

SECOND REGULAR SESSION

HOUSE BILL NO. 2636

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE OWEN.

6376H.01I

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 443, RSMo, by adding thereto six new sections relating to mortgage modifications, with a severability clause.

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

Section A. Chapter 443, RSMo, is amended by adding thereto six new sections, to be known as sections 443.920, 443.921, 443.922, 443.923, 443.924, and 443.925, to read as follows:

443.920. Sections 443.920 to 443.925 shall be known and may be cited as the "Uniform Mortgage Modification Act".

443.921. For purposes of sections 443.920 to 443.925, the following terms mean:

(1) "Electronic", relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(2) "Financial covenant", an undertaking to demonstrate an obligor's creditworthiness, or the adequacy of security provided by an obligor;

(3) "Modification", includes change, amendment, revision, correction, addition, supplementation, elimination, waiver, and restatement;

(4) "Mortgage":

(a) An agreement that creates a consensual interest in real property to secure payment or performance of an obligation, regardless of:

a. How the agreement is denominated, including a mortgage, deed of trust, trust deed, security deed, indenture, and deed to secure debt; and

b. Whether the agreement also creates a security interest in personal property; and

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 (b) Does not include an agreement that creates a consensual interest to secure a
16 liability owed by a unit owner to a condominium association, owners' association, or
17 cooperative housing association for association dues, fees, or assessments;

18 (5) "Mortgage modification", modification of:

19 (a) A mortgage;

20 (b) An agreement that creates an obligation, including a promissory note, loan
21 agreement, or credit agreement; or

22 (c) An agreement that creates other security or credit enhancement for an
23 obligation, including an assignment of leases or rents or a guaranty;

24 (6) "Obligation", a debt, duty, or other liability, secured by a mortgage;

25 (7) "Obligor", a person that:

26 (a) Owes payment or performance of an obligation;

27 (b) Signs a mortgage; or

28 (c) Is otherwise accountable, or whose property serves as collateral, for payment
29 or performance of an obligation;

30 (8) "Person", an individual, estate, business or nonprofit entity, government or
31 governmental subdivision, agency, or instrumentality, or other legal entity;

32 (9) "Recognized index", an index to which changes in the interest rate may be
33 linked that is:

34 (a) Readily available to, and verifiable by, the obligor; and

35 (b) Beyond the control of the person to whom the obligation is owed;

36 (10) "Record", used as a noun, means information:

37 (a) Inscribed on a tangible medium; or

38 (b) Stored in an electronic or other medium and retrievable in perceivable form;

39 (11) "Sign", with present intent to authenticate or adopt a record:

40 (a) Execute or adopt a tangible symbol; or

41 (b) Attach to or logically associate with the record an electronic symbol, sound,
42 or process.

 443.922. 1. Except as provided in subsection 3 of this section, sections 443.920 to
2 443.925 apply to a mortgage modification.

3 2. Sections 443.920 to 443.925 do not affect:

4 (1) Laws governing the required content of a mortgage;

5 (2) A statute of limitations or other law governing the expiration or termination
6 of a right to enforce an obligation or a mortgage;

7 (3) A recording statute;

8 (4) A statute governing the priority of a tax lien or other governmental lien;

9 (5) A statute of frauds; or

10 (6) Except as provided in subdivision (8) of subsection 2 of section 443.923, law
11 governing the priority of a future advance.

12 3. Sections 443.920 to 443.925 do not apply to any of the following modifications:

13 (1) A release of, or addition to, property encumbered by a mortgage;

14 (2) A release of, addition of, or other change in an obligor; or

15 (3) An assignment or other transfer of a mortgage or an obligation.

 443.923. 1. For a mortgage modification described in subsection 2 of this
2 section:

3 (1) The mortgage continues to secure the obligation as modified;

4 (2) The priority of the mortgage is not affected by the modification;

5 (3) The mortgage retains its priority regardless of whether a record of the
6 mortgage modification is recorded in the public land records; and

7 (4) The modification is not a novation.

8 2. Subsection 1 of this section applies to one or more of the following mortgage
9 modifications:

10 (1) An extension of the maturity date of an obligation;

11 (2) A decrease in the interest rate of an obligation;

12 (3) If the change does not result in an increase in the interest rate of an
13 obligation as calculated on the date the modification becomes effective:

14 (a) A change to a different index that is a recognized index if the previous index
15 to which changes in the interest rate were linked is no longer available;

16 (b) A change in the differential between the index and the interest rate;

17 (c) A change from a floating or adjustable rate to a fixed rate; or

18 (d) A change from a fixed rate to a floating or adjustable rate based on a
19 recognized index;

20 (4) A capitalization of unpaid interest or other unpaid monetary obligation;

21 (5) A forgiveness, forbearance, or other reduction of principal, accrued interest,
22 or other monetary obligation;

23 (6) A modification of a requirement for maintaining an escrow or reserve
24 account for payment of an obligation, including taxes and insurance premiums;

25 (7) A modification of a requirement for acquiring or maintaining insurance;

26 (8) A modification of an existing condition to advance funds;

27 (9) A modification of a financial covenant; and

28 (10) A modification of the payment amount or schedule resulting from another
29 modification described in this subsection.

30 3. The effect of a mortgage modification not described in subsection 2 is
31 governed by other law.

**443.924. Sections 443.920 to 443.925 modify, limit, or supersede the Electronic
2 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., as
3 amended, but do not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize
4 electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).**

**443.925. Sections 443.920 to 443.925 apply to a mortgage modification made on
2 or after the effective date of such sections regardless of when the mortgage or the
3 obligation was created.**

Section B. If any provision of section A of this act or the application thereof to
2 anyone or to any circumstance is held invalid, the remainder of those sections and the
3 application of such provisions to others or other circumstances shall not be affected thereby.

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