

HOUSE BILL No. 5859

May 6, 2004, Introduced by Reps. Lipsey, Howell, Voorhees, Bieda, Gaffney and Koetje and referred to the Committee on Commerce.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 3204 and 3212 (MCL 600.3204 and 600.3212),
as amended by 1994 PA 397.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3204. (1) A party may foreclose **a mortgage** by
2 advertisement if all of the following circumstances exist:

3 (a) A default in a condition of the mortgage has occurred, by
4 which the power to sell became operative.

5 (b) ~~A suit~~ **An action** or proceeding has not been instituted,
6 at law, to recover the debt ~~then remaining~~ secured by the
7 mortgage ~~—~~ or any part of the mortgage; or, if ~~a suit~~ **an**
8 **action** or proceeding has been instituted, the ~~suit~~ **action** or
9 proceeding has been discontinued; or an execution ~~upon the~~ **on a**
10 judgment rendered in ~~a suit~~ **an action** or proceeding has been

1 returned unsatisfied, in whole or in part.

2 (c) The mortgage containing the power of sale has been
 3 properly recorded. ~~and, if the party foreclosing is not the~~
 4 ~~original mortgagee, a record chain of title exists evidencing the~~
 5 ~~assignment of the mortgage to the party foreclosing the~~
 6 ~~mortgage.~~

7 (d) The party foreclosing the mortgage is either the owner of
 8 the indebtedness or of an interest in the indebtedness secured by
 9 the mortgage or the serving agent of the mortgage.

10 (2) ~~When mortgages are~~ **If a mortgage is** given to secure the
 11 payment of money by installments, each of the installments
 12 mentioned in the mortgage after the first shall be ~~taken and~~
 13 ~~considered to be~~ **treated as** a separate and independent
 14 mortgage. The mortgage for each of the installments may be
 15 foreclosed in the same manner and with the same effect as if a
 16 separate mortgage were given for each subsequent installment. A
 17 redemption of a sale by the mortgagor ~~shall have~~ **has** the same
 18 effect as if the sale for the installment had been made upon an
 19 independent prior mortgage.

20 (3) **If the party foreclosing a mortgage by advertisement is**
 21 **not the original mortgagee, a chain of title shall exist prior to**
 22 **the date of sale under section 3216 evidencing the assignment of**
 23 **the mortgage to the party foreclosing the mortgage.**

24 Sec. 3212. Every notice of foreclosure by advertisement
 25 shall include all of the following:

26 (a) The names of the mortgagor, the **original** mortgagee, and
 27 the foreclosing assignee of ~~a recorded~~ **an** assignment of the

1 mortgage.

2 (b) The date of the mortgage and the date the mortgage was
3 recorded.

4 (c) The amount claimed to be due on the mortgage on the date
5 of the notice.

6 (d) A description of the mortgaged premises that
7 substantially conforms with the description contained in the
8 mortgage.

9 (e) For a mortgage executed on or after January 1, 1965, the
10 length of the redemption period as determined under section
11 3240.