

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Missouri Bankers Association, Inc. ("MBA") is a non-profit corporation organized and existing under the laws of the State of Missouri. MBA is an association comprised of commercial banks and savings and loan associations that serves as the principal advocate for the banking industry within the state of Missouri. MBA brings suit on behalf of its members who will be adversely affected by implementation of the ordinance described herein. The issues at stake in this lawsuit are germane to MBA's purposes and relevant to the day-to-day operations of its members.

2. MBA's members are lending and/or deposit-taking entities regulated by the State of Missouri's Department of Insurance, Financial Institutions and Professional Registration and the Division of Finance within that Department. MBA members also include lending and/or deposit taking entities regulated by the Federal Deposit Insurance Corporation, the Office of the Comptroller of Currency, and, the Federal Reserve System.

3. Plaintiff Jonesburg State Bank is a lending and deposit-taking entity subject to state law and regulations and supervision by the Missouri Division of Finance. It also has existing contracts with homeowners that would be subject to the Ordinance if implemented.

4. Defendant County is a constitutional charter county and a body corporate and politic, organized pursuant to Art. VI, §18(a) of the Missouri Constitution.

5. Defendant Charlie A. Dooley ("Dooley") is the duly elected County Executive of the County, charged with administering and enforcing the ordinances and laws of the County (the "County Executive").

6. The County operates under a charter adopted in 1979.

7. The Court has jurisdiction over this action and the authority and power to enter a declaratory judgment by virtue of Mo. Rev. Stat. § 527.010.

8. Venue is proper in St. Louis County, Missouri pursuant to Mo. Rev. Stat. § 508.060.

STATEMENT OF FACTS

9. On or about August 28, 2012, the St. Louis County Council (the "County Council") enacted Ordinance 25,190 of 2012 (the "Ordinance") which purports to amend Title VII of the Revised St. Louis County Code (the "County Code") by adding Chapter 727 entitled the "Mortgage Foreclosure Intervention Code." The measure was signed by Dooley on August 29, 2012 and will become effective on September 28, 2012. A true and correct copy of the Ordinance is attached hereto as Exhibit 1 and incorporated herein by reference.

10. Dooley is charged with implementing and enforcing the ordinance.

11. Dooley intends to take steps to implement and enforce the ordinance.

12. The Ordinance creates a required mediation process wherein a lender who has loaned money to an owner of residential property that is secured by a deed of trust (a "Lender") must engage in mediation with an owner of said property (a "Homeowner") when the Homeowner has failed to meet his obligations under the loan. The mediation must be offered to the Homeowner prior to the filing of a foreclosure deed (the "Mediation Program"). *See* Ordinance at Exhibit 1.

13. To implement the Mediation Program, the Ordinance requires the County Executive to contract with an individual of his designation who will manage and oversee the Mediation Program (the "Mediation Coordinator") and appoint mediators to oversee the mediation conferences (the "Presiding Mediators"). *Id.* at § 727.300.

14. The Mediation Program mandates that the Lender provide written notice to a Homeowner of the Mediation Program and of the Homeowner's right to request, in writing on a provided form and within twenty (20) days, mediation regarding his or her default at the same time that the Lender provides the Notice of Foreclosure required by Mo. Rev. Stat. Chapter 443 (the "Mediation Notice"). *Id.* at § 727.400.1.

15. Simultaneously therewith, the Lender must also send a copy of the Mediation Notice and payment of a \$100 fee to the Mediation Coordinator. *Id.*

16. Should the Homeowner provide notice of intent to proceed with the mediation conference, the Ordinance outlines the procedures and timeframes to govern the process in § 727.500, including the requirements that the Mediation Coordinator schedule the mediation conference within sixty (60) days of receiving the Homeowner's notice of intent to participate and that the Lender submit payment of an additional \$350 fee to the Mediation Coordinator. *See id.* at § 727.500.

17. The ordinance makes no provision for refund of any fee should a homeowner later decide not to participate in any scheduled mediation. *See id.*

18. If the Lender and Homeowner reach a settlement at the mediation conference, the Mediation Coordinator must issue a Certificate of Compliance within five (5) business days after the conference. *Id.* at § 727.500.9.

19. If the Lender and Homeowner fail to reach a settlement at the mediation conference, a "good faith effort on behalf of the Lender" shall be deemed to satisfy the requirements of the Mediation Program and the Mediation Coordinator will issue a Certificate of Compliance within five (5) business days after the mediation conference if the Lender submitted all "necessary" paperwork and fees and was represented at the mediation conference by a person

with 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)." *Id.* at § 727.500.10.

20. "Good faith effort" is not defined anywhere in the Ordinance and is essentially determined by the Mediation Coordinator and/or County Counselor. *See id.*

21. If the Homeowner elects not to proceed with the mediation conference, the Lender will be deemed to have satisfied the requirements of the Mediation Program and the Mediation Coordinator must issue the Lender a Certificate of Compliance, but not within any specified timeframe. *Id.* at § 727.400.4.

22. The Ordinance requires that a Lender file the Certificate of Compliance with the St. Louis County Assessor contemporaneously with the filing of any conveyance of the foreclosed property with the St. Louis County Recorder of Deeds. *Id.* at § 727.700.1.

23. Any Lender filing a conveyance without the Certificate of Compliance will be subject to a fine of up to \$1,000. *Id.* at §§ 727.700.1 – 727.700.2.

24. The Ordinance has an effective date of thirty (30) days after approval by the County Executive, or September 28, 2012. *See id.* at Section 2.

25. There is now a real and existing controversy between the parties hereto concerning the validity of the Ordinance and the effect the Ordinance will have on the manner in which Plaintiffs, among others, conduct business with regard to the residential real estate market in St. Louis County.

26. Plaintiffs have a legally protectable interest in the security for loans made to homeowners who have defaulted, or who will default in the future, that will be adversely impacted by the implementation and enforcement of the Ordinance.

27. Plaintiffs include taxpayers in St. Louis County.

28. Plaintiffs have no adequate remedy at law and will be irreparably injured if the Ordinance is allowed to take effect and be enforced.

29. Pursuant to Mo. R. Civ. P. 87.02(a), "[a]ny person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder."¹

COUNT I – ORDINANCE CONFLICTS WITH STATE STATUTES

30. Plaintiffs incorporate and re-allege paragraphs 1 through 29 as though more fully set forth herein.

31. Mo. Const. Art. VI, §18(b) applies to and limits the powers of the county.

32. Mo. Rev. Stat. § 362.109 specifies that "any ordinance by any political subdivision shall be consistent with and not more restrictive than state law and regulations governing lending or deposit-taking entities regulated by the division of finance..."

33. The ordinance exceeds the County's constitutional authority and is in direct conflict with state law in at least the following ways:

- a. The ordinance conflicts with and is more restrictive than Mo. Rev. Stat. Chapter § 443, in that the Ordinance imposes restrictions on and standards for foreclosure proceedings in excess of those codified in Chapter 443, examples of which include

¹ A declaratory judgment action is appropriately used to determine the constitutionality or construction of a statute or ordinance. *Wellston Fire Prot. Dist. of St. Louis County v. State Bank & Trust Co. of Wellston*, 282 S.W.2d 171 (Mo. App. E.D. 1955).

- i. Chapter 443 requires no mediation prior to foreclosure, but the Ordinance imposes the more restrictive requirement of mediation.
 - ii. Chapter 443 specifies the method for notifying a debtor of foreclosure and sale; the Ordinance imposes the more restrictive requirement of additional notice prior to sale.
 - iii. Chapter 443 specifies the requirements for a notice of foreclosure while the Ordinance adds an additional, more restrictive, requirement that a lender file a Certificate of Compliance.
 - iv. Chapter 443 specifies that foreclosures shall be stayed only in the event of the death of a debtor, while the Ordinance imposes an additional grounds for stay of foreclosure when the debtor requests mediation.
- b. The Ordinance is more restrictive than Mo. Rev. Stat. Chapter § 408, in that the Ordinance imposes restrictions on and standards for the enforcement of security instruments in excess of those codified in Chapter 408. Examples of these restrictions include, but are not limited to:
 - i. Chapter 408 discusses the procedures for enforcing security instruments when a debtor is in default; the Ordinance contains additional requirements which are more restrictive than those found in Chapter 408.
 - ii. Chapter 408 allows a lender to take possession of property subject to a security interest after 20 days notice; the Ordinance allows a debtor to unilaterally extend those 20 days by electing to mediate.

- iii. Chapter 408 specifies the notice required when a lender gives notice of default; the Ordinance imposes additional, more restrictive notice requirements.
- c. The Ordinance conflicts with and is more restrictive than Mo. Rev. Stat. §442.020 which allows "conveyance of land by deed without any other act or ceremony whatever" because the Ordinance prohibits conveyance without an additional act of mediation and the filing of a Certificate of Compliance or the payment of a fine.
- d. The Ordinance conflicts with and is more restrictive than Mo. Rev. Stat. Chapters 53 and 59, in that the Ordinance imposes new requirements on the County Assessor and Recorder of Deeds related to recording transfer deeds, mortgages, conveyances and deeds of trust in excess of those codified in Chapters 53 and 59.

WHEREFORE Plaintiffs Missouri Bankers Association and Jonesburg State Bank respectfully request this Court enter its Judgment declaring Ordinance No. 25,190 of 2012 in excess of the County's authority under the Missouri Constitution and in violation of state law because the Ordinance is in conflict and more restrictive than state law, and further declaring that the Ordinance is void and of no effect. Plaintiffs further request an order enjoining Defendants from implementing the foreclosure mediation program outlined herein, and for such other and further relief as the Court deems just and proper, together with the costs of this action.

COUNT II – VIOLATION OF ARTICLE X'S "HANCOCK AMENDMENT"

34. Plaintiffs incorporate by reference the allegations of paragraphs 1-33 above.

35. As discussed above, the Ordinance imposes a mediation fee on Plaintiffs any time they seek to foreclose on property.

36. Mo. Const. Art. X, §22, prohibits the County from imposing "any tax, license or fees" without a vote of the people after the effective date of that provision.

37. The fee imposed by the Ordinance is a new fee that did not exist prior to the passage of the Ordinance.

38. The fee imposed by the Ordinance has not been approved by the qualified voters of St. Louis County.

39. As discussed above, every time a foreclosure is sought, the Lender is required to pay \$100 to the Mediation Coordinator whether or not the Homeowner chooses to mediate.

40. If the Homeowner files a notice of intent to mediate, the Lender must pay an additional fee of \$350 to the Mediation Coordinator.

41. The Ordinance does not provide for return of any fee should the Homeowner fail to appear at mediation or choose to forgo mediation after giving notice of his or her intent to mediate.

42. As a result, the Lender must pay a minimum of \$100 for every foreclosure notice that is sent and must pay a total of \$450 for every foreclosure where the Homeowner sends a notice of intent to mediate.

43. Lenders must pay the fee whether or not they receive any services from the Mediation Program.

44. The fees required under the Mediation Program violate Mo. Const. Art. X, § 22.

45. Plaintiffs are entitled to their attorneys fees for this action enforcing the provisions of the constitution.

WHEREFORE, Plaintiffs Missouri Bankers Association and Jonesburg State Bank respectfully request this Court enter it Judgment declaring Ordinance No. 25,190 of 2012 to be in violation of the Missouri Constitution and, therefore, void and of no effect. Plaintiffs further pray that the Court enjoin the Defendants St. Louis County and Charlie A. Dooley from enforcing the Ordinance, award plaintiffs their costs including reasonable attorneys fees for maintaining this suit and for such other relief as the court deems just and proper.

**COUNT III – THE ORDINANCE VIOLATES OTHER TAXATION PROVISIONS
OF THE MISSOURI CONSTITUTION**

46. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 45.

47. Mo. Const. Art. X, §25 prohibits the County from imposing any new tax (after November of 2010) on the sale or transfer of homes or real estate. As discussed above, the Ordinance imposes a new charge on transfers of real estate pursuant to foreclosure.

48. Mo. Const. Art. X, §3, prohibits the imposition of non-uniform taxes for properties that are partially located in the County and partially located in another county. The Ordinance applies to foreclosures in St. Louis County even though property may be located in more than one county.

49. The Ordinance violates Mo. Const. Art. X, §§1 in that the Ordinance imposes taxes that the Missouri General Assembly has not authorized for county or municipal purposes.

50. The Ordinance violates Mo. Const. Art. VI, §18(d), in that the Ordinance imposes taxes that are not authorized by the Missouri constitution or by law.

WHEREFORE, Plaintiffs Missouri Bankers Association and Jonesburg State Bank respectfully request this Court enter it Judgment declaring Ordinance No. 25,190 of 2012 to be in

violation of the Missouri Constitution and, therefore, void and of no effect. Plaintiffs further pray that the Court enjoin the Defendants St. Louis County and Charlie A. Dooley from enforcing the Ordinance, award plaintiffs their costs including reasonable attorneys fees for maintaining this suit and for such other relief as the court deems just and proper.

**COUNT IV -- VIOLATION OF CONSTITUTIONAL RESTRICTIONS
ON COUNTY AUTHORITY**

51. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 50.

52. Mo. Const. Art. VI, §12 requires that public officers in counties having a population greater than 100,000 be compensated only by salary.

53. As discussed above, the Ordinance requires that the Mediation Coordinator and the Presiding Mediators be paid by fees established in the Ordinance.

54. The ordinance also violates Mo. Const. Art. VI, §23, in that the Ordinance grants public funds and valuable services to individuals in violation of the prohibition against counties, cities or political subdivisions lending their credit or granting public money or things of value to, or in aid of, any corporation, association or individual.

WHEREFORE, Plaintiffs Missouri Bankers Association and Jonesburg State Bank respectfully request this Court enter its Judgment declaring Ordinance No. 25,190 of 2012 to be in violation of the Missouri Constitution and, therefore, void and of no effect. Plaintiffs further pray that the Court enjoin the Defendants St. Louis County and Charlie A. Dooley from enforcing the Ordinance, award plaintiffs their costs including reasonable attorneys fees for maintaining this suit and for such other relief as the court deems just and proper.

COUNT V -- VIOLATION OF RIGHTS OF PLAINTIFFS

55. Plaintiffs incorporate by reference the allegations of paragraphs 1- 54.

56. Plaintiffs have contracts and agreement with homeowners which existed prior to the adoption of the ordinance. Homeowners agreed to the method for foreclosure by way of contracts with Plaintiffs. The Ordinance purports to alter those agreements.

57. Prior to the adoption of the Ordinance, Plaintiffs had the right to take possession of property within 20 days after providing notice to homeowners. The Ordinance prevents such possession in certain instances.

58. The Ordinance therefore violates Mo. Const. Art. I, §13, in that the Ordinance is a retrospective law that impairs Plaintiffs' rights under their existing contracts with homeowners in St. Louis County and seeks to apply retroactively to those same contracts

59. The Ordinance also violates Mo. Const. Art. I, §26, in that the Ordinance takes an interest in the subject housing from plaintiffs during the period required for mediation.

60. The Ordinance also deprives Plaintiffs of due process of law by determining compliance with its provisions and/or levying fines for private parties without any provision for judicial review in violation of Art. I, §10 of the Missouri Constitution.

WHEREFORE, Plaintiffs Missouri Bankers Association and Jonesburg State Bank respectfully request this Court enter it Judgment declaring Ordinance No. 25,190 of 2012 to be in violation of the Missouri Constitution and, therefore, void and of no effect. Plaintiffs further pray that the Court enjoin the Defendants St. Louis County and Charlie A. Dooley from enforcing the Ordinance, award plaintiffs their costs including reasonable attorneys fees for maintaining this suit and for such other relief as the court deems just and proper.

COUNT VI – VIOLATION OF COUNTY CHARTER.

61. Plaintiffs incorporate by reference the allegations of paragraphs 1- 60.

62. The Charter establishes the powers of the County Council.

63. In passing the Ordinance, the County Council has legislated regarding matters beyond its vested authority under the Charter.

64. The Ordinance purports to regulate an area (foreclosures on residential property) that is not within the powers granted the County Council by the Charter.

65. Furthermore, the Ordinance purports to levy a fee on each entity desiring to foreclose; said fee is paid to the Mediation Coordinator. The Mediation Coordinator is responsible for providing Presiding Mediators to oversee each individual mediation. The Mediation Coordinator and the Presiding Mediators are compensated solely by the fees established by the Ordinance.

66. The Charter only allows establishment of fees for services performed by County officers and employees.

67. The Charter requires that such fees be paid into the County treasury.

68. The Charter also requires the County Council to appropriate all funds for the expenses of the County and does not allow delegation of such appropriation authority to a Mediation Coordinator.

WHEREFORE Plaintiffs Missouri Bankers Association and Jonesburg State Bank respectfully request this Court enter its Judgment declaring Ordinance No. 25,190 of 2012 to be in violation of the Missouri Constitution and, therefore, void and of no effect. Plaintiffs further pray that the Court enjoin the Defendants St. Louis County and Charlie A. Dooley from enforcing the Ordinance, award plaintiffs their costs including reasonable attorneys fees for maintaining this suit and for such other relief as the court deems just and proper.

Respectfully submitted,

STINSON MORRISON HECKER LLP

By:  _____

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Attorneys for Plaintiffs

AFFIDAVIT IN SUPPORT OF PETITION FOR DECLARATORY JUDGMENT

I, Keith Thornburg, being duly sworn and under oath, state as follows:

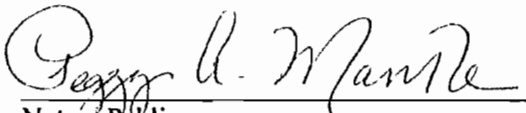
1. I am over 21 years of age, have personal knowledge of, and am competent to testify to, the matters set forth herein.
2. I am employed by the Missouri Bankers Association, plaintiff in the above-described action, and am duly authorized to make this Affidavit on its behalf.
3. I have read and reviewed the Petition and attached Exhibit filed herein. The averments in the Petition, except paragraph 3, are true and accurate to the best of my knowledge and belief, the Exhibit is a true and correct copy of the original, and I incorporate them herein by reference.

FURTHER AFFIANT SAYETH NOT.

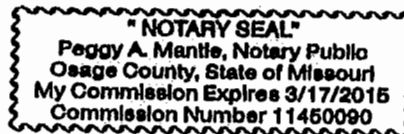

Print Name: Keith Thornburg
Title: General Counsel & V.P.
MBA

STATE OF MISSOURI)
) ss.
COUNTY OF COLE OSAGE)

Subscribed and sworn before me, a notary public, this 24th day of September, 2012.


Notary Public

My Commission Expires: 03/17/2015



AFFIDAVIT IN SUPPORT OF PETITION FOR DECLARATORY JUDGMENT

I, Daniel D. Robb, being duly sworn and under oath, state as follows:

1. I am over 21 years of age, have personal knowledge of, and am competent to testify to, the matters set forth herein.
2. I am employed by Jonesburg State Bank, plaintiff in the above-described action, and am duly authorized to make this Affidavit on its behalf.
3. I have read and reviewed the Petition and attached Exhibit filed herein. The averments in the Petition paragraph 3 are true and accurate to the best of my knowledge and belief, the Exhibit is a true and correct copy of the original, and I incorporate them herein by reference.

FURTHER AFFIANT SAYETH NOT.

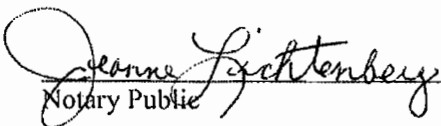


Print Name: Daniel D. Robb

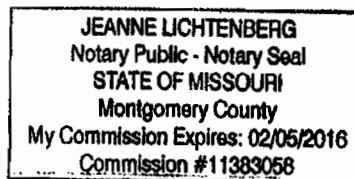
Title: President/CEO

STATE OF MISSOURI)
) ss.
COUNTY OF Montgomery)

Subscribed and sworn before me, a notary public, this 24th day of September, 2012.


Notary Public

My Commission Expires: 2-5-16



Substitute Bill No. 1 for

BILL NO. 174, 2012

ORDINANCE NO. 25,190, 2012

Introduced by Councilmember Erby

AN ORDINANCE

AMENDING TITLE VII SLCRO 1974 AS AMENDED,
"PUBLIC SAFETY AND MORALS," BY ENACTING AND
ADDING THERETO A NEW CHAPTER TO BE KNOWN AS
CHAPTER 727, "MORTGAGE FORECLOSURE
INTERVENTION CODE."

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

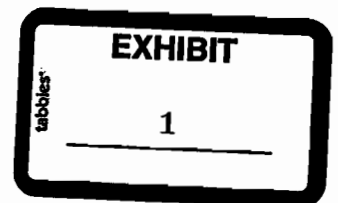
WHEREAS, unsecured and unmaintained properties present a danger to the health, safety and welfare of the public, including public safety officers, occupants, abutters, and neighborhoods, and as such, constitute a public nuisance; and

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

NOW THEREFORE;

BE IT ORDAINED BY THE COUNTY COUNCIL OF ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:

SECTION 1. Title VII SLCRO 1974 as amended, "Public Safety and Morals," is amended by enacting and adding thereto one new Chapter which shall be known as Chapter 727, "Mortgage Foreclosure Intervention Code," which shall read as follows:



CHAPTER 727
MORTGAGE FORECLOSURE INTERVENTION CODE

727.100 Citation, Scope and Construction of Chapter. This Chapter shall be known and cited as the "Mortgage Foreclosure Intervention Code." The provisions of this Chapter shall apply in both the incorporated and unincorporated areas of St. Louis County.

727.200 Definitions. Unless the context otherwise requires, as used in this Chapter:

1. "Homeowner" means the individual(s) owning and whose principal place of residence is a Residential Property that is subject to foreclosure under Ch. 443 RSMo.
2. "Residential Property" means real property that is located within St. Louis County on which is situated either a single-family dwelling or a structure containing not more than four residential units, including residential condominium units or residential co-op 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 Chapter, "Lender" shall include any servicer of mortgage loans, trustee named in the deed of trust, a duly appointed successor trustee, or legal representative of any of these.
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 Mediation" means a notice sent to the Homeowner informing the Homeowner of the right to participate in a Mediation Conference pursuant to this Chapter.
6. "Mediation Coordinator" means the person or entity designated by the County Executive to manage the mortgage foreclosure intervention program established by this Chapter, pursuant to a contract with the County for such purposes.
7. "Mediation Conference" means the meeting between a Homeowner and Lender, in accordance with the requirements of this Chapter, 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 County Counselor that is awarded to the Lender by the Mediation Coordinator, certifying that the Lender complied with this Chapter and is eligible to record the foreclosure deed without penalty.

727.300 Contract for Mediation Coordinator. - The County Executive, on behalf of St. Louis County, is 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 Chapter; shall provide for the Mediation Coordinator and Presiding Mediators to be compensated solely by the fees established by this Chapter; and shall contain such other terms and conditions as are approved by the County Counselor.

727.400 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 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 thirty days of mailing of the Notice of Mediation. 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 County Counselor for the Homeowner to make a written request for mediation under this Chapter. The Notice of Mediation provided to the Mediation Coordinator shall be accompanied by payment to the Mediation Coordinator of a fee of \$100.00.

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

3. Within fifteen days of receipt of the Notice of Foreclosure and the Notice of Mediation, the Mediation Coordinator shall make and document at least three 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 days from the mailing by Lender of the Notice of Mediation and Notice of Foreclosure.

4. If the Homeowner either fails to request a Mediation Conference within twenty days of the mailing of the Notice of Foreclosure and Notice of 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 Chapter and the Mediation Coordinator shall issue the Lender a Certificate of Compliance.

727.500 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 days of the date on which the Lender mailed the notices required by this Chapter, 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 \$350.00 to the Mediation Coordinator not less than ten 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 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.

3. Not less than ten 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 County Counselor;
- (b) a completed housing affordability form, on a form provided by the Mediation Coordinator and approved by the County 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.

4. Not less than ten 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 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.

5. Not less than ten 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.

6. 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.

7. A request for a continuance of a scheduled Mediation Conference will be granted in only extraordinary circumstances, or upon a written agreement of the Lender and Homeowner. For good cause shown, 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.

8. 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. If such notice is received by the Mediation Coordinator at least three days prior to the Mediation Conference, the \$350 mediation fee will be refunded. Otherwise, there will be no refund of any fees. If the settlement agreement involves selling the Residential Property by short sale or other means, the Mediation Coordinator shall forthwith issue a Certificate of Compliance to the Lender upon receipt of a written settlement agreement signed by the Homeowner and Lender.

9. 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 two business days following the Mediation Conference and the Mediation Coordinator shall issue the Lender a Certificate of Compliance within five business days following the Mediation Conference.

10. 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 Chapter, and the Mediation Coordinator shall, within five 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 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 Chapter.

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

12. 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 St. Louis County.

727.600 Submission to State law. - Nothing in this Chapter shall prohibit any person from exercising the right to carry out a non-judicial foreclosure sale pursuant to Chapter 443 R.S.Mo.

727.700 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 Certificate of Compliance for foreclosed Residential Property 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).

2. Any person, firm or corporation convicted of violating this section shall be assessed a fine of up to \$1,000.00. A fine assessed against the Lender may not be passed on to the Homeowner.

SECTION 2. This ordinance shall become effective thirty days after approval by the County Executive.

ADOPTED: August 28, 2012

MICHAEL E. O'MARA
CHAIR, COUNTY COUNCIL

APPROVED: August 29, 2012

CHARLIE A. DOOLEY
COUNTY EXECUTIVE

ATTEST: GENEVIEVE M. FRANK
ADMINISTRATIVE DIRECTOR

APPROVED AS TO LEGAL FORM:

Patricia Redington
COUNTY COUNSELOR

