected personal property to a security interest  
4 with power of sale, shall die, no sale shall take place under the  
5 deed of trust or mortgage conveying real estate within six months  
6 after the death of such person, and no sale shall take place of  
7 personal property so subjected to a security interest within four  
8 months after the death of the person.]

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

[443.320. The notice required by section 443.310 shall set  
2 forth the date and book and page of the record of such mortgages  
3 or deeds of trust, the grantors, the time, terms and place of sale,  
4 and a description of the property to be sold, and shall be given by  
5 advertisement, inserted for at least twenty times, and continued to  
6 the day of the sale, in some daily newspaper, in counties having  
7 cities of fifty thousand inhabitants or more, and in all other  
8 counties such notice shall be given by advertisement in some  
9 weekly newspaper published in such county for four successive

10 issues, the last insertion to be not more than one week prior to the  
11 day of sale, or in some daily, triweekly or semiweekly paper  
12 published in such county at least once a week for four successive  
13 weeks. Such notice shall appear on the same day of each week, the  
14 last insertion to be not more than one week prior to the day of sale,  
15 and if there be no newspaper published in such county or city, such  
16 notice shall be published in the nearest newspaper thereto in this  
17 state. Nothing in this section shall be construed to authorize the  
18 giving of any shorter notice than that required by such mortgage  
19 or deed of trust. Where the property to be sold lies wholly or in  
20 part within the corporate limits of any city having or that may  
21 hereafter have a population of fifty thousand inhabitants or more,  
22 then the notice provided for in this section shall be published in a  
23 daily newspaper in such city and where the property to be sold lies  
24 wholly or in part within the corporate limits of a city extending  
25 into two or more counties, then the notice provided for in this  
26 section shall be published in some newspaper published in the  
27 county in which the property lies, in the manner provided in this  
28 section for publication in such county, even though such property  
29 may lie in a city having a population of fifty thousand inhabitants  
30 or more. Where the property to be sold is located in more than one  
31 county, the notices required in this section shall be published in  
32 each county in which a part of the property is located. Other  
33 provisions of this section to the contrary notwithstanding, in any  
34 county of the first class not having a charter form of government  
35 and containing a portion of a city with a population over three  
36 hundred fifty thousand and in any county of the second class  
37 containing a portion of a city with a population over three hundred  
38 fifty thousand, the notice requirements of section 443.310 and this  
39 section may be met by advertisement in some weekly newspaper  
40 published in such counties for four successive issues, the last  
41 insertion to be not more than one week prior to the date of the  
42 sale.]

2 [443.325. 1. Any person desiring notice of sale under any  
3 deed of trust or mortgage with power of sale upon real property  
may, at any time subsequent to recordation of such deed of trust or

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

13 "In accordance with RSMo, 443.325, request is hereby made  
 14 that notice of sale under the deed of trust (or mortgage) recorded  
 15 the .... day of ....., 20.., (as recorder's number .... or in Book ....., Page  
 16 ....) of the records of .... County, Missouri, the legal description of  
 17 the property being .... in County, Missouri, executed by .... as  
 18 Grantor (or Mortgagor) in which .... is named as beneficiary (or  
 19 Mortgagee) and .... as Trustee, be mailed to .... (Name) at .....,  
 20 (Address) ....., (City) (State).

21 .....

22 (Signature)

23 .....

24 (Acknowledgment)" A separate request shall be filed for each  
 25 person desiring notice of sale.

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

30 3. In the event of foreclosure under a power of sale, the  
 31 foreclosing mortgagee or trustee shall, not less than twenty days  
 32 prior to the scheduled date of the sale, cause to be deposited in the  
 33 United States mail an envelope certified or registered, and with  
 34 postage prepaid, enclosing a notice containing the information  
 35 required in the published notice of sale referred to in section  
 36 443.320, addressed

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

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

44 (3) To the mortgagor or grantor named in the deed of trust  
45 or mortgage at the foreclosing mortgagee's last known address for  
46 said mortgagor or grantor.

47 (4) Actual receipt by the addressee of the envelope referred  
48 to above shall not be necessary to establish compliance with the  
49 notice requirements of subsection 3 hereof. Recording of receipt  
50 issued by the United States Post Office for certified or registered  
51 mail to evidence that said envelope has been delivered by the  
52 sender to the United States Post Office shall constitute proof of  
53 compliance with notice requirements of subsection 3 hereof.

54 4. The foreclosing mortgagee or trustee of a deed of trust or  
55 mortgage filed subsequent to a deed of trust or mortgage for which  
56 a request has been recorded in accordance with subsection 1 hereof  
57 shall give notice to each person named in each such request so long  
58 as the prior deed of trust or mortgage identified in such notice has  
59 not been released of record.

60 5. The release of a deed of trust or mortgage shall cancel of  
61 record all requests for notice which pertain to the deed of trust or  
62 mortgage identified in such request.]

[443.327. The trustee exercising a power of sale granted in  
2 any security instrument may in the trustee's discretion set the time  
3 for sale at any commercially reasonable time, unless the security  
4 instrument specifies an hour at which the sale is to occur. The  
5 time for sale will be deemed to be commercially reasonable if the  
6 sale is held between the hours of 9:00 a.m. and 5:00 p.m. on the  
7 date of sale. If no time is stated in the notice of sale, then the sale  
8 shall be held at the time customary for such sales in the county. If  
9 the trustee elects to state a specific time for sale in the notice of  
10 sale, then the sale shall be held at the time stated in the notice  
11 unless the sale is continued as may be otherwise provided by law.]

[443.355. 1. A trustee exercising a power of sale granted in  
2 any security instrument may, in his discretion, continue the sale

3 without readvertisement or mailing additional notice by  
4 announcing or causing to be announced on the day and at the time  
5 and place of sale the fact of such continuance. The announcement  
6 shall contain the date, time and place to which the sale is  
7 continued. No party shall have a cause of action for damages  
8 against a trustee for continuing or refusing to continue a sale as  
9 provided in this section.

10 2. Only one continuance shall be made under the authority  
11 granted by this section, which continuance shall be for a period of  
12 not to exceed seven days. The provisions of this section shall not  
13 prevent the holder of a security instrument and the owner of the  
14 land encumbered thereby from agreeing to more than one  
15 continuance or to continuances for more than one week. Nothing  
16 in this section shall prevent a trustee from abandoning a sale  
17 before its completion and commencing new sale proceedings after  
18 compliance with sections 443.310, 443.320 and 443.325.]

[443.380. Whenever any real estate within this state shall  
2 have been or shall hereafter be sold by any trustee or mortgagee,  
3 or sheriff or other person acting as trustee, under a power of sale  
4 given in any mortgage or deed of trust, the recitals in the trustee  
5 or mortgagee's deed concerning the default, advertisement, sale or  
6 receipt of the purchase money, and all other facts pertinent thereto,  
7 shall be received as prima facie evidence in all courts of the truth  
8 thereof.]

[443.390. In all cities in this state which now have or which  
2 may hereafter have three hundred fifty thousand inhabitants or  
3 more and in all counties in this state of the first class, no trustee's  
4 deed or mortgagee's deed under power of sale in foreclosure of any  
5 security instrument recorded prior to January 1, 1986, shall be  
6 accepted by the recorder of deeds for record unless:

7 (1) The principal note or notes or other principal obligations  
8 which were unpaid when the foreclosure sale commenced and for  
9 the default in payment of which foreclosure is had, are produced to  
10 the recorder; or

11 (2) If such notes are lost then the owner of the principal  
12 notes or obligations makes an affidavit that such notes are lost and

13 produces such affidavit for the recorder. Upon such trustee's or  
 14 mortgagee's deed being filed for record, the recorder shall make a  
 15 notation on the principal note or notes or other principal  
 16 obligations showing that such deed in foreclosure has been filed of  
 17 record, in substantially the following form:

18 "Deed under foreclosure filed ....., 20....  
 19 ..... Recorder" Except, whenever any  
 20 trustee's deed or mortgagee's deed under power of sale in  
 21 foreclosure of any security instrument recorded prior to January 1,  
 22 1986, providing for the issuance of more than one principal note or  
 23 bond shall be presented for recording, it shall be accepted by the  
 24 recorder of deeds for record upon the presentation to the recorder  
 25 of the unpaid principal note or notes or bonds required by such  
 26 security instrument to permit the trustee to sell the property under  
 27 foreclosure sale. A foreclosure sale shall be deemed to have  
 28 commenced within the meaning of this law upon the first  
 29 publication of the notice of sale.]

[443.410. Deeds of trust in the nature of mortgages of lands  
 2 may, in addition to being forecloseable by suit, be also foreclosed by  
 3 trustee's sale at the option of the holder of the debt or obligation  
 4 thereby secured and the mortgaged property sold by the trustee or  
 5 his successor in the same manner and in all respects as in case of  
 6 mortgages with power of sale; and all real estate which may be sold  
 7 under any such power of sale in a mortgage deed of trust hereafter  
 8 made and which at such sale shall be brought in by the holder of  
 9 such debt or obligation or by any other person for such holder shall  
 10 be subject to redemption by the grantor in such mortgage deed of  
 11 trust or his heirs, devisees, executors, administrators, grantees or  
 12 assigns at any time within one year from the date of the sale;  
 13 provided, however, that such person so entitled to redeem shall  
 14 give written notice at the sale or within ten days before the date  
 15 advertised for the sale to the person making or who is to make the  
 16 sale of the purpose to redeem if the sale and purchase are so made;  
 17 and provided further, the said grantor, his representatives,  
 18 grantees or assigns to make the redemption shall within the year  
 19 pay the debt and interest or other obligation secured by such deed



20 of trust and to accrue thereon together with all sums paid out by  
21 any holder thereof or purchaser at such sale or holder of the rights  
22 of such purchaser for interest and principal and either of any prior  
23 encumbrances, and for taxes and assessments and all legal charges  
24 and costs of the sale.]

[493.100. In all cities having a population of more than six  
2 hundred thousand inhabitants, as shown by the last United States  
3 census, no notice or other advertisement permitted or required by  
4 law to be made in conformity with the power of sale of real estate  
5 contained in any mortgage or deed of trust shall be valid or  
6 sufficient unless such notice or other advertisement shall be  
7 published in a daily newspaper, published in such city, whose  
8 annual cash receipts from circulation shall exceed six thousand  
9 dollars; and such receipts shall be paid by the bona fide individual  
10 and separate subscribers of such newspapers in such city, and in  
11 computing such receipts there shall not be counted or included cash  
12 received from advertising or from any other source.]

Bill ✓

Copy