

FIRST REGULAR SESSION

# HOUSE BILL NO. 1168

## 95TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES NASHEED (Sponsor) AND STORCH (Co-sponsor).

2442L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 443.310 and 443.325, RSMo, and to enact in lieu thereof two new sections relating to the rights of tenants in cases of foreclosure.

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

Section A. Sections 443.310 and 443.325, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 443.310 and 443.325, to read as follows:

443.310. All sales of real estate under a power of sale contained in any mortgage or deed  
2 of trust executed after August 28, 1989, shall be made in the county where the land to be sold  
3 is situated, and not less than [twenty] **sixty** days' notice of such sale shall be given **to**  
4 **mortgagors or grantors named in the mortgage or deed of trust and any tenants residing**  
5 **on the property in the manner required by subsection 3 of section 443.325 and not less than**  
6 **twenty days' notice of such sale by publication shall be given as required by section**  
7 **443.320**, whether so provided in such mortgage or deed of trust or not. Where the property to  
8 be sold is located in more than one county, the property may be sold in any county where a part  
9 of the property is located.

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

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.

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

15 .....  
 16 (Signature)  
 17 .....  
 18 (Acknowledgment)"  
 19

20 A separate request shall be filed for each person desiring notice of sale.

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

24 3. In the event of foreclosure under a power of sale, the foreclosing mortgagee or trustee  
 25 shall, not less than [twenty] **sixty** days prior to the scheduled date of the sale, cause to be  
 26 deposited in the United States mail an envelope certified or registered, and with postage prepaid,  
 27 enclosing a notice containing the **following** information [required] in [the published notice of  
 28 sale referred to in section 443.320, addressed] **at least fourteen-point type:**

29 **"NOTICE OF FORECLOSURE SALE**

30 **Dear Sir or Madam:**

31 **If you own the property known and numbered as (property address), or you are a**  
 32 **tenant and renting the aforesaid property, you are in danger of losing your home.**

33 **Our office has been appointed (trustee of successor trustee) of the deed of trust**  
 34 **signed by (name and address of the mortgagors) on (date of execution) and recorded in**  
 35 **(enter book and page) and having a legal description as follows: (enter legal description).**

36 **As (trustee or successor trustee), we have been instructed by (name and address of**  
 37 **holder of promissory note secured by the deed of trust), to proceed with foreclosure of the**  
 38 **above referenced property because a default has occurred in the payment of the mortgage**  
 39 **on the property. The foreclosure sale is scheduled for (date) at (time) at (location).**

40 **If you are the owner and are experiencing financial difficulty, you should know that**  
 41 **there are several options available to you that may help you keep your home. Housing**  
 42 **counseling agencies which provide free of very low-cost counseling are available to help**  
 43 **you assess your financial condition and, most importantly, work with your lender to**  
 44 **explore the possibility of modifying your loan, establishing an easier payment plan for you,**

45 or even working out a period of loan forbearance with your lender. The Department of  
46 Housing and Urban Development (HUD) and the Missouri Housing Trust Fund (MHTF)  
47 maintain lists of government-approved counseling agencies in your area. You may obtain  
48 these lists by calling the following toll-free numbers: (telephone numbers for HUD and  
49 MHTF). You should consider contacting one of these listed housing counseling agencies  
50 immediately. You should also contact your lender directly at (telephone number for the  
51 lender's loss mitigation department). While we cannot assure you that a mutually  
52 agreeable resolution will be possible, we encourage you to call immediately because the  
53 longer you wait the fewer options you may have.

54 You may also wish to contact an attorney or your local legal aid office for legal  
55 assistance.

56 If you are a tenant, this notice is to inform you that your lease might be terminated  
57 if the property you are renting is sold at the foreclosure sale scheduled on the above date.  
58 Please note that the scheduled foreclosure sale may be cancelled if your landlord cures the  
59 default or otherwise reaches an agreeable resolution with the lender. Your failure to pay  
60 rent to your landlord prior to the foreclosure sale could subject you to an eviction lawsuit  
61 by your landlord for nonpayment of rent. You may wish to contact an attorney to find out  
62 your rights as a tenant. You can also call (phone number for trustee) on or after (date of  
63 foreclosure sale) to find out whether the foreclosure sale occurred and to find out the new  
64 owner of the property."

65 **4. The notice required in subsection 3 of this section shall be addressed:**

66 (1) To each person whose name and address is set forth in any such request recorded at  
67 least [forty] **sixty** days prior to the scheduled date of sale; and

68 (2) To the person shown by the records in the office of the recorder of deeds to be the  
69 owner of the property as of [forty] **sixty** days prior to the scheduled date of foreclosure sale at  
70 the foreclosing mortgagee's last known address for said record owner; and

71 (3) To the mortgagor or grantor named in the deed of trust or mortgage at the foreclosing  
72 mortgagee's last known address for said mortgagor or grantor[.] ; **and**

73 **(4) To any tenants living in the property subject to foreclosure. Unless the**  
74 **mortgagee shall have actual notice of the tenant's name, any notice to a tenant required in**  
75 **this section shall be sufficient if addressed to "tenant";**

76 [(4)] **(5)** Actual receipt by the addressee of the envelope referred to above shall not be  
77 necessary to establish compliance with the notice requirements of subsection 3 hereof.  
78 Recording of receipt issued by the United States Post Office for certified or registered mail to  
79 evidence that said envelope has been delivered by the sender to the United States Post Office  
80 shall constitute proof of compliance with notice requirements of subsection 3 hereof.

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

85           5. The release of a deed of trust or mortgage shall cancel of record all requests for notice  
86 which pertain to the deed of trust or mortgage identified in such request.

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