TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

JURISDICTIONAL STATEMENT

The Court of Appeals has subject matter jurisdiction of this case. Although Point V of Appellant's Brief purports to raise constitutional questions with regard to §443.060 and §443.130, Appellant has failed to meet its burden to affirmatively establish the Supreme Court's jurisdiction over the appeal. A full discussion of this failure is set out in Respondents' Memorandum Regarding Transfer of this Cause to the Missouri Supreme Court filed on July 2, 2004.

STATEMENT OF FACTS

On December 21, 1999, Respondents executed a deed of trust in favor of Appellant as mortgagee in the amount of $525,000.00. L.F. Vol. II, p. 244-45, 344-54; Vol. III, p. 507. The deed of trust secured a mortgage loan extended to Respondents as mortgagors by Appellant as mortgagee for the purchase of the real property located at 12706 Wynfield Pines Court, Des Peres, Missouri 63131. L.F. Vol. II, p. 245; Vol. III, p. 507. Respondents are and at all relevant times have been the owners of the property. L.F. Vol. II, p. 244; Vol. III, 507. On June 13, 2001, Respondents paid off the loan and deed of trust. L.F. Vol. II, p. 245-46, 260; Vol. III, p. 508. Appellant received full satisfaction of the mortgage loan secured by the deed of trust. L.F. Vol. II, p. 246; Vol. III, p. 508. On July 24, 2001, Appellant, by and through Loan Servicing Center, sent Respondents documentation acknowledging the loan was paid in full on June 13, 2001. L.F. Vol. II, p. 246, 261, 355-58, 375-76; Vol. III, p. 508. On or about August 3, 2001, Respondents sent Appellant a demand letter requesting a deed of release for the mortgage loan secured by the deed of trust. L.F. Vol. II, p. 247, 261, 264, 359-62, 393, 394. The letter was sent to Appellant via Certified Mail, Return Receipt Requested (L.F. Vol. II, p. 247, 261, 393); it enclosed a tender of costs for the deed of release (L.F. Vol. II, p. 247-48, 359-62, 506; Vol. III, p. 509), enclosed documentation evidencing that the loan secured by the deed of trust was paid in full (L.F. Vol. II, p. 248, 359-62; Vol. III, p. 509). A true and accurate copy of this letter requesting a deed of release and its enclosures is attached to Respondents' First Amended Petition as Exhibit 3. L.F. Vol. II, p. 248, 359-62; Vol. III, p. 509. Appellant received the letter requesting a deed of release

on August 6, 2001. L.F. Vol. II, p. 248-49, 363-65; Vol. III, p. 509. Appellant did not provide Respondents with the deed of release until November 13, 2001. L.F. Vol. II, p. 249, 262, 394, 503-05. Appellant failed to deliver the deed of release to Respondents within the statutorily prescribed period of fifteen business days after request and tender of costs. L.F. Vol. II, p. 250, 262, 394; Vol. III, p. 509.

Respondents filed suit against Appellant seeking the forfeiture amount and other damages as provided for in §443.130 for violation of the statute in addition to other claims that are not the subject of this appeal. L.F. Vol. I, p. 9-43. On March 7, 2003, Respondents filed their Verified Motion for Partial Summary Judgment as to Count I of their First Amended Petition for the forfeiture amount and damages as provided for in §443.130 for violation of the statute. L.F. Vol. I, p. 4; Vol. II, p. 239-506. Also on March 7, 2003, Appellant filed its Motion for Summary Judgment and Legal Memorandum in Support of its Motion for Summary Judgment. L.F. Vol. I, p. 4, 91-238. On December 31, 2003, the Circuit Court of St. Louis County, Missouri granted summary judgment in favor of Respondents and against Appellant on Count I of their First Amended Petition for forfeiture of ten percent upon the amount of the security instrument in the amount of $52,500.00. L.F. Vol. VI, p. 1194-97. The Circuit Court granted summary judgment in favor of Appellant and against Respondents as to any and all other damages claimed by Respondents in Count I, and as to Counts II, III and IV of Respondents' First Amended Petition. L.F. Vol. VI, p. 1194-97. Appellant appeals the Circuit Court's grant of summary judgment in favor of Respondents and against

Appellant for forfeiture of ten percent upon the amount of the security instrument in the amount of $52,500.00. L.F. Vol. VI, p. 1203.

POINTS RELIED ON

I. The trial court properly granted summary judgment in favor of Respondents in that Respondents were entitled to judgment as a matter of law in that there was no genuine dispute as to the material facts that Appellant had failed to deliver to Respondents any deed of release within the statutorily prescribed period of fifteen business days after receipt of their request and tender of costs made pursuant to §443.130.

Section 443.130 RSMo.

II. Responding to Appellant's Point I, Respondents' demand letter complied with the requirements of §443.130, and the trial court properly granted summary judgment in favor of Respondents.

Section 443.130 RSMo.

Bartareau v. Executive Business Products, Inc., 846 S.W.2d 248 (Mo. App. E.D. 1993).

Garr v. Countrywide Home Loans, Inc., 2004 WL 1470860 (Mo. banc 2004).

Lines v. Mercantile Bank, N.A. 70 S.W.3d 676 (Mo. App. S.D. 2002).

III. Responding to Appellant's Point II, Appellant did not fulfill its obligations under §443.130, and the trial court properly granted summary judgment in favor of Respondents.

Section 443.060 RSMo and Section 443.130 RSMo.

IV. Responding to Appellant's Point III, the trial court properly granted summary judgment in favor of Respondents, and the argument raised in

Appellant's Point III is entirely irrelevant and does nothing to change the fact that Appellant failed to comply with §443.130 and is liable to Respondents for the forfeiture amount as provided by §443.130.

Section 443.130 RSMo.

Bartareau v. Executive Business Products, Inc., 846 S.W.2d 248 (Mo. App. E.D. 1993).

Ong Bldg. Corp. v. GMAC Mortgage Corp., 851 S.W.2d 54 (Mo. App. W.D. 1993).

V. Responding to Appellant's Point IV, Respondents are the "persons making satisfaction" within the purview of §443.130 and the trial court properly granted summary judgment in favor of Respondents.

Section 443.130 RSMo.

Martin v. STM Mortgage Company, 903 S.W.2d 548 (Mo. App. W.D. 1995).

Roberts v. Rider, 924 S.W.2d 555 (Mo. App. S.D. 1996).

Trovillion v. Countrywide Funding Corp., 910 S.W.2d 822 (Mo. App. E.D. 1995).

VI. Responding to Appellant's Point V, §443.060 and §443.130 are not unconstitutional and the trial court properly granted summary judgment in favor of Respondents.

Etling v. Westport Heating & Cooling Services, Inc., 92 S.W.3d 771, 773 (Mo. banc 2003).

ARGUMENT

I. The trial court properly granted summary judgment in favor of Respondents in that Respondents were entitled to judgment as a matter of law in that there was no genuine dispute as to the material facts that Appellant had failed to deliver to Respondents any deed of release within the statutorily prescribed period of fifteen business days after receipt of their request and tender of costs made pursuant to §443.130.

This Court's review of the trial court's grant of summary judgment is essentially *de novo*. ITT Commercial Finance Corp. v. Mid-America Marine Supply Corp., 854 S.W.2d 371, 376 (Mo. banc 1993). Because there is no genuine dispute as to the material facts that demonstrate Respondents' right to judgment as a matter of law, the trial court's grant of summary judgment in favor of Respondents was proper. See Id. In this case, no genuine issue of material fact remained as to the elements necessary to entitle Respondents to the forfeiture amount as provided for in §443.130, and none of the Points raised by Appellant in its Brief are sufficient to reverse the trial court's order granting summary judgment in favor of Respondents as addressed in Points II through VI of this Brief.

Section 443.130.1 provides that a mortgagee, after receiving satisfaction of a security instrument, becomes obligated to pay damages to a mortgagor if the mortgagee does not comply with the specific elements of the statute. The statute reads as follows:

443.130. Forfeiture for failing to satisfy

1. If any such person, thus receiving satisfaction, does not, within fifteen business days after request and tender of costs, deliver to the person making satisfaction a sufficient deed of release, such person shall forfeit to the party aggrieved ten percent upon the amount of the security instrument, absolutely, and any other damages such person may be able to prove such person has sustained, to be recovered in any court of competent jurisdiction. A business day is any day except Saturday, Sunday and legal holidays.

2. To qualify under this section, the mortgagor shall provide the request in the form of a demand letter to the mortgagee, cestui qui trust, or assignee by certified mail, return receipt requested. The letter shall include good and sufficient evidence that the debt secured by the deed of trust was satisfied with good funds, and the expense of filing and recording the release was advanced.

3. In any action against such person who fails to release the lien as provided in subsection 1 of this section, the plaintiff, or his attorney, shall prove at trial that the plaintiff notified the holder of the note by certified mail, return receipt requested.

The uncontroverted facts establish that Respondents satisfied each requirement of §443.130, entitling Respondents to a forfeiture by Appellant of 10% of the amount of the loan secured by the deed of trust. In order for Respondents to recover under §443.130, they must show that the following elements have been met:

1. Mortgagee received satisfaction of security instrument (deed of trust which secured mortgage loan);
2. Mortgagor requested from mortgagee a deed of release for the deed of trust in the form of a demand letter delivered to the mortgagee by certified mail, return receipt requested;
3. The letter requesting a deed of release included tender of costs of filing and recording the release (See Trovillion v. Countrywide Funding Corp., 910 S.W.2d 822, 824 (Mo. App. E.D. 1995) holding "Costs, as that term is used in these statutes, means the recorder of deeds' fee for releasing the deed of trust.");
4. The letter requesting a deed of release included evidence that the debt secured by the deed of trust was satisfied; and
5. Mortgagee's failure to deliver to the person making satisfaction a deed of release within fifteen business days after request for deed of release and tender of costs.

(See Trovillion, 910 S.W.2d at 824, stating that "[i]n order to recover under [§443.060 and §443.130], a borrower must prove (1) payment of the debt, (2) demand for a deed of release, and (3) "tender of costs.")

The facts, pleadings, discovery, exhibits and affidavits submitted with Respondents' Verified Motion for Partial Summary Judgment and Respondents' Statement of Uncontroverted Material Facts submitted therewith and made a part of the record on appeal, L.F. Vol. II, p. 239-506, substantiate each of the aforementioned

requirements (thereby entitling Respondents to damages pursuant to §443.130) as follows:

1. Appellant received full satisfaction of the mortgage loan secured by the deed of trust on the real property located at 12706 Wynfield Pines Court, Des Peres, Missouri 63131 (L.F. Vol. II, p. 246; Vol. III, 508);
2. On or about August 3, 2001, Respondents sent to Appellant via Certified Mail, Return Receipt Requested (Article #7000 1530 1582 9429), a demand letter (with enclosures) requesting a deed of release for the mortgage/deed of trust (L.F. Vol. II, p. 247-48, 261, 264, 359-62, 393, 394);
3. Respondents' letter requesting a deed of release included tender of costs for obtaining the deed of release by including a check made payable to "St. Louis Co. Recorder of Deeds" in the amount of $24.00 (L.F. Vol. II, p. 247-48, 359-62, 506; Vol. III, p. 509);
4. Respondents' letter requesting a deed of release included documentation from Appellant c/o Loan Servicing Center acknowledging that the mortgage loan extended by the mortgagee Appellant and secured by the deed of trust was paid in full on June 13, 2001 (L.F. Vol. II, p. 248, 359-62; Vol. III, p. 509); and
5. Respondents' letter and enclosures requesting a deed of release was received by Appellant on August 6, 2001 as evidenced by the Certified Mail Return Receipt (L.F. Vol. II, p. 248-49, 363-65; Vol. III, p. 509) and a

deed of release was not delivered to Respondents within fifteen business days of August 6, 2001 (L.F. Vol. II, p. 250, 262, 394; Vol. III, p. 509).

Respondents' demand letter was in strict compliance with the requirements of §443.130, and in fact, closely tracked the language of the statute. Appellant failed to deliver to Respondents a deed of release for their mortgage loan/deed of trust, sufficient or otherwise, within the fifteen business day time limit from receipt of Respondents' request and tender of costs as prescribed by the statute. L.F. Vol. II, p. 250, 262, 394; Vol. III, p. 509 Moreover, it was not until November 13, 2001, 68 business days after receipt and tender of costs, that Respondents received a deed of release for their mortgage/deed of trust. L.F. Vol. II, p. 249, 262, 394, 503-505. Pursuant to §443.130, Appellant must forfeit to Respondents 10% of the amount of the security instrument, absolutely. The Circuit Court's finding that there were no genuine issues as to material facts and that Respondents were entitled to partial summary judgment as a matter of law and the Circuit Court's order granting summary judgment in favor of Respondents and against Appellant on Count I of their First Amended Petition for forfeiture of 10% upon the amount of the security instrument in the amount of $52,500.00 were entirely proper. L.F. Vol. VI, p. 1194-1197.

II. Responding to Appellant's Point I, Respondents' demand letter complied with the requirements of §443.130, and the trial court properly granted summary judgment in favor of Respondents.

As shown in Point I, Respondents satisfied each requirement of §443.130 entitling Respondents to a forfeiture by Appellant of 10% of the amount of the loan secured by the deed of trust.

Pursuant to §443.130.2, Respondents' letter to Appellant (L.F. Vol. II, p. 240, 359-62; Vol. III, p. 509) requested from Appellant a deed of release for the deed of trust in the form of a demand letter delivered to Appellant by certified mail, return receipt requested. L.F. Vol. II, p. 247, 261, 264, 359-62, 393, 394. The letter requesting a deed of release included tender of costs of filing and recording the release and included evidence that the debt secured by the deed of trust was satisfied. L.F. Vol. II, p. 247-48, 359-62, 506; Vol. III, p. 509. Respondents' letter was in complete compliance with the specific requirements explicitly set forth in §443.130.2.

Appellant's argument that Respondents' letter requesting a deed of release was inadequate for Respondents to recover the forfeiture amount is based primarily upon the recent case of Lines v. Mercantile Bank, N.A. 70 S.W.3d 676 (Mo. App. S.D. 2002). Appellant attempts to make the Lines case applicable to the facts of this case by giving it an overly broad reading and implying incorrectly that Lines holds that a demand letter for a deed of release is insufficient to invoke the forfeiture provisions of §443.130 if it does not reference the statute or the 15-day period for compliance. Appellant's Brief, p. 23. The holding in Lines is very limited and applies only to the specific situation between

Lines and Mercantile Bank. The court held specifically that "[t]his opinion holds only that the letter to Mercantile did not invoke the remedy afforded by §443.130.1. The letter to Mercantile incorporated the settlement agreement, including its provision for release of the deed of trust, and under these facts did not invoke the provisions of §443.130." Id. at 680. Lines and Mercantile had a previous dispute regarding various notes and security instruments. The dispute was resolved through a "Settlement and Mutual Release Agreement." The terms of the Settlement Agreement stated that Mercantile agreed that "upon request" it would "execute appropriate releases of any security instruments to the extent that such security instruments secure any of the Obligations." Id. at 680. The Lines' letter to Mercantile requesting a deed of release stated in part:

> By the terms of the 'Settlement and Mutual Release Agreement' . . . the indebtedness for which the aforementioned deed of trust was given to secure has been satisfied. A copy of the Settlement and Mutual Release Agreement whereby all obligations of your mortgagors were released is enclosed herein for your reference . . . Demand is hereby made for Mercantile to proceed appropriately to affect release of the aforementioned deed of trust. Id. at 678.

The court held that because the Lines' letter made specific reference to the terms of the Settlement Agreement and enclosed a copy of the agreement for Mercantile's "reference" and the agreement "required Mercantile, upon request, to 'execute appropriate releases of any security instruments to the extent that such security instruments secure any of the Obligations,'" "the terms of the settlement agreement were

infused and made part of the request that Mercantile 'effect releases of the . . . deed of trust.'" Id. at 679-680. The court held that under these facts, the Lines' letter did not invoke the provisions of §443.130; the letter requested compliance with the Settlement Agreement which "required execution of appropriate releases of security instruments for debts the terms of the agreement deemed to have been satisfied." Id. at 680.

Lines does not hold that failure to include in a demand letter specific reference to the relevant statute and failing to cite the requisite time period precludes recovery of the forfeiture amount as provided for in §443.130, and no such limitations can be read into the statute. The Lines court held merely that under the specific facts in that case the "letter upon which Mrs. Lines relies requests nothing more than compliance with the agreement." Id. The Lines decision represents a limited exception to the application and invocation of §443.130 because of the particular parties' prior settlement agreement requiring execution of releases upon demand that was specifically invoked in the Lines' letter. The facts of Lines are easily distinguishable from the case at hand.

In this case, there is no such confusion created by Respondents' letter requesting a deed of release. Respondents' letter neither referenced nor incorporated an agreement with Appellant whereby Appellant had previously agreed to provide a release upon demand.

Moreover, in direct compliance with the requirements of §443.130, Respondents' letter closely tracked and almost identically recited the language of §443.130.2. Respondents' letter to Appellant (L.F. Vol. II, p. 248, 359; Vol. III, p. 509) states in pertinent parts:

(a) "Please consider this our demand letter and written request for a deed of release"; and

(b) Directly under the letterhead, Respondents' letter states "Certified Mail Return Receipt Requested" and the letter was in fact mailed via certified mail, return receipt requested (L.F. Vol. II, p. 247, 261, 393), Appellant received the letter on August 6, 2001 (L.F. Vol. II, p. 248-49, 363-65; Vol. III, p. 509) and the return receipt was signed by Appellant employee Rick Beller on August 6, 2001 (L.F. Vol. II, p. 249, 363-65; Vol. III, p. 509); and

(c) "your loan, which was secured by a mortgage/deed of trust on the above property, has been paid off and satisfied with good funds . . . I have also enclosed evidence that the aforesaid mortgage/deed of trust has been paid off" and the letter did in fact include a copy of letter dated June 24, 2001 acknowledging receipt of payment in full of the loan secured by the deed of trust (L.F. Vol. II, 248, 359-62; Vol. III, p. 509); and

(d) "I have also enclosed evidence that . . . the expense of filing and recording the release has been advanced" and the letter did in fact enclose "a check in the amount of $24.00 as and for costs, including recording fees, for the filing and recordation of the deed of release." L.F. Vol. II, p. 247-48, 359-62, 506; Vol. III, p. 509.

As such, Appellant's statement that there is "nothing in the text of the Glass letter . . . sufficient to place Appellant on proper notice that a statutory demand for the deed of release was being made" is without merit. Appellant's Brief, p. 21.

Furthermore, Appellant's assertions that Respondents' letter makes "only a generic reference to a 'mortgage/deed of trust'" and that it is unclear as to whether it refers to Respondents' mortgage loan or the home equity line of credit (Appellant's Brief, p. 21) are entirely without merit and blatantly false. Respondents' demand letter, attached as Exhibit 3 to Respondents' First Amended Petition (L.F. Vol. II, p. 248, 359; Vol. III, p. 509), plainly identifies the specific loan and deed of trust to be released by referencing Appellant's loan number, 2010185700, in two separate instances. Moreover, the letter referenced and enclosed evidence that the debt secured by the deed of trust was satisfied, such evidence being documentation from Appellant c/o Loan Servicing Center acknowledging that this particular loan extended by Appellant and secured by the deed of trust was paid in full on June 13, 2001. (L.F. Vol. II, p. 248, 359-62; Vol. III, p. 509). Also, as an obvious point, the letter consistently refers to a "mortgage/deed of trust" rather than a "home equity line of credit" of which there is absolutely no mention. Moreover, this argument is specious in that Appellant did not deliver any deed of release to Respondents within fifteen business days of receipt of Respondents' request and tender of costs. L.F. Vol. II, p. 250, 262, 394; Vol. III, p. 509.

Appellant asserts that §443.130 is penal in nature and therefore must be strictly construed. The rule in Missouri is clear, that "[i]f the statutory terms are plain and clear to one of ordinary intelligence, they are not ambiguous and there is no need to resort to rules of construction." Bartareau v. Executive Business Products, Inc., 846 S.W.2d 248, 249 (Mo. App. E.D. 1993) (citing Wolff Shoe Co. v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). "When statutory language is clear, courts must give effect to the

language as written . . . The court should regard the statute as meaning what it says." Emery v. Wal-Mart Stores, Inc., 976 S.W.2d 439, 449 (Mo. banc 1998).

Section 443.130.2 is not ambiguous, and it is explicit in setting forth the specific requirements for a letter requesting a deed of release. The statute does not include a requirement that the letter reference the statute or the requisite time period in which to provide a deed of release. "A court may not add words by implication to a statute that is clear and unambiguous." Emery, 976 S.W.2d at 449 (citing Asbury v. Lombardi, 846 S.W.2d 196 (Mo. banc 1993). Moreover, if the legislature intended for the demand letter to include such reference or notice, it could have provided for such requirement in the language of the statute. See Bussmann Manufacturing Company v. Industrial Commission, 335 S.W.2d 456, 460 (Mo. App. St. Louis 1960) (holding that if the legislature had intended to add the work "or" into § 288.050, "it would have been easy of accomplishment, but they did not do so, and we are not empowered to contort their plain clear language.") In Bussmann, the court further recognized that the rules of statutory construction require that courts give some meaning to every word, phrase and sentence of a statute that is not in conflict with the legislative intent, and courts "are not to presume that the legislature intended to use superfluous or meaningless words in a statute." Id.

As in Bussmann, to require mortgagors to specifically reference §443.130 or the requisite time period in which to provide a deed of release, would effectively negate the words "[t]o qualify under this section" in §443.130.2. By using these words followed by a list of specific requirements for making a request for a deed of release that is sufficient to invoke the forfeiture provision of §443.130.1, the plain language used by the

legislature provides that the specifically identified requirements stated in §443.130.2 are exactly what is required "to qualify under this section" and nothing further is needed.

Furthermore, if §443.130 is to be strictly construed as suggested by Appellant, "[a] court has no power to rewrite the statute under the guise of giving it a strict construction." Reeder v. Board of Police Commissioners of Kansas City, Missouri, 800 S.W.2d 5, 7 (Mo. App. W.D. 1990). The court in Reeder recognized that the generally accepted definition of "strict construction" is:

> But by the expression "strict construction" is meant that the scope of the statute shall not be extended by implication beyond the literal meaning of the terms employed, and not that the language of the terms shall be unreasonably interpreted. Courts should neither enlarge nor narrow the true meaning of penal statutes by construction, but should give effect to the plain meaning of words and where they are doubtful, should adopt the sense in harmony with the context and the obvious policy and object of the enactment. Id. at 6.

Even if §443.130 were to be construed strictly, the court must give effect to the plain meaning of the words. The requirements for making a request for a deed of release are specifically identified in §443.130.2 and premised with the terms "to qualify under this section." The meaning of this statute should not be enlarged or narrowed beyond the literal meaning of the words employed. It is contradictory on its face to assert that strict construction could require Respondents to comply with requirements that are not present in the language of the statute. As in Reeder, if §443.130 is to be considered penal in

nature and subject to strict construction, that "does not mean that this court is at liberty to rewrite the statute to include a requirement" that is not written in the statute. Reeder, 800 S.W.2d at 6.

Clearly the legislature knows how to write provisions that require citation to the statute in order to invoke its remedies. For example, the Missouri Service Letter Statute provides that if an employee, no longer employed by a corporation "***requests in writing by certified mail to the superintendent, manager or registered agent of said corporation, with specific reference to the statute***," the superintendent or manager of said corporation shall issue a service letter to such employee. §290.140.1 (emphasis added).

It is beyond reason to suggest that §443.130, which is so specific in stating that a request must be made in the form of a demand letter, by certified mail, return receipt requested, include sufficient evidence that the debt has been satisfied and advance the expense of recording the release could have other implied and unwritten requirements for the request to be effective in invoking the statute. Appellant in this case makes such a suggestion in asserting that, the request, though not required by the words of the statute, must also specifically make reference to the statute and the 15-day time period for the mortgagee to deliver a deed of release. Appellant's Brief, p. 23. Appellant states that requiring a mortgagor to have knowledge of and comply with this unwritten requirement to a meticulously explicit statute "removes any uncertainties" between the bank and the mortgagor. Appellant's Brief, p. 23.

In Missouri "[p]ersons are conclusively presumed to know the law." Mo. Highway and Transp. Comm'n., 785 S.W.2d 70, 75 (Mo. banc 1990). See also Dodson v. Clark, 49 Mo. App. 148 (Mo. App. Kansas City 1892) (stating, with regard to predecessor statute to §443.130, "We must presume that the mortgagee knows the law."). Moreover, Appellant admits that it had knowledge of §443.130 for several years prior to Respondents' request for a deed of release. L.F. Vol. II, p. 398; Vol. IV, p. 680-81.

Appellant also states that Respondents' letter "that simply requests a deed of release be delivered ***promptly*** and does nothing to place the financial institution on notice of the brief time period for compliance with the demands in the letter, clearly thwarts the express purpose of the statute, which is the ***prompt*** clearing of title." Appellant's Brief, p. 23 (emphasis added). Aside from the fact that persons are conclusively presumed to know the law, Appellant's argument in this statement appears to be that to request a deed of release "promptly" thwarts the purpose of the statute, which is the "prompt" clearing of title. On its face, Appellant's argument is entirely without merit.

"The purpose of §443.130 is to 'enforce the duty of the mortgagee to clear the title of the mortgagor, so that it [is] apparent upon examination that the incumbrance of record no longer exist[s].'" Ong Bldg. Corp. v. GMAC Mortgage Corp., 851 S.W.2d 54, 55 (Mo. App. W.D. 1993) (citing Henry v. Orear, 78 S.W. 283, 284 (Mo. App. 1904)). Appellant would have this court read conspicuously omitted language into a detailed statute when such a reading would be in direct opposition to the rules of statutory construction in Missouri and would frustrate the purpose of the statute, which is to enforce an existing duty of the mortgagee. Requiring a mortgagor/debtor to have

knowledge of and comply with unwritten requirements to a law about which the mortgagor/bank is presumed to know and should know considering it specifically affects its own industry would clearly frustrate the purpose of the statute. See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498 (1982) (recognizing that "businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action.").

As stated above, Appellant did know of the statute. L.F. Vol. II, p. 398; Vol. IV, p. 680-81. Moreover, Appellant had policies in place for handling written requests for deeds of release. L.F. Vol. IV, p. 673. In this case, Appellant is attempting to masquerade as a victim when the facts are that Appellant was paid in full by Respondents and was only entitled to a security interest in Respondents' property while there remained money due to it on its loan to Respondents. Appellant failed to timely release the deed of trust on Respondents' property and Appellant failed to timely provide Respondents with a deed of release upon request and tender of costs.

This Court in Bartareau v. Executive Business Products, Inc., in holding that "strict adherence to the plain language of [the service letter statute, §290.140] does not defeat the purpose of the statute," the court stated "[i]n cases where the language is clear, we will look beyond the plain and ordinary meaning of the statute only if the meaning would otherwise lead to an illogical result which would defeat the purpose of the legislation." 846 S.W.2d 248, 250 (Mo. App. E.D. 1993). The language of §443.130 is clear in setting forth particular requirements for the letter requesting a deed of release in order "to qualify under this section", and adherence to the plain language of the statute

does not frustrate the purpose of §443.130, which is to enforce an existing duty of the mortgagee. Requiring consumer/mortgagors to comply with unwritten requirements to a statute that specifically identifies the requirements needed for a mortgagor "to qualify under this section," §443.130.2, would clearly frustrate the purpose of the statute. "Where, as here, a statute is clear, plain and unambiguous on its face, provisions or limitations not plainly written or necessarily implied from what is written may not be interpolated or intercalated therein to effect some modification of or change in the right conferred by the statute." Collier v. Roth, 515 S.W.2d 829, 834 (Mo. App. Springfield 1974). See also State v. Hoester, 681 S.W.2d 449, 452 (Mo. banc 1984) (stating "we are not at liberty to add by interpolation or otherwise limiting provisions not plainly written or necessarily implied from the language used.").

In support of Appellant's assertion that §443.130 has implied and unwritten requirements in addition to those explicitly recited, Appellant cites the service letter statute, §290.140, as an analogous statute that sets forth explicit requirements in order to invoke the statute. The service letter statute requires that requests for service letters:

(1) be in writing,

(2) sent by certified mail,

(3) sent to the superintendent, manager or registered agent, and

(4) make specific reference to the statute.

Section 290.140. Section 443.130 is similar to §290.140 in that it also provides explicit requirements "to qualify under this section." One major difference in the explicit requirements of the two statutes is that §290.140 explicitly requires an employee's letter

to, among other particularly listed things, make "***specific reference to the statute***." §290.140 (emphasis added). Moreover, upon receipt of a request pursuant to §290.140, an employer "shall . . . within forty-five days after the receipt of such request" issue a service letter to such employee. It has never been held that an employee must make reference to this 45-day time limit in his or her request for a service letter.

We note that Appellant cites to Bartareau v. Executive Bus. Prods., Inc. for the proposition that "Because of the strict construction of the [service letter] statute, failure of an employee to request a service letter by certified mail or failure to reference the statute in the letter relieves the employer of its obligation to provide a service letter." Appellant's Brief, p. 22. In fact, Bartareau makes no reference whatsoever to "strict construction." This Court stated that "If the statutory terms are plain and clear to one of ordinary intelligence, they are not ambiguous and there is no need to resort to rules of statutory construction." Bartareau, 846 S.W.2d at 249. Moreover, Bartareau did not make any determination as to whether failure to reference the statute in a service letter statute relieves the employer of its obligations under the statute. This Court determined only (1) that a request for a service letter by an attorney, rather than an employee, is insufficient and (2) that regular mail, rather than certified mail, does not comply with the statute. Id. at 249-50.

In citing §290.140, Appellant makes Respondents' point that if the legislature intends to include the requirement that the mortgagor specifically cite the statute in his or her letter requesting a deed of release, the legislature certainly knows how to do so.

Moreover, in Bartareau, the court noted that the legislature could have provided additional requirements to making a request for a service letter, but it did not do so. Id. Similarly, in Vollmann v. Rosenburg, 972 S.W.2d 490, 493 (Mo. App. E.D. 1998), in refusing to add an unwritten limitation to the words of § 474.465.1, this Court stated, "If the legislature intended to limit the application of the statute to that asserted by plaintiffs, it could have written such language. We must give effect to a statute as it is written." Vollmann, 972 S.W.2d at 493 (citing McDermott v. Carnahan, 934 S.W.2d 285, 287 (Mo. banc 1996).

If Appellant's contention regarding the need for a full citation to the relevant statute was taken to its natural conclusion, **all** statutes requiring that notice be given to another party would require precise citation to the relevant statute. Such affected statutes encompass a vast range of areas of law, include those dealing with worker's compensation, negotiable instruments, licensing of motor vehicles, interest on judgments, civil procedure and satisfaction of mechanics liens upon real property (a particularly appropriate analogy to the instant case). See §287.420, §287.215, §287.420 RSMo (worker's compensation); §213.111 RSMo (human rights); §400.3-502, §400.2-725 RSMo, §400.2A-506 RSMo (UCC); §301.190, §302.530 RSMo (licensing of motor vehicles and drivers); §408.040 RSMo (interest on judgments); §511.250, §510.340, §509.490, §509.330, §509.100, §516.110, §516.370 RSMo (civil procedure); §276.491 RSMo (agriculture licensing); §140.350 RSMo (taxes and revenue); §82.210 RSMo (actions against cities); §433.010, §433.020 and §433.030 RSMo (obligee required to sue

principal on notice of surety); §429.080, §429.623, §429.120 and §429.130 RSMo (satisfaction of mechanics liens upon real property).

It should be noted that none of the above referenced statutes, by their terms, require specific reference to the statute in order to satisfy the notice requirements contained therein, nor do they require specific reference to the time period in which the party must comply. In fact, no Missouri case law was discovered which reads into these statutes such a specific reference requirement. Appellant's assertion regarding the notice required under the statute would have far reaching implications on an untold number of Missouri statutes which likewise lack any requirement of explicit statutory reference.

On July 1, 2004, the Supreme Court of Missouri handed down an opinion regarding a mortgagor's request for a deed of release, which the Court determined did not place the mortgagee on notice that §443.130 was being invoked. Garr v. Countrywide Home Loans, Inc., 2004 WL 1470860 (Mo. banc 2004). In Garr, the court held that the mortgagor's letter "did not sufficiently track the statutory requirements of section 443.130." Id. at p. 3. The Garrs' letter demanded an "immediate release" of the deed of trust rather than the fifteen business days allowed under the statute. The Garrs' letter also demanded that the mortgagee record the deed of release, which the Court noted is not required by §443.130. Finally, the Court stated that "reading the Garrs' letter as a whole, nothing places Countrywide on notice that the Garrs are making a demand under section 443.130, whether directly, by reprinting, citing, or referencing, or otherwise." Id.

The Supreme Court stated that in order for a demand letter to invoke §443.130, it "should closely track the language of the statute to place the mortgagee on notice that the

statutory demand is being made." Id. at p. 2. Unlike the Garrs' letter, Respondents' letter closely tracks the language of the statute by almost directly quoting the language of §443.130.2 "to qualify under this section" as illustrated above. Moreover, the Supreme Court recognized that the proposition stated in Martin v. STM Mortgage Company, 903 S.W.2d 548, 550 (Mo. App. W.D. 1995), that the statutory demand need not consist of any particular form of words, is a correct proposition. In Martin, the court stated, "No particular form of words is necessary for this demand; it is sufficient if it informs the mortgagee with reasonable certainty that an entry of satisfaction of the particular mortgage is requested." Martin, 903 S.W.2d at 550. In Garr, the Supreme Court found Martin inapposite because it appeared from the opinion in Martin that the letter included a recitation of §443.130. Garr, WL p. 3. Like the letter in Martin, Respondents' letter was comprised significantly of language that closely tracked if not directly recited the language of §443.130.

Appellant's insistence that there are unwritten requirements to §443.130 with which Respondents failed to comply results from its overly broad reading of Lines v. Mercantile Bank, N.A. Rewriting the provisions of §443.130 as Appellant has suggested would violate the rules of statutory construction, frustrate the purposes of the statute and lead to illogical results and implications for the vast number of Missouri statutes providing specific requirements for making various demands that do not require reference to the statute being invoked or reference to time limits for compliance. In this case, Respondents' written demand and request for a deed of release met all of the requirements of §443.130 in order "to qualify under this section." Appellant failed to

deliver to Respondents a sufficient deed of release within fifteen business days of request and tender of costs. Appellant is liable to Respondents for the forfeiture amount of ten percent of the amount of the security instrument, absolutely.

III. Responding to Appellant's Point II, Appellant did not fulfill its obligations under §443.130, and the trial court properly granted summary judgment in favor of Respondents.

Appellant asserts that it "fulfilled its obligations under sections 443.060 and 443.130 given that Appellant prepared and forwarded for recording the Glass deed of release to the St. Louis County Recorder of Deeds' office. For this reason, the trial court erred . . ." Appellant's Brief, p. 25. Even if there were support in the Record for this contention, preparing and forwarding for recording a deed of release to the Recorder of Deeds' office does not fulfill a mortgagee's obligations under §443.060 and §443.130. The first sentence of both §443.060 and §443.130 require the mortgagee receiving satisfaction of any security instrument to, at the request of the person making satisfaction, deliver to such person a sufficient deed of release. Section 443.130 further provides that a mortgagee that fails to deliver a sufficient deed of release to the person making satisfaction within fifteen business days after request and tender of costs, shall forfeit 10% of the amount of the security instrument, absolutely. Clearly, the essential element to fulfilling its obligations under §443.060 and §443.130 is that a mortgagee deliver a sufficient deed of release to the person making satisfaction, regardless of when it forwarded a deed of release to the Recorder of Deeds' office. Moreover, compliance with §443.060 is not at issue in this matter.

Appellant did not fulfill its obligations under §443.130. On August 6, 2001, Appellant received Respondents' letter requesting a deed of release and tender of costs. L.F. Vol. II, p. 248-49, 359-62, 363-65; Vol. III, p. 509. Appellant did not provide

Respondents with the deed of release within fifteen business days after August 6, 2001. L.F. Vol. II, p. 250, 262, 394; Vol. III, p. 509. There is no dispute or genuine issue as to these facts. Appellant failed to provide the deed of release within the statutorily prescribed period of fifteen business days after request and tender of costs. Accordingly, Appellant "shall forfeit to the party aggrieved ten percent upon the amount of the security instrument, ***absolutely***." §443.130.1 (emphasis added).

Not only is Appellant's argument that it fulfilled its obligations under §443.130 entirely specious, but Appellant supports its argument with purported facts that are in actuality mere suppositions. Appellant suggests that it complied with the requirements of §443.130 because the Loan Servicing Center prepared and forwarded Respondents' deed of release to the St. Louis County Recorder of Deeds' office in either June or July 2001 and that because of purported problems and backlogging at the Recorder of Deeds' office and because Appellant had no control over filings at the Recorder of Deeds' office, Appellant could not provide a deed of release to Respondents. Appellant's Brief, p. 26-28. According to the express language of §443.130, these statements, even if true, do not in any way change the fact that Appellant failed to comply with §443.130.

Appellant has failed to produce any evidence showing that the deed of release was prepared and forwarded to the St. Louis County Recorder of Deeds' office in either June or July 2001. Appellant asserts that after the Loan Servicing Center generated a weekly pay off report, release processors checked the Glass file for the note and deed of trust, (citing to the deposition transcript of Deborah Belt who was speaking only generally

about her responsibilities as the assistant to the release processor between February and June 2001). Appellant's Brief, p. 25; L.F. Vol. V, p. 920, 922-24.

Moreover, Appellant states that Exhibit H to Appellant's Motion for Summary Judgment, L.F. Vol. I, p. 202-06, is the weekly payoff report for the Glass loan. Appellant's Brief, p. 25. In its Motion for Summary Judgment, Appellant stated that Exhibit H is a copy of the "weekly payoff report" for the Glass loan. L.F. Vol. I, p. 92. Respondents denied that Appellant's Exhibit H is a true and accurate copy of the weekly payoff report because Appellant failed to reference pleadings, discovery, exhibits or affidavits to demonstrate a lack of genuine issue as to the accuracy of its Exhibit H. L.F. Vol. IV, p. 598.

In fact, neither Deborah Belt nor Anna Holt (the release processor from approximately April 2001 to February 2002) remember preparing or mailing Respondents' deed of release. L.F. Vol. IV, p. 720; Vol. V, p. 931-32. What is certain is that the deed of release was not recorded until October 9, 2001 (L.F. Vol. I, p. 93; Vol. II, p. 249; Vol. III, p. 509), and it was not delivered to Respondents within fifteen business days of receipt of their request and tender of costs (L.F. Vol. II, p. 250, 262, 394; Vol. III, p. 509).

Appellant asserts that Respondents' deed of release was sent to the Recorder of Deeds' office no later than July 24, 2001 because Anna Holt noted that it had been sent to St. Louis County in her July 24, 2001 facsimile to Rodney Glass. Appellant's Brief, p. 26. When asked in her deposition, "[f]or the Glasses, do you remember what happened with [their deed of releases]?" Anna Holt responded, "I don't specifically, because I

really honestly don't remember too much about him particularly." L.F. Vol. IV, p. 766. Moreover, Ms. Holt stated that she would have been the one who mailed Respondents' deed of release to the Recorder "most likely." L.F. Vol. IV, p. 775.

Furthermore, the records kept as to when deeds of release are sent to various Recorders' offices specified only the number of releases sent to each county on a particular date. L.F. Vol. IV, p. 757, 677, 689. Said record did not identify whether a specific deed of release was in fact sent to the Recorder's office. L.F. Vol. IV, p. 757, 775-76. With regard to the facsimile dated July 24, 2001 bearing the notation that she sent the deed of release to the Recorder of Deeds' office, Anna Holt stated that in writing the notation on her July 24, 2001 letter, she "probably" checked the weekly payoff list and her manual report. L.F. Vol. IV, p. 755. The manual report does not specify whether or not the Glasses' deed of release was sent to the Recorder of Deeds' office. L.F. Vol. IV, p. 775-76. Defendant has failed and continues to fail to produce any evidence to show when Respondents' deed of release was forwarded to the Recorder of Deeds.

Even if Appellant had sent the deed of release to the Recorder's Office as it claims, this would not comply with the statute. The only competent evidence that the deed of release was forwarded to the Recorder of Deeds is that it was recorded on October 9, 2004. L.F. Vol. I, p. 93; Vol. II, p. 249; Vol. III, p. 509.

Any attempt to link embezzling at the St. Louis County Recorder of Deeds' office to Appellant's failure to comply with §443.130 is a baseless assertion. Furthermore, Appellant's blanket assertions that the Recorder of Deeds' office was "backlogged" and "typically took several months to record documents and have them returned" are proven

false by a simple review of the deeds of release prepared by the Loan Servicing Center and recorded with the St. Louis County Recorder of Deeds which were for mortgage loans listed on Exhibit H of Appellant's Motion for Summary Judgment (L.F. Vol. I, p. 202-06) as being paid-off and marked "FDN." For example, the properties listed on Appellant's Exhibit H referencing the names James D. Works, Virginia V. Ash, Ernest W. Rosener Jr., Mary Jean Russell and Eric W. Mundwiller have Deeds of Release notarized on June 19, 2001 and recorded with the St. Louis County Recorder of Deeds on June 30, 2001. L.F. Vol. IV, p. 602; Vol. V, p. 962-976. Furthermore, the deed of release referenced in paragraph 21 and attached as Exhibit N to Appellant's Motion for Summary Judgment as the deed of release for Respondents' home equity line of credit (L.F. Vol. I, p. 95, 226-27) purports to have been notarized on September 4, 2001 and filed with the St. Louis County Recorder of Deeds on September 11, 2001. L.F. Vol. I, p. 226-27.

Appellant asserts that it had no control over the filings at the St. Louis County Recorder of Deeds' office. However, Appellant could have taken control over when Respondents' deed of release was filed. Jennifer Poole stated that written requests for deeds of release are made infrequently, three times a year. L.F. Vol. IV, p. 673. As such, upon receipt of a written request or a verbal request for that matter, Appellant could have prepared the deed of release and mailed it to its Des Peres office for hand delivery to the St. Louis County Recorder of Deeds' office for recordation that day. Alternatively, Appellant's Des Peres office could prepare deed of release itself, especially considering the fact that its Des Peres office does prepare deeds of release for loans they are

refinancing, and originating banks sometimes prepare deeds of release independently of the Loan Servicing Center. L.F. Vol. IV, p. 674-75.

Additionally, Anna Holt stated that there was a file on the release processor's desk that contained miscellaneous deeds of release that were not prepared or filed for years after the loans had been paid off for various and sometimes unknown reasons. L.F. Vol. IV, p. 737-38. Jennifer Poole stated that the Recorder of Deeds' office will return defective deeds of release to the Loan Servicing Center when they contain an error, such as if a deed of release were to contain the wrong book or page number. L.F. Vol. IV, p. 659-60. Furthermore, upon Jennifer Poole's examination of the deed of release for Respondents' deed of trust during her deposition, she stated:

> But you know that there is a page number correction at some point on this document. If you take a look at the page number, it says 1993, and if you'll notice, the three is in a different font style or size than the 199. At some point there was a correction to that document. What was on the document before the correction, I don't know, but it is very possible that if what we originally submitted to the county referenced a wrong page, they can have returned the document to us for a correction. L.F. Vol. IV, p. 690-91.

Considering that the essential element for a mortgagee's compliance with §443.130 is delivery of a sufficient deed of release to the person making satisfaction, Appellant could have attempted to comply with the statute by delivering a deed of release to Respondents while it waited to obtain a copy of a recorded deed of release from the

Recorder of Deeds' office. The Loan Processing Service sometimes prepares multiple deeds of release for the same deed of trust securing a debt which has been satisfied. L.F. Vol. IV, p. 659-61, 763.

Moreover, Appellant asserts that there is no probative evidence to show that the delay in filing was caused by Appellant. Appellant's Brief, p. 27. As stated, Appellant has not provided any evidence to show when it mailed Respondents' deed of release to the Recorder of Deeds' office. The only evidence there is to support Appellant's argument that there was delay in the filing of Respondents' deed of release once it arrived at the Recorder of Deeds' office is Jennifer Poole's statement that, upon her examination of Respondents' deed of release, it appears as if there was a correction made to the document which very possibly could mean that the originally submitted deed of release contained reference to the wrong page and that the Recorder of Deeds' office returned it to the Loan Servicing Center for a correction. L.F. Vol. IV, p. 690-91. In any case, the reason for any such delay is immaterial.

It is also immaterial that, as Appellant asserts, it forwarded the deed of release to Respondents within a reasonable time after it received it from the Recorder of Deeds' office. Appellant's Brief, p. 27. Moreover, such an argument is entirely specious given the fact that the Loan Servicing Center has no idea when Respondents' deed of release or any other deed of release is returned to the Loan Servicing Center after recordation. L.F. Vol. IV, p. 693-94, 767-68.

Incredibly, Appellant attempts to place blame on Respondents for its delay in delivering a deed of release by stating that Respondents made their demand in August for

a loan that was satisfied in June. The onus is on the mortgagee to deliver a deed of release. It is not the mortgagor's duty to request a sufficient deed of release, nor should he/she have to do so. Furthermore, Respondents' "delay" in requesting a deed of release should be viewed as giving Appellant an opportunity to fulfill its existing obligations without demand being necessary. Moreover, whatever Respondents did other than send their demand to Appellant pursuant to §443.130 is entirely irrelevant to whether Appellant complied with §443.130.

IV. Responding to Appellant's Point III, the trial court properly granted summary judgment in favor of Respondents, and the argument raised in Appellant's Point III is entirely irrelevant and does nothing to change the fact that Appellant failed to comply with §443.130 and is liable to Respondents for the forfeiture amount as provided by §443.130.

Appellant's argument relating to letters sent by Respondents to subsequent mortgagees of their property is entirely irrelevant to this case. Appellant mischaracterizes the subject matter of this case in stating "[t]his case involves an original mortgage loan from Appellant to the Glasses and three subsequent refinancings of this mortgage loan in hopes of achieving a better interest rate." Appellant's Brief, p. 29. In fact, this case involves only Appellant's failure to deliver to Respondents a sufficient deed of release within fifteen business days after request and tender of costs pursuant to §443.130.

In an effort to cloud the issue, Appellant argues that the purposes sought to be achieved by §443.130 are non-existent in this case. This argument is absurd. Nowhere in the statute is there a requirement that a mortgagor make a showing of the purpose of its claim pursuant to §443.130. Appellant itself cites to Ong Bldg. Corp. v. GMAC Mortgage Corp., which states, "The purpose of §443.130 is to 'enforce the duty of the mortgagee to clear the title of the mortgagor, so that it [is] apparent upon examination that the incumbrance of record no longer exist[s].'" 851 S.W.2d 54, 55 (Mo. App. W.D. 1993) (citing Henry v. Orear, 78 S.W. 283, 284 (Mo. App. 1904)). Ong Bldg. Corp. also states that "Section 443.060.1 requires a mortgagee, when it has received 'full

satisfaction of any security instrument, . . . at the request and cost of the person making the same, [to] deliver to such person a sufficient deed of release of the security instrument[.]' Section 443.130 is an enforcement mechanism for §443.060." Id. The purposes of §443.130 as stated in Ong Bldg. Corp. and recognized in Roberts v. Rider, 924 S.W.2d 555, 558 (Mo. App. S.D. 1996), include the following:

(1) to serve as an enforcement mechanism for §443.060; and

(2) to enforce the duty of the mortgagee to clear the title of the mortgagor; and

(3) to make it apparent upon examination of the land records that an incumbrance of record no longer exists.

In this case, Respondents paid off their mortgage loan on June 13, 2001. L.F. Vol. II, p. 245-46; Vol. III, p. 508. By the time Respondents made their statutory demand for a deed of release on or about August 3, 2001 (L.F. Vol. II, p. 247-48, 359-62; Vol. III, p. 509), and by the time Appellant received Respondents' written request on August 6, 2001 (L.F. Vol. II, p. 248-49, 363-65; Vol. III, p. 509), Appellant had not yet cleared the title of the mortgagor. L.F. Vol. I, p. 93; Vol. II, p. 249; Vol. III, p. 509. Not only did Appellant fail to provide the deed of release within fifteen business days after request and tender of costs, but Appellant did not provide Respondents with the deed of release until November 13, 2001. L.F. Vol. II, p. 249-50, 262, 394, 503-05; Vol. III, p. 509.

Moreover, Appellant's failure to provide Respondents with the deed of release, (which was not recorded until October 9, 2001) until November 13, 2001 is precisely the behavior of mortgagees that §443.130 is intended to protect against. The statute is an

enforcement mechanism to ensure that encumbrances upon land that no longer represent enforceable security interests are promptly released by mortgagees pursuant to their existing duty. In the event of non-compliance on the part of secured lenders, the statute provides a forfeiture provision to assure prompt release of such inappropriate encumbrances.

Enforcing the forfeiture provision of §443.130 against Appellant, serves to promote the purposes of the statute as stated in Ong Bldg. Corp. Appellant failed to deliver the deed of release to Respondents until over three months after Appellant received Respondents' written request and tender of cost. Moreover, Appellant failed to ensure that a deed of release was properly recorded and that title to Respondents' property was properly cleared until October 9, 2001 for a deed of trust that was satisfied by Respondents on June 13, 2001. If as Appellant presumes, "the legislature intended for §443.130 to aid in the clearing of title by the filing of deeds of release," enforcement of the forfeiture provision against Appellant for its failure to clear title to Respondents' property is certainly proper.

Regardless of whether Respondents were able to refinance their mortgage successfully, at the time Respondents sent their demand letter to Appellant in early August 2001, they could not have known whether Appellant's failure to release the deed of trust could or would hinder their ability to refinance. As recognized by Appellant, "section 443.130 does not expressly contain a finding that the plaintiff prove prejudice or some form of damage in order to recover under the statute." Appellant's Brief, p. 32. In fact, Respondents could only refinance because the title insurance company issued a hold

harmless agreement to the refinancing lender/mortgagee. Title companies issue title policies for which they bear significant liabilities to subsequent holders of security interests in the property. A mortgagor, such as the Glasses, pays the premium for the title insurance provided to a subsequent/refinancing mortgagee. As such, Respondents' letters to subsequent mortgagees does not constitute a "predatory" use of the statute as Appellant has asserted. During the time Respondents refinanced their mortgage, there was a rash of refinancing because of the continually lowering interest rates. In order for a mortgagor to facilitate multiple refinancings of his/her property, he/she logically would resort to the enforcement mechanism provided in §443.130 to enforce the mortgagee's duty to clear the title of property on which it no longer has an enforceable security interest.

Appellant relies on Bartareau v. Executive Bus. Prod., Inc., 846 S.W.2d 248 (Mo. App. E.D. 1993), a case involving an unrelated statute, the Missouri Service Letter Statute, for its mistaken contention that the court should look beyond the plain language of §443.130 and add a requirement that the mortgagor make some showing of prejudice in order to be entitled to the forfeiture of ten percent of the security interest. In fact, as discussed in Point II of Respondents' Brief, Bartareau is of no assistance to Appellant.

Like the Service Letter Statute (§290.140), §443.130 sets forth specific requirements for making a written demand and request for a deed of release. To require a mortgagor to show prejudice would require a mortgagor/debtor to have knowledge of and comply with unwritten requirements to a law which is unambiguous in setting forth particular requirements for making written demand and about which the mortgagee/bank

is presumed to know and show know considering it specifically affects its own industry would clearly frustrate the purposes of the statute, one of which is to enforce an existing duty of the mortgagee.

Enforcement of §443.130 promotes the purposes of the statute as set forth in Ong. Bldg. Corp. Moreover, this Court has recognized that it "may not engraft upon the statute provisions which do not appear in explicit words or by implication from other language in the statute." Schuettenberg v. Board of Police Commissioners of the City of St. Louis, 935 S.W.2d 712, 714 (Mo. App. E.D. 1996).

Appellant's argument on its Point III is entirely superfluous. The facts are that Respondents made a written demand and request for a deed of release pursuant to §443.130 and Appellant failed to provide same within fifteen business days, thereby requiring Appellant to forfeit ten percent of the amount of the security interest, absolutely.

Respondents note further that Appellant egregiously misrepresents and misstates some of the evidence in this case. As with the entirety of Appellant's argument in Point III of its Brief, the following evidence is not at all relevant to whether or not Appellant complied with §443.130 rendering it liable to Respondent for the forfeiture amount therein provided. However, the degree of Appellant's inaccuracies warrants some clarification.

1) Appellant states on page 30 of its Brief that "the Glasses were provided with an original note marked "paid" by a representative of Appellant on August 22, 2001." In support of this assertion, Appellant references L.F.

Vol. I, p. 170 which is Exhibit L to Appellant's Motion for Summary Judgment. As stated in Plaintiff/Respondents' Verified Response to Defendant's Motion for Summary Judgment, Appellant attached its Exhibit L to its Motion for Summary Judgment without any reference to pleadings, discovery, exhibits or affidavits to demonstrate a lack of genuine issue as to the accuracy of its Exhibit L. L.F. Vol. I, 95. Respondents did receive a letter dated August 22, 2001 purportedly from Julie Bret of Appellant with enclosures, but Appellant's Exhibit L (L.F. Vol. I, p. 170) is not a copy of what Respondents received. The letter and enclosures received by Respondents purportedly from Julie Bret enclosed a copy of the Glasses' "Equity Credit," i.e. the Glasses' home equity line of credit, stamped "paid" and did not enclose a copy of the Glasses' mortgage loan stamped "paid" as Appellant asserts without any evidentiary support. L.F. Vol. IV, p. 606 (paragraph 20) and L.F. Vol. V, p. 1044-1048.

2) Appellant asserts on page 30 of its Brief that "Obtaining a deed of release was never the goal of the Glasses. Rather, the driving force in this case was the ten percent penalty provided by section 443.130, as admitted by Rodney Glass in his deposition" and cites L.F. Vol. II, p. 281. In fact, on the page of the Legal File cited by Appellant, which is a page from the transcript of Rodney Glass' deposition, Rodney Glass stated repeatedly that the purpose of the Glasses' demand letter requesting a deed of release was to obtain a copy of the deed of release, and that was the paramount purpose in sending

> the letter. L.F. Vol. II, p. 281. Moreover, when asked "can we agree that with respect to [the demand letter], the purpose of this letter was two part, number one, to get a deed of release, but also to potentially set up the bank?" Rodney Glass responded, "No. The purpose of this letter was to prod the bank into getting me a deed of release. My thinking would be if you have to provide a deed of release within 15 days of receipt of this letter that you might move and get me a deed of release." L.F. Vol. II, p. 281.

As stated, Appellant's argument in its Point III is merely an effort to cloud the issue in this case. Respondents made a written demand and request for a deed of release pursuant to §443.130. The plain and unambiguous language of §443.130 does not require that mortgagors make some showing of the purpose sought to be invoked by the statute, nor does it require that mortgagors make a showing of prejudice. Appellant failed to deliver a deed of release to Respondents within fifteen business days of receipt of their request for a deed of release pursuant to §443.130 and must therefore forfeit to Respondents ten percent of the amount of the security interest absolutely.

V. Responding to Appellant's Point IV, Respondents are the "persons making satisfaction" within the purview of §443.130 and the trial court properly granted summary judgment in favor of Respondents.

Appellant argues that Respondents are not the persons making satisfaction of the security instrument because they did not pay off their loan with funds directly out of their pockets and that they are therefore not the persons to whom Appellant was required to deliver a deed of release pursuant to §443.130. Even if this were so, this would not relieve Appellant of its obligations under Missouri law. In fact, Respondents of course did pay off their loan to Appellant with the proceeds of the subsequent loan which they obtained from National City Mortgage, the subsequent lender of a loan to Respondents. L.F. Vol. I, p. 92; Vol. II, p. 245-46; Vol. III, p. 508; Vol. IV, p. 597. In any case, nowhere in the relevant statutes does the legislature condition compliance on payment by a mortgagor directly. See generally § 433.060 and § 433.130.

Moreover, Appellant's reliance on Masterson v. Roosevelt Bank in support of this position is misplaced. 919 S.W.2d 9 (Mo. App. E.D. 1996). The key fact that Appellant omits from its discussion of the Masterson case is that, in Masterson, the mortgagee *actually delivered a deed of release within the time provided by the statute*. Id. at 10. It is clear that the Masterson court rested its decision on this fact, as demonstrated by its holding that "delivery of the deed of release to the new mortgagee's agent [as opposed to directly to the mortgagor] . . . complied with the statute." Id. at 11.

In the case at bar, Appellant did not even record the deed of release within the fifteen business days provided by the statute (L.F. Vol. II, p. 250, 262, 394; Vol. III, p.

509), much less deliver it *to anyone* within that time (L.F. Vol. II, p. 395). This is a vastly different situation from one in which a mortgagee brings suit against a mortgagor based on a dispute as to who the proper recipient of the deed of release should have been. Here, Appellant did not record the deed of release until October 9, 2001 (L.F. Vol. I, p. 93; Vol. II, p. 249; Vol. III, p. 509) and did not deliver it to anyone until November 13, 2001 (L.F. Vol. II, p. 249-50, 262, 394, 395, 503-05). The Masterson case is, therefore, wholly inapplicable to the instant case. The fact remains that Respondents are the "persons making satisfaction" (L.F. Vol. II, p. 245-46, 260; Vol. III, p. 508), they are the persons who at all relevant times were the owners of the property located at 12706 Wynfield Pines Court, Des Peres, Missouri 63131 (L.F. Vol. II, p. 244; Vol. III, 507), they are the persons who made demand for a deed of release pursuant to §443.130 (L.F. Vol. II, p. 247, 261, 393) and Respondents are, therefore, entitled to "enforce the duty of the mortgagee to clear the title of the mortgagor, so that it is apparent upon examination that the incumbrance of record no longer exist[s]." Roberts v. Rider, 924 S.W.2d 555, 558 (Mo. App. S.D. 1996) (citing Ong Bldg. Corp. v. GMAC Mortgage Corp. of Pennsylvania, 851 S.W.2d 54, 55 (Mo. App. W.D. 1993)).

Respondents, acting through their agent, Fidelity Mortgage Company, made full satisfaction of the mortgage loan secured by the deed of trust. L.F. Vol. II, p. 245-46; Vol. III, p. 508. In re Barker, 251 B.R. 250, 259 (Bankr. E.D. Pa. 2000) (holding that "[i]t is established that the broker-client relationship is primarily that of principal and agent."); Stone v. Mellon Mortgage Co., 771 So.2d 451, 457 (Ala. 2000). In fulfilling the satisfaction of the mortgage loan secured by the deed of trust, Fidelity Mortgage

Company acted solely on behalf of, at the direction of, and for the benefit of Respondents. Notwithstanding the above, whether satisfaction of the deed of trust was sent directly by Respondents or by Fidelity Mortgage Company, acting as Respondents' agent, is a non-issue. See Trovillion v. Countrywide Funding Corp., 910 S.W.2d 822 (Mo. App. E.D. 1995) (In Trovillion, the company through whom the mortgagor chose to refinance, Commerce Mortgage Corporation, sent payment to the holder of the mortgagor's deed of trust. No issue was made by either party in that action and the court stated that "[t]he parties essentially agree[d] that plaintiffs paid the debt and made a proper demand.").

The funds used to make satisfaction of the loan made to Respondents by Appellant, which was secured by the deed of trust, were Respondents' funds. L.F. Vol. II, p. 245, 260. In refinancing a loan through a new lender, a mortgagor must provide the new lender with a promissory note secured by a security interest in her/her property in exchange for the funds loaned to the mortgagor by the new lender/mortgagee. A mortgagor, like Respondents, gives good and valuable consideration to a new lender/mortgagee in exchange for the funds used to pay off a previous lender/mortgagee. The funds used to pay the previous lender are the mortgagor's funds.

Similar to the facts of this case, in Martin v. STM Mortgage Company, the mortgagor's note secured by a deed of trust was satisfied with a check payable from Chicago Title Insurance Company's disbursement account. 903 S.W.2d 548, 549-50 (Mo. App. W.D. 1995). Satisfaction of the debt by the title company was not fatal to the mortgagor's claim made pursuant to §443.130, nor was it even considered to be an issue.

The court recognized that the request for a deed of release constituted an effective request as contemplated by the statute. Id. at 550. However, the court held that the mortgagor's claim must fail because it failed to prove when the check payable from Chicago Title Insurance Company's disbursement account was actually paid, i.e. the date of satisfaction. Id. at 551. The court did not question whether the mortgagor was the person making satisfaction.

In sum, Appellant's argument that Respondents are not the "persons making satisfaction" pursuant to §443.130 is entirely without merit.

VI. Responding to Appellant's Point V, §443.060 and §443.130 are not unconstitutional and the trial court properly granted summary judgment in favor of Respondents.

In this case, none of the arguments asserted by Appellant in its Brief are sufficient to raise or sustain a constitutional challenge to §443.060 or §443.130. As stated in Respondents' Memorandum Regarding Transfer of this Cause to the Missouri Supreme Court filed on July 2, 2004 and included in the Appendix to this Brief, Appellant has raised no real or substantial constitutional issues, and any issues that were raised, were not properly raised. Furthermore, Appellant cannot meet its burden of overcoming the presumption that statutes are constitutional. "Statutes are presumed to be constitutional, and the party attacking the constitutionality of a statute 'bears an extremely heavy burden.' This Court will not invalidate a statute 'unless it clearly and undoubtedly contravenes the constitution and plainly and palpably affronts fundamental law embodied' therein." Etling v. Westport Heating & Cooling Services, Inc., 92 S.W.3d 771, 773 (Mo. banc 2003) (citing Linton v. Missouri Veterinary Med. Bd., 988 S.W.2d 513, 515 (Mo. banc 1999).

A. Sections 443.130 and 443.060 are not unconstitutionally vague.

Appellant cites United States v. Lanier, 520 U.S. 259, 266 (1997), for its proposition that §443.060 and §443.130 offend the Due Process Clause. Appellant's Brief, p. 37-38. The line of United States Supreme Court Cases culminating in Lanier, (e.g., Kolender v. Lawson, 461 U.S. 352 (1983); Lanzetta v. State of New Jersey, 306 U.S. 451 (1939); and Connolly v. General Const. Co., 269 U.S. 385 (1926)) treat

specifically criminal statutes, and not consumer-protection statutes that merely provide a civil remedy. Sections 443.060 and 443.130 are statutes that define proper business practices of mortgagees and articulate civil remedies for consumers.

The United States Supreme Court stated in Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc. that to present a sustainable void-for-vagueness argument to a business regulation, the business must show that under *any application* of the statute, even after a diligent effort to study the mandate and regulatory effect of the statute, the statute is so imprecise and unclear that no business in a similar position could have understood how to act in a manner to avoid its violation. 455 U.S. 489, 497-98 (1982).

Appellant suggests that the terms "party aggrieved," "sufficient deed of release," and "the person making satisfaction" are so uncertain and imprecise as to leave Appellant with utterly no means of understanding the General Assembly's directions for providing deeds of release. Appellant's argument is specious. Appellant admits that it not only had knowledge of §443.130 and its requirements, but it had policies in place to handle written requests for deeds of release. L.F. Vol. II, p. 395, 398; Vol. IV, p. 673, 680-81.

Moreover, §443.060 and §443.130 and their predecessors have been around for more than 100 years. During this time, a wealth of Appellate Court Decisions have interpreted and applied the statutes, and none of these decisions question the constitutionality of either statute or its predecessors.

Statutory words and phrases may be taken in their ordinary and usual sense. Abrams v. Ohio Pacific Express, 819 S.W.2d 338 (Mo. 1991). "Sufficient deed of release" is an instrument that is adequate to accomplish the legal release of a previously

executed/recorded deed of trust. "Party making satisfaction" is the party who fulfills its obligations under the note for which the security interest was issued. "Party aggrieved" is one whose pecuniary interest or right to property is directly affected. Ong Building Corp., 851 S.W.2d 54, 55 (Mo. App. W.D. 1993). None of these terms is vague.

B. Sections 443.130 and 443.060 do not violate substantive due process rights.

Sections 443.060 and 443.130 govern exclusively economic rights of Appellant, and there is no fundamental right in question. Under modern substantive due process analysis, *any* rational basis for the economic regulation related to a legitimate public interest will enable the statute to withstand scrutiny on substantive due process grounds. In fact, the legislature need not articulate that basis; it is sufficient for the reviewing court to identify any one potential rational basis. McGowan v. Maryland, 366 U.S. 420, 425-26 (1961), In re the Marriage of Woodson and Woodson, 92 S.W.3d 780, 784 (Mo. banc 2003).

Sections 443.060 and 443.130 are consumer protection statutes, which protect consumers who have fully paid a secured lender from having their property encumbered for an unnecessarily long duration of time. Roberts v. Rider, 924 S.W.2d 555, 558 (Mo. App. S.D. 1996). The procedure the legislature set out in the statutes provides clear parameters within which mortgagees must provide deeds of release and clear and reasonable procedures for aggrieved consumers to demand release of fully paid liens on their property, thereby not leaving consumers to the mercy of large institutional lenders. As a means of non-governmental enforcement, the legislature may have quite rationally

added the civil remedy to provide secured lenders with adequate motivation to comply. Missouri Pac. RY. Co. v. Humes, 115 U.S. 512, 523 (1885).

The legislature has an important and legitimate aim to regulate and assure the consistency and reliability of the public land records and of facilitating the efficient transfer of real property in the marketplace. Kerssenbrock-Praschma v. Sauders, 48 F.3d 323, 325-26 (8th Cir. 1995) (citing 73 C.J.S. Property § 27 (1983)). Sections 443.060 and 443.130 serve those public interests by encouraging release of encumbrances upon land that no longer represent actual and enforceable security interests.

The government has an interest in allowing and facilitating quick and economical transfer of property. When a deed of trust remains in the land records as an encumbrance on a property even though the owner has paid off the note associated with that deed of trust, the selling landowner and buyer are necessarily forced to expend significant resources to investigate whether the deed of trust represents an actual encumbrance on the property. Such a paid deed of trust for which no release has been recorded may place the sale in jeopardy or substantially delay closing. Title companies, charged with investigating titles to properties, issue title policies for which they bear significant liabilities to subsequent holders of security interests in the property. The state may legitimately seek to prevent lenders from neglecting their duties or dragging their feet in doing so to save the ultimate aim of enhancing the efficiency of selling land. Accordingly, §443.060 and §443.130 clearly advance those public interests.

C. Section 443.130 does not impose an arbitrary punishment.

The only case cited by Appellant in support of its argument that §443.130 imposes an arbitrary punishment, State Farm Mutual Automobile Insurance Company v. Campbell, 538 U.S. 408, 416-17 (2003), addresses only the specific issue of punitive damages awarded by a jury. This is not analogous to the present case.

In determining the constitutionality of a statute that provided for exemplary damages to be paid to a property owner for violation of a statute, the United States Supreme Court stated as follows:

> The power of the state to impose fines and penalties for a violation of its statutory requirements is coeval with government; and the mode in which they shall be enforced, whether at the suit of a private party or at the suit of the public, and what disposition shall be made of the amounts collected, are merely matters of legislative discretion. The statutes of nearly every state of the Union provide for the increase of damages where the injury complained of results from the neglect of duties imposed for the better, security of life and property, and make that increase in many cases double, in some cases treble, and even quadruple the actual damages. And experience favors this legislation as the most efficient mode of preventing, with the least inconvenience, the commission of injuries. Missouri Pac. RY. Co. v. Humes, 115 U.S. 512, 521-523 (1885).

Section 443.130 provides for a forfeiture of 10% of the amount of the security instrument to enforce an existing duty of the mortgagee and to encourage clearing of title to property. Roberts v. Rider, 924 S.W.2d 555, 558 (Mo. App. S.D. 1996). To say that

the statute "does not advance a legitimate state purpose" (Appellant's Brief, p. 40) is absurd.

The forfeiture of 10% of the wrongfully encumbered security interest is easily calculated for a security interest held by a mortgagee. It is logical to set the amount at a percentage, rather than a flat rate, in that a mortgagor giving a large security interest is harmed to a greater degree than a mortgagor giving only a small security interest. As recognized in Humes, "[t]he injury actually received is often so small that in many cases no effort would be made by the sufferer to obtain redress, if the private interest were not supported by the imposition of punitive damages." 115 U.S. at 523. Providing for a forfeiture of only a fraction of the amount of the security interest on wrongfully encumbered property cannot be considered unrelated to the legitimate state interest of free transferability of property.

D. Section 443.060 and section 443.130 do not violate equal protection rights.

Equal protection analysis commences with identification of the class that is arguably subject to disparate treatment under the law. Washington v. Glucksberg, 521 U.S. 702 (1997); Woodson, 92 S.W.3d at 784. When the class delineation is not drawn upon suspect lines, i.e., race, gender, alienage, and/or other recognized factors, and especially when a classification is merely economic in nature, the classification will be upheld so long as it is conceivable that the classification bears a *rational relationship* to *a legitimate* governmental objective. Heller v. Doe, 509 U.S. 312, 320 (1993). In a "rational basis" review of a statute upon equal protection grounds, the Court does not question the social or economic policies underlying the statute, McGowan v. Maryland,

366 U.S. 420, 425-26 (1961), and will hypothesize the legislative intent. See Id. at 426. Under this highly deferential approach, if the reviewing court can identify any one rational policy objective for the disparate classification scheme, the statute under review will survive. Id. at 425-26. In this case, under this analysis, there is no suspect class.

E. Section 443.130 does not constitute an unlawful takings clause.

As an initial point, Appellant has utterly failed to reason its purported takings issue "with relevant authority or argument beyond conclusions," and as such, even assuming Appellant had preserved a takings question prior to this appeal, the point is now abandoned. Massage Therapy Training Institute, LLC v. Missouri State Board of Therapeutic Massage, 65 S.W.3d 601, 609 (Mo. App. S.D. 2002).

The only case cited by Appellant, City of Kansas City v. Kindle, 446 S.W.2d 807 (Mo. 1969), for its proposition that §443.130 is an unconstitutional taking once again does not support its purported constitutional issue. The problem in relying on Kinble or even the two main lines of takings cases from the United States Supreme Court, i.e., Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419 (1982) (per se physical takings) and Penn Central Transportation Company v. City of New York, 438 U.S. 104 (1978) (regulatory taking of physical property) is that each of these cases discuss some actual taking of *physical* property or regulations that have the effect of restricting the use of physical property. No physical property of Appellant's has been taken.

It is Appellant's burden to demonstrate a real and substantial challenge to a statute, and absent a clear and reasonable showing that any property was taken, Appellant's conclusory invocation of Article I, § 28 is inadequate to support its appeal.

Nevertheless, as stated above, §443.130 bears a "substantial relation" to its public purposes and is neither arbitrary nor unreasonable, and, as stated by the Supreme Court in Kinble, the fact that some private individuals stand to make a private gain is not sufficient to negate the overwhelming public purpose of the statute. Kinble at 815.

F. Section 443.130 does not constitute an excessive fine.

"[T]he Excessive Fines Clause [of the Eighth Amendment] was intended to limit only those fines directly imposed by, and payable to, the government." Browning –Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 268 (1989). "The term "fine" as used in the Excessive Fines Clause[s of the United States and Missouri Constitutions], denotes payment extracted by the government and payable to the government." State v. Polley, 2 S.W.3d 887, 894 (Mo. App. W.D. 1999).

Section 443.130 calls for a forfeiture made to the mortgagor and not to the government. By definition, there is no "fine" within the meaning of the Excessive Fines Clauses.

Appellant's purported constitutional challenges to §443.060 and §443.130 must fail for the reasons set forth above and in more detail in Respondent's Memorandum Regarding Transfer of this Cause to the Missouri Supreme Court filed in this Court on July 2, 2004.

CONCLUSION

Respondents' demand letter was in strict compliance with the requirements of §443.130, and in fact, closely tracked the language of the statute. Appellant failed to deliver to Respondents a deed of release for their mortgage loan/deed of trust within the fifteen business days after receipt of Respondents' request and tender of costs. Appellant, therefore, must forfeit to Respondents ten percent upon the amount of the security instrument in the amount of $52,500.00. Appellant has failed to raise any argument in its Brief sufficient to reverse the Circuit Court's Order. The Circuit Court's December 31, 2003 Order granting summary judgment in favor of Respondents and against Appellant on Count I of their First Amended Petition for forfeiture of ten percent upon the amount of the security instrument in the amount of $52,500.00 was entirely proper. This Court has jurisdiction over this appeal and should affirm the Circuit Court's order granting summary judgment in favor of Respondents.

Respectively Submitted,

REINERT & ROURKE, P.C.

By: _____

John W. Rourke, #38111
Jennie I. Bartlett, #53152
812 N. Collins, Laclede's Landing
St. Louis, MO 63102-2174
Tel.: 314-621-5743
Fax: 314-621-8071

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above and foregoing forwarded by U.S. Mail, postage prepaid, this 16th day of July 2004:

Donald L. O'Keefe
Ann E. Ahrens
Rabbitt, Pitzer & Snodgrass, P.C.
100 South Fourth Street, Ste. 400
St. Louis, MO 63102-1821
Attorneys for Defendant/Appellant

_____

CERTIFICATE OF COMPLIANCE WITH RULE 84.06

The undersigned, counsel for Respondents Rodney Glass and Diane Glass, pursuant to Rule 84.06, Local Rule 360 and Rule 55.03 certifies that this Brief was prepared utilizing Microsoft Word formatted to comply with Rule 84.06. The Brief exclusive of the cover, table of contents, table of authorities, certificate of service, this certificate and the signature block contains 13,937 words and 1,100 lines of text in a monospaced face as ascertained utilizing Microsoft Word. Respondents' floppy disk has been scanned for viruses and affirm it is virus free.

REINERT & ROURKE, P.C.

By: _____
John W. Rourke, #38111
Jennie I. Bartlett, #53152
812 N. Collins, Laclede's Landing
St. Louis, MO 63102-2174
Tel.: 314-621-5743
Fax: 314-621-8071