

1 **BOARD BILL NO. 160 INTRODUCED BY PRESIDENT LEWIS E. REED,**
2 **ALDERMAN SAMUEL MOORE, ALDERWOMAN KACIE STARR TRIPLETT,**
3 **ALDERMAN TERRY KENNEDY, ALDERMAN ANTONIO FRENCH,**
4 **ALDERMAN SCOTT OGILVIE, ALDERMAN FRANK WILLIAMSON,**
5 **ALDERMAN FREEMAN BOSLEY, SR.**

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

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

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

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

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

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

- 23 1. "Homeowner" means the individual(s) owning and whose principal place of
24 residence is a Residential Property that is subject to foreclosure under Ch. 443 RSMo.
- 25 2. "Residential Property" means real property that is located within the City of St. Louis
26 on which is situated either a single-family dwelling or a structure containing not more

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1 than four residential units, including residential condominium units or residential co-op
2 units.

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

8 4. “Notice of Intent to Foreclose” means a written notice sent to the Homeowner of
9 Lender’s intent to foreclose according to the provisions of Chapter 443 R.S. Mo;

10 5. “Notice of Mediation” means a notice sent to the Homeowner informing the
11 Homeowner of the right to participate in a Mediation Conference pursuant to this
12 Ordinance.

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

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

20 8. “Presiding Mediator” means the person designated by the Mediation Coordinator
21 to oversee and facilitate the Mediation Conference.

22 9. “Certificate of Compliance” means a certificate in a form promulgated by the
23 Mediation Coordinator and approved by the City Counselor that is awarded to the Lender

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1 by the Mediation Coordinator, certifying that the Lender complied with this Ordinance
2 and is eligible to record the foreclosure deed without penalty.

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

10 **SECTION THREE. Notification requirements.**

11 1. The Lender, or any other person authorized to conduct a sale of the Homeowner’s
12 Residential Property pursuant to Chapter 443 R.S.Mo., shall contemporaneously provide
13 to the Homeowner and the Mediation Coordinator a Notice of Mediation which informs
14 the Homeowner of the Homeowner’s right to participate in a Mediation Conference by
15 sending a request for same to the Mediation Coordinator within thirty days of mailing of
16 the Notice of Mediation. Such notice shall be provided to Homeowner concurrently with
17 the Lender’s “Notice of Intent to Foreclose,” according to the provisions of Chapter 443
18 R.S.Mo., and shall include a form promulgated by the Mediation Coordinator and
19 approved by the City Counselor for the Homeowner to make a written request for
20 mediation under this Ordinance. The Notice of Mediation provided to the Mediation
21 Coordinator shall be accompanied by payment to the Mediation Coordinator of a fee of
22 one hundred fifty dollars (\$150.00.)

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1 2. Homeowner shall have thirty (30) days from mailing by Lender of the Notice of
2 Mediation to complete and return to Mediation Coordinator the form requesting
3 mediation.

4 3. Within fifteen (15) days of receipt of the Notice of Intent to Foreclose and the Notice
5 of Mediation, the Mediation Coordinator shall make and document at least three (3)
6 attempts to contact the Homeowner to inform the Homeowner of the right to participate
7 in a Mediation Conference and to explain the mediation process. The explanation shall
8 include advising the Homeowner of the Homeowner's right to request a Mediation
9 Conference in writing, within thirty (30) days from the mailing by Lender of the Notice
10 of Mediation and Notice of Intent to Foreclose.

11 4. If the Homeowner either fails to request a Mediation Conference within thirty (30)
12 days of the mailing of the Notice of Intent to Foreclose and Notice of Mediation OR
13 advises the Mediation Coordinator in writing of the Homeowner's waiver of the right to
14 participate in a Mediation Conference OR has otherwise failed to comply with the
15 requirements imposed herein upon Homeowners, the Lender shall be deemed to have
16 satisfied the requirements of this Ordinance and the Mediation Coordinator shall issue the
17 Lender a Certificate of Compliance.

18 **SECTION FOUR. Mediation Procedures.**

19 1. Upon the written request of the Homeowner to participate in a Mediation Conference,
20 the Mediation Coordinator shall schedule a Mediation Conference for a date within sixty
21 (60) days of the date on which the Lender mailed the notices required by this Ordinance,
22 and shall designate a Presiding Mediator, time, date and location for the Mediation
23 Conference, and shall advise both the Lender and the Homeowner of same. Upon receipt

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1 of such information, the Lender shall submit a mediation fee of three hundred fifty
2 dollars (\$350.00) to the Mediation Coordinator not less than ten (10) days prior to the
3 Mediation Conference.

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

8 3. Not less than ten (10) days prior to the Mediation Conference, the Homeowner shall
9 submit to the Mediation Coordinator and to the Lender the following materials:

10 (a) a completed financial statement on a form provided by the Mediation
11 Coordinator and approved by the City Counselor;

12 (b) a completed housing affordability form, on a form provided by the Mediation
13 Coordinator and approved by the City Counselor;

14 (c) the Homeowner's opinion of the condition of the subject residential property;
15 and

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

18 4. Not less than ten (10) days prior to the Mediation Conference, the Lender shall submit
19 to the Mediation Coordinator and to the Homeowner the following materials:

20 (a) an appraisal and/or broker's price opinion compiled not more than ninety (90)
21 days prior to the Mediation Conference;

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1 (b) a written proposal to resolve the foreclosure and the evaluation methodology
2 used to determine the eligibility or non-eligibility of the Homeowner for the retention or
3 non-retention of the home;

4 (c) an estimate of the “short sale” value of the Residential Property that the
5 Lender may be willing to consider as part of the negotiation if loan modification is not
6 agreed upon; and

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

9 5. Not less than ten (10) days prior to the Mediation Conference, both the Lender and the
10 Homeowner shall submit to the designated Presiding Mediator, in writing and under
11 confidential cover, a non-binding proposal for avoiding foreclosure.

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

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1 other authorized individual for Lender must appear at the Mediation Conference to sign
2 documents and settlement agreements on behalf of Lender.

3 7. A request for a continuance of a scheduled Mediation Conference will be granted in
4 only extraordinary circumstances, or upon a written agreement of the Lender and
5 Homeowner. For good cause shown, the Mediation Coordinator may grant a continuance
6 of the scheduled mediation conference of up to eighty days from the date on which the
7 Lender mailed the required notices.

8 8. In the event the Lender and Homeowner are able to resolve the foreclosure prior to the
9 Mediation Conference, they shall forward a copy of a written settlement agreement
10 signed by Lender and Homeowner to the Mediation Coordinator. If such notice is
11 received by the Mediation Coordinator at least three days prior to the Mediation
12 Conference, the three hundred fifty dollars (\$350) mediation fee will be refunded.
13 Otherwise, there will be no refund of any fees. If the settlement agreement involves
14 selling the Residential Property by short sale or other means, the Mediation Coordinator
15 shall forthwith issue a Certificate of Compliance to the Lender upon receipt of a written
16 settlement agreement signed by the Homeowner and Lender.

17 9. If the Lender and Homeowner reach a settlement during the Mediation Conference, the
18 Presiding Mediator shall submit to the Mediation Coordinator a true and correct copy of a
19 settlement agreement within two business days following the Mediation Conference and
20 the Mediation Coordinator shall issue the Lender a Certificate of Compliance within five
21 (5) business days following the Mediation Conference.

22 10. If the Lender and Homeowner fail to reach a settlement during the Mediation
23 Conference, a good faith effort on behalf of the Lender shall be deemed to satisfy the

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1 requirements of this Ordinance, and the Mediation Coordinator shall, within five (5) days
2 following the Mediation Conference, issue a Certificate of Compliance to the Lender if:

3 (a) the Lender sent the Notice of Intent to Foreclose and the Notice of
4 Mediation and forms as required by Section 727.400;

5 (b) the Lender provided all of the necessary paperwork as required by Section
6 727.500 4(a)-(d)and (5);

7 (c) the Lender's representative who participated in the mediation had the
8 authority to negotiate and modify the loan in question, and the ability to review and
9 approve options for the Homeowner's specific type of loan as required by Section
10 727.500(6); and

11 (d) the Lender paid all fees required by this Ordinance.

12 11. If the Lender fails to satisfy any of the requirements identified in this Ordinance, the
13 Mediation Coordinator shall forward a notice of non-compliance to the Lender within
14 five business days following the Mediation Conference.

15 12. All documents and discussions presented during the Mediation Conference shall be
16 deemed confidential and inadmissible in subsequent actions or proceedings as provided
17 in Section 435.014 R.S. Mo. and Missouri Supreme Court Rule 17. Aggregate data to
18 monitor and/or evaluate the implementation of the program may be collected by the City
19 of St. Louis.

20 **SECTION FIVE. Submission to State law.** Nothing in this Ordinance shall prohibit any
21 person from exercising the right to carry out a non-judicial foreclosure sale pursuant to
22 Chapter 443 R.S.Mo.

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1 **SECTION SIX. Filing of Certificate of Compliance with Foreclosure Deed.** It shall
2 be a violation of this ordinance to file for recordation with the Recorder of Deeds any
3 instrument of conveyance of title to foreclosed Residential Property without
4 contemporaneously filing, for transmittal to the Assessor, a Certificate of Compliance for
5 the foreclosed Residential Property; provided, however, that the Recorder shall not refuse
6 to file any such instrument for failure to comply with this provision.

7 **SECTION SEVEN. Penalty Clause.**

- 8 1. No person or entity shall violate any of the provisions of this Ordinance.
9 2. Any person, firm or corporation convicted of violating any provision of this Ordinance
10 shall be assessed a fine of up to five hundred dollars (\$500.00.) A fine assessed against
11 the Lender may not be passed on to the Homeowner.

12 **SECTION EIGHT. Severability Clause.**

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

21 **SECTION NINE. Emergency Clause.**

22 This being an ordinance for the preservation of public peace, health, and safety, it is
23 hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of

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- 1 Article IV of the Charter of the City of St. Louis and therefore shall become effective
- 2 immediately upon its passage and approval by the mayor.

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