


Vernon's Annotated Missouri Statutes Currentness

Title XXVI. Trade and Commerce

 [Chapter 407. Merchandising Practices \(Refs & Annos\)](#)

→ Foreclosure Consultants

### [407.935. Definitions](#)

As used in sections 407.935 to [407.943](#), the following words and phrases shall mean:

(1) "**Contract**", any agreement, or any term thereof, between a foreclosure consultant and an owner for the rendition of any service as defined in subdivision (6) of this section;

(2) "**Foreclosure consultant**":

(a) Includes any person who makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will do in any manner any of the following:

a. Stop or postpone the foreclosure sale;

b. Obtain any forbearance from any beneficiary or mortgagee;

c. Assist the owner to exercise any right of redemption;

d. Obtain any extension of the period within which the owner may reinstate his obligation;

e. Obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in any such deed of trust or mortgage;

f. Assist the owner in obtaining a loan or advance of funds;

g. Avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;

h. Save the owner's residence from foreclosure;

(b) A foreclosure consultant does not include any of the following:

a. A person licensed to practice law in this state when the person renders service in the course of his practice as an attorney at law;

b. A person licensed as a real estate broker pursuant to chapter 339, RSMo, when the person makes a direct loan or when the person:

(i) Engages in acts, the performance of which require licensure under that chapter;

(ii) Is entitled to compensation for the act performed in connection with the sale of a residence in foreclosure or with the arranging of a loan secured by a lien on a residence in foreclosure;

(iii) Does not claim, demand, charge, collect, or receive any compensation until the acts have been performed or cannot be performed because of the failure of the owner to accept an offer from a purchaser or lender ready, willing, and able to purchase a residence in foreclosure or make a loan secured by a lien on a residence in foreclosure on the terms prescribed in a listing or a loan agreement; and

(iv) Does not acquire any interest in a residence in foreclosure directly from an owner for whom the person agreed to perform the acts other than as a trustee or beneficiary under a deed of trust given to secure the payment of a loan or that compensation;

(v) For the purposes of this subdivision, a "**direct loan**" means a loan of a real estate broker's own funds secured by a deed of trust on the residence in foreclosure, which loan and deed of trust the broker in good faith attempts to assign to a lender, for an amount at least sufficient to cure all of the defaults on obligations which are then subject to a notice of default, provided that: if a foreclosure sale is conducted with respect to the deed of trust, the person conducting the foreclosure sale has no interest in the residence in foreclosure or in the outcome of the sale and is not owned, controlled, or managed by the lending broker; the lending broker does not acquire any interest in the residence in foreclosure directly from the owner other than as a beneficiary under the deed of trust; and the loan is not made for the purpose or effect of avoiding or evading the provisions of this act; [FN1]

c. A person or his authorized agent acting under the express authority or written approval of the department of housing and urban development or other department or agency of the United States or this state to provide services;

d. A person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with the obligation or lien;

e. Any person licensed to make loans pursuant to [sections 367.100 to 367.215, RSMo](#), subject to the authority of the director of finance to terminate this exclusion, if after notice and hearing, any such licensee is found to have engaged in practices described in [section 407.938](#);

f. Any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, credit unions, or any person or entity authorized under the laws of this state to conduct a title or escrow business, or a mortgagee which is a United States department of housing and urban development approved mortgagee and any subsidiary or affiliate of the above, and any agent or employee of the above while engaged in business of these persons or entities;

- (3) **"Owner"**, the record owner of any residence in foreclosure;
- (4) **"Person"**, any individual, partnership, corporation, association or other group, however organized;
- (5) **"Residence in foreclosure"**, any real property improved by a residential structure used or intended to be used as a residence by not more than four families, and occupied by the owner, which is the subject of any attempt by any person to enforce an obligation, the performance of which is secured by a mortgage or deed of trust encumbering the real property;
- (6) **"Service"** includes, but is not limited to, any of the following:
  - (a) Debt, budget, or financial counseling of any type;
  - (b) Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;
  - (c) Contacting creditors on behalf of an owner of a residence in foreclosure;
  - (d) Arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure his default and reinstate his obligation;
  - (e) Arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure;
  - (f) Advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court;
  - (g) Giving any advice, explanation or instruction to an owner of a residence in foreclosure which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure pursuant to a power of sale contained in any deed of trust.

[FN1] **Revisor's Note--1992:** Words "this act" probably refer to sections 407.935 to [407.943](#).

**[407.937. Right to cancel contract--notice of cancellation, effective when-- form of cancellation](#)**

1. In addition to any other right under law to rescind a contract, an owner has the right to cancel a contract until midnight of the third business day after the day on which the owner signs a contract which complies with [section 407.938](#).

2. The term "third business day" shall exclude all intervening Saturdays, Sundays and national and state holidays.
3. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.
4. Notice of cancellation given by the owner need not take the particular form as provided with the contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

**407.938. Contract, form of--notice required, contents--contract to be accompanied by notice of cancellation, contents**

1. Every contract shall be in writing and shall fully disclose the exact nature of the foreclosure consultant's services and the total amount and terms of compensation.
2. The following notice, printed in at least fourteen-point boldface type and completed with the name of the foreclosure consultant, shall be printed immediately above the statement required by subsection 3 of this section:

NOTICE REQUIRED BY MISSOURI LAW

..... (Enter name of foreclosure consultant) or anyone working for him or her cannot:

- (1) Take any money from you or ask you for money until ..... (Enter name of foreclosure consultant) has completely finished doing everything he or she said he or she would do; and
  - (2) Ask you to sign or have you sign any lien, mortgage, deed of trust, or deed.
3. The contract shall be written in the same language as principally used by the foreclosure consultant to describe his services or to negotiate the contract, shall be dated and signed by the owner, and shall contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least ten-point bold type, as follows:

You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

4. The contract shall contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

- (1) The name and address of the foreclosure consultant to which the notice or cancellation is to be mailed;

(2) The date the owner signed the contract.

5. The contract shall be accompanied by a completed form in duplicate, captioned "notice of cancellation", which shall be attached to the contract, shall be easily detachable, and shall contain in type of at least ten-point the following statement written in the same language as used in the contract:

NOTICE OF CANCELLATION

..... (Enter date of transaction) ..... (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to ..... (Enter name of foreclosure consultant) at ..... (Enter address of foreclosure consultant's place of business) NOT LATER THAN MIDNIGHT OF ..... (Enter date) I hereby cancel this transaction on ..... (Date) ..... (Owner's signature)

6. The foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation.

**407.940. Foreclosure consultants, unlawful acts--penalty**

1. It shall be unlawful for a foreclosure consultant to knowingly:

(1) Claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he would perform;

(2) Claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason which exceeds ten percent per annum of the amount of any loan which the foreclosure consultant may make to the owner;

(3) Take any wage assignment, any lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security shall be void and unenforceable;

(4) Receive any consideration from any third party in connection with services rendered to an owner unless such consideration is fully disclosed to the owner;

(5) Acquire any interest in a residence in foreclosure from an owner with whom the foreclosure consultant has contracted. Any interest acquired in violation of this subdivision shall be voidable, provided that nothing herein shall affect or defeat the title of a bona fide purchaser or

encumberer for value and without notice of a violation of this section. Knowledge that the property was a "residence in foreclosure" shall not constitute notice of a violation of this section. This subdivision shall not be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in possession of a residence in foreclosure;

(6) Take any power of attorney from an owner for any purpose, except to inspect documents as provided by law;

(7) Induce or attempt to induce any owner to enter a contract which does not comply in all respects with [sections 407.935](#) and [407.937](#).

2. Any violation of any of the acts enumerated in subsection 1 of this section shall be a class A misdemeanor.

#### **407.941. Waiver, void--penalty**

Any waiver by an owner of the provisions of [sections 407.935](#) to [407.943](#) shall be deemed void and unenforceable as contrary to public policy. Any attempt by a foreclosure consultant to induce an owner to waive his rights shall be deemed a violation of subdivision (7) of subsection 1 of [section 407.940](#).

#### **407.943. Action against foreclosure consultant authorized--exemplary damages authorized--remedies not exclusive**

1. An owner may bring an action against a foreclosure consultant for any violation of [sections 407.935](#) to 407.943. Judgment shall be entered for actual damages, reasonable attorneys' fees and costs, and appropriate equitable relief. The court also may, in its discretion, award exemplary damages equivalent to at least twice the compensation received by the foreclosure consultant in violation of [section 407.940](#), in addition to any other award of actual damages.

2. The rights and remedies provided in subsection 1 of this section are cumulative to, and not a limitation of, any other rights and remedies provided by law. Any action brought pursuant to this section shall be commenced within three years from the date of the alleged violation.

Constitution is current through the November 7, 2006 General Election. Statutes are current through the 2006 Second Regular Session of the 93rd General Assembly.  
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