

SENATE BILL NO. 834

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

4894S.011

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 443, RSMo, by adding thereto six new sections relating to mortgage modifications, with a severability clause.

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

Section A. Chapter 443, RSMo, is amended by adding thereto
2 six new sections, to be known as sections 443.920, 443.921,
3 443.922, 443.923, 443.924, and 443.925, to read as follows:

443.920. Sections 443.920 to 443.925 shall be known
2 and may be cited as the "Uniform Mortgage Modification Act".

443.921. For purposes of sections 443.920 to 443.925,
2 the following terms mean:

3 (1) "Electronic", relating to technology having
4 electrical, digital, magnetic, wireless, optical,
5 electromagnetic, or similar capabilities;

6 (2) "Financial covenant", an undertaking to
7 demonstrate an obligor's creditworthiness, or the adequacy
8 of security provided by an obligor;

9 (3) "Modification", includes change, amendment,
10 revision, correction, addition, supplementation,
11 elimination, waiver, and restatement;

12 (4) "Mortgage":

13 (a) An agreement that creates a consensual interest in
14 real property to secure payment or performance of an
15 obligation, regardless of:

16 a. How the agreement is denominated, including a
17 mortgage, deed of trust, trust deed, security deed,
18 indenture, and deed to secure debt; and

19 b. Whether the agreement also creates a security
20 interest in personal property; and

21 (b) Does not include an agreement that creates a
22 consensual interest to secure a liability owed by a unit
23 owner to a condominium association, owners' association, or
24 cooperative housing association for association dues, fees,
25 or assessments;

26 (5) "Mortgage modification", modification of:

27 (a) A mortgage;

28 (b) An agreement that creates an obligation, including
29 a promissory note, loan agreement, or credit agreement; or

30 (c) An agreement that creates other security or credit
31 enhancement for an obligation, including an assignment of
32 leases or rents or a guaranty;

33 (6) "Obligation", a debt, duty, or other liability,
34 secured by a mortgage;

35 (7) "Obligor", a person that:

36 (a) Owes payment or performance of an obligation;

37 (b) Signs a mortgage; or

38 (c) Is otherwise accountable, or whose property serves
39 as collateral, for payment or performance of an obligation;

40 (8) "Person", an individual, estate, business or
41 nonprofit entity, government or governmental subdivision,
42 agency, or instrumentality, or other legal entity;

43 (9) "Recognized index", an index to which changes in
44 the interest rate may be linked that is:

45 (a) Readily available to, and verifiable by, the
46 obligor; and

(b) Beyond the control of the person to whom the obligation is owed;

(10) "Record", used as a noun, means information:

(a) Inscribed on a tangible medium; or

(b) Stored in an electronic or other medium and retrievable in perceivable form;

(11) "Sign", with present intent to authenticate or adopt a record:

(a) Execute or adopt a tangible symbol; or

(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

443.922. 1. Except as provided in subsection 3 of this section, sections 443.920 to 443.925 apply to a mortgage modification.

2. Sections 443.920 to 443.925 do not affect:

(1) Laws governing the required content of a mortgage;

(2) A statute of limitations or other law governing the expiration or termination of a right to enforce an obligation or a mortgage;

(3) A recording statute;

(4) A statute governing the priority of a tax lien or other governmental lien;

(5) A statute of frauds; or

(6) Except as provided in subdivision (8) of subsection 2 of section 443.923, law governing the priority of a future advance.

3. Sections 443.920 to 443.925 do not apply to any of the following modifications:

(1) A release of, or addition to, property encumbered by a mortgage;

(2) A release of, addition of, or other change in an obligor; or

22 (3) An assignment or other transfer of a mortgage or
23 an obligation.

 443.923. 1. For a mortgage modification described in
2 subsection 2 of this section:

3 (1) The mortgage continues to secure the obligation as
4 modified;

5 (2) The priority of the mortgage is not affected by
6 the modification;

7 (3) The mortgage retains its priority regardless of
8 whether a record of the mortgage modification is recorded in
9 the public land records; and

10 (4) The modification is not a novation.

11 2. Subsection 1 of this section applies to one or more
12 of the following mortgage modifications:

13 (1) An extension of the maturity date of an obligation;

14 (2) A decrease in the interest rate of an obligation;

15 (3) If the change does not result in an increase in
16 the interest rate of an obligation as calculated on the date
17 the modification becomes effective:

18 (a) A change to a different index that is a recognized
19 index if the previous index to which changes in the interest
20 rate were linked is no longer available;

21 (b) A change in the differential between the index and
22 the interest rate;

23 (c) A change from a floating or adjustable rate to a
24 fixed rate; or

25 (d) A change from a fixed rate to a floating or
26 adjustable rate based on a recognized index;

27 (4) A capitalization of unpaid interest or other
28 unpaid monetary obligation;

29 (5) A forgiveness, forbearance, or other reduction of
30 principal, accrued interest, or other monetary obligation;

31 (6) A modification of a requirement for maintaining an
32 escrow or reserve account for payment of an obligation,
33 including taxes and insurance premiums;

34 (7) A modification of a requirement for acquiring or
35 maintaining insurance;

36 (8) A modification of an existing condition to advance
37 funds;

38 (9) A modification of a financial covenant; and

39 (10) A modification of the payment amount or schedule
40 resulting from another modification described in this
41 subsection.

42 3. The effect of a mortgage modification not described
43 in subsection 2 is governed by other law.

 443.924. Sections 443.920 to 443.925 modify, limit, or
2 supersede the Electronic Signatures in Global and National
3 Commerce Act, 15 U.S.C. Section 7001, et seq., as amended,
4 but do not modify, limit, or supersede 15 U.S.C. Section
5 7001(c), or authorize electronic delivery of any of the
6 notices described in 15 U.S.C. Section 7003(b).

 443.925. Sections 443.920 to 443.925 apply to a
2 mortgage modification made on or after the effective date of
3 such sections regardless of when the mortgage or the
4 obligation was created.

 Section B. If any provision of section A of this act
2 or the application thereof to anyone or to any circumstance
3 is held invalid, the remainder of those sections and the
4 application of such provisions to others or other
5 circumstances shall not be affected thereby.

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