

SENATE BILL NO. 670

June 17, 1999, Introduced by Senators BULLARD and STEIL and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 2431, 3208, 3216, and 3240 (MCL 600.2431, 600.3208, 600.3216, and 600.3240), section 3240 as amended by 1996 PA 214, and by adding section 3181.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2431. (1) The expenses of foreclosing ~~any~~ A mortgage
2 by advertisement shall be taxed in the circuit court as in civil
3 actions upon the request of ~~any~~ A person paying the expenses
4 ~~thereof, and upon such~~ FOR THE ADVERTISEMENT, AND ASSESSED
5 AGAINST THE party liable to pay the ~~same~~ EXPENSES.

6 (2) ~~Where~~ IF an attorney is employed to foreclose a mort-
7 gage by advertisement, an attorney's fee, not to exceed ~~any~~ AN
8 amount ~~which~~ THAT may be provided for in the mortgage, may be
9 included as a part of the expenses ALLOWED TO BE TAXED UNDER

1 SUBSECTION (1) AND in the amount bid ~~upon such~~ IN THE sale for
2 principal and interest due ~~thereon in the following amounts:~~ ON
3 THE MORTGAGE. THE CHARGE FOR ATTORNEY FEES SHALL NOT EXCEED THE
4 AMOUNT ALLOWABLE UNDER THE FEE SCHEDULE IN THE UNDERWRITING
5 GUIDELINES OF THE VETERANS' ADMINISTRATION, THE FEDERAL HOUSING
6 AUTHORITY, THE FEDERAL HOME LOAN MORTGAGE CORPORATION, THE FED-
7 ERAL NATIONAL MORTGAGE ASSOCIATION, OR SIMILAR AGENCY, THAT APPLY
8 TO THE LOAN BEING FORECLOSED. IF SIMILAR UNDERWRITING GUIDELINES
9 DO NOT APPLY TO THE LOAN BEING FORECLOSED, OR IF A THIRD PARTY IS
10 THE SUCCESSFUL BIDDER AT THE FORECLOSURE SALE, THE ATTORNEY MAY
11 CHARGE A FEE NOT TO EXCEED 3% OF THE AMOUNT OF PRINCIPAL AND
12 INTEREST DUE UNDER THE LOAN, PLUS EXPENSES AND COSTS.

13 ~~(a) for all sums of \$1,000.00 or less, \$25.00.~~

14 ~~(b) for all sums over \$1,000.00 but less than \$5,000.00,~~
15 ~~\$50.00.~~

16 ~~(c) for all sums of \$5,000.00 or more, \$75.00.~~

17 ~~But if payment is made after foreclosure proceedings are~~
18 ~~commenced and before sale is made, only 1/2 of such attorney's~~
19 ~~fees shall be allowed. Both the principal and the interest due~~
20 ~~thereon shall be included in the sum on which the attorney's fee~~
21 ~~is computed.~~

22 (3) IF REPAYMENT OR REINSTATEMENT OF THE LOAN IS MADE AFTER
23 FORECLOSURE PROCEEDINGS ARE COMMENCED BUT BEFORE THE SALE IS
24 MADE, THE AMOUNT OF ATTORNEY FEES PERMITTED TO BE CHARGED TO THE
25 BORROWER SHALL NOT EXCEED THE AMOUNT OF FEES ALLOWED UNDER THIS
26 SECTION.

1 SEC. 3181. (1) A MORTGAGEE OF REAL PROPERTY MAY SUBMIT A
2 WRITTEN REQUEST BY CERTIFIED MAIL TO A MORTGAGEE OF ANY LIEN
3 WHICH IS SENIOR TO THE LIEN OF THE REQUESTER, FOR WRITTEN NOTICE
4 OF ANY DELINQUENCIES OF 3 MONTHS OR MORE, IN PAYMENTS OF PRINCIPAL OR INTEREST ON ANY OBLIGATION SECURED BY THE SENIOR LIEN.

6 (2) THE REQUEST ALLOWED UNDER SUBSECTION (1) SHALL BE SENT
7 TO THE MORTGAGEE, OR THE MORTGAGEE'S AGENT DESIGNATED FOR THE
8 PURPOSE OF RECEIVING LOAN PAYMENTS, AT THE ADDRESS SPECIFIED FOR
9 THE RECEIPT OF PAYMENTS OR AT THE ADDRESS SHOWN ON THE RECORDED
10 DEED OR MORTGAGE.

11 (3) THE REQUEST FOR NOTICE SHALL IDENTIFY THE OWNERSHIP OR
12 SECURITY INTEREST OF THE REQUESTER, THE DATE ON WHICH THE INTEREST OF THE REQUESTER WILL TERMINATE, THE NAME OF THE MORTGAGOR
14 AND THE NAME OF THE CURRENT OWNER OF THE SECURITY PROPERTY IF
15 DIFFERENT FROM THE MORTGAGOR, THE STREET ADDRESS OR OTHER
16 DESCRIPTION OF THE SECURITY PROPERTY, THE LOAN NUMBER, IF AVAILABLE, OF THE LOAN SECURED BY THE SENIOR LIEN, AND THE NAME AND
18 ADDRESS TO WHICH THE NOTICE IS TO BE SENT AND BE ACCOMPANIED BY A
19 FEE OF \$40.00.

20 (4) UNLESS DELINQUENCY HAS BEEN CURED WITHIN 15 DAYS FOLLOWING THE END OF 3 MONTHS FROM A DELINQUENCY IN PAYMENTS OF PRINCIPAL OR INTEREST ON ANY OBLIGATION SECURED BY THE SENIOR LIEN OR
23 WITHIN 10 DAYS FROM THE MAILING OF THE REQUEST FOR NOTICE, WHICHEVER OCCURS LATER, THE SENIOR LIEN MORTGAGEE SHALL GIVE WRITTEN
25 NOTICE TO THE REQUESTER OF THE FACT OF THE DELINQUENCY AND THE
26 AMOUNT OF THE DELINQUENCY.

1 (5) IF THE MORTGAGEE OF THE SENIOR LIEN FAILS TO GIVE NOTICE
 2 TO THE REQUESTER AS REQUIRED BY THIS SECTION AND A SUBSEQUENT
 3 FORECLOSURE SALE OF THE SECURITY PROPERTY OCCURS, THE MORTGAGEE
 4 OF THE SENIOR LIEN SHALL BE LIABLE TO THE REQUESTER FOR ANY MONE-
 5 TARY DAMAGE DUE TO THE FAILURE TO PROVIDE NOTICE WITHIN THE TIME
 6 PERIOD REQUIRED BY THIS SECTION AND SHALL ALSO FORFEIT TO THE
 7 REQUESTER THE SUM OF \$300.00.

8 (6) A SHOWING BY THE MORTGAGEE OF THE SENIOR LIEN BY A PRE-
 9 PONDERANCE OF THE EVIDENCE THAT THE FAILURE TO PROVIDE TIMELY
 10 NOTICE AS REQUIRED BY THIS SECTION RESULTED FROM A BONA FIDE
 11 ERROR NOTWITHSTANDING THE MAINTENANCE OF PROCEDURES REASONABLY
 12 ADAPTED TO AVOID ANY SUCH ERROR SHALL BE A DEFENSE TO ANY LIABIL-
 13 ITY FOR THAT FAILURE UNDER SUBSECTION (5).

14 Sec. 3208. (1) Notice that the mortgage will be foreclosed
 15 by a sale of the mortgaged premises, or ~~some~~ A part of ~~them~~
 16 THE PREMISES, shall be given by publishing the ~~same for 4 suc-~~
 17 ~~cessive weeks at least once in each week~~ NOTICE A TOTAL OF 5
 18 TIMES, ONCE WEEKLY FOR 5 CONSECUTIVE WEEKS, in a newspaper pub-
 19 lished in the county where the premises ~~included in the mortgage~~
 20 ~~and intended~~ to be sold ~~, or some part of them,~~ are ~~situated~~
 21 LOCATED. If no newspaper is published in the APPROPRIATE county,
 22 the notice shall be published in a newspaper published in an
 23 adjacent county. ~~In every case within~~

24 (2) WITHIN 15 days after the first publication of the notice
 25 UNDER SUBSECTION (1), a true copy OF THE NOTICE shall be posted
 26 in a conspicuous place upon any part of the premises described in
 27 the notice.

1 Sec. 3216. (1) The sale shall be at public sale, CONDUCTED
2 between ~~the hour of 9 o'clock in the forenoon and 4 o'clock in~~
3 ~~the afternoon~~ 9 A.M. AND 4 P.M., at ~~the place of holding the~~
4 circuit court ~~within~~ FOR the county in which the premises to be
5 sold ~~, or some part of them, are situated, and shall be made by~~
6 ~~the person appointed for that purpose in the mortgage, or by the~~
7 ~~sheriff, undersheriff, or a deputy sheriff of the county, to the~~
8 ~~highest bidder~~ ARE LOCATED.

9 (2) THE SALE SHALL BE CONDUCTED BY A PERSON LICENSED UNDER
10 1955 PA 224, MCL 446.51 TO 446.60, OR AS OTHERWISE PERMITTED BY
11 LAW.

12 Sec. 3240. ~~(1) A purchaser's deed is void if the mortga-~~
13 ~~gor, the mortgagor's heirs, executors, or administrators, or any~~
14 ~~person lawfully claiming under the mortgagor, the mortgagor's~~
15 ~~heirs, executors, or administrators redeems the entire premises~~
16 ~~sold by paying the amount required under subsection (2), within~~
17 ~~the applicable time limit prescribed in subsections (7) to (12),~~
18 ~~to the purchaser, the purchaser's executors, administrators, or~~
19 ~~assigns, or to the register of deeds in whose office the deed is~~
20 ~~deposited for the benefit of the purchaser.~~

21 ~~(2) The amount required to be paid under subsection (1) is~~
22 ~~the sum that was bid for the entire premises sold, with interest~~
23 ~~from the time of the sale at the rate percent borne by the mort-~~
24 ~~gage, together with the amount of the sheriff's fee paid by the~~
25 ~~purchaser under section 2558(2)(q), and an additional \$3.00 as a~~
26 ~~fee for the care and custody of the redemption money if the~~
27 ~~payment is made to the register of deeds.~~

1 ~~(3) If a distinct lot or parcel separately sold is redeemed,~~
2 ~~leaving a portion of the premises unredeemed, the deed shall be~~
3 ~~inoperative only to the redeemed parcel or parcels, and to those~~
4 ~~portions that have not been redeemed the deed shall remain~~
5 ~~valid.~~

6 ~~(4) If after the sale the purchaser, the purchaser's heirs,~~
7 ~~executors, or administrators, or any person lawfully claiming~~
8 ~~under the purchaser, the purchaser's heirs, executors, or admin-~~
9 ~~istrators pays taxes assessed against the property, amounts nec-~~
10 ~~essary to redeem senior liens from foreclosure, or premiums on an~~
11 ~~insurance policy covering any buildings located on the property~~
12 ~~that under the terms of the mortgage it would have been the duty~~
13 ~~of the mortgagor to pay if the mortgage had not been foreclosed~~
14 ~~and that are necessary to keep the policy in force until the~~
15 ~~expiration of the period of redemption, redemption shall be made~~
16 ~~only upon payment of the sum specified in subsection (2) plus the~~
17 ~~amounts specified in this subsection with interest on the amounts~~
18 ~~specified in this subsection from the date of the payment to the~~
19 ~~date of redemption at the rate specified in the mortgage, if all~~
20 ~~of the following are filed with the register of deeds with whom~~
21 ~~the deed is deposited:~~

22 ~~(a) An affidavit by the purchaser or someone in his or her~~
23 ~~behalf who has knowledge of the facts of the payment showing the~~
24 ~~amount and items paid.~~

25 ~~(b) The receipt or copy of the canceled check evidencing the~~
26 ~~payment of the taxes, amounts necessary to redeem senior liens~~
27 ~~from foreclosure, or insurance premiums.~~

1 ~~(c) An affidavit of an insurance agent of the insurance~~
2 ~~company stating that the payment was made and what portion of the~~
3 ~~payment covers the premium for the period prior to the expiration~~
4 ~~of the period of redemption.~~

5 ~~(5) If the redemption payment in subsection (4) includes an~~
6 ~~amount used to redeem a senior lien from a nonjudicial foreclo-~~
7 ~~sure, the mortgagor shall have the same defenses against the pur-~~
8 ~~chaser with respect to the amount used to redeem the senior lien~~
9 ~~as the mortgagor would have had against the senior lien.~~

10 ~~(6) The register of deeds shall indorse on the documents~~
11 ~~filed pursuant to subsection (4) the time they are received. The~~
12 ~~register of deeds shall record the affidavit of the purchaser~~
13 ~~only and shall preserve in his or her files the recorded affida-~~
14 ~~vit, receipts, insurance receipts, and insurance agent's affida-~~
15 ~~vit until expiration of the period of redemption.~~

16 ~~(7) For a mortgage executed on or after January 1, 1965, on~~
17 ~~commercial or industrial property, or multifamily residential~~
18 ~~property in excess of 4 units, the redemption period is 6 months~~
19 ~~from the time of the sale.~~

20 ~~(8) For a mortgage executed on or after January 1, 1965, on~~
21 ~~residential property not exceeding 4 units and not more than 3~~
22 ~~acres in size, if the amount claimed to be due on the mortgage at~~
23 ~~the date of the notice of foreclosure is more than 66-2/3% of the~~
24 ~~original indebtedness secured by the mortgage, the redemption~~
25 ~~period is 6 months.~~

26 ~~(1) THE DEED ISSUED UNDER THE SALE SHALL BE VOID IF THE~~
27 ~~MORTGAGOR, THE MORTGAGOR'S HEIRS, EXECUTORS, OR ADMINISTRATORS OR~~

1 A PERSON LAWFULLY CLAIMING UNDER THE MORTGAGOR REDEEMS THE ENTIRE
2 PREMISES SOLD BY PAYING WITHIN 30 DAYS AFTER THE DATE OF THE SALE
3 TO THE PURCHASER, THE PURCHASER'S SUCCESSORS, OR THE REGISTER OF
4 DEEDS IN WHOSE OFFICE THE DEED IS DEPOSITED FOR THE BENEFIT OF
5 THE PURCHASER, THE SUM WHICH WAS BID FOR THE ENTIRE PREMISES
6 SOLD, WITH INTEREST FROM THE TIME OF THE SALE AT THE INTEREST
7 RATE BORNE BY THE MORTGAGE.

8 (2) IF A DISTINCT LOT OR PARCEL LESS THAN THE WHOLE PREMISES
9 IS SEPARATELY SOLD AND REDEEMED UNDER THIS SECTION, LEAVING A
10 PORTION OF THE PREMISES UNREDEEMED, THE DEED SHALL BE VOID ONLY
11 AS TO THAT PORTION OF THE PREMISES REDEEMED.

12 (3) IF THE PAYMENT IS MADE TO THE REGISTER OF DEEDS, THE
13 REDEMPTION AMOUNT SHALL INCLUDE A \$3.00 FEE FOR THE CARE AND CUS-
14 TODY OF THE REDEMPTION MONEY.

15 (4) ~~-(9)-~~ For a mortgage on residential property not exceed-
16 ing 4 units and not more than 3 acres in size, if the property is
17 abandoned as determined ~~pursuant to~~ UNDER section 3241, the
18 redemption period is ~~3 months~~ 90 DAYS.

19 (5) ~~-(10)-~~ For a mortgage on residential property not
20 exceeding 4 units and not more than 3 acres in size, if the
21 amount claimed to be due on the mortgage at the date of the
22 notice of foreclosure is more than 66-2/3% of the original
23 indebtedness secured by the mortgage and the property is aban-
24 doned as determined ~~pursuant to~~ UNDER section 3241, the redemp-
25 tion period is ~~1 month~~ 30 DAYS.

1 (6) ~~—(11)—~~ If the property is abandoned as determined
2 ~~—pursuant to—~~ UNDER section 3241a, the redemption period is 30
3 days.

4 (7) ~~—(12) In any other case—~~ EXCEPT AS OTHERWISE PROVIDED BY
5 THIS SECTION, the redemption period is 1 year from the date of
6 the sale.