

SECOND REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 834

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

4894S.02P

KRISTINA MARTIN, Secretary

AN ACT

To amend chapters 442 and 443, RSMo, by adding thereto seven 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. Chapters 442 and 443, RSMo, are amended by
2 adding thereto seven new sections, to be known as sections
3 442.920, 443.920, 443.921, 443.922, 443.923, 443.924, and
4 443.925, to read as follows:

**442.920. 1. This section shall be known and may be
2 cited as the "Missouri Residential Sale Leaseback Protection
3 Act".**

**4 2. For purposes of this section, the following terms
5 mean:**

**6 (1) "Buyer", any person or entity that acquires an
7 ownership interest in residential real estate in a sale
8 leaseback transaction;**

**9 (2) "Residential real estate", real property that is
10 improved by a building or other structure that has one to
11 four dwelling units;**

**12 (3) "Sale leaseback", a transaction or series of
13 transactions in which a seller sells residential real estate
14 that is or was the seller's residence to another party and,**

15 as a condition of the sale, or as part of the same or a
16 related transaction, enters into a lease or rental agreement
17 to remain in or re-occupy the property;

18 (4) "Seller", any natural person who transfers an
19 ownership interest in residential real estate in a sale
20 leaseback transaction.

21 3. (1) In any sale leaseback transaction, the buyer
22 shall provide the seller with the following disclosure on a
23 single page in a clear and conspicuous manner, printed in
24 boldface type:

25 If you sign a sale leaseback agreement, you
26 are entering into a contract to sell your
27 home. This means you will no longer own your
28 home.

29 You may be subject to eviction if you do not
30 follow the lease terms.

31 You may lose the right to buy back your home.

32 This may affect your credit, taxes, and legal
33 rights.

34 You are encouraged to speak with:

- 35 (1) An attorney;
- 36 (2) A real estate agent;
- 37 (3) A housing counselor;
- 38 (4) A tax advisor; and
- 39 (5) A real estate appraiser.

40 No sale leaseback can be closed for at least
41 thirty (30) days after signing an agreement.

42 Do not sign unless you fully understand the
43 terms.

44 (2) The disclosure required by subdivision (1) of this
45 subsection shall be provided to the seller not less than
46 fourteen calendar days prior to execution of any sale
47 leaseback agreement, and the disclosures shall be signed by
48 both the seller and the buyer concurrently with the
49 execution of the sale leaseback agreement.

50 (3) A copy of the signed disclosure required by
51 subdivision (1) of this subsection shall be provided to the
52 seller within five days of the execution of the sale
53 leaseback agreement.

54 4. There shall be no delivery, recording, or other
55 transfer of title from seller to buyer until thirty days
56 after the execution of any sale leaseback agreement.

57 5. (1) Any violation of the provisions of this
58 section shall be subject to a civil penalty not to exceed
59 ten thousand dollars per violation.

60 (2) The attorney general may bring an action to
61 enforce this section, including actions for injunctive
62 relief, civil penalties, and restitution.

63 (3) Any seller harmed by a violation of this section
64 may bring a civil action to recover:

- 65 (a) Actual damages;
- 66 (b) Statutory damages of ten thousand dollars, which
67 shall be in addition to any actual damages proven;
- 68 (c) Attorneys' fees and costs; and
- 69 (d) Equitable or injunctive relief.

70 6. No provision of this section shall be modified or
71 waived by any agreement. Any portion of an agreement that
72 is executed, modified, or extended after the effective date

73 of this section that modifies or waives a duty or remedy
74 under this section is void ab initio and unenforceable.

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 any 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

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

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

50 (a) Inscribed on a tangible medium; or

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

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

55 (a) Execute or adopt a tangible symbol; or

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

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

4 2. Sections 443.920 to 443.925 do not affect:

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

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

9 (3) A recording statute;

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

12 (5) A statute of frauds; or

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

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

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

20 (2) A release of, addition of, or other change in an
21 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. Pursuant to the authority granted by the
2 federal Electronic Signatures in Global and National
3 Commerce Act, 15 U.S.C. 7002, sections 443.920 to 443.925
4 modify, limit, or supersede such act, 15 U.S.C. Section
5 7001, et seq., as amended, but do not modify, limit, or
6 supersede 15 U.S.C. Section 7001(c), or authorize electronic
7 delivery of any of the notices described in 15 U.S.C.
8 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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