

SECOND REGULAR SESSION

HOUSE BILL NO. 1717

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FLOOK (Sponsor) AND YATES (Co-sponsor).

Read 1st time February 9, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4412L.02I

AN ACT

To amend chapter 443, RSMo, by adding thereto sixteen new sections relating to mortgage satisfaction.

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

Section A. Chapter 443, RSMo, is amended by adding thereto sixteen new sections, to
2 be known as sections 443.1000, 443.1002, 443.1004, 443.1006, 443.1008, 443.1010, 443.1012,
3 443.1014, 443.1016, 443.1018, 443.1020, 443.1022, 443.1024, 443.1026, 443.1028, and
4 443.1030, to read as follows:

443.1000. 1. Sections 443.1000 to 443.1030 shall be known and may be cited as the
2 **"Missouri Uniform Residential Mortgage Satisfaction Act".**

3 **2. As used in sections 443.1000 to 443.1030, the following terms mean:**

4 **(1) "Address for giving a notification", for the purpose of a particular type of**
5 **notification, the most recent address provided in a document by the intended recipient of**
6 **the notification to the person giving the notification, unless the person giving notification**
7 **knows of a more accurate address, in which case the term means that address;**

8 **(2) "Day", calendar day;**

9 **(3) "Document", information that is inscribed on a tangible medium or that is**
10 **stored in an electronic or other medium and is retrievable in perceivable form;**

11 **(4) "Document of rescission", a document stating that an identified satisfaction or**
12 **affidavit of satisfaction of a security instrument was recorded erroneously, the secured**
13 **obligation remains unsatisfied, and the security instrument remains in force;**

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) "Electronic", relating to technology having electrical, digital, magnetic, wireless,
15 optical, electromagnetic, or similar capabilities;
- 16 (6) "Entitled person", a person liable for payment or performance of the obligation
17 secured by the real property described in a security instrument, or the landowner;
- 18 (7) "Good faith", honesty in fact and the observance of reasonable commercial
19 standards of fair dealing;
- 20 (8) "Landowner", a person that, before foreclosure, has the right of redemption in
21 the real property described in a security instrument. The term does not include a person
22 that holds only a lien on the real property;
- 23 (9) "Notification", a document containing information required under sections
24 443.1000 to 443.1030 and signed by the person required to provide the information;
- 25 (10) "Payoff amount", the sum necessary to satisfy a secured obligation;
- 26 (11) "Payoff statement", a document containing the information specified in
27 subsection 4 of section 443.1006;
- 28 (12) "Person", an individual, corporation, business trust, estate, trust, partnership,
29 limited liability company, association, joint venture, public corporation, government or
30 governmental subdivision, agency or instrumentality, or any other legal or commercial
31 entity;
- 32 (13) "Recording data", the date, book, and page number or document number that
33 indicates where a document is recorded in the appropriate governmental office under
34 section 442.380, RSMo;
- 35 (14) "Residential real property", real property located in this state which is used
36 primarily for personal, family, or household purposes and is improved by one to four
37 dwelling units;
- 38 (15) "Secured creditor", a person that holds or is the beneficiary of a security
39 interest that is authorized both to receive payments on behalf of a person that holds a
40 security interest and to record a satisfaction of the security instrument upon receiving full
41 performance of the secured obligation. The term does not include a trustee under a
42 security instrument;
- 43 (16) "Secured obligation", an obligation, the payment or performance of which is
44 secured by a security interest;
- 45 (17) "Security instrument", an agreement, however denominated, that creates or
46 provides for an interest in residential real property to secure payment or performance of
47 an obligation, whether or not it also creates or provides for a lien on personal property;
- 48 (18) "Security interest", an interest in residential real property created by a
49 security instrument;

- 50 **(19) "Sign", with present intent to authenticate or adopt a document:**
51 **(a) To execute or adopt a tangible symbol; or**
52 **(b) To attach to or logically associate with the document an electronic sound,**
53 **symbol, or process;**
54 **(20) "State", any state of the United States, the District of Columbia, Puerto Rico,**
55 **the United States Virgin Islands, or any territory or insular possession subject to the**
56 **jurisdiction of the United States;**
57 **(21) "Submit for recording", to deliver, with required fees and taxes, a document**
58 **sufficient to be recorded under sections 443.1000 to 443.1030, to the appropriate**
59 **governmental office under section 442.380, RSMo;**
60 **(22) "Title insurance company", an organization authorized to conduct the**
61 **business of insuring titles to real property in this state.**
- 443.1002. 1. A person gives a notification by:**
2 **(1) Depositing it with the United States Postal Service with first-class postage paid**
3 **or with a commercially reasonable delivery service with cost of delivery provided, properly**
4 **addressed to the recipient's address for giving a notification;**
5 **(2) Sending it by facsimile transmission, electronic mail, or other electronic**
6 **transmission to the recipient's address for giving a notification, but only if the recipient**
7 **agreed to receive notification in that manner; or**
8 **(3) Causing it to be received at the address for giving a notification within the time**
9 **that would have been received if given under subdivision (1) of this subsection.**
10 **2. A notification is effective:**
11 **(1) The day after it is deposited with a commercially reasonable delivery service for**
12 **overnight delivery;**
13 **(2) Three days after it is deposited with the United States Postal Service, first-class**
14 **mail with postage prepaid, or with a commercially reasonable delivery service for delivery**
15 **other than by overnight delivery;**
16 **(3) The day it is given, if given under subdivision (2) of subsection 1 of this section;**
17 **or**
18 **(4) The day it is received, if given by a method other than as provided in**
19 **subdivisions (1) and (2) of subsection 1 of this section.**
20 **3. If any notification required under sections 443.1000 to 443.1030 requires**
21 **performance on or by a certain day and that day is Saturday, Sunday, or a legal holiday,**
22 **the performance is sufficient if performed on the next day that is not a Saturday, Sunday,**
23 **or legal holiday.**

443.1004. 1. If a person records a satisfaction or affidavit of satisfaction of a security instrument in error, the person may execute and record a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction or affidavit.

2. A recorded document of rescission has no effect on the rights of a person that:

(1) Acquired an interest in the real property described in a security instrument after the recording of the satisfaction or affidavit of satisfaction of the security instrument and before the recording of the document of rescission; and

(2) Would otherwise have priority over or take free of the lien created by the security instrument under section 442.400, RSMo.

3. A person that erroneously or wrongfully records a document of rescission is liable to any person injured thereby for the actual damages caused by the recording.

443.1006. 1. An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the secured creditor a notification requesting a payoff statement for a specified payoff date and not more than thirty days after the notification is given. The notification shall contain:

(1) The entitled person's name;

(2) If given by a person other than an entitled person, the name of the person giving the notification and a statement that the person is an authorized agent of the entitled person;

(3) A direction whether the statement is to be sent to the entitled person or that person's authorized agent;

(4) The address to which the creditor shall send the statement; and

(5) Sufficient information to enable the creditor to identify the secured obligation and the real property encumbered by the security interest.

2. If a notification under subsection 1 of this section directs the secured creditor to send the payoff statement to a person identified as an authorized agent of the entitled person, the secured creditor shall send the statement to the agent, unless the secured creditor knows that the entitled person has not authorized the request.

3. Within ten days after the effective date of the notification that complies with subsection 1 of this section, the secured creditor shall issue a payoff statement and send it as directed under subdivision (3) of subsection 1 of this section, in the manner prescribed under section 443.1002 for giving a notification. A secured creditor that sends a payoff statement to the entitled person or the authorized agent shall not claim that the notification did not satisfy subsection 1 of this section. If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, the person need not send a payoff statement but shall give a notification of the assignment to

26 the person to whom the payoff statement otherwise would have been sent, providing the
27 name and address of the assignee.

28 4. A payoff statement shall contain:

29 (1) The date on which it was prepared and the payoff amount as of that date,
30 including the amount by type of each fee, charge, or other sum included within the payoff
31 amount;

32 (2) The information reasonably necessary to calculate the payoff amount as the
33 requested payoff date, including the per diem interest amount; and

34 (3) The payment cutoff time, if any, the address or place where the payment shall
35 be made, and any limitation as to the authorized method of payment.

36 5. A payoff statement may contain the amount of any fees authorized under this
37 section not included in the payoff amount.

38 6. A secured creditor shall not qualify a payoff amount or state that it is subject to
39 change before the payoff date unless the payoff statement provides information sufficient
40 to permit the entitled person or the person's authorized agent to request an updated payoff
41 amount at no charge and to obtain that updated payoff amount during the secured
42 creditor's normal business hours on the payoff date or immediately preceding business
43 day.

44 7. A secured creditor shall provide, upon request, one payoff statement without
45 charge during any six-month period. A secured creditor may charge a fee of twenty-five
46 dollars for each additional payoff statement requested during that six-month period. A
47 secured creditor shall not charge a fee providing an updated payoff amount under
48 subsection 6 of this section or a corrected payoff statement under section 443.1008.

49 8. Unless the security interest provides otherwise, a secured creditor is not required
50 to send a payoff statement by means other than first-class mail. If the creditor agrees to
51 send a statement by another means, it may charge a reasonable fee for complying with the
52 requested manner of delivery.

53 9. Except as otherwise provided in section 443.1014, if a secured creditor to which
54 a notification has been given under subsection 1 of this section does not send a timely
55 payoff statement that substantially complies with subsection 4 of this section, the creditor
56 is liable to the entitled person for any actual damages caused by the failure, plus five
57 hundred dollars, but not punitive damages.

443.1008. 1. If a secured creditor determines that the payoff amount it provided
2 in a payoff statement was understated, the creditor may send a corrected payoff statement.
3 If the entitled person or the person's authorized agent receives and has a reasonable

4 opportunity to act upon a corrected payoff statement before making a payment, the
5 corrected statement supercedes an earlier statement.

6 2. A secured creditor that sends a payoff statement containing an understated
7 payoff amount shall not deny the accuracy of the payoff amount as against any person that
8 reasonably and detrimentally relied upon the understated payoff amount.

9 3. Sections 443.1000 to 443.1030 shall not:

10 (1) Affect the right of the secured creditor to recover any sum that it did not include
11 in a payoff amount from any person liable for payment of the secured obligation; or

12 (2) Limit any claim or defense that a person liable for payment of a secured
13 obligation may have under law other than sections 443.1000 to 443.1030.

443.1010. 1. Upon full payment or performance of the secured obligation, the
2 landowner or the landowner's agent may give the secured creditor a notification, by any
3 method authorized by section 443.1002 that provides proof of receipt, demanding that the
4 creditor submit a satisfaction for recording within forty-five days following the creditor's
5 receipt of the notification. The notification shall provide sufficient information to enable
6 the creditor to identify the secured obligation. If a security instrument secures a line of
7 credit or future advances, the secured obligation is fully performed only if, in addition to
8 full payment, the secured creditor has received a notification requesting the creditor to
9 terminate the line of credit or containing a statement sufficient to terminate the
10 effectiveness of the provision for future advances in the security instrument.

11 2. Except as otherwise provided in subsection 3 of this section and in section
12 443.1014, if a secured creditor has received full payment or performance of the secured
13 obligation and fails to submit a satisfaction for recording within the period specified in
14 subsection 1 of this section, the creditor shall be liable to the landowner for any actual
15 damages caused by the failure, plus an amount equal to the lesser of three hundred dollars
16 per day for each additional day during which the creditor fails to submit a satisfaction for
17 recording or an amount equal to ten percent of the original principal amount of the
18 security instrument.

19 3. Subsection 2 of this section shall not apply if the secured creditor received full
20 payment or performance of the secured obligation before August 28, 2006.

21 4. No particular phrasing shall be required for the notification specified in
22 subsection 1 of this section. The following information is sufficient to satisfy the
23 requirements of subsection 1 of this section:

24 (1) The name and address of the secured creditor;

25 (2) If the notification to submit a satisfaction for recording is submitted by the
26 landowner, the landowner shall identify the county in which the real property is located.

27 If the notification to submit a satisfaction recording is submitted by the landowner's
28 authorized agent, the authorized agent shall indicate the name of the landowner of the real
29 property and the county where the real property is located;

30 (3) The recording information covered by the security instrument is recorded, the
31 county where the security instrument is recorded, and the mortgage loan number assigned
32 by the secured creditor;

33 (4) Language that the indebtedness secured by the security instrument has been
34 satisfied;

35 (5) Notification that the creditor has forty-five days from the receipt of the
36 notification to submit to the recorder a satisfaction of the security instrument. Along with
37 the notification, there shall be language indicating that failure to submit to the recorder
38 within the specified time period shall result in an amount equal to the lesser of three
39 hundred dollars per day for each additional days thereafter in which there is a failure to
40 record or ten percent of the original principal amount of the indebtedness secured by the
41 security instrument; and

42 (6) The signature of the landowner or authorized agent.

443.1012. 1. A document is a satisfaction of a security instrument if it:

2 (1) Identifies the security instrument, the original parties to the security instrument,
3 the recording data for the security instrument, and the office in which the security
4 instrument is recorded;

5 (2) States that the person signing the satisfaction is the secured creditor;

6 (3) Contains a legal description of the real property identified in the security
7 instrument, but only if a legal description is necessary for a satisfaction to be properly
8 indexed;

9 (4) Contains language terminating the effectiveness of the security instrument; and

10 (5) Is signed by the secured creditor and acknowledged as required by law for a
11 conveyance of an interest in real property.

12 2. The recorder of deeds for the county in which a security instrument was
13 recorded shall accept for recording a satisfaction of the security instrument, unless:

14 (1) An amount equal to or greater than the applicable recording fees and taxes is
15 not tendered;

16 (2) The document is submitted by a method or in a medium not authorized by the
17 recorder; or

18 (3) The document is not signed by the secured creditor and acknowledged as
19 required by law for a conveyance of an interest in real property.

443.1014. A secured creditor shall not be liable under sections 443.1000 to 443.1030
2 if it:
3 (1) Established a reasonable procedure to achieve compliance with its obligations
4 under sections 443.1000 to 443.1030;
5 (2) Complied with that procedure in good faith; and
6 (3) Was unable to comply with its obligations because of circumstances beyond its
7 control.

443.1016. The following may serve as a satisfaction agent:
2 (1) A title insurance company, acting directly or through an agent authorized to
3 sign and submit for recording an affidavit of satisfaction; or
4 (2) An attorney licensed to practice law in this state and in good standing.

443.1018. 1. If a secured creditor has not submitted for recording a satisfaction of
2 a security instrument within the period specified in subsection 1 of section 443.1010, a
3 satisfaction agent acting for and with authority from the landowner may give the secured
4 creditor a notification that the satisfaction agent intends to submit for recording an
5 affidavit of satisfaction of the security instrument. The notification shall include:
6 (1) The identity and mailing address of the satisfaction agent;
7 (2) The identification of the security instrument for which a recorded satisfaction
8 is sought, including the names of the original parties to, and the recording data for, the
9 security instrument;
10 (3) A statement that the satisfaction agent has reasonable grounds to believe that:
11 (a) The real property described in the security instrument is residential real
12 property;
13 (b) The person to which the notification is being given is the secured creditor; and
14 (c) The secured creditor has received full payment or performance of the secured
15 obligation;
16 (4) A statement that a satisfaction of the security instrument does not appear of
17 record;
18 (5) A statement that the satisfaction agent, acting with the authorization of the
19 owner of the real property described in the security instrument, intends to sign and submit
20 for recording an affidavit of satisfaction of the security instrument unless, within thirty
21 days after the effective date of the notification:
22 (a) The secured creditor submits a satisfaction of the security instrument for
23 recording;
24 (b) The satisfaction agent receives from the secured creditor a notification stating
25 that the secured obligation remains unsatisfied; or

26 (c) The satisfaction agent receives from the secured creditor a notification stating
27 that the secured creditor has assigned the security interest and identifying the name and
28 address of the assignee.

29 2. A notification under subsection 1 of this section shall be sent by a method
30 authorized by section 443.1002 that provides proof of receipt to the secured creditor's
31 address for giving a notification for the purpose of requesting a payoff statement, or if the
32 satisfaction agent cannot ascertain that address, to the secured creditor's address for
33 notification for any other purpose.

34 3. Sections 443.1000 to 443.1030 shall not require a person to agree to serve as a
35 satisfaction agent.

443.1020. 1. Subject to subsections 2 and 3 of this section, a satisfaction agent may
2 sign and submit, for recording, an affidavit of satisfaction of a security instrument
3 complying with section 443.1022 if:

4 (1) The secured creditor has not, to the knowledge of the satisfaction agent,
5 submitted for recording a satisfaction of a security instrument within thirty days after the
6 effective date of a notification complying with subsection 1 of section 443.1018; or

7 (2) The secured creditor authorizes the satisfaction agent to do so.

8 2. A satisfaction agent shall not sign and submit for recording an affidavit of
9 satisfaction of a security instrument if it has received a notification under paragraph (b)
10 of subdivision (5) of subsection 1 of section 443.1018 stating that the secured obligation
11 remains unsatisfied.

12 3. If a satisfaction agent receives a notification under paragraph (c) of subdivision
13 (5) of subsection 1 of section 443.1018 stating the security instrument has been assigned,
14 the satisfaction agent shall not submit for recording an affidavit of satisfaction of the
15 security instrument without:

16 (1) Giving a notification of intent to submit for recording an affidavit of satisfaction
17 to the identified assignee at the identified address; and

18 (2) Complying with section 443.1018 with respect to the identified assignee.

443.1022. An affidavit of satisfaction of a security instrument shall:

2 (1) Identify the original parties to the security instrument, the secured creditor, the
3 recording data for the security instrument, and, if necessary for proper indexing of the
4 affidavit, a legal description of the real property identified in the security instrument;

5 (2) State the basis upon which the person signing the affidavit is a satisfaction
6 agent;

7 (3) State that the person signing the affidavit has reasonable grounds to believe that
8 the real property described in the security instrument is residential real property;

9 (4) State that the person signing the affidavit has reasonable grounds to believe that
10 the secured creditor has received full payment or performance of the secured obligation;

11 (5) State that the person signing the affidavit, acting with the authority of the
12 owner of the real property described in the security instrument, gave notification to the
13 secured creditor of its intention to sign and submit for recording an affidavit of
14 satisfaction;

15 (6) Describe the method by which the person signing the affidavit gave notification
16 in compliance with sections 443.1000 to 443.1030;

17 (7) State that:

18 (a) More than thirty days have elapsed since the effective date of that notification,
19 and the person signing the affidavit has no knowledge that the secured creditor has
20 submitted a satisfaction for recording and has not received a notification that the secured
21 obligation remains unsatisfied; or

22 (b) The secured creditor authorized the person signing the affidavit to sign and
23 record an affidavit of satisfaction; and

24 (8) Be signed and acknowledged, as required by law, for a conveyance of an interest
25 in real property.

443.1024. No particular phrasing of an affidavit of satisfaction shall be required.
2 **The following information contained in a form for an affidavit of satisfaction is sufficient**
3 **to satisfy the requirements of subsection 1 of section 443.1022:**

4 (1) The date of the affidavit of satisfaction;

5 (2) Whether the undersigned person is one of the following:

6 (a) An officer or duly appointed agent of an insurance company authorized to
7 transact in the business of insuring titles to interest in real property of the state and
8 authorized to sign and submit an affidavit of satisfaction; or

9 (b) An attorney licensed to practice law in this state and in good standing;

10 (3) Whether the affidavit of satisfaction is evidence of full payment or performance
11 of the obligation secured by the real property covered by the following security instrument
12 currently held by the secured creditor along with the following:

13 (a) The title of the security instrument;

14 (b) The original parties to security instrument;

15 (c) The county and state of recording;

16 (d) The recording data for the security instrument; and

17 (e) The legal description, if necessary for proper indexing;

18 (4) Whether the undersigned person has reasonable grounds to believe that:

19 (a) The secured creditor received full payment or performance of the balance of the
20 obligations secured by the security instrument; and

21 (b) The real property described in the security instrument constituted residential
22 property;

23 (5) Whether the undersigned person, with the authorization of the owner of the real
24 property described in the security instrument, notifies the secured creditor by a method
25 authorized in section 443.1002 that provides proof of receipt that the undersigned would
26 sign and record an affidavit of satisfaction of the instrument if, within thirty days after the
27 effective date of the notification, the secured creditor did not submit a satisfaction of the
28 security interest for recording or give notification that the secured obligation remains
29 unsatisfied;

30 (6) Whether either of the following occurred:

31 (a) The thirty-day period identified in subdivision (5) of this section elapsed and the
32 undersigned had no knowledge that the secured creditor submitted a satisfaction for
33 recording, and did not receive notification that the secured obligation remained
34 unsatisfied; or

35 (b) The secured creditor responded to the notification in subdivision (5) of this
36 section authorizing the undersigned to execute and record the affidavit of satisfaction;

37 (7) The signature of the satisfaction agent; and

38 (8) Notarization.

 443.1026. 1. Upon recording an affidavit substantially complying with the
2 requirements of section 443.1022 constitutes a satisfaction of the security instrument
3 described in the affidavit.

4 2. The recording of an affidavit of satisfaction of a security instrument shall not by
5 itself extinguish any liability of a person for payment or performance of the secured
6 obligation.

7 3. The recorder of deeds in the county in which a security instrument was recorded
8 shall not refuse to accept for recording an affidavit of satisfaction of a security instrument
9 unless:

10 (1) An amount equal to or greater than the applicable recording fees and taxes is
11 not tendered;

12 (2) The affidavit is submitted by a method or in a medium not authorized by the
13 recorder; or

14 (3) The affidavit is not signed by the satisfaction agent and acknowledged as
15 required by law for a conveyance of an interest in real property.

2 **443.1028. 1. Except as otherwise provided in subsection 2 of this section, a**
3 **satisfaction agent that records an affidavit of satisfaction of a security instrument**
4 **erroneously or with knowledge that the statements contained in the affidavit are false shall**
5 **be liable to the secured creditor for any actual damages caused by the recording.**

6 **2. A satisfaction agent that records an affidavit of satisfaction of a security**
7 **instrument erroneously shall not be liable if the agent properly complied with this section**
8 **and the secured creditor did not respond in a timely manner to the notification under**
9 **subdivision (5) of subsection 1 of section 443.1018.**

10 **3. If a satisfaction agent records an affidavit of satisfaction of a security instrument**
11 **with knowledge that the statements contained in the affidavit are false, this section shall**
12 **not preclude:**

13 **(1) A court from awarding punitive damages on account of the conduct;**

14 **(2) The secured creditor from proceeding against the satisfaction agent under law**
15 **of this state other than sections 443.1000 to 443.1030; or**

16 **(3) The enforcement of any criminal statute prohibiting this conduct.**

17 **443.1030. 1. In applying and construing sections 443.1000 to 443.1030,**
18 **consideration shall be given to the need to promote uniformity of the law with respect to**
19 **its subject matter among the states that enact it.**

20 **2. As authorized in 15 U.S.C. 7001, as amended, sections 443.1000 to 443.1030**
21 **modify, limit, and supercede the federal Electronic Signatures in Global and National**
22 **Commerce Act, 15 U.S.C. 7001 et seq., but shall not modify, limit, or supercede section**
23 **101(c) of that act, 15 U.S.C. section 7001(c), as amended, or authorize electronic delivery**
24 **of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b), as**
25 **amended.**

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