

FIRST REGULAR SESSION

HOUSE BILL NO. 526

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCCANN BEATTY.

1369H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 50.340, 95.535, 204.628, 407.935, 428.019, 442.018, 443.290, 443.300, 443.310, 443.320, 443.325, 443.327, 443.355, 443.380, 443.390, 443.410, 448.080, 448.3-116, 456.003, 493.055, 493.100, and 516.150, RSMo, and to enact in lieu thereof twelve new sections relating to nonjudicial foreclosure proceedings.

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

Section A. Sections 50.340, 95.535, 204.628, 407.935, 428.019, 442.018, 443.290, 2 443.300, 443.310, 443.320, 443.325, 443.327, 443.355, 443.380, 443.390, 443.410, 448.080, 3 448.3-116, 456.003, 493.055, 493.100, and 516.150, RSMo, are repealed and twelve new 4 sections enacted in lieu thereof, to be known as sections 50.340, 95.535, 204.628, 407.935, 5 428.019, 442.018, 443.285, 448.080, 448.3-116, 456.003, 493.055, and 516.150, to read as 6 follows:

50.340. All county officers, excepting public administrators and notaries public, in all 2 counties of class one shall be compensated for their services by salaries only. It shall be the duty 3 of any such county officer in any such county to charge on behalf of the county every fee that 4 accrues in or to his office and to receive the same and all fees, fines, costs, commissions, 5 penalties and charges that may be taxed in his office. All such fees, fines, costs, commissions, 6 penalties and charges imposed by law and collected by such officer shall be paid into the county 7 treasury and become the property of the county. The county commission of such counties shall 8 determine by a proper order when such fees, fines, costs, commissions, penalties or charges so 9 collected by any of the officers of said county shall be paid and turned over to the county treasury 10 and how they shall be accounted for. The county commission shall require a sworn or affirmed 11 statement by each county officer, showing such items collected in detail, their source, character

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.

12 and the aggregate amount thereof, and shall require a copy of such sworn or affirmed statement
13 to be filed in the office of the county clerk in said county. [Nothing herein contained shall be
14 construed to include the performance by the sheriff of his duties as trustee in any deed of trust
15 or mortgage with power of sale, within the term "services" used herein.]

95.535. All public officers, excepting the public administrator and notaries public, in the
2 city of St. Louis shall be compensated for their services by salaries only. It shall be the duty of
3 any public officer in such city to charge on behalf of the city every fee that accrues in or to his
4 office and to receive the same and all fees, fines, costs, commissions, penalties and charges that
5 may be taxed in his office. All such fees, fines, costs, commissions, penalties and charges
6 imposed by law and collected by such officer shall be paid into the city treasury and become the
7 property of the city. The comptroller of such city shall determine by a proper order the current
8 or future dates or periods when such fees, fines, costs, commissions, penalties or charges so
9 collected by any of the officers in said city shall be paid and turned over to the city treasury and
10 how they shall be accounted for. The comptroller shall require a sworn or affirmed statement
11 by each public officer, showing such items collected in detail, their source character and the
12 aggregate amount thereof, and shall require a copy of such sworn or affirmed statement to be
13 filed in the office of the city register. [Nothing herein contained shall be construed to include
14 the performance by the sheriff of his duties as trustee in any deed of trust or mortgage with power
15 of sale, within the term "services" used herein.]

204.628. Any user fees or charges, connection fees, or other charges levied by the
2 reorganized common sewer district to fund its general or special operations, maintenance, or
3 payment of bonded indebtedness or other indebtedness shall be due at such time or times as
4 specified by the reorganized common sewer district, and shall, if not paid by the due date,
5 become delinquent and shall bear interest from the date of delinquency until paid. In addition
6 to and consistent with any other provision of applicable law, if such fees or charges or other
7 amounts due become delinquent, there shall be a lien upon the land, and a notice of delinquency
8 shall be filed with the recorder of deeds in the county where the land is situated. The reorganized
9 common sewer district shall file with the recorder of deeds a similar notice of satisfaction of debt
10 when the delinquent amounts, plus interest and any recording fees or attorneys' fees, have been
11 paid in full. [The lien created may be enforced by foreclosure by power of sale vested in the
12 reorganized common sewer district if the reorganized common sewer district adopts written rules
13 for the exercise of power of sale consistent with the provisions of sections 443.290 to 443.325
14 which are recorded in the land records of the office of the recorder of deeds in each county in
15 which the district is located.] Otherwise, such lien shall be enforced by suit in the circuit court
16 having jurisdiction against the property subject to the lien for judicial foreclosure and sale by
17 special execution. Such suit may include a request for judgment against the persons responsible

18 for payment of such delinquency as well as the person or persons owning the property to which
 19 services were provided, if different, including post-sale deficiency, and as a part of the relief,
 20 may include award of the district's reasonable attorney's fees, court costs, and other expenses
 21 reasonably incurred by the district for collection.

407.935. As used in sections 407.935 to 407.943, the following words and phrases shall
 2 mean:

3 (1) "Contract", any agreement, or any term thereof, between a foreclosure consultant and
 4 an owner for the rendition of any service as defined in subdivision (6) of this section;

5 (2) "Foreclosure consultant":

6 (a) Includes any person who makes any solicitation, representation, or offer to any owner
 7 to perform for compensation or who, for compensation, performs any service which the person
 8 in any manner represents will do in any manner any of the following:

9 a. Stop or postpone the foreclosure sale;

10 b. Obtain any forbearance from any beneficiary or mortgagee;

11 c. Assist the owner to exercise any right of redemption;

12 d. Obtain any extension of the period within which the owner may reinstate his
 13 obligation;

14 e. Obtain any waiver of an acceleration clause contained in any promissory note or
 15 contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in any
 16 such deed of trust or mortgage;

17 f. Assist the owner in obtaining a loan or advance of funds;

18 g. Avoid or ameliorate the impairment of the owner's credit resulting from the recording
 19 of a notice of default or the conduct of a foreclosure sale;

20 h. Save the owner's residence from foreclosure;

21 (b) A foreclosure consultant does not include any of the following:

22 a. A person licensed to practice law in this state when the person renders service in the
 23 course of his practice as an attorney at law;

24 b. A person licensed as a real estate broker pursuant to chapter 339 when the person
 25 makes a direct loan or when the person:

26 (i) Engages in acts, the performance of which require licensure under that chapter;

27 (ii) Is entitled to compensation for the act performed in connection with the sale of a
 28 residence in foreclosure or with the arranging of a loan secured by a lien on a residence in
 29 foreclosure;

30 (iii) Does not claim, demand, charge, collect, or receive any compensation until the acts
 31 have been performed or cannot be performed because of the failure of the owner to accept an
 32 offer from a purchaser or lender ready, willing, and able to purchase a residence in foreclosure

33 or make a loan secured by a lien on a residence in foreclosure on the terms prescribed in a listing
34 or a loan agreement; and

35 (iv) Does not acquire any interest in a residence in foreclosure directly from an owner
36 for whom the person agreed to perform the acts other than as a trustee or beneficiary under a
37 deed of trust given to secure the payment of a loan or that compensation;

38 (v) For the purposes of this subdivision, a "direct loan" means a loan of a real estate
39 broker's own funds secured by a deed of trust on the residence in foreclosure, which loan and
40 deed of trust the broker in good faith attempts to assign to a lender, for an amount at least
41 sufficient to cure all of the defaults on obligations which are then subject to a notice of default,
42 provided that: if a foreclosure sale is conducted with respect to the deed of trust, the person
43 conducting the foreclosure sale has no interest in the residence in foreclosure or in the outcome
44 of the sale and is not owned, controlled, or managed by the lending broker; the lending broker
45 does not acquire any interest in the residence in foreclosure directly from the owner other than
46 as a beneficiary under the deed of trust; and the loan is not made for the purpose or effect of
47 avoiding or evading the provisions of this act;

48 c. A person or his authorized agent acting under the express authority or written approval
49 of the department of housing and urban development or other department or agency of the United
50 States or this state to provide services;

51 d. A person who holds or is owed an obligation secured by a lien on any residence in
52 foreclosure when the person performs services in connection with the obligation or lien;

53 e. Any person licensed to make loans pursuant to sections 367.100 to 367.215, subject
54 to the authority of the director of finance to terminate this exclusion, if after notice and hearing,
55 any such licensee is found to have engaged in practices described in section 407.938;

56 f. Any person or entity doing business under any law of this state, or of the United States
57 relating to banks, trust companies, savings and loan associations, credit unions, or any person
58 or entity authorized under the laws of this state to conduct a title or escrow business, or a
59 mortgagee which is a United States department of housing and urban development approved
60 mortgagee and any subsidiary or affiliate of the above, and any agent or employee of the above
61 while engaged in business of these persons or entities;

62 (3) "Owner", the record owner of any residence in foreclosure;

63 (4) "Person", any individual, partnership, corporation, association or other group,
64 however organized;

65 (5) "Residence in foreclosure", any real property improved by a residential structure used
66 or intended to be used as a residence by not more than four families, and occupied by the owner,
67 which is the subject of any attempt by any person to enforce an obligation, the performance of
68 which is secured by a mortgage or deed of trust encumbering the real property;

- 69 (6) "Service" includes, but is not limited to, any of the following:
 70 (a) Debt, budget, or financial counseling of any type;
 71 (b) Receiving money for the purpose of distributing it to creditors in payment or partial
 72 payment of any obligation secured by a lien on a residence in foreclosure;
 73 (c) Contacting creditors on behalf of an owner of a residence in foreclosure;
 74 (d) Arranging or attempting to arrange for an extension of the period within which the
 75 owner of a residence in foreclosure may cure his default and reinstate his obligation;
 76 (e) Arranging or attempting to arrange for any delay or postponement of the time of sale
 77 of the residence in foreclosure;
 78 (f) Advising the filing of any document or assisting in any manner in the preparation of
 79 any document for filing with any bankruptcy court;
 80 (g) Giving any advice, explanation or instruction to an owner of a residence in
 81 foreclosure which in any manner relates to the cure of a default in or the reinstatement of an
 82 obligation secured by a lien on the residence in foreclosure, **or** the full satisfaction of that
 83 obligation[, or the postponement or avoidance of a sale of a residence in foreclosure pursuant to
 84 a power of sale contained in any deed of trust].

428.019. 1. Value is given for a transfer or an obligation if, in exchange for the transfer
 2 or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does
 3 not include an unperformed promise made otherwise than in the ordinary course of the promisor's
 4 business to furnish support to the debtor or another person.

2. [For the purposes of subdivision (2) of subsection 1 of section 428.024 and section
 6 428.029, a person gives a reasonably equivalent value if the person acquires an interest of the
 7 debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution
 8 of a power of sale for the acquisition or disposition of the interest of the debtor upon default
 9 under a mortgage, deed of trust, or security agreement.

3.] A transfer is made for present value if the exchange between the debtor and the
 11 transferee is intended by them to be contemporaneous and is in fact substantially
 12 contemporaneous.

442.018. All public advertisements and orders of publication required by law to be made,
 2 including but not limited to amendments to the Missouri Constitution[, legal publications
 3 affecting all sales of real estate under a power of sale contained in any mortgage or deed of trust,]
 4 and other legal publications affecting the title to real estate, shall be published in a newspaper
 5 of general circulation, qualified under the provisions of section 493.050, and persons responsible
 6 for orders of publication described in sections 443.310 and 443.320 shall be subject to the
 7 prohibitions in sections 493.130 and 493.140.

**443.285. Beginning August 28, 2015, all foreclosure proceedings shall be handled
2 judicially as provided in sections 443.190 to 443.280.**

448.080. 1. Every unit owner shall pay his proportionate share of the expenses of
2 administration, maintenance and repair of the common elements and of any other expense
3 lawfully agreed upon. Such proportionate share shall be in the same ratio as his percentage of
4 ownership in the common elements as set forth in the declaration. Payment thereof shall be in
5 the amounts and at the times as determined by the unit owners or the board of managers, as
6 hereinafter provided.

7 2. If any unit owner fails or refuses to make any payment of the common expenses when
8 due, the amount thereof shall constitute a lien on the interest of such unit owner in the property,
9 and upon the recording of notice thereof by the manager or board of managers shall be a lien
10 upon such unit owner's interest in the property prior to all other liens and encumbrances,
11 recorded or unrecorded; except only taxes, special assessments and special taxes theretofore or
12 thereafter levied by any political subdivision or municipal corporation of this state and other state
13 or federal taxes which by law are a lien on the interest of such unit owner prior to preexisting
14 recorded encumbrances thereon, and encumbrances on the interest of such unit owner recorded
15 prior to the date such notice is recorded which by law would be a lien thereon prior to
16 subsequently recorded encumbrances, but only if such prior recorded encumbrance contains a
17 statement of a mailing address in the state of Missouri where notice may be mailed to the
18 encumbrancer thereunder. Any encumbrancer whose lien is junior to the lien of the common
19 expenses herein provided may from time to time request in writing a written statement from the
20 manager or board of managers setting forth the unpaid common expenses with respect to the unit
21 covered by his encumbrance and unless the request is complied with within twenty days, all
22 unpaid common expenses which became due prior to the date of the making of such request shall
23 be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a unit may
24 pay any unpaid common expenses payable with respect to such unit and upon such payment such
25 encumbrancer shall have a lien on such unit for the amounts paid at the same rank as the lien of
26 his encumbrance.

27 3. The lien to secure payment of common expenses shall be in favor of the members of
28 the board of managers and their successors in office and shall be for the benefit of all other unit
29 owners, and may be foreclosed by an action brought in the name of the board of managers in like
30 manner as a mortgage of real property, as provided in sections 443.190 to [443.310] **443.280**.
31 Unless otherwise provided in the declaration, the members of the board of managers and their
32 successors in office, acting on behalf of the other unit owners, shall have the power to bid in the
33 interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey
34 the same.

35 4. In the event any person acquires or is entitled to the issuance of a sheriff's or other
36 official deed in foreclosure of the lien for common expenses above provided, the deed conveying
37 the interest of any unit owner and the interest so acquired shall be subject to all of the provisions
38 of sections 448.005 to 448.210 and to the terms, provisions, covenants, conditions and
39 limitations contained in the declaration, the plat, the bylaws or any deed affecting such interest
40 then in force.

 448.3-116. 1. The association has a lien on a unit for any assessment levied against that
2 unit or fines imposed against its unit owner from the time the assessment or fine becomes due.
3 The association's lien may be foreclosed in like manner as a mortgage on real estate [or a power
4 of sale pursuant to chapter 443]. Unless the declaration otherwise provides, fees, charges, late
5 charges, fines, and interest charged pursuant to subdivisions (10), (11), and (12) of subsection
6 1 of section 448.3-102 are enforceable as assessments pursuant to this section. If an assessment
7 is payable in installments, the full amount of the assessment is a lien from the time the first
8 installment thereof becomes due.

9 2. A lien pursuant to this section is prior to all other liens and encumbrances on a unit
10 except:

11 (1) Liens and encumbrances recorded before the recordation of the declaration;

12 (2) A mortgage and deed of trust for the purchase of a unit recorded before the date on
13 which the assessment sought to be enforced became delinquent;

14 (3) Liens for real estate taxes and other governmental assessments or charges against the
15 unit;

16 (4) Except for delinquent assessments or fines, up to a maximum of six months'
17 assessments or fines, which are due prior to any subsequent refinancing of a unit or for any
18 subsequent second mortgage interest. This subsection does not affect the priority of mechanics'
19 or materialmen's liens, or the priority of liens for other assessments made by the association. The
20 lien pursuant to this section is not subject to the provisions of section 513.475.

21 3. Unless the declaration provides otherwise, if two or more associations have liens for
22 assessments created at any time on the same real estate, those liens have equal priority.

23 4. Recording of the declaration constitutes record notice and perfection of the lien. No
24 further recordation of any claim of lien for assessment pursuant to this section is required.

25 5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien
26 are instituted within three years after the full amount of the assessments becomes due.

27 6. This section shall not prohibit actions to recover sums for which subsection 1 of this
28 section creates a lien, or prohibit an association from taking a deed in lieu of foreclosure.

29 7. A judgment or decree in any action brought pursuant to this section shall include costs
30 and reasonable attorney's fees for the prevailing party.

31 8. The association shall furnish to a unit owner, upon written request, a recordable
32 statement setting forth the amount of unpaid assessments against the unit owner's unit. The
33 statement shall be furnished within ten business days after receipt of the request and is binding
34 on the association, the executive board, and every unit owner.

 456.003. When the terms of an instrument creating a trust manifest intention that the
2 trustee shall have the legal fee simple in land, the full legal ownership of an estate for years, or
3 the absolute legal ownership of chattels personal, **or** investment securities or choses in action,
4 an exercise by the trustee or a successor trustee of [an express or implied power of sale,] **a**
5 mortgage, leasing, improvement or conducting any other transaction incident to the
6 administration of the trust, shall bind the fee simple, term of years or absolute ownership
7 notwithstanding the execution of a future interest under the trust into a legal estate or interest by
8 the operation of the Statute of Uses, or former section 456.003, or a judicial doctrine imposing
9 such execution on dry or passive trusts.

 493.055. All public advertisements and orders of publication required by law to be made,
2 including but not limited to amendments to the Missouri Constitution[, legal publications
3 affecting all sales of real estate under a power of sale contained in any mortgage or deed of trust,]
4 and other legal publications affecting the title to real estate, shall be published in a newspaper
5 of general circulation, qualified under the provisions of section 493.050, and persons responsible
6 for orders of publication described in sections 443.310 and 443.320 shall be subject to the
7 prohibitions in sections 493.130 and 493.140.

 516.150. No suit[, **or** action [or proceeding under power of sale] to foreclose any
2 mortgage or deed of trust, to secure any obligation to pay money or property, shall be had or
3 maintained after such obligation has been barred by the statutes of limitation of this state; nor
4 in any event after the lapse of twenty years from the date at which the last maturing obligation
5 secured by the instrument sought to be foreclosed is due on the face of such instrument, unless
6 such termination of said period falls within two years after the passage of this section, or has
7 heretofore happened, in which event such suit, action or proceeding may be begun within two
8 years after the passage of this section without regard to the date of the instrument or the maturity
9 of the obligation, unless otherwise barred under the provisions of the general statutes of
10 limitation, unless before the lapse of said twenty years the owner of the debt thereby secured or
11 some person for him shall file an affidavit duly verified, or file an instrument in writing
12 acknowledged as deeds are required to be acknowledged in order to entitle them to record in this
13 state, showing the amount due and owing thereon.

 [443.290. All mortgages of real property or security agreements
2 providing for a security interest in personal property, or both, with powers of sale
3 in the mortgagee or secured party, and all sales made by such mortgagee, secured
4 party or his personal representatives, in pursuance of the provisions of the

5 mortgages or security agreements, shall be valid and binding by the laws of this
 6 state upon the mortgagors and debtors, and all persons claiming under them, and
 7 shall forever foreclose all right and equity of redemption of the property so sold.
 8 Nothing herein shall be construed to affect in any way the rights of a tenant to the
 9 growing and unharvested crops on lands foreclosed as aforesaid, to the extent of
 10 the interest of the tenant under the terms of contract or lease between the tenant
 11 and the mortgagor or his personal representatives.]
 12

2 [443.300. If any person shall die owning real estate on which there is an
 3 outstanding deed of trust or mortgage of real estate, or having subjected personal
 4 property to a security interest with power of sale, shall die, no sale shall take
 5 place under the deed of trust or mortgage conveying real estate within six months
 6 after the death of such person, and no sale shall take place of personal property
 7 so subjected to a security interest within four months after the death of the
 8 person.]

2 [443.310. All sales of real estate under a power of sale contained in any
 3 mortgage or deed of trust executed after August 28, 1989, shall be made in the
 4 county where the land to be sold is situated, and not less than twenty days' notice
 5 of such sale shall be given, whether so provided in such mortgage or deed of trust
 6 or not. Where the property to be sold is located in more than one county, the
 7 property may be sold in any county where a part of the property is located.]

2 [443.320. The notice required by section 443.310 shall set forth the date
 3 and book and page of the record of such mortgages or deeds of trust, the grantors,
 4 the time, terms and place of sale, and a description of the property to be sold, and
 5 shall be given by advertisement, inserted for at least twenty times, and continued
 6 to the day of the sale, in some daily newspaper, in counties having cities of fifty
 7 thousand inhabitants or more, and in all other counties such notice shall be given
 8 by advertisement in some weekly newspaper published in such county for four
 9 successive issues, the last insertion to be not more than one week prior to the day
 10 of sale, or in some daily, triweekly or semiweekly paper published in such county
 11 at least once a week for four successive weeks. Such notice shall appear on the
 12 same day of each week, the last insertion to be not more than one week prior to
 13 the day of sale, and if there be no newspaper published in such county or city,
 14 such notice shall be published in the nearest newspaper thereto in this state.
 15 Nothing in this section shall be construed to authorize the giving of any shorter
 16 notice than that required by such mortgage or deed of trust. Where the property
 17 to be sold lies wholly or in part within the corporate limits of any city having or
 18 that may hereafter have a population of fifty thousand inhabitants or more, then
 19 the notice provided for in this section shall be published in a daily newspaper in
 20 such city and where the property to be sold lies wholly or in part within the
 corporate limits of a city extending into two or more counties, then the notice

21 provided for in this section shall be published in some newspaper published in
 22 the county in which the property lies, in the manner provided in this section for
 23 publication in such county, even though such property may lie in a city having a
 24 population of fifty thousand inhabitants or more. Where the property to be sold
 25 is located in more than one county, the notices required in this section shall be
 26 published in each county in which a part of the property is located. Other
 27 provisions of this section to the contrary notwithstanding, in any county of the
 28 first class not having a charter form of government and containing a portion of
 29 a city with a population over three hundred fifty thousand and in any county of
 30 the second class containing a portion of a city with a population over three
 31 hundred fifty thousand, the notice requirements of section 443.310 and this
 32 section may be met by advertisement in some weekly newspaper published in
 33 such counties for four successive issues, the last insertion to be not more than one
 34 week prior to the date of the sale.]

35

2 [443.325. 1. Any person desiring notice of sale under any deed of trust
 3 or mortgage with power of sale upon real property may, at any time subsequent
 4 to recordation of such deed of trust or mortgage, cause to be filed for record in
 5 the office of the recorder of each county in which any part or parcel of the real
 6 property is situated a duly acknowledged request for such notice of sale. This
 7 request shall specify the name and address of the person to whom the notice is to
 8 be mailed and shall identify the deed of trust or mortgage by stating the names
 9 of the parties thereto and the legal description of the land described therein and
 10 the book and page where the same is recorded or the recorder's number and shall
 be in substantially the following form:

11 "In accordance with RSMo, 443.325, request is hereby made that notice
 12 of sale under the deed of trust (or mortgage) recorded the day of, 20.., (as
 13 recorder's number or in Book, Page) of the records of County,
 14 Missouri, the legal description of the property being in County, Missouri,
 15 executed by as Grantor (or Mortgagor) in which is named as beneficiary
 16 (or Mortgagee) and as Trustee, be mailed to (Name) at, (Address),
 17 (City) (State).

18

19 (Signature)

20

21 (Acknowledgment)" A separate request shall be filed for each person
 22 desiring notice of sale.

23 2. Upon the filing for record of such request, the recorder shall index the
 24 request in a separate index so that the name of the mortgagor or grantor shall be
 25 indexed as the grantor, and the name of the requesting party shall be indexed as
 26 the grantee.

27 3. In the event of foreclosure under a power of sale, the foreclosing
 28 mortgagee or trustee shall, not less than twenty days prior to the scheduled date

29 of the sale, cause to be deposited in the United States mail an envelope certified
30 or registered, and with postage prepaid, enclosing a notice containing the
31 information required in the published notice of sale referred to in section
32 443.320, addressed

33 (1) To each person whose name and address is set forth in any such
34 request recorded at least forty days prior to the scheduled date of sale; and

35 (2) To the person shown by the records in the office of the recorder of
36 deeds to be the owner of the property as of forty days prior to the scheduled date
37 of foreclosure sale at the foreclosing mortgagee's last known address for said
38 record owner; and

39 (3) To the mortgagor or grantor named in the deed of trust or mortgage
40 at the foreclosing mortgagee's last known address for said mortgagor or grantor.

41 (4) Actual receipt by the addressee of the envelope referred to above shall
42 not be necessary to establish compliance with the notice requirements of
43 subsection 3 hereof. Recording of receipt issued by the United States Post Office
44 for certified or registered mail to evidence that said envelope has been delivered
45 by the sender to the United States Post Office shall constitute proof of
46 compliance with notice requirements of subsection 3 hereof.

47 4. The foreclosing mortgagee or trustee of a deed of trust or mortgage
48 filed subsequent to a deed of trust or mortgage for which a request has been
49 recorded in accordance with subsection 1 hereof shall give notice to each person
50 named in each such request so long as the prior deed of trust or mortgage
51 identified in such notice has not been released of record.

52 5. The release of a deed of trust or mortgage shall cancel of record all
53 requests for notice which pertain to the deed of trust or mortgage identified in
54 such request.]
55

[443.327. The trustee exercising a power of sale granted in any security
2 instrument may in the trustee's discretion set the time for sale at any
3 commercially reasonable time, unless the security instrument specifies an hour
4 at which the sale is to occur. The time for sale will be deemed to be
5 commercially reasonable if the sale is held between the hours of 9:00 a.m. and
6 5:00 p.m. on the date of sale. If no time is stated in the notice of sale, then the
7 sale shall be held at the time customary for such sales in the county. If the trustee
8 elects to state a specific time for sale in the notice of sale, then the sale shall be
9 held at the time stated in the notice unless the sale is continued as may be
10 otherwise provided by law.]
11

[443.355. 1. A trustee exercising a power of sale granted in any security
2 instrument may, in his discretion, continue the sale without readvertisement or
3 mailing additional notice by announcing or causing to be announced on the day
4 and at the time and place of sale the fact of such continuance. The announcement
5 shall contain the date, time and place to which the sale is continued. No party

6 shall have a cause of action for damages against a trustee for continuing or
7 refusing to continue a sale as provided in this section.

8 2. Only one continuance shall be made under the authority granted by this
9 section, which continuance shall be for a period of not to exceed seven days. The
10 provisions of this section shall not prevent the holder of a security instrument and
11 the owner of the land encumbered thereby from agreeing to more than one
12 continuance or to continuances for more than one week. Nothing in this section
13 shall prevent a trustee from abandoning a sale before its completion and
14 commencing new sale proceedings after compliance with sections 443.310,
15 443.320 and 443.325.]
16

2 [443.380. Whenever any real estate within this state shall have been or
3 shall hereafter be sold by any trustee or mortgagee, or sheriff or other person
4 acting as trustee, under a power of sale given in any mortgage or deed of trust, the
5 recitals in the trustee or mortgagee's deed concerning the default, advertisement,
6 sale or receipt of the purchase money, and all other facts pertinent thereto, shall
7 be received as prima facie evidence in all courts of the truth thereof.]

2 [443.390. In all cities in this state which now have or which may
3 hereafter have three hundred fifty thousand inhabitants or more and in all
4 counties in this state of the first class, no trustee's deed or mortgagee's deed under
5 power of sale in foreclosure of any security instrument recorded prior to January
6 1, 1986, shall be accepted by the recorder of deeds for record unless:

6 (1) The principal note or notes or other principal obligations which were
7 unpaid when the foreclosure sale commenced and for the default in payment of
8 which foreclosure is had, are produced to the recorder; or

9 (2) If such notes are lost then the owner of the principal notes or
10 obligations makes an affidavit that such notes are lost and produces such affidavit
11 for the recorder. Upon such trustee's or mortgagee's deed being filed for record,
12 the recorder shall make a notation on the principal note or notes or other principal
13 obligations showing that such deed in foreclosure has been filed of record, in
14 substantially the following form:

15 "Deed under foreclosure filed, 20....
16 Recorder" Except, whenever any trustee's
17 deed or mortgagee's deed under power of sale in foreclosure of any security
18 instrument recorded prior to January 1, 1986, providing for the issuance of more
19 than one principal note or bond shall be presented for recording, it shall be
20 accepted by the recorder of deeds for record upon the presentation to the recorder
21 of the unpaid principal note or notes or bonds required by such security
22 instrument to permit the trustee to sell the property under foreclosure sale. A
23 foreclosure sale shall be deemed to have commenced within the meaning of this
24 law upon the first publication of the notice of sale.]
25

2 [443.410. Deeds of trust in the nature of mortgages of lands may, in
3 addition to being forecloseable by suit, be also foreclosed by trustee's sale at the
4 option of the holder of the debt or obligation thereby secured and the mortgaged
5 property sold by the trustee or his successor in the same manner and in all
6 respects as in case of mortgages with power of sale; and all real estate which may
7 be sold under any such power of sale in a mortgage deed of trust hereafter made
8 and which at such sale shall be brought in by the holder of such debt or obligation
9 or by any other person for such holder shall be subject to redemption by the
10 grantor in such mortgage deed of trust or his heirs, devisees, executors,
11 administrators, grantees or assigns at any time within one year from the date of
12 the sale; provided, however, that such person so entitled to redeem shall give
13 written notice at the sale or within ten days before the date advertised for the sale
14 to the person making or who is to make the sale of the purpose to redeem if the
15 sale and purchase are so made; and provided further, the said grantor, his
16 representatives, grantees or assigns to make the redemption shall within the year
17 pay the debt and interest or other obligation secured by such deed of trust and to
18 accrue thereon together with all sums paid out by any holder thereof or purchaser
19 at such sale or holder of the rights of such purchaser for interest and principal and
20 either of any prior encumbrances, and for taxes and assessments and all legal
21 charges and costs of the sale.]

2 [493.100. In all cities having a population of more than six hundred
3 thousand inhabitants, as shown by the last United States census, no notice or
4 other advertisement permitted or required by law to be made in conformity with
5 the power of sale of real estate contained in any mortgage or deed of trust shall
6 be valid or sufficient unless such notice or other advertisement shall be published
7 in a daily newspaper, published in such city, whose annual cash receipts from
8 circulation shall exceed six thousand dollars; and such receipts shall be paid by
9 the bona fide individual and separate subscribers of such newspapers in such city,
10 and in computing such receipts there shall not be counted or included cash
received from advertising or from any other source.]

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