

FIRST REGULAR SESSION

SENATE BILL NO. 429

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

Read 1st time February 12, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2125S.011

AN ACT

To amend chapter 443, RSMo, by adding thereto seven new sections relating to the mortgage foreclosure mediation code, with a penalty provision.

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

Section A. Chapter 443, RSMo, is amended by adding thereto seven new sections, to be known as sections 443.401, 443.402, 443.403, 443.404, 443.405, 443.406, and 443.407, to read as follows:

443.401. Sections 443.401 to 443.407 shall be known and may be cited as the "Mortgage Foreclosure Mediation Code".

443.402. For purposes of sections 443.402 to 443.407, unless the context clearly indicates another meaning, the following terms shall mean:

(1) "Certificate of compliance", a certificate that is awarded to a lender by the mediation coordinator certifying that the lender complied with the provisions of sections 443.402 to 443.407 and is eligible to record the foreclosure deed. Such certificate shall be in a form promulgated by the mediation coordinator and approved by the attorney general. A certificate of compliance shall be valid for the original foreclosure of a homeowner's residential property for which it is issued and any subsequent foreclosure of such residential property for which a notice of foreclosure is issued within twelve months of issuance of a certificate of compliance;

(2) "Homeowner", an individual who:

(a) Owns, and whose principal place of residence is a residential property, and

(b) Is the borrower under the promissory note secured by the deed of trust on such residential property that is subject to foreclosure

19 under this chapter;

20 (3) "Lender":

21 (a) A person or entity which has advanced funds for a loan to a
22 homeowner secured by a deed of trust on a residential property; or

23 (b) Any servicer of mortgage loans, as well as the current holder
24 of a promissory note secured by a deed of trust on the residential
25 property in question;

26 (4) "Mediation conference", the meeting between a homeowner
27 and lender for the purpose of facilitating a mutually beneficial
28 alternative to foreclosure;

29 (5) "Mediation coordinator", the person or entity approved by the
30 governor with the advice and consent of the senate to manage the
31 mortgage foreclosure mediation program established under sections
32 443.402 to 443.407;

33 (6) "Mediator", a person designated by the mediation coordinator
34 to oversee and facilitate a mediation conference;

35 (7) "Notice of foreclosure", a written notice sent to a homeowner
36 under section 443.325;

37 (8) "Notice of right to request mediation", a notice sent to a
38 homeowner informing him or her of the right to participate in a
39 mediation conference under sections 443.402 to 443.407;

40 (9) "Residential property", real property, located within a charter
41 county which consists of:

42 (a) A single-family dwelling;

43 (b) One or more condominium or co-op units; or

44 (c) A structure containing not more than four residential units.

443.403. The office of administration shall contract with any
2 person or entity to serve as a mediation coordinator on behalf of the
3 state. The contract shall:

4 (1) Require the mediation coordinator to provide all services
5 designated to the position under sections 443.402 to 443.407;

6 (2) Provide that the mediation coordinator shall be compensated
7 solely by the fees established by sections 443.402 to 443.407; and

8 (3) Contain such other terms and conditions as are included by
9 the attorney general.

443.404. 1. A lender or any other person or entity authorized to
2 conduct a sale of a homeowner's residential property under this

3 chapter who is seeking a certificate of compliance, shall send a notice
4 of right to request mediation to both the homeowner and the mediation
5 coordinator. Notice of right to request mediation shall be sent
6 concurrently with the lender's notice of foreclosure as well as a form
7 designed for use by the homeowner to formally request
8 mediation. Such form shall be promulgated by the mediation
9 coordinator and approved by the attorney general. The notice of right
10 to request mediation provided to the mediation coordinator by the
11 lender shall be accompanied by a mediation fee of one hundred twenty-
12 five dollars.

13 2. A homeowner shall have twenty days from the date of mailing
14 by lender of the notice of right to request mediation to request
15 mediation. The mediation request form shall be sent to the mediation
16 coordinator.

17 3. Within fifteen days of the receipt of the notice of foreclosure
18 and the notice of the right to request mediation, the mediation
19 coordinator shall make and document at least two attempts to contact
20 the homeowner to inform the homeowner of his or her right to request
21 mediation and further explain the mediation process.

22 4. The homeowner may waive, in a writing delivered to the
23 mediation coordinator, the right to participate in a mediation
24 conference.

443.405. 1. Upon receiving a request from the homeowner to
2 participate in a mediation conference, the mediation coordinator shall:

3 (1) Schedule a mediation conference to be held within sixty-one
4 days of the date on which the lender mailed the notice of foreclosure
5 and the notice of right to request mediation;

6 (2) Designate a mediator and location for the mediation
7 conference; and

8 (3) Notify the lender and homeowner of such information.

9 Upon receipt of such information, the lender shall submit a mediation
10 fee of three-hundred fifty dollars to the mediation coordinator not less
11 than seven days prior to the mediation conference.

12 2. A homeowner's written request to participate in mediation
13 conference shall be deemed consent of the homeowner to a continuance
14 of a foreclosure sale for forty-two days under section 443.355.

15 3. The mediation coordinator shall provide the homeowner with

16 a list of qualified housing counselors who shall assist and represent the
17 homeowner throughout the mediation process at the request of the
18 homeowner. A homeowner may also retain an attorney for the
19 mediation process.

20 4. If a homeowner requests mediation within thirty-five days of
21 the date on which the lender mailed the notice of the right to request
22 mediation, the homeowner shall complete and deliver to the mediation
23 coordinator and lender the following:

24 (1) A completed financial statement on a form designed by the
25 mediation coordinator and approved by the attorney general;

26 (2) A completed request for mortgage assistance form designed
27 by the mediation coordinator and approved by the attorney general;

28 (3) The homeowner's written opinion of the condition of the
29 subject residential property; and

30 (4) A written statement of any offers the homeowner has made
31 to the lender in an effort to resolve the default on the loan.

32 If the homeowner fails to comply with the requirements of this
33 subsection, the mediation coordinator shall issue a certificate of
34 compliance to the lender.

35 5. If a homeowner complies with the provisions of subsection 4
36 of this section, within fifty days of the date on which the lender mailed
37 the notice of right to request mediation, the lender shall deliver to the
38 mediation coordinator and homeowner the following:

39 (1) An appraisal and/or broker's price opinion compiled not more
40 than ninety days prior to the mediation conference;

41 (2) A written proposal to resolve the foreclosure and the
42 evaluation methodology used to determine the eligibility or non-
43 eligibility of the homeowner for the retention or non-retention of the
44 home;

45 (3) An estimate of the "short sale" value of the residential
46 property that the lender may be willing to consider as part of the
47 negotiation if loan modification is not agreed upon;

48 (4) A statement of any offers the lender has made to the
49 homeowner in an effort to resolve the default on the loan; and

50 (5) The name, title, and address of the person who will be
51 attending the mediation on behalf of the lender.

52 6. If the deadlines in subsections 4 and 5 of this section fall on

53 a Saturday, Sunday, or legal holiday, the deadline shall be extended to
54 the following business day.

55 7. Both the lender and homeowner, or his or her authorized
56 representatives, shall appear in person at the mediation conference.

57 8. Any representative appearing at a mediation conference for
58 the lender shall:

59 (1) Have full authority to agree to a proposed settlement, loan
60 modification, or dismissal;

61 (2) Have access to the homeowner's account information and
62 records relating to consideration of loss mitigation options;

63 (3) Have knowledge of loss mitigation and the ability to review
64 options for the homeowner's specific type of loan; and

65 (4) Understand the investor guidelines for the homeowner's
66 specific loan.

67 9. If the lender is located outside the metropolitan area of the
68 residential property of the homeowner, the lender may exercise the
69 option of participating by telephone, videoconferencing, or other
70 communication equipment. If participating by other communication
71 equipment, the lender representative shall be available at all times
72 during the mediation conference. In any event, counsel or other
73 authorized individuals for the lender shall appear in person at the
74 mediation conference to sign documents and settlement agreements on
75 behalf of the lender.

76 10. A continuance of a scheduled mediation conference shall be
77 granted by the mediation coordinator upon either:

78 (1) Written request submitted prior to the mediation upon
79 showing of extraordinary circumstances; or

80 (2) Written agreement between the homeowner and lender.

81 11. In the event that the lender and homeowner resolve the
82 foreclosure prior to the mediation conference, a copy of the written
83 settlement agreement signed by the lender and homeowner shall be
84 forwarded to the mediation coordinator. The mediation coordinator
85 shall subsequently issue the lender a certificate of compliance within
86 two business days. If the settlement agreement is received by the
87 mediation coordinator at least two days prior to the mediation
88 conference, the mediation fee assessed in subsection one of this section
89 shall be refunded to the lender.

90 12. If the lender and homeowner reach a settlement agreement
91 during the mediation conference, the mediator shall submit to the
92 mediation coordinator a copy of the settlement agreement within one
93 business day following the mediation conference. The mediation
94 coordinator shall subsequently issue a certificate of compliance to the
95 lender within two business days of the mediation conference.

96 13. If the lender and homeowner fail to reach a settlement
97 agreement during the mediation conference, the mediation coordinator
98 shall issue a certificate of compliance under following circumstances:

99 (1) The lender sent the notice of foreclosure and the notice of the
100 right to request mediation;

101 (2) The lender provided all of the necessary paperwork as
102 required by this section;

103 (3) The lender's representative participating in the mediation
104 had the authority to negotiate and modify the loan in question, and the
105 ability to review and approve options for the homeowner's specific type
106 of loan as required by this section; and

107 (4) The lender paid all fees required by sections 443.402 to
108 443.407.

109 14. If the lender fails to satisfy any of the requirements of
110 sections 443.402 to 443.407, the mediation coordinator shall not issue a
111 certificate of compliance to the lender.

112 15. All documents and discussion presented during the mediation
113 conference shall be confidential and inadmissible in subsequent actions
114 or proceedings, as provided in section 435.014 and Missouri Supreme
115 Court Rule 17, except to the extent necessary to prosecute a violation
116 of section 443.407. Aggregate data to monitor and evaluate the
117 implementation of the program may be collected by the state.

443.406. 1. Notwithstanding the provisions of sections 443.402 to
2 443.407 to the contrary, persons or entities shall not be prohibited from
3 exercising the right to carry out a judicial or non-judicial foreclosure
4 pursuant to the provisions of this chapter.

5 2. Notwithstanding the provisions of sections 443.402 to 443.407
6 to the contrary, no person or entity shall have a private right of action
7 under such sections.

443.407. 1. A lender shall file a valid certificate of compliance for
2 the foreclosed residential property with the county assessor either

3 before or contemporaneously with the filing of any instrument of
4 conveyance of title to the foreclosed residential property with the
5 recorder of deeds. The recorder shall not refuse to file any such
6 instrument for failure to comply with such requirement.

7 2. Any person, firm, or corporation that has violated the
8 provisions of this section shall be assessed a fine not to exceed one
9 thousand dollars. Fines assessed against a lender shall not be passed
10 on to the homeowner. It shall be a complete defense that the lender has
11 complied with the provisions of subsection 13 of section 443.405.

Unofficial ✓

Bill

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