

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 2636

103RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE OWEN.

6376H.01P

JOSEPH ENGLER, Chief Clerk

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## AN ACT

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

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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 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

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.

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

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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