

SECOND REGULAR SESSION

# HOUSE BILL NO. 1611

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES NASHEED (Sponsor), McCREERY, HUBBARD, OXFORD,  
PIERSON, PACE, ZERR AND McNEIL (Co-sponsors).

5425L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 443, RSMo, by adding thereto twenty-four new sections relating to real estate foreclosure, with penalty provisions.

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

Section A. Chapter 443, RSMo, is amended by adding thereto twenty-four new sections, to be known as sections 443.326, 443.460, 443.465, 443.470, 443.475, 443.480, 443.485, 443.490, 443.495, 443.500, 443.505, 443.510, 443.515, 443.520, 443.525, 443.530, 443.535, 443.540, 443.545, 443.550, 443.560, 443.570, 443.575, and 443.580, to read as follows:

443.326. 1. All terms in this section shall have the same meaning as in section 443.465.

2. When a foreclosing mortgagee intends to conduct a power of sale foreclosure under sections 443.290 to 443.440, of residential real property that is occupied by one or more mortgagors who are owner-occupants, the foreclosing mortgagee shall prepare a written notice of default and intention to foreclose addressed to all mortgagors. The notice of default and intention to foreclose shall state:

(1) The name and address of any current mortgagee;

(2) The name and last known address of all mortgagors;

(3) The address or a description of the location of the property subject to foreclosure, and the legal description of the property;

(4) The description of the default or, if the default is a monetary default, an itemization of the defaulted amount;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

14           **(5) The action required to cure the default, including the defaulted amount and the**  
15 **estimated amount of the foreclosing mortgagee's attorney's fees and costs, and all other fees**  
16 **and costs related to the default estimated to be incurred by the foreclosing mortgagee by**  
17 **the deadline date;**

18           **(6) The date by which the default must be cured, which shall be at least sixty days**  
19 **after the date of the notice of default and intention to foreclose;**

20           **(7) A statement that if the default is not cured by the deadline date stated in the**  
21 **notice of default and intention to foreclose, the entire unpaid balance of the moneys owed**  
22 **to the mortgagee under the security instrument will become due, that the mortgagee**  
23 **intends to conduct a power of sale foreclosure to sell the property at a public sale without**  
24 **any court action, and that the mortgagee or any other person may acquire the property at**  
25 **the public sale;**

26           **(8) The name, address, electronic address, and telephone number of the attorney**  
27 **who is representing the foreclosing mortgagee; provided that the attorney shall be licensed**  
28 **to practice law in the state and physically located in the state;**

29           **(9) Notice of the right of the owner-occupant to elect to participate in any other**  
30 **process as established by law; and**

31           **(10) Contact information for local approved housing counselors and approved**  
32 **budget and credit counselors as those terms are defined in section 443.465.**

33           **3. The notice of default and intention to foreclose shall also contain wording**  
34 **substantially similar to the following in all capital letters and printed in not less than**  
35 **fourteen-point font:**

36                   **"IF THE DEFAULT CONTINUES AFTER THE DEADLINE DATE**  
37 **IN THIS NOTICE, THE PROPERTY MAY BE FORECLOSED AND**  
38 **SOLD WITHOUT ANY COURT ACTION.**

39                   **YOU MAY HAVE CERTAIN LEGAL RIGHTS OR DEFENSES.**  
40 **FOR ADVICE, YOU SHOULD CONSULT AN ATTORNEY LICENSED**  
41 **IN THIS STATE.**

42                   **AFTER THE DEADLINE DATE IN THIS NOTICE, TWO PUBLIC**  
43 **SHOWINGS (OPEN HOUSES) OF THE PROPERTY BY THE LENDER**  
44 **WILL BE HELD, BUT ONLY IF ALL MORTGAGORS (OWNERS) OF**  
45 **THE PROPERTY WHO ALSO CURRENTLY RESIDE AT THE**  
46 **PROPERTY SO AGREE. TO SHOW THAT ALL OWNERS RESIDING**  
47 **AT THE PROPERTY AGREE TO ALLOW TWO OPEN HOUSES BY**  
48 **THE LENDER, THEY MUST SIGN A LETTER SHOWING THEY**  
49 **AGREE. THE SIGNED LETTER MUST BE SENT TO THIS OFFICE AT**  
50 **THE ADDRESS GIVEN IN THIS NOTICE.**

51                   **THIS OFFICE MUST ACTUALLY RECEIVE THE SIGNED**  
52 **LETTER BY THE DEADLINE DATE IN THIS NOTICE. THE SIGNED**

53 LETTER MUST BE SENT TO THIS OFFICE BY CERTIFIED MAIL,  
54 REGISTERED MAIL, OR EXPRESS MAIL, POSTAGE PREPAID AND  
55 RETURN RECEIPT REQUESTED.

56 IF THE SIGNED LETTER IS NOT RECEIVED BY THIS OFFICE  
57 BY THE DEADLINE DATE, THE PROPERTY WILL THEN BE SOLD  
58 WITHOUT ANY OPEN HOUSES BEING HELD.

59 EVEN IF THIS OFFICE RECEIVES THE SIGNED LETTER TO  
60 ALLOW THE LENDER TO HOLD TWO OPEN HOUSES OF THE  
61 PROPERTY, IF ALL OWNERS LATER DO NOT COOPERATE TO  
62 ALLOW THE OPEN HOUSES, THE PROPERTY WILL BE SOLD  
63 WITHOUT ANY OPEN HOUSES BEING HELD.

64 ALL FUTURE NOTICES AND CORRESPONDENCE WILL BE  
65 MAILED TO YOU AT THE ADDRESS AT WHICH YOU RECEIVED  
66 THIS NOTICE UNLESS YOU SEND WRITTEN INSTRUCTIONS TO  
67 THIS OFFICE INFORMING THIS OFFICE OF A DIFFERENT  
68 ADDRESS. THE WRITTEN INSTRUCTIONS MUST BE SENT TO THIS  
69 OFFICE BY CERTIFIED MAIL, REGISTERED MAIL, OR EXPRESS  
70 MAIL, POSTAGE PREPAID AND RETURN RECEIPT REQUESTED.".

71 4. The notice of default and intention to foreclose shall include a copy of:

72 (1) The original security instrument, and copies of any subsequent agreements and  
73 assignments;

74 (2) Any other documents that amend or alter the terms of the original agreement  
75 that were signed by the mortgagor and the mortgagee or any successors or assigns of such  
76 parties.

77 5. The foreclosing mortgagee shall have the notice of default and intention to  
78 foreclose served on all mortgagors and any prior or junior creditors who have a recorded  
79 lien on the property.

80 6. As used in this section, unless the context clearly indicates otherwise, the notice  
81 of default and intention to foreclose shall also include any amended notice that results from  
82 participation in the mortgage foreclosure dispute resolution program under section  
83 443.470.

2 443.460. Sections 443.460 to 443.575 shall apply to nonjudicial foreclosures  
3 conducted by power of sale under sections 443.290 to 443.440, of residential real property  
4 that is occupied by one or more mortgagors who are owner-occupants, but shall not apply  
5 to power of sale foreclosures that have been converted to judicial foreclosure actions under  
6 sections 443.540 to 443.550.

2 443.465. As used in section 443.326 and sections 443.460 to 443.575, the following  
3 terms shall mean:

- 3           (1) "Approved budget and credit counselor", a budget and credit counseling  
4 agency that has received approval from a United States trustee or bankruptcy  
5 administrator to provide instructional courses concerning personal financial management  
6 under 11 U.S.C. Section 111;
- 7           (2) "Approved housing counselor", a housing counseling agency that has received  
8 approval from the United States Department of Housing and Urban Development to  
9 provide housing counseling services under 12 U.S.C. Section 1701x;
- 10          (3) "Division", the division of finance within the department of insurance, financial  
11 institutions, and professional registration;
- 12          (4) "Director", the director of the division of finance;
- 13          (5) "Dispute resolution", a facilitated negotiation between an owner-occupant and  
14 mortgagee for the purpose of reaching an agreement for a mortgage loan modification or  
15 other agreement in an attempt to avoid foreclosure or to mitigate damages if foreclosure  
16 is unavoidable;
- 17          (6) "Mortgagee", the lender of secured party and current holder of record of an  
18 interest in a security instrument;
- 19          (7) "Mortgagor", all borrowers and debtors named in the security instrument and  
20 includes the current owner of record of the property whose interest is subject to the  
21 security instrument;
- 22          (8) "Neutral party", a person who is a dispute resolution specialist assigned by the  
23 division to facilitate the dispute resolution process;
- 24          (9) "Nonjudicial foreclosure", foreclosure under power of sale under sections  
25 443.290 to 443.440;
- 26          (10) "Owner-occupant", a person, at the time that a notice of default and intention  
27 to foreclose is served upon the mortgagor under a power of sale:
- 28           (a) Who owns an interest in the residential property, whereby the interest is  
29 encumbered by the security instrument being foreclosed upon; and
- 30           (b) For whom the residential property is and has been the person's primary  
31 residence for a continuous period of not less than two hundred days immediately preceding  
32 the date on which the notice is served.

443.470. 1. A foreclosure dispute resolution program shall be established within  
2 the division to provide owner-occupants facing foreclosure an opportunity to negotiate an  
3 agreement to avoid foreclosure or mitigate damages in cases where foreclosure is  
4 unavoidable.

5           2. The office of state courts administrator shall provide assistance to the division  
6 in matters including:

7           **(1) Contract procurement;**

8           **(2) Performance oversight, such as monitoring compliance with program**  
9 **requirements; and**

10           **(3) Management services to oversee any contract between the division and a private**  
11 **organization retained by the division to provide dispute resolution services or personnel,**  
12 **including providing the division with monthly status reports and evaluations.**

13           **3. The division and the office of state courts administrator shall execute a**  
14 **memorandum of understanding that establishes their rights and responsibilities relating**  
15 **to the foreclosure dispute resolution program, which may be amended from time to time.**

16           **4. The division is authorized to contract with county, state, or federal agencies, and**  
17 **private organizations in order to carry out the requirements of sections 443.470 to 443.535.**

**443.475. Before a public sale may be conducted under sections 443.290 to 443.440**  
2 **for owner-occupied residential property, the foreclosing mortgagee shall, at the election of**  
3 **the owner-occupant, participate in the foreclosure dispute resolution program under**  
4 **sections 443.470 to 443.535 to attempt to negotiate an agreement that avoids foreclosure**  
5 **or mitigates damages where foreclosure is unavoidable.**

**443.480. 1. A notice of default and intention to foreclose served under section**  
2 **443.326 shall include notice that the mortgagee is required, at the election of the owner-**  
3 **occupant, to participate in the foreclosure dispute resolution program under sections**  
4 **443.470 to 443.535 to attempt to avoid foreclosure or to mitigate damages where**  
5 **foreclosure is unavoidable.**

6           **2. The notice required by subsection 1 of this section shall be printed in not less**  
7 **than fourteen-point font and include:**

8           **(1) The name and contact information of any mortgagor and any mortgagee;**

9           **(2) The subject property address and legal description of the property;**

10           **(3) The name and contact information of a person or entity authorized to negotiate**  
11 **a loan modification on behalf of the mortgagee;**

12           **(4) A statement that the mortgagor shall consult with an approved housing**  
13 **counselor or an approved budget and credit counselor at least thirty days prior to the first**  
14 **day of a scheduled dispute resolution session;**

15           **(5) Contact information for all local approved housing counselors;**

16           **(6) Contact information for all local approved budget and credit counselors;**

17           **(7) A statement that the mortgagor electing to participate in the mortgage**  
18 **foreclosure dispute resolution program shall provide a certification under penalty of**  
19 **perjury to the department that the mortgagor is an owner-occupant of the subject**  
20 **property, including supporting documentation;**

21           **(8) A general description of the information that an owner-occupant electing to**  
22 **participate in the foreclosure dispute resolution program is required to provide a statement**  
23 **that the owner-occupant shall elect to participate in the program no later than thirty days**  
24 **after the department's mailing of the notice under section 443.470, or the right shall be**  
25 **waived.**

**443.485. 1. Within three days after a mortgagee serves a notice of default and**  
2 **intention to foreclose under section 443.326, the mortgagee shall file the same notice with**  
3 **the division and pay a filing fee of five hundred fifty dollars, which shall be deposited into**  
4 **the mortgage foreclosure dispute resolution fund established under section 443.535.**

5           **2. Violation of this section shall constitute an unlawful merchandising practice**  
6 **under section 407.020.**

**443.490. 1. Within ten days after the mortgagee's filing of a notice of default and**  
2 **intention to foreclose with the division, the division shall mail a written notification by**  
3 **registered or certified mail to the mortgagor that a notice of default and intention to**  
4 **foreclose has been filed with the division. The notification shall inform the mortgagor of**  
5 **an owner-occupant's right to elect to participate in the foreclosure dispute resolution**  
6 **program and shall include:**

7           **(1) Information about the foreclosure dispute resolution program;**

8           **(2) A form for an owner-occupant to elect or to waive participation in the**  
9 **foreclosure dispute resolution program that shall contain instructions for the completion**  
10 **and return of the form to the division and the division's mailing address;**

11           **(3) A statement that the mortgagor electing to participate in the foreclosure dispute**  
12 **resolution program shall provide a certification under penalty of perjury to the division**  
13 **that the mortgagor is an owner-occupant of the subject property, including a description**  
14 **of acceptable supporting documentation;**

15           **(4) A statement that the owner-occupant shall elect to participate in the foreclosure**  
16 **dispute resolution program no later than thirty days after the division's mailing of the**  
17 **notice or the owner-occupant shall be deemed to have waived the option to participate in**  
18 **the program;**

19           **(5) A description of the information required under subdivision (2) of subsection**  
20 **3 of section 443.505 that the owner-occupant shall provide to the mortgagee and division;**

21           **(6) A statement that the owner-occupant shall consult with an approved housing**  
22 **counselor or approved budget and credit counselor at least thirty days prior to the first day**  
23 **of a scheduled dispute resolution session;**

24           **(7) Contact information for all local approved housing counselors;**

25           **(8) Contact information for all local approved budget and credit counselors; and**

26           **(9) Contact information for the division.**

27           **2. The notification required under subsection 1 of this section shall be mailed to the**  
28 **subject property and any other addresses for the mortgagor as provided in the mortgagee's**  
29 **notice of default and intention to foreclose under section 443.485.**

**443.495. 1. An owner-occupant elects to participate in the mortgage foreclosure**  
2 **dispute resolution program by returning to the division:**

3           **(1) The completed program election form provided under section 443.490;**

4           **(2) Certification under penalty of perjury that the mortgagor is an owner-occupant,**  
5 **accompanied with any supporting documentation, including copies of recent utility billing**  
6 **statements, voter registration records, real estate property tax records, or state**  
7 **identification forms.**

8           **2. The completed form and fees shall be received by the division no later than thirty**  
9 **days after mailing of the division's notification under section 443.490. If the completed**  
10 **form and fee are not received within the required time period, the owner-occupant shall**  
11 **be deemed to have waived any right to participate in the foreclosure dispute resolution**  
12 **program with respect to the subject property.**

13           **3. If the owner-occupant does not elect to participate in dispute resolution, the**  
14 **division shall notify the mortgagee within ten days of receiving an election form indicating**  
15 **nonelection or the termination of the thirty-day time period for election. After receiving**  
16 **the division's notification, the mortgagee may proceed with the nonjudicial foreclosure.**

**443.500. 1. If an owner-occupant elects to participate in the foreclosure dispute**  
2 **resolution program, the division shall open a dispute resolution case within twenty days**  
3 **of receipt of the owner-occupant's election form and fee in accordance with section 443.495,**  
4 **and the division shall mail written notification of the case opening to the parties by**  
5 **registered mail, return receipt requested, which shall include:**

6           **(1) Notification of the date, time, and location of the dispute resolution session;**

7           **(2) An explanation of the dispute resolution process;**

8           **(3) Information about the dispute resolution program requirements; and**

9           **(4) Consequences and penalties for noncompliance.**

10           **2. The dispute resolution session shall be scheduled for a date no less than thirty**  
11 **and no more than sixty days from the date of the notification of case opening, unless**  
12 **mutually agreed to by the parties and the neutral party.**

13           **3. The written notification of a case opening under this section shall operate as a**  
14 **stay of the foreclosure proceeding.**

**443.505. 1. The parties to a dispute resolution process under sections 443.470 to 443.535 shall consist of the owner-occupant or the owner-occupant's representative, and the mortgagee or the mortgagee's representative; provided that:**

**(1) A representative of the mortgagee who participates in the dispute resolution shall be authorized to negotiate a loan modification on behalf of the mortgagee or shall have, at all stages of the dispute resolution process, direct access by telephone, videoconference, or other immediately available contemporaneous telecommunications medium, to a person who is so authorized;**

**(2) The mortgagee and owner-occupant may be represented by counsel; and**

**(3) The owner-occupant may be assisted by an approved housing counselor or approved budget and credit counselor.**

**2. No fewer than thirty days prior to the first day of a scheduled dispute resolution session, the owner-occupant shall consult with an approved housing counselor or approved budget and credit counselor.**

**3. The parties shall comply with all information requests from the division and neutral party. No less than fifteen days prior to the first day of the scheduled dispute resolution session:**

**(1) The mortgagee shall provide to the division and the mortgagor:**

**(a) A copy of the promissory note, signed by the mortgagor, including any endorsements, amendments, or riders to the note evidencing the debt;**

**(b) A copy of the security instrument and any amendments, riders, or other documentation evidencing the mortgagee's right of nonjudicial foreclosure and interest in the property including any interest as a successor or assignee; and**

**(c) Financial records and correspondence that confirms default.**

**(2) The owner-occupant shall provide to the division and the mortgagee:**

**(a) Documentation showing income qualification for a loan modification, including any copies of pay stubs, W-2 forms, social security or disability income, retirement income, child support income, or any other income that the owner-occupant deems relevant to the owner-occupant's financial ability to repay the debt;**

**(b) Any records or correspondence available which may dispute that the mortgagor is in default;**

**(c) Any records or correspondence available evidencing a loan modification or amendment;**

**(d) Any records or correspondence available that indicate the parties are currently engaged in bona fide negotiations to modify the loan or negotiate a settlement of the default;**



37 (e) Names and contact information for housing counselors, approved budget and  
38 credit counselors, or representatives of the mortgagee, with whom the owner-occupant may  
39 have or is currently working with to address the default; and

40 (f) Verification of counseling by an approved housing counselor or approved  
41 budget and credit counselor.

42 4. The dispute resolution session shall consist of at least one meeting lasting no  
43 more than three hours, which may be extended by the equivalent of one additional three-  
44 hour session on the same or a different day at the neutral party's discretion. The parties  
45 shall be present in person at the dispute resolution session provided that a party may  
46 submit a written request to the division at least fourteen days prior to the scheduled  
47 dispute resolution session to participate through telephone, videoconference, or other  
48 contemporaneous telecommunications medium. A request to participate through a  
49 telecommunications medium shall be granted only for good cause and upon agreement of  
50 the neutral party and the other party to the dispute resolution. For purposes of this  
51 subsection, "good cause" means an event or circumstance outside of the requesting party's  
52 control that makes in-person participation impossible. The neutral party shall have the  
53 discretion to postpone a dispute resolution session in order to allow the requesting party  
54 to participate in person.

55 5. A dispute resolution process conducted shall use the calculations, assumptions,  
56 and forms established by the Federal Deposit Insurance Corporation Loan Modification  
57 Program Guide as set out on the Federal Deposit Insurance Corporation's publicly  
58 accessible website or a different program or process if agreed to by both parties and the  
59 neutral party.

60 6. The dispute resolution process shall conclude within sixty days from the first  
61 scheduled meeting between the parties and the neutral party, provided that the neutral  
62 party shall have the authority to extend this period. Nothing in this section shall be  
63 construed to require the dispute resolution process to take the full sixty days allotted to  
64 reach a negotiated agreement.

443.510. 1. Within ten days from the conclusion of the dispute resolution, the  
2 neutral party shall file a closing report with the division which verifies the parties'  
3 presence at the session, compliance with the requirements of sections 443.475 to 443.505,  
4 and reports whether the parties reached an agreement to resolve the dispute and the date  
5 of the dispute resolution's conclusion. Upon receipt of the neutral party's closing report,  
6 the division shall close the case. The division shall forward a written copy of the neutral  
7 party's closing report by registered or certified mail to the parties within five days after  
8 receipt from the neutral party.

9           **2. If, despite the parties' participation in the dispute resolution process and**  
10 **compliance thereunder, the parties are not able to come to an agreement, the neutral party**  
11 **shall file a closing report with the division evidencing that the parties met the program**  
12 **requirements but were unable to come to an agreement. The mortgagee may file or record**  
13 **the report with the recorder of deeds in the county where the subject property is situated**  
14 **and non judicial foreclosure may proceed as otherwise provided by law. Nothing in this**  
15 **subsection shall be construed to require the neutral party to wait the full sixty days allotted**  
16 **for dispute resolution to determine that the parties were unable to reach an agreement and**  
17 **file a report.**

18           **3. If the parties have complied with the requirements of sections 443.475 to 443.505**  
19 **and have reached an agreement, the agreement shall be memorialized in a settlement**  
20 **document signed by the parties or their authorized representatives. If the parties or their**  
21 **authorized representatives participate in the dispute resolution session in person, the**  
22 **settlement document shall be signed in the presence of the neutral party. If any of the**  
23 **parties or their authorized representatives participate in the dispute resolution through**  
24 **telephone, videoconference, or other immediately available contemporaneous**  
25 **telecommunications medium, the settlement document shall be signed and returned to the**  
26 **neutral party no later than ten days after the conclusion of the dispute resolution session.**  
27 **The parties shall be responsible for drafting any agreement reached for filings and**  
28 **recordings, and enforcing the settlement document. The neutral party shall file the**  
29 **settlement document with the neutral party's closing report. The settlement document**  
30 **shall be a contract between the parties and shall be enforceable in a private contract action**  
31 **in a court of appropriate jurisdiction in the event of breach by either party. If the**  
32 **settlement document allows for foreclosure or other transfer of the subject property, the**  
33 **stay of the foreclosure shall be released upon filing or recording the settlement document**  
34 **with the recorder of deeds in the county where the subject property is situated.**

35           **4. If the parties to a dispute resolution process reach an agreement which resolves**  
36 **the matters at issue in the dispute resolution before the first day of the scheduled dispute**  
37 **resolution session scheduled under this section, the parties shall notify the neutral party**  
38 **by that date. The neutral party shall thereafter issue a closing report that the parties have**  
39 **reached an agreement prior to the commencement of a dispute resolution session. If the**  
40 **agreement provides for foreclosure, the parties shall memorialize the agreement in a**  
41 **writing signed by both parties and provide it to the neutral party. Any agreement**  
42 **authorizing foreclosure shall be attached to the neutral party's closing report. If the**  
43 **agreement authorizes foreclosure, the stay of the foreclosure shall be released upon filing**  
44 **or recording with the recorder of deeds in the county where the subject property is**

45 situated. No fees shall be refunded if the parties come to an agreement prior to a dispute  
46 resolution session.

443.515. 1. The neutral party's closing report shall indicate if the mortgagee or the  
2 owner-occupant failed to comply with requirements of the mortgage foreclosure dispute  
3 resolution program.

4 (1) In the case of the mortgagee, failure to comply with the requirements of the  
5 program may consist of:

6 (a) Participation in dispute resolution without the authority to negotiate a loan  
7 modification or without access at all stages of the dispute resolution process to a person  
8 who is so authorized;

9 (b) Failure to provide the required information or documents;

10 (c) Refusal to cooperate or participate in dispute resolution; or

11 (d) Refusal or failure to pay program fees in a timely manner.

12 (2) In the case of the owner-occupant, failure to comply with the requirements of  
13 the program may consist of:

14 (a) Failure to provide the required information or documents; or

15 (b) Refusal to cooperate or participate in dispute resolution.

16 2. If the neutral party determines that the noncompliance was unjustified as a  
17 result of circumstances within a party's control, sanctions may be imposed on the  
18 noncompliant party as follows:

19 (1) Sanctions against a mortgagee for unjustified noncompliance with the program  
20 shall include a stay of the foreclosure and a fine payable to the owner-occupant not to  
21 exceed one thousand five hundred dollars; and

22 (2) Sanctions against an owner-occupant for unjustified noncompliance with the  
23 program shall include a removal of the stay of the foreclosure and a fine payable to the  
24 mortgagee not to exceed one thousand five hundred dollars.

443.520. 1. The written notification of a case opening under section 443.500 shall  
2 operate as a stay of the nonjudicial foreclosure proceeding.

3 2. Upon a stay under subsection 1 of this section, a mortgagee shall not foreclose  
4 upon a mortgage or deed of trust:

5 (1) Until the neutral party's report confirming either that the parties have been  
6 unable to reach an agreement or have reached an agreement that authorizes foreclosure  
7 is filed with the division under section 443.515;

8 (2) If a statement of noncompliance has been issued against the mortgagee under  
9 section 443.515; or

10 (3) Unless otherwise provided by law or court order.

**443.525. Personal financial information and other sensitive personal information, including information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or credit worthiness which is disclosed by the parties in the course of the foreclosure dispute resolution program, shall be confidential and not subject to public disclosure.**

**443.530. A neutral party shall possess sufficient knowledge in the areas of law, real estate, or finance and shall receive sufficient training to be able to effectuate the purposes of sections 443.470 to 443.525. A neutral party shall not be liable for any act or omission that occurs in relation to the administration or operation of the foreclosure dispute resolution program. A neutral party shall not be a necessary party to, called as a witness in, or subject to any subpoena duces tecum for the production of documents in any arbitral, judicial, or administrative proceeding that arises from or relates to the foreclosure dispute resolution program.**

**443.535. There is hereby established in the state treasury a special fund to be known as the "Foreclosure Dispute Resolution Fund" to be administered by the division to implement and operate the foreclosure dispute resolution program established by sections 443.470 to 443.535. The state treasurer shall be custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may approve disbursements. The fund shall be a dedicated fund and, upon appropriation, money in the fund shall be used solely for the administration of sections 443.470 to 443.535. Notwithstanding the provisions of section 33.080, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.**

**443.540. 1. An owner-occupant of a residential property that is subject to nonjudicial foreclosure under sections 443.290 to 443.440 may convert the action to a judicial foreclosure under sections 443.190 to 443.280 provided that:**

**(1) A petition conforming to section 443.545 shall be filed with the circuit court in any county where any part of the property is situated, stating that the owner-occupant of the property elects to convert the nonjudicial foreclosure to a judicial foreclosure proceeding no later than thirty days after the notice of default and intent to foreclose is served on the owner-occupant as required by section 443.326;**

**(2) Within forty-five days of the filing of the petition, all owner-occupants and mortgagors of an interest in the residential property whose interests are pledged or otherwise encumbered by the security instrument that is being foreclosed and all persons**

12 who have signed the promissory note or other instrument evidencing the debt secured by  
13 the security instrument that is being foreclosed, including without limitation co-obligors  
14 and guarantors, shall file a statement in the circuit court stating that they agree to submit  
15 themselves to the judicial process and the jurisdiction of the circuit court; provided further  
16 that if this condition is not satisfied, the circuit court action may be dismissed with  
17 prejudice as to the right of any owner-occupant to convert the action to a judicial  
18 proceeding, and the mortgagee may proceed nonjudicially;

19 (3) Filing a petition under subdivision (1) of this subsection shall automatically stay  
20 the nonjudicial foreclosure action unless and until the judicial proceeding has been  
21 dismissed;

22 (4) The person filing the petition under subdivision (1) of this subsection shall have  
23 an affirmative duty to promptly notify the attorney who is handling the nonjudicial  
24 foreclosure about the filing of the petition for conversion;

25 (5) All parties joined in the converted judicial proceeding may assert therein any  
26 claims and defenses that they could have asserted had the action originally been  
27 commenced as a judicial foreclosure action.

28 2. This section shall not apply to a foreclosure for which the mortgagor has elected  
29 to participate in the mortgage foreclosure dispute resolution program under sections  
30 443.470 to 443.530.

443.545. 1. A petition filed under section 443.540 shall contain at a minimum:

2 (1) A caption setting forth the name of the court, the title of the action, and the  
3 names of the filing party as petitioner and the foreclosing party as the respondent;

4 (2) The name, mailing address, and telephone number of the filing party;

5 (3) The address and legal description of the property subject to the foreclosure  
6 action;

7 (4) A statement identifying all other owner-occupants and mortgagors of the  
8 property whose interests are pledged or otherwise encumbered by the security instrument  
9 that is being foreclosed and all persons who have signed the promissory note or other  
10 instrument evidencing the debt secured by the security instrument that is being foreclosed,  
11 including without limitation co-obligors and guarantors;

12 (5) A certification under penalty of perjury that the filing party is an owner-  
13 occupant of the subject property and seeks to convert the nonjudicial foreclosure to a  
14 judicial proceeding;

15 (6) A statement certifying that the filing party served a copy of the petition on the  
16 foreclosing party's attorney identified in the notice of default and intent to foreclose under

17 section 443.326 either by personal delivery or by postage prepaid United States mail, to the  
18 address of the attorney as set forth in said section; and

19 (7) A copy of the notice of default and intent to foreclose that was served on the  
20 filing party under section 443.326.

21 2. The assignment of parties in the petition for conversion under subsection 1 of  
22 this section shall relate to the petition for conversion only and shall not be construed to  
23 affect the assignment of parties in a nonjudicial power of sale foreclosure converted to a  
24 judicial foreclosure under this section.

443.550. 1. The notice of default and intent to foreclose that is served as required  
2 under section 443.326 shall include a form containing the contents described in section  
3 443.545 and in addition to all other requirements, a statement printed in not less than  
4 fourteen-point font as follows:

5 "IF THE PROPERTY BEING FORECLOSED IS USED FOR  
6 RESIDENTIAL PURPOSES, AN OWNER-OCCUPANT OF THE  
7 PROPERTY (A PERSON WHO, AT THE TIME THIS NOTICE IS  
8 SERVED, OWNS AN INTEREST IN THE RESIDENTIAL PROPERTY  
9 THAT IS SUBJECT TO THE MORTGAGE BEING FORECLOSED AND  
10 THE RESIDENTIAL PROPERTY HAS BEEN THE PRIMARY  
11 RESIDENCE CONTINUOUSLY FOR NOT LESS THAN TWO  
12 HUNDRED DAYS) HAS THE RIGHT TO CONVERT A NONJUDICIAL  
13 FORECLOSURE PROCEEDING TO A JUDICIAL FORECLOSURE  
14 WHERE CLAIMS AND DEFENSES MAY BE CONSIDERED BY A  
15 COURT OF LAW. TO EXERCISE THIS RIGHT, THE OWNER-  
16 OCCUPANT SHALL COMPLETE AND FILE THE ATTACHED FORM  
17 WITH THE CIRCUIT COURT IN ANY COUNTY WHERE ANY PART  
18 OF THE PROPERTY IS SITUATED WITHIN THIRTY DAYS AFTER  
19 SERVICE OF THIS NOTICE.

20 IN ADDITION, ALL OWNER-OCCUPANTS AND  
21 MORTGAGORS OF THE RESIDENTIAL PROPERTY WHOSE  
22 INTERESTS HAVE BEEN PLEDGED OR OTHERWISE ENCUMBERED  
23 BY THE MORTGAGE THAT IS BEING FORECLOSED AND ALL  
24 PERSONS WHO HAVE SIGNED THE PROMISSORY NOTE OR  
25 OTHER INSTRUMENT EVIDENCING THE DEBT SECURED BY THE  
26 MORTGAGE THAT IS BEING FORECLOSED, INCLUDING,  
27 WITHOUT LIMITATION, CO-OBLIGORS AND GUARANTORS,  
28 SHALL FILE A STATEMENT IN THE CIRCUIT COURT ACTION  
29 THAT THEY AGREE TO SUBMIT TO THE JUDICIAL PROCESS AND  
30 THE JURISDICTION OF THE CIRCUIT COURT WITHIN FORTY-  
31 FIVE DAYS OF THE FILING OF THE ATTACHED FORM. FAILURE  
32 TO SATISFY THIS CONDITION MAY RESULT IN DISMISSAL OF THE  
33 CIRCUIT COURT ACTION WITH PREJUDICE.

34 AN OWNER-OCCUPANT SHALL PROMPTLY NOTIFY THE  
35 ATTORNEY LISTED IN THIS NOTICE ABOUT THE FILING OF THE  
36 CONVERSION FORM.

37 FORECLOSURE DISPUTE RESOLUTION MAY BE AVAILABLE  
38 IN NONJUDICIAL FORECLOSURE ACTIONS AS AN ALTERNATIVE  
39 FOR OWNER-OCCUPANTS ATTEMPTING TO AVOID  
40 FORECLOSURE OR TO MITIGATE THE EFFECTS OF  
41 FORECLOSURE ON AN OWNER-OCCUPANT. HOWEVER, IF AN  
42 OWNER-OCCUPANT FILES FOR CONVERSION, DISPUTE  
43 RESOLUTION MAY NOT BE AVAILABLE UNLESS ORDERED BY A  
44 JUDGE.

45 A FORECLOSING LENDER WHO COMPLETES A  
46 NONJUDICIAL FORECLOSURE OF RESIDENTIAL PROPERTY  
47 SHALL BE PROHIBITED FROM PURSUING A DEFICIENCY  
48 JUDGMENT AGAINST A MORTGAGOR UNLESS THE DEBT IS  
49 SECURED BY OTHER COLLATERAL, OR AS OTHERWISE  
50 PROVIDED BY LAW. IF THIS ACTION IS CONVERTED TO A  
51 JUDICIAL PROCEEDING, HOWEVER, THEN ALL REMEDIES  
52 AVAILABLE TO A LENDER MAY BE ASSERTED, INCLUDING THE  
53 RIGHT TO SEEK A DEFICIENCY JUDGMENT."

54 2. The statement required by this section shall not be required to be included in the  
55 notice of sale under section 443.320 or 443.325.

443.560. 1. It shall be a prohibited practice for any foreclosing mortgagee to engage  
2 in any of the following practices:

3 (1) Holding a public sale on a date, at a time, or at a place other than that described  
4 in the public notice of the public sale or a properly noticed postponement;

5 (2) Specifying a fictitious place in the public notice of the public sale;

6 (3) Conducting a postponed public sale on a date other than the date described in  
7 the new public notice of the public sale;

8 (4) Delaying the delivery of the recorded, conformed copy of the conveyance  
9 document to a bona fide purchaser who purchases in good faith for more than forty-five  
10 days after the completion of the public sale;

11 (5) Completing nonjudicial foreclosure proceedings during short sale escrows with  
12 a bona fide purchaser if the short sale offer is at least five per cent greater than the public  
13 sale price; provided that escrow is opened within ten days and closed within forty-five days  
14 of the public sale; and provided further that a bona fide short sale purchaser shall have  
15 priority over any other purchaser;

16 (6) Completing nonjudicial foreclosure proceedings during bona fide loan  
17 modification negotiations with the mortgagor; or

18           **(7) Completing nonjudicial foreclosure proceedings against a mortgagor who has**  
19 **been accepted or is being evaluated for consideration for entry into a federal loan**  
20 **modification program before obtaining a certificate or other documentation confirming**  
21 **that the mortgagor is no longer eligible or an active participant of that federal program.**

22           **2. Upon initiation of a foreclosure action by a foreclosing mortgagee, no junior**  
23 **lienholder shall be permitted to initiate a nonjudicial foreclosure during a pendency of a**  
24 **stay.**

**443.570. 1. Any notices required to be made by a mortgagee under section 443.326**  
2 **and sections 443.460 to 443.550 shall be issued only by persons authorized by a foreclosing**  
3 **mortgagee or lender pursuant to an affiliate statement signed by that foreclosing**  
4 **mortgagee or lender and recorded at the recorder of deeds identifying the agency or**  
5 **affiliate relationship and the authority granted or conferred to that agent or representative.**

6           **2. The recorder of deeds document number for the affiliate statement required**  
7 **under subsection 1 of this section shall be included in any notice required to be personally**  
8 **served upon the mortgagor or borrower under section 443.326 and sections 443.460 to**  
9 **443.550.**

**443.575. A foreclosing mortgagee shall be bound by all agreements, obligations,**  
2 **representations, or inducements made on its behalf by its agents including but not limited**  
3 **to its employees, representatives, mortgage servicers, or persons authorized by a**  
4 **foreclosing mortgagee or lender pursuant to an affiliate statement recorded under section**  
5 **443.570.**

**443.580. Any foreclosing mortgagee who violates section 443.326 or sections 443.460**  
2 **to 443.570 shall have committed an unlawful merchandising practice under section**  
3 **407.020.**

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