

ORDINANCE #69428
Board Bill No. 160
Committee Substitute

An ordinance pertaining to mortgage foreclosure intervention; and containing a penalty, severability and emergency clause.

WHEREAS, the national residential property foreclosure crisis has manifested itself in the City of St. Louis by negatively impacting property values, reducing the City of St. Louis' tax base, imposing increasing burdens upon the City of St. Louis' budget, and impeding the orderly assessment of value and the collection of real property taxes; and

WHEREAS, unsecured and unmaintained properties present a danger to the health, safety and welfare of the public, including public safety officers, occupants, abutters, and neighborhoods, and as such, constitute a public nuisance; and

WHEREAS, jurisdictions across the country are currently using foreclosure mediation programs to successfully facilitate mutually beneficial alternatives to foreclosure and the Board of Aldermen is of the view that mediation in advance of foreclosures will be beneficial to homeowners, lenders and to all of City of St. Louis;

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. Definitions. Unless the context otherwise requires, as used in this Ordinance:

1. "Homeowner" means the individual(s) owning and whose principal place of residence is a Residential Property and who is/are the borrower(s) under the promissory note secured by the Deed of Trust on such Residential Property that is subject to foreclosure under Ch. 443 RSMo.

2. "Residential Property" means real property that is located within the City of St. Louis on which is situated either a single-family dwelling, or one or more condominium or co-op units, or a structure containing not more than four residential units.

3. "Lender" means a person or entity which has advanced funds for a loan to a Homeowner secured by a deed of trust on a Residential Property. For the purpose of this Ordinance, "Lender" shall include any servicer of mortgage loans, trustee named in the deed of trust or a duly appointed successor trustee.

4. "Notice of Foreclosure" means a written notice sent to the Homeowner of Lender's intent to foreclose according to the provisions of Chapter 443 R.S. Mo.

5. "Notice of Right to Request Mediation" means a written notice sent to the Homeowner informing the Homeowner of the right to participate in a Mediation Conference pursuant to this Ordinance.

6. "Mediation Coordinator" means the person or entity designated by the Mayor and the Comptroller of the City of St. Louis, acting on behalf of said City, to manage the mortgage foreclosure intervention program established by this Ordinance, pursuant to a contract with the City for such purposes.

7. "Mediation Conference" means the meeting between a Homeowner and Lender, in accordance with the requirements of this Ordinance, for the purpose of effectuating a mutually beneficial alternative to foreclosure.

8. "Presiding Mediator" means the person designated by the Mediation Coordinator to oversee and facilitate the Mediation Conference.

9. "Certificate of Compliance" means a certificate in a form promulgated by the Mediation Coordinator and approved by the City Counselor that is awarded to the Lender by the Mediation Coordinator, certifying that the Lender complied with this Ordinance and is eligible to record the foreclosure deed without penalty.

SECTION TWO. Contract for Mediation Coordinator. – The Mayor and Comptroller of the City of St. Louis, acting on behalf of said City, are authorized to contract with a person or entity to serve as a Mediation Coordinator. The contract shall require the Mediation Coordinator to provide all services established for the position by this Ordinance; shall provide for the Mediation Coordinator and Presiding Mediators to be compensated solely by the fees established by this Ordinance; and shall contain such other terms and conditions as are approved by the City Counselor.

SECTION THREE. Notification requirements.

1. The Lender, or any other person authorized to conduct a sale of the Homeowner's Residential Property pursuant to Chapter 443 R.S.Mo., shall, if desirous of filing a Certificate of Compliance pursuant to Section 727.700, contemporaneously provide to the Homeowner and the Mediation Coordinator a Notice of Right to Request Mediation which informs the Homeowner of the Homeowner's right to participate in a Mediation Conference by sending a request for same to the Mediation Coordinator within twenty days of mailing of the Notice of Right to Request Mediation; except, however, that no such notice shall be required if the Lender has received a Certificate of Compliance for the same Residential Property following notice to the same Homeowner within the preceding twelve months. Such notice shall be provided to Homeowner concurrently with the Lender's "Notice of Foreclosure" according to the provisions of Chapter 443 R.S.Mo., and shall include a form promulgated by the Mediation Coordinator and approved by the City Counselor for the Homeowner to make a written request for mediation under this Ordinance. The Notice of Right to Request Mediation provided to the Mediation Coordinator shall be accompanied by payment to the Mediation Coordinator of a fee of one hundred dollars (\$100.00).

2. Homeowner shall have twenty (20) days from mailing by Lender of the Notice of Right to Request Mediation to complete and return to Mediation Coordinator the form requesting mediation.

3. Within fifteen (15) days of receipt of the Notice of Foreclosure and the Notice of Right to Request Mediation, the Mediation Coordinator shall make and document at least three (3) attempts to contact the Homeowner to inform the Homeowner of the right to participate in a Mediation Conference and to explain the mediation process. The explanation shall include advising the Homeowner of the Homeowner's right to request a Mediation Conference in writing, within twenty (20) days from the mailing by Lender of the Notice of Right to Request Mediation and Notice of Foreclosure.

4. If the Homeowner either fails to request a Mediation Conference within twenty (20) days of the mailing of the Notice of Foreclosure and Notice of Right to Request Mediation OR advises the Mediation Coordinator in writing of the Homeowner's waiver of the right to participate in a Mediation Conference OR has otherwise failed to comply with the requirements imposed herein upon Homeowners, the Lender shall be deemed to have satisfied the requirements of this Ordinance so long as the Lender has made the required \$100.00 payment, and the Mediation Coordinator shall issue the Lender a Certificate of Compliance within one (1) business day.

SECTION FOUR. Mediation Procedures.

1. Upon the written request of the Homeowner to participate in a Mediation Conference, the Mediation Coordinator shall schedule a Mediation Conference for a date within sixty (60) days of the date on which the Lender mailed the notices required by this Ordinance, and shall designate a Presiding Mediator, time, date and location for the Mediation Conference, and shall advise both the Lender and the Homeowner of same. Upon receipt of such information, the Lender shall submit a mediation fee of three hundred fifty dollars (\$350.00) to the Mediation Coordinator not less than seven (7) business days prior to the Mediation Conference and shall comply with all duties imposed upon Lenders hereunder if desirous of filing a Certificate of Compliance.

2. The written request to participate in the Mediation Conference by the Homeowner shall be deemed to be consent by the Homeowner for a continuance of the foreclosure sale for forty-two days as allowed under Section 443.355(2) R.S.Mo.

3. The Mediation Coordinator shall provide the Homeowner with a list of qualified housing counselors who may assist and represent the Homeowner throughout the mediation process. Nothing herein shall prevent a Homeowner from retaining an attorney for the mediation process, nor require use of the housing counselors.

4. Not less than seven (7) business days prior to the Mediation Conference, the Homeowner shall submit to the Mediation Coordinator and to the Lender the following materials:

- (a) a completed financial statement on a form provided by the Mediation Coordinator and approved by the City Counselor;
- (b) a completed Request for Mortgage Assistance form, on a form provided by the Mediation Coordinator and approved by the City Counselor;
- (c) the Homeowner's opinion of the condition of the subject residential property; and

- (d) a statement of any offers the Homeowner has made to the Lender in an effort to resolve the default of the loan.

5. Not less than seven (7) business days prior to the Mediation Conference, the Lender shall submit to the Mediation Coordinator and to the Homeowner the following materials:

- (a) an appraisal and/or broker's price opinion compiled not more than ninety (90) days prior to the Mediation Conference;
- (b) a written proposal to resolve the foreclosure and the evaluation methodology used to determine the eligibility or non-eligibility of the Homeowner for the retention or non-retention of the home;
- (c) an estimate of the "short sale" value of the Residential Property that the Lender may be willing to consider as part of the negotiation if loan modification is not agreed upon; and
- (d) a statement of any offers the Lender has made to the Homeowner in an effort to resolve the default on the loan.

6. Not less than seven (7) business days prior to the Mediation Conference, both the Lender and the Homeowner shall submit to the designated Presiding Mediator, in writing and under confidential cover, a non-binding proposal for avoiding foreclosure.

7. Both Lender and Homeowner, or their authorized representatives, shall appear in person at the Mediation Conference. Any representative appearing at the Mediation Conference for the Lender must have full authority to agree to a proposed settlement, loan modification, or dismissal. A Lender representative who is participating in the Mediation Conference must have real time access to the Homeowner's account information and records relating to consideration of loss mitigation options; have knowledge of loss mitigation and the ability to review options for the Homeowner's specific type of loan; and understand the investor guidelines for the Homeowner's specific loan. If the Lender is located outside the Statistical St. Louis Metropolitan Area, Lender may exercise the option to participate by telephone, videoconferencing, or other communication equipment. If participating by communication equipment, the Lender representative must be available at all times during the Mediation Conference. Counsel or other authorized individual for Lender must appear at the Mediation Conference to sign documents and settlement agreements on behalf of Lender.

8. A continuance of a scheduled Mediation Conference will be granted by the Mediation Coordinator only upon (1) written request submitted prior to the mediation upon a showing of extraordinary circumstances, or (2) written agreement of the Lender and Homeowner. The Mediation Coordinator may grant a continuance of the scheduled mediation conference of up to eighty days from the date on which the Lender mailed the required notices.

9. In the event the Lender and Homeowner are able to resolve the foreclosure prior to the Mediation Conference, they shall forward a copy of a written settlement agreement signed by Lender and Homeowner to the Mediation Coordinator and the Mediation Coordinator shall issue the Lender a Certificate of Compliance within one business day. If notice of settlement is received by the Mediation Coordinator at least one business day prior to the Mediation Conference, the \$350 mediation fee will be refunded. Otherwise, there will be no refund of any fees.

10. If the Lender and Homeowner reach a settlement during the Mediation Conference, the Presiding Mediator shall submit to the Mediation Coordinator a true and correct copy of a settlement agreement within one business days following the Mediation Conference and the Mediation Coordinator shall issue the Lender a Certificate of Compliance within one (1) business days following the Mediation Conference.

11. If the Lender and Homeowner fail to reach a settlement during the Mediation Conference, a good faith effort on behalf of the Lender shall be deemed to satisfy the requirements of this Ordinance, and the Mediation Coordinator shall, within five (5) one (1) days following the Mediation Conference, issue a Certificate of Compliance to the Lender if:

- (a) the Lender sent the Notice of Foreclosure and the Notice of Right to Request Mediation and forms as required by Section 727.400;
- (b) the Lender provided all of the necessary paperwork as required by Section 727.500 4(a)-(d)and (5);

- (c) the Lender's representative who participated in the mediation had the authority to negotiate and modify the loan in question, and the ability to review and approve options for the Homeowner's specific type of loan as required by Section 727.500(6); and
- (d) the Lender paid all fees required by this Ordinance.

12. If the Lender fails to satisfy any of the requirements identified in this Ordinance, the Mediation Coordinator shall not issue a Certificate of Compliance to the Lender.

13. All documents and discussions presented during the Mediation Conference shall be deemed confidential and inadmissible in subsequent actions or proceedings as provided in Section 435.014 R.S. Mo. and Missouri Supreme Court Rule 17 except to the extent needed to prosecute a violation of Section 727.700. Aggregate data to monitor and/or evaluate the implementation of the program may be collected by the City of St. Louis.

SECTION FIVE. Interaction with State law. 1. Nothing in this Ordinance shall prohibit any person from exercising the right to carry out a judicial or non-judicial foreclosure sale pursuant to Chapter 443 R.S.Mo.

2. Nothing in this Ordinance shall be construed to create any private right of action for any person or entity, or to affect title to any Residential Property to which this code applies, or to interfere with any private right of action not related to mediation requirement of this ordinance.

SECTION SIX. Filing of Certificate of Compliance with Assessor-Penalties for Failure to File.-1. It shall be a violation of this ordinance for a Lender to fail either to file or cause to be filed with the Assessor, a valid Certificate of Compliance for the foreclosed Residential Property subject to the provisions of this Chapter, either before or contemporaneously with the filing for recordation with the Recorder of Deeds any instrument of conveyance of title to the foreclosed Residential Property; provided, however, that the Recorder shall not refuse to file any such instrument for failure to comply with this requirement; and further provided that it shall be a complete defense to prosecution hereunder that the Lender has in fact complied with the requirements set forth in Section 727.500.10(a)-(d).

SECTION SEVEN. Penalty Clause.

Any person, firm or corporation convicted of violating any provision of this Ordinance shall be assessed a fine of up to five hundred dollars (\$500.00.) A fine assessed against the Lender may not be passed on to the Homeowner.

SECTION EIGHT. Severability Clause.

The provisions of this ordinance shall be severable. In the event that any provision of this ordinance is found by a court of competent jurisdiction to be unconstitutional, the remaining provisions of this ordinance are valid unless the court finds the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed that the Board of Aldermen would have enacted the valid provisions without the void ones or unless the Court finds that the valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

SECTION NINE. Emergency Clause.

This being an ordinance for the preservation of public peace, health, and safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore shall become effective immediately upon its passage and approval by the mayor.

Approved: February 27, 2013