

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 834

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 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.