

FIRST REGULAR SESSION

# HOUSE BILL NO. 1263

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE MCCANN BEATTY.

2622L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 443, RSMo, by adding thereto seven new sections relating to the mortgage foreclosure mediation code, with a penalty provision.

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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 seven new sections, to be known as sections 443.401, 443.402, 443.403, 443.404, 443.405, 443.406, and 443.407, to read as follows:

**443.401. Sections 443.401 to 443.407 shall be known and may be cited as the "Mortgage Foreclosure Mediation Code".**

**443.402. For purposes of sections 443.402 to 443.407, unless the context clearly indicates another meaning, the following terms shall mean:**

**(1) "Certificate of compliance", a certificate that is awarded to a lender by the mediation coordinator certifying that the lender complied with the provisions of sections 443.402 to 443.407 and is eligible to record the foreclosure deed. Such certificate shall be in a form promulgated by the mediation coordinator and approved by the attorney general. A certificate of compliance shall be valid for the original foreclosure of a homeowner's residential property for which it is issued and any subsequent foreclosure of such residential property for which a notice of foreclosure is issued within twelve months of issuance of a certificate of compliance;**

**(2) "Homeowner", an individual who:**

**(a) Owns, and whose principal place of residence is a residential property; and**

**(b) Is the borrower under the promissory note secured by the deed of trust on such residential property that is subject to foreclosure under this chapter;**

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.

15 (3) "Lender":

16 (a) A person or entity which has advanced funds for a loan to a homeowner secured  
17 by a deed of trust on a residential property; or

18 (b) Any servicer of mortgage loans, as well as the current holder of a promissory  
19 note secured by a deed of trust on the residential property in question;

20 (4) "Mediation conference", the meeting between a homeowner and lender for the  
21 purpose of facilitating a mutually beneficial alternative to foreclosure;

22 (5) "Mediation coordinator", the person or entity approved by the governor with  
23 the advice and consent of the senate to manage the mortgage foreclosure mediation  
24 program established under sections 443.402 to 443.407;

25 (6) "Mediator", a person designated by the mediation coordinator to oversee and  
26 facilitate a mediation conference;

27 (7) "Notice of foreclosure", a written notice sent to a homeowner under section  
28 443.325;

29 (8) "Notice of right to request mediation", a notice sent to a homeowner informing  
30 him or her of the right to participate in a mediation conference under sections 443.402 to  
31 443.407;

32 (9) "Residential property", real property, located within a charter county which  
33 consists of:

34 (a) A single-family dwelling;

35 (b) One or more condominium or co-op units; or

36 (c) A structure containing not more than four residential units.

443.403. The office of administration shall contract with any person or entity to  
2 serve as a mediation coordinator on behalf of the state. The contract shall:

3 (1) Require the mediation coordinator to provide all services designated to the  
4 position under sections 443.402 to 443.407;

5 (2) Provide that the mediation coordinator shall be compensated solely by the fees  
6 established by sections 443.402 to 443.407; and

7 (3) Contain such other terms and conditions as are included by the attorney  
8 general.

443.404. 1. A lender or any other person or entity authorized to conduct a sale of  
2 a homeowner's residential property under this chapter who is seeking a certificate of  
3 compliance, shall send a notice of right to request mediation to both the homeowner and  
4 the mediation coordinator. Notice of right to request mediation shall be sent concurrently  
5 with the lender's notice of foreclosure as well as a form designed for use by the homeowner  
6 to formally request mediation. Such form shall be promulgated by the mediation

7 coordinator and approved by the attorney general. The notice of right to request  
8 mediation provided to the mediation coordinator by the lender shall be accompanied by  
9 a mediation fee of one hundred twenty-five dollars.

10 2. A homeowner shall have twenty days from the date of mailing by lender of the  
11 notice of right to request mediation to request mediation. The mediation request form  
12 shall be sent to the mediation coordinator.

13 3. Within fifteen days of the receipt of the notice of foreclosure and the notice of the  
14 right to request mediation, the mediation coordinator shall make and document at least  
15 two attempts to contact the homeowner to inform the homeowner of his or her right to  
16 request mediation and further explain the mediation process.

17 4. The homeowner may waive, in a writing delivered to the mediation coordinator,  
18 the right to participate in a mediation conference.

443.405. 1. Upon receiving a request from the homeowner to participate in a  
2 mediation conference, the mediation coordinator shall:

3 (1) Schedule a mediation conference to be held within sixty-one days of the date on  
4 which the lender mailed the notice of foreclosure and the notice of right to request  
5 mediation;

6 (2) Designate a mediator and location for the mediation conference; and

7 (3) Notify the lender and homeowner of such information. Upon receipt of such  
8 information, the lender shall submit a mediation fee of three-hundred fifty dollars to the  
9 mediation coordinator not less than seven days prior to the mediation conference.

10 2. A homeowner's written request to participate in mediation conference shall be  
11 deemed consent of the homeowner to a continuance of a foreclosure sale for forty-two days  
12 under section 443.355.

13 3. The mediation coordinator shall provide the homeowner with a list of qualified  
14 housing counselors who shall assist and represent the homeowner throughout the  
15 mediation process at the request of the homeowner. A homeowner may also retain an  
16 attorney for the mediation process.

17 4. If a homeowner requests mediation within thirty-five days of the date on which  
18 the lender mailed the notice of the right to request mediation, the homeowner shall  
19 complete and deliver to the mediation coordinator and lender the following:

20 (1) A completed financial statement on a form designed by the mediation  
21 coordinator and approved by the attorney general;

22 (2) A completed request for mortgage assistance form designed by the mediation  
23 coordinator and approved by the attorney general;

24           **(3) The homeowner's written opinion of the condition of the subject residential**  
25 **property; and**

26           **(4) A written statement of any offers the homeowner has made to the lender in an**  
27 **effort to resolve the default on the loan.**

28

29 **If the homeowner fails to comply with the requirements of this subsection, the mediation**  
30 **coordinator shall issue a certificate of compliance to the lender.**

31           **5. If a homeowner complies with the provisions of subsection 4 of this section,**  
32 **within fifty days of the date on which the lender mailed the notice of right to request**  
33 **mediation, the lender shall deliver to the mediation coordinator and homeowner the**  
34 **following:**

35           **(1) An appraisal and/or broker's price opinion compiled not more than ninety days**  
36 **prior to the mediation conference;**

37           **(2) A written proposal to resolve the foreclosure and the evaluation methodology**  
38 **used to determine the eligibility or noneligibility of the homeowner for the retention or**  
39 **nonretention of the home;**

40           **(3) An estimate of the short-sale value of the residential property that the lender**  
41 **may be willing to consider as part of the negotiation if loan modification is not agreed**  
42 **upon;**

43           **(4) A statement of any offers the lender has made to the homeowner in an effort to**  
44 **resolve the default on the loan; and**

45           **(5) The name, title, and address of the person who will be attending the mediation**  
46 **on behalf of the lender.**

47           **6. If the deadlines in subsections 4 and 5 of this section fall on a Saturday, Sunday,**  
48 **or legal holiday, the deadline shall be extended to the following business day.**

49           **7. Both the lender and homeowner, or his or her authorized representatives, shall**  
50 **appear in person at the mediation conference.**

51           **8. Any representative appearing at a mediation conference for the lender shall:**

52           **(1) Have full authority to agree to a proposed settlement, loan modification, or**  
53 **dismissal;**

54           **(2) Have access to the homeowner's account information and records relating to**  
55 **consideration of loss mitigation options;**

56           **(3) Have knowledge of loss mitigation and the ability to review options for the**  
57 **homeowner's specific type of loan; and**

58           **(4) Understand the investor guidelines for the homeowner's specific loan.**

59           **9. If the lender is located outside the metropolitan area of the residential property**  
60 **of the homeowner, the lender may exercise the option of participating by telephone,**  
61 **videoconferencing, or other communication equipment. If participating by other**  
62 **communication equipment, the lender representative shall be available at all times during**  
63 **the mediation conference. In any event, counsel or other authorized individuals for the**  
64 **lender shall appear in person at the mediation conference to sign documents and settlement**  
65 **agreements on behalf of the lender.**

66           **10. A continuance of a scheduled mediation conference shall be granted by the**  
67 **mediation coordinator upon either:**

68           **(1) Written request submitted prior to the mediation upon showing of**  
69 **extraordinary circumstances; or**

70           **(2) Written agreement between the homeowner and lender.**

71           **11. In the event that the lender and homeowner resolve the foreclosure prior to the**  
72 **mediation conference, a copy of the written settlement agreement signed by the lender and**  
73 **homeowner shall be forwarded to the mediation coordinator. The mediation coordinator**  
74 **shall subsequently issue the lender a certificate of compliance within two business days.**  
75 **If the settlement agreement is received by the mediation coordinator at least two days prior**  
76 **to the mediation conference, the mediation fee assessed in subsection one of this section**  
77 **shall be refunded to the lender.**

78           **12. If the lender and homeowner reach a settlement agreement during the**  
79 **mediation conference, the mediator shall submit to the mediation coordinator a copy of the**  
80 **settlement agreement within one business day following the mediation conference. The**  
81 **mediation coordinator shall subsequently issue a certificate of compliance to the lender**  
82 **within two business days of the mediation conference.**

83           **13. If the lender and homeowner fail to reach a settlement agreement during the**  
84 **mediation conference, the mediation coordinator shall issue a certificate of compliance**  
85 **under following circumstances:**

86           **(1) The lender sent the notice of foreclosure and the notice of the right to request**  
87 **mediation;**

88           **(2) The lender provided all of the necessary paperwork as required by this section;**

89           **(3) The lender's representative participating in the mediation had the authority to**  
90 **negotiate and modify the loan in question, and the ability to review and approve options**  
91 **for the homeowner's specific type of loan as required by this section; and**

92           **(4) The lender paid all fees required by sections 443.402 to 443.407.**

93           **14. If the lender fails to satisfy any of the requirements of sections 443.402 to**  
94 **443.407, the mediation coordinator shall not issue a certificate of compliance to the lender.**

95           **15. All documents and discussion presented during the mediation conference shall**  
96 **be confidential and inadmissible in subsequent actions or proceedings, as provided in**  
97 **section 435.014 and Missouri supreme court rule 17, except to the extent necessary to**  
98 **prosecute a violation of section 443.407. Aggregate data to monitor and evaluate the**  
99 **implementation of the program may be collected by the state.**

**443.406. 1. Notwithstanding the provisions of sections 443.402 to 443.407 to the**  
2 **contrary, persons or entities shall not be prohibited from exercising the right to carry out**  
3 **a judicial or nonjudicial foreclosure under the provisions of this chapter.**

4           **2. Notwithstanding the provisions of sections 443.402 to 443.407 to the contrary, no**  
5 **person or entity shall have a private right of action under such sections.**

**443.407. 1. A lender shall file a valid certificate of compliance for the foreclosed**  
2 **residential property with the county assessor either before or contemporaneously with the**  
3 **filing of any instrument of conveyance of title to the foreclosed residential property with**  
4 **the recorder of deeds. The recorder shall not refuse to file any such instrument for failure**  
5 **to comply with such requirement.**

6           **2. Any person, firm, or corporation that has violated the provisions of this section**  
7 **shall be assessed a fine not to exceed one thousand dollars. Fines assessed against a lender**  
8 **shall not be passed on to the homeowner. It shall be a complete defense that the lender has**  
9 **complied with the provisions of subsection 13 of section 443.405.**

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