

FIRST REGULAR SESSION

HOUSE BILL NO. 922

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STILL (Sponsor), McGEOGHEGAN, ELLINGER, OXFORD,
KIRKTON, SCHUPP, McNEIL, McDONALD AND McCANN BEATTY (Co-sponsors).

1993L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 443, RSMo, by adding thereto five new sections relating to mortgage foreclosures.

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

Section A. Chapter 443, RSMo, is amended by adding thereto five new sections, to be
2 known as sections 443.222, 443.223, 443.224, 443.225, and 443.226, to read as follows:

2 **443.222. 1. Each office of the circuit court in a county in Missouri shall establish**
3 **a loss mitigation application and a residential mortgage foreclosure mediation negotiation**
4 **program to assist mortgagors and mortgagees in achieving a mutually agreeable resolution**
5 **to a mortgage foreclosure action.**

5 **2. The Missouri supreme court shall develop model guidelines for the**
6 **implementation of sections 443.222 to 443.226.**

2 **443.223. 1. A mortgagor shall be served with a loss mitigation application and a**
3 **preforeclosure notice or other official communication at the earliest opportunity. A loss**
4 **mitigation application shall not be a substitute for other efforts to contact the mortgagor,**
5 **but would assist in performance of a good faith review of the mortgagor's eligibility for a**
6 **foreclosure alternative.**

6 **2. A ninety-day notice to proceed with foreclosure shall be sent to the mortgagor**
7 **informing him or her of the state's residential mortgage foreclosure mediation negotiation**
8 **process. Such notice shall advise the mortgagor of the right to meet with a Department of**
9 **Housing and Urban Development (HUD)-approved counseling agency prior to the entry**
10 **of judgment in the foreclosure action and outline the process required to schedule such**

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.

11 negotiation. The mortgagee's legal representative shall also be notified by the mortgagor
12 and/or servicer when a negotiation conference has been scheduled.

13 3. Negotiation conference proceedings shall only pertain to the foreclosure of
14 residential mortgage on a one- to four-family owner-occupier property. The mortgagee
15 shall certify proof of ownership of the mortgage note and produce evidence of such note
16 and all assignments and endorsements therein.

443.224. 1. The court shall assign mediators who:

2 (1) Are trained in mediation and all relevant aspects of the law;

3 (2) Have knowledge of community-based resources that are available in the
4 counties in which they serve;

5 (3) Have knowledge of mortgage assistance programs; and

6 (4) Are trained in using the relevant Federal Deposit Insurance Corporation forms
7 and worksheets.

8

9 The court may establish a training program for mediators and require that mediators
10 receive such training prior to being appointed.

11 2. All negotiations shall be conducted in good faith so that a foreclosure may be
12 avoided.

13 3. Each party and each party's attorney, if any, and/or a HUD-approved counseling
14 agency shall be present at the negotiation conference as required by subsection 4 of this
15 section and make a good faith effort to mediate all issues within the ninety-day period.

16 4. Mediation and appearance is mandatory for the following:

17 (1) The mortgagee who has the authority to agree to a proposed settlement, loan
18 modification, or dismissal of the loan, except that the mortgagee may participate by
19 telephone or electronic means as long as the mortgagee has the authority to agree to a
20 proposed settlement;

21 (2) The mortgagor;

22 (3) Counsel for the mortgagor, if represented, or a representative of the HUD
23 counseling agency, unless the mortgagor has waived the right to representation provided
24 the waiver has been submitted in writing and agreed upon by both parties prior to the
25 scheduled negotiation conference.

443.225. 1. The negotiation conference shall address all issues of the loss mitigation
2 application and the lenders response, including the following:

3 (1) Whether the mortgagor has met with a representative of a HUD-approved
4 counseling agency;

- 5 (2) Whether the consumer credit counseling agency prepared an assessment or
6 report providing options to help resolve the foreclosure action;
- 7 (3) Whether copies of any completed application for mortgage or financial
8 assistance have been reviewed;
- 9 (4) Whether the mortgagor's income and expense information has been verified;
- 10 (5) Whether the mortgagor's employment status has been verified;
- 11 (6) Verification that a permanent restructuring of the mortgage debt has been made
12 and that the restructuring includes a reduction in principal. The restructuring shall not
13 exceed the value of the residential property;
- 14 (7) That all parties reach a mutual agreement within ninety days;
- 15 (8) A loss mitigation affidavit submitted by the foreclosing party stating either:
- 16 (a) That a loss mitigation review was performed along with the reasons for denial;
17 or
- 18 (b) That the review could not be completed despite repeated attempts;
- 19 (8) That the mortgage deed is recorded and such a recording thereafter constitutes
20 a record notice of foreclosure.

443.226. 1. If a mortgagor fails to appear for a scheduled negotiation conference,
2 the requirement for such conference shall be deemed satisfied upon verification that the
3 required notice was served and the mortgagor failed to respond within the ninety-day time
4 period resulting in an order issued by the state authorizing the mortgagee to proceed with
5 the foreclosure action.

6 **2.** If the mortgagee or legal representative of the mortgagee fails to appear for a
7 scheduled negotiation conference, the case shall not proceed until a rescheduled negotiation
8 conference is held.

9 **3.** If a mortgagee fails to appear within the ninety-day timeframe, a claim shall be
10 reissued to restart the process.

11 **4.** A mortgagee shall demonstrate the benefits of proceeding with foreclosure versus
12 modifying the loan.

13 **5.** The mortgagee shall further certify and provide evidence that all steps mandated
14 by law to provide notice to the mortgagor under sections 443.222 to 443.226 were strictly
15 performed.

16 **6.** If the notice required under section 443.223 is given and the ninety-day
17 redemption period has expired, the mortgagee may institute a foreclosure action by filing
18 a petition in the office of the circuit court where the property is located.

19 **7. The mortgagee shall, after entry of final judgment in favor of the mortgagee,**
20 **provide a copy of the foreclosure judgment to any resident of the premises ninety days**
21 **prior to eviction.**

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