

MISSOURI FORECLOSURE UPDATE MAY, 2009

INTRODUCTION:

Allison Tanner presented a CLE Presentation on Missouri Foreclosures (Missouri Non-Judicial Foreclosures, a Step-by-Step Guide with Forms and Checklists) at the KCMBA on 5/12/09. I am scheduled to present this seminar again on 6/3/09 for the Missouri Bar as an interactive telephone seminar. If you are interested in attending, please contact the Missouri Bar for more details and information. If you are interested in having me present the seminar to you or your clients, please contact me directly at (816) 460-2550; fax (816) 531-7545 or atanner@sonnenschein.com. The Power Point presentation appears on my Linked In profile. I also have forms, checklists, cases and other materials which are available at the seminar.

PRACTICE TIPS:

* If representing the lender, confirm that your client has the original Note and has proper documentation to prove that it is the holder of the debt. More and more cases are being decided in the bankruptcy context in which the lender's motion to lift the bankruptcy stay is being denied because the lender does not have the original note or does not have documentation proving that it is the holder of the debt. See <http://loanworkout.org/2009/02/wheres-the-note-whos-the-holder-enforcement-of-the-promissory-note-secured-by-real-estate/> for an analysis of these issues by two Bankruptcy Judges.

NEWS FROM THE COURTS

(Missouri) We have not really seen much action in Missouri . . . yet. We still anticipate that it is coming.

(National) The South Carolina Supreme Court temporarily halted thousands of pending home foreclosures in the state. This was an attempt to give homeowners more time to take advantage of the new federal program Hope for Homeowners Program (part of the Homeowner Affordability and Stability Plan) (the "Plan") to help them refinance mortgages. The ruling applies to foreclosures backed by either Fannie Mae or Freddie Mac or any other lender who has agreed to participate in the Plan. This is the first and (so far) only statewide temporary injunction halting foreclosures in the nation. See links below for more information.

http://www.abajournal.com/news/south_carolina_supreme_court_temporarily_bars_foreclosures/

<http://www.dailymail.com/Business/200905050712>

LEGISLATIVE UPDATE

(Missouri) Senate Bill 469 is proposed to amend RSMO §§ 443.310, 443.325 and 534.030. This Bill will amend the parties to which notice must be given of a pending foreclosure sale to include tenants of such real property. I have attached the text of Senate Bill 469 as Exhibit A attached hereto.

GENERAL FORECLOSURE NEWS

(Missouri)

(National)

Latest bankruptcy case to decide that the MERS system could not represent lenders seeking to foreclose on delinquent homeowners already in bankruptcy unless it could produce the actual note -- see link to the opinion below.

<http://www.nvb.uscourts.gov/Opinions/Riegle/07-16226%20Opinion.pdf>

SB 469	Requires certain notices to tenants in cases of foreclosure and provides additional time before eviction actions may begin
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Sponsor:	<i>Justus</i>		
LR Number:	2123S.011	Fiscal Note:	2123-0
Committee:	General Laws		
Last Action:	2/26/2009 - Second Read and Referred S General Laws Committee	Journal Page:	S425
Title:		Calendar Position:	
Effective Date:	August 28, 2009		

[Full Bill Text](#) | [All Actions](#) | [Available Summaries](#) | [Senate Home Page](#) | [List of 2009 Senate Bill](#)

Current Bill Summary

SB 469 - This act requires that at least twenty days notice of foreclosure sales be given to mortgagors of the property (i.e. borrowers) and any tenants residing on the property. The lender must mail notice to the tenant of the foreclosure sale. The act provides the language of the notice to the tenant. When the lender or trustee does not know the name of the tenant they do not have to send the notice by certified or registered mail. The lender or trustee must record an affidavit of service as proof they notified the tenant.

In cases where a foreclosed property is lawfully occupied by a residential tenant who is not in violation of any lease agreement, no unlawful detainer (i.e. eviction) action may begin against the tenant until 45 days after the date the tenant is given notice that the foreclosure sale occurred. A tenant is not guilty of unlawful detainer until they have received written notice that the foreclosure sale has occurred and they are either in violation of any lease agreement or it has been at least 45 days after the date of the foreclosure sale.

EMILY KALMER

FIRST REGULAR SESSION

SENATE BILL NO. 469

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time February 24, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

2123S.011

AN ACT

To repeal sections 443.310, 443.325, and 534.030, RSMo, and to enact in lieu thereof three new sections relating to the rights of tenants in cases of foreclosure.

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

Section A. Sections 443.310, 443.325, and 534.030, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 443.310,
3 443.325, and 534.030, to read as follows:

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

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

11 "In accordance with RSMo, 443.325, request is hereby made that notice of

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

SB 469

12 sale under the deed of trust (or mortgage) recorded the day of, 20.., (as
 13 recorder's number or in Book, Page) of the records of County,
 14 Missouri, the legal description of the property being in County, Missouri,
 15 executed by as Grantor (or Mortgagee) in which is named as beneficiary (or
 16 Mortgagee) and as Trustee, be mailed to (Name) at, (Address), (City)
 17 (State).

18

19 (Signature)

20

21 (Acknowledgment)"

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

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

27 3. In the event of foreclosure under a power of sale, the foreclosing
 28 mortgagee or trustee shall, not less than twenty days prior to the scheduled date
 29 of the sale, cause to be deposited in the United States mail an envelope certified
 30 or registered, **or not certified or registered in the case of notice to a**
 31 **tenant whose name is unknown to the foreclosing mortgagee or trustee,**
 32 and with postage prepaid, enclosing a notice containing the information required
 33 in the published notice of sale referred to in section 443.320, addressed

34 (1) To each person whose name and address is set forth in any such
 35 request recorded at least forty days prior to the scheduled date of sale; and

36 (2) To the person shown by the records in the office of the recorder of
 37 deeds to be the owner of the property as of forty days prior to the scheduled date
 38 of foreclosure sale at the foreclosing mortgagee's last known address for said
 39 record owner; and

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

43 (4) **To any tenant dwelling in the property subject to the**
 44 **foreclosure. Unless the mortgagee or trustee shall have actual notice**
 45 **of the tenant's name, any notice to a tenant required in this section**
 46 **shall be sufficient if addressed to "tenant". Notice to the tenant shall**
 47 **also include the following text: "Attention Tenant: We are the trustee**

SB 469

48 for (holder of the promissory note) that holds a mortgage on
49 (address of property). Your landlord has defaulted, and a foreclosure
50 sale has been scheduled on (date of foreclosure sale). If the
51 property is sold on that date, then your landlord may no longer own the
52 property. You can call (phone number for trustee or trustee's
53 representative) on or after (date of foreclosure sale) to find out
54 whether the foreclosure sale occurred and to request the name of the
55 new owner of the property. If the foreclosure sale occurs, your lease
56 may be invalidated."

57 (5) Actual receipt by the addressee of the envelope referred to above shall
58 not be necessary to establish compliance with the notice requirements of
59 subsection 3 hereof. Recording of receipt issued by the United States Post Office
60 for certified or registered mail to evidence that said envelope has been delivered
61 by the sender to the United States Post Office, or in the case of notice to a
62 tenant recording of an affidavit of service executed by a duly
63 authorized representative of the mortgagee or trustee, shall constitute
64 proof of compliance with notice requirements of subsection 3 hereof.

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

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

534.030. 1. Except as provided in subsection 2 of this section,
2 when any person willfully and without force holds over any lands, tenements or
3 other possessions, after the termination of the time for which they were demised
4 or let to the person, or the person under whom such person claims; or after a
5 mortgage or deed of trust has been foreclosed and the person has received written
6 notice [of] that a foreclosure sale has occurred and either such person is
7 in violation of any lease agreement or at least forty-five days have
8 elapsed after the date of the foreclosure sale; or when premises are
9 occupied incident to the terms of employment and the employee holds over after
10 the termination of such employment; or when any person wrongfully and without
11 force, by disseisin, shall obtain and continue in possession of any lands,

SB 469

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12 tenements or other possessions, and after demand made, in writing, for the
13 delivery of such possession of the premises by the person having the legal right
14 to such possession, or the person's agent or attorney, shall refuse or neglect to
15 vacate such possession, such person is guilty of an "unlawful detainer".

16 **2. In any case where a foreclosed property is lawfully occupied**
17 **by a residential tenant who is not in violation of any lease agreement,**
18 **no unlawful detainer action may be commenced against the tenant**
19 **under this chapter within forty-five days following the date the tenant**
20 **is given notice that the foreclosure sale has occurred.**

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