

HOUSE BILL No. 5857

March 4, 2008, Introduced by Rep. Jackson and referred to the Committee on Banking and Financial Services.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 3101, 3115, 3201, and 3236 (MCL 600.3101,
600.3115, 600.3201, and 600.3236), sections 3101 and 3201 as
amended by 1981 PA 172, and by adding sections 3116 and 3237.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3101. The circuit court has jurisdiction to foreclose
2 mortgages of real estate and land contracts. However, **WITH THE**
3 **EXCEPTION OF SECTION 3116**, the procedures ~~set forth~~ in this chapter
4 ~~shall~~ **DO** not apply to mortgages of real estate and land contracts
5 held by the Michigan state housing development authority.

6 Sec. 3115. ~~Whenever a complaint is filed~~ **SUBJECT TO SECTION**
7 **3116, IN AN ACTION** for the foreclosure or satisfaction of ~~any~~ **A**

1 mortgage on real estate or land contract, the court ~~has power to~~
 2 **MAY** order a sale of the premises ~~which~~ **THAT** are the subject of the
 3 mortgage ~~on real estate or land contract~~, or of ~~that~~ part of the
 4 premises ~~which~~ **THAT** is sufficient to discharge the amount due on
 5 the mortgage ~~on real estate or land contract~~ plus costs. ~~But the~~
 6 ~~circuit judge~~ **THE COURT** shall not order that the lands subject to
 7 the mortgage be sold within 6 months after the filing of the
 8 complaint for foreclosure of the mortgage or that the lands ~~which~~
 9 **THAT** are the subject of the land contract be sold within 3 months
 10 after the filing of the complaint for foreclosure of the land
 11 contract.

12 SEC. 3116. (1) IN AN ACTION TO FORECLOSE A MORTGAGE OF OR LAND
 13 CONTRACT FOR THE SALE OF RESIDENTIAL PROPERTY IN WHICH A JUDGMENT
 14 OF FORECLOSURE HAS NOT BEEN ENTERED BY THE EFFECTIVE DATE OF THE
 15 AMENDATORY ACT THAT ADDED THIS SECTION, THE COURT, ON MOTION OF A
 16 DEFENDANT, SHALL ORDER THE ACTION STAYED UNTIL 1 YEAR AFTER THE
 17 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

18 (2) IN AN ACTION TO FORECLOSE A MORTGAGE OF OR LAND CONTRACT
 19 FOR THE SALE OF RESIDENTIAL PROPERTY IN WHICH A JUDGMENT OF
 20 FORECLOSURE HAS BEEN ENTERED BUT THE PERIOD OF REDEMPTION HAS NOT
 21 EXPIRED BY THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
 22 SECTION, THE COURT, ON MOTION OF A DEFENDANT, SHALL DO 1 OF THE
 23 FOLLOWING:

24 (A) IF THE PROPERTY HAS NOT BEEN SOLD UNDER THE JUDGMENT,
 25 AMEND THE JUDGMENT TO INCLUDE A STAY OF THE SALE UNTIL 1 YEAR AFTER
 26 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION.

27 (B) IF THE PROPERTY HAS BEEN SOLD UNDER THE JUDGMENT, INCLUDE

1 IN THE ORDER CONFIRMING THE REPORT OF SALE OR, IF THE ORDER
2 CONFIRMING THE REPORT OF SALE HAS BEEN ENTERED, AMEND THE ORDER TO
3 INCLUDE A PROVISION EXTENDING THE PERIOD OF REDEMPTION UNTIL 1 YEAR
4 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
5 SECTION. THE REGISTER OF DEEDS SHALL INDORSE, RECORD, AND INDEX AN
6 ORDER AMENDING AN ORDER CONFIRMING THE REPORT OF SALE UNDER THIS
7 SUBDIVISION IN THE MANNER PROVIDED FOR DEEDS OF SALE UNDER SECTION
8 3130 OR, IF THE MORTGAGE OR LAND CONTRACT IS HELD BY THE MICHIGAN
9 STATE HOUSING DEVELOPMENT AUTHORITY, UNDER SECTION 48G OF THE STATE
10 HOUSING DEVELOPMENT AUTHORITY ACT OF 1966, 1966 PA 346, MCL
11 125.1448G, AND NOTE THE EXISTENCE OF THE ORDER AMENDING THE ORDER
12 CONFIRMING THE REPORT OF SALE ON THE RECORD OF THE DEED OF SALE.

13 (3) THE COURT MAY INCLUDE IN AN ORDER ENTERED UNDER SUBSECTION
14 (1) OR A JUDGMENT OR ORDER ENTERED UNDER SUBSECTION (2) ANY OF THE
15 FOLLOWING PROVISIONS RELATING TO THE PROPERTY DURING THE STAY OR
16 EXTENSION:

17 (A) POSSESSION OF THE PROPERTY. IN MAKING AN ORDER UNDER THIS
18 SUBDIVISION, THE COURT SHALL GIVE PREFERENCE TO THE OWNER IN
19 POSSESSION.

20 (B) A FAIR AMOUNT TO BE PAID AS RENTAL BY THE PERSON IN
21 POSSESSION.

22 (C) THE APPLICATION OF MONEY RECEIVED FROM RENT UNDER
23 SUBDIVISION (B) OR ANY OTHER INCOME OR PROFITS OF THE PROPERTY. THE
24 COURT MAY ORDER THAT PAYMENT AND DISTRIBUTION OF MONEY BE MADE
25 THROUGH THE CLERK OF THE COURT OR ANOTHER PERSON.

26 (D) PRESERVATION OF THE PROPERTY, INCLUDING PAYMENT OF TAXES
27 AND MAINTENANCE OF INSURANCE.

(4) THE COURT MAY SET ASIDE OR MODIFY AN ORDER OR JUDGMENT ENTERED UNDER SUBSECTION (1) OR (2) IF A DEFENDANT SUBSTANTIALLY VIOLATES A PROVISION ORDERED UNDER SUBSECTION (3) OR FOR ANY OTHER REASON THAT THE COURT DETERMINES IN ITS DISCRETION TO JUSTIFY THE CHANGE. IF AN ORDER OR JUDGMENT ENTERED UNDER SUBSECTION (1) OR (2) IS SET ASIDE, THE RIGHTS OF A PERSON INTERESTED IN THE PROPERTY THAT WERE AFFECTED BY THE ORDER OR JUDGMENT ARE REINVESTED IN THE PERSON EFFECTIVE THE DATE THE ORDER OR JUDGMENT IS SET ASIDE AS IF THE ORDER OR JUDGMENT HAD NOT BEEN ENTERED.

Sec. 3201. (1) ~~Every~~SUBJECT TO SUBSECTION (3), EVERY mortgage of real estate ~~, which~~THAT contains a power of sale, upon default ~~being made in any condition of such~~THE mortgage, may be foreclosed by advertisement ~~, in the cases and in the manner specified~~AS PROVIDED in this chapter. ~~However, the procedures set forth in this~~

(2) WITH THE EXCEPTION OF SUBSECTION (3) AND SECTION 3237, THIS chapter ~~shall~~DOES not apply to mortgages of real estate held by the Michigan state housing development authority.

(3) BEFORE 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, IF A MORTGAGE OF RESIDENTIAL PROPERTY IS BEING FORECLOSED BY ADVERTISEMENT, THE OWNER OF THE MORTGAGED PROPERTY OR A PERSON LIABLE UNDER THE MORTGAGE OR MORTGAGE NOTE MAY FILE AN ACTION IN THE CIRCUIT COURT FOR THE COUNTY WHERE THE PROPERTY IS LOCATED TO ENJOIN FORECLOSURE OF THE MORTGAGE BY ADVERTISEMENT. THE COURT IN AN ACTION FILED UNDER THIS SUBSECTION SHALL ENJOIN FORECLOSURE OF THE MORTGAGE BY ADVERTISEMENT AND ORDER THE FORECLOSURE TO PROCEED UNDER CHAPTER 31 OR, IF THE MORTGAGE IS HELD BY THE MICHIGAN STATE HOUSING

1 DEVELOPMENT AUTHORITY, UNDER SECTIONS 48A TO 48P OF THE STATE
 2 HOUSING DEVELOPMENT AUTHORITY ACT OF 1966, 1966 PA 346, MCL
 3 125.1448A TO 125.1448P.

4 Sec. 3236. (1) ~~Unless~~ EXCEPT AS PROVIDED IN SECTION 3237,
 5 UNLESS the premises described in ~~such~~ THE deed ~~shall be~~ OF SALE ARE
 6 redeemed within the ~~time limited for such~~ APPLICABLE PERIOD OF
 7 redemption as ~~hereinafter~~ provided, ~~such~~ IN THIS CHAPTER, THE deed
 8 ~~shall thereupon become~~ BECOMES operative, ~~ON THE EXPIRATION OF THE~~
 9 PERIOD OF REDEMPTION and ~~shall vest~~ VESTS in the grantee therein
 10 named, ~~his~~ IN THE DEED OR THE GRANTEE'S heirs or assigns, ~~all the~~
 11 right, title, and interest ~~which~~ the mortgagor had at the time of
 12 the execution of the mortgage, or at any time ~~thereafter~~ AFTER THE
 13 EXECUTION, except as to any parcel or parcels ~~which may~~ THAT have
 14 been redeemed and canceled, ~~as hereinafter~~ provided, ~~and the~~ IN
 15 THIS CHAPTER.

16 (2) AFTER THE PERIOD OF REDEMPTION EXPIRES, THE record thereof
 17 ~~shall thereafter,~~ OF THE DEED OF SALE IS for all purposes ~~be deemed~~
 18 a valid record of ~~said~~ THE deed OF SALE without being re-recorded.
 19 ~~but no~~ HOWEVER, A person ~~having any~~ WHO HAS A valid subsisting
 20 lien ~~upon~~ ON the mortgaged premises, or any part thereof ~~OF THE~~
 21 MORTGAGED PREMISES, created before the lien of ~~such~~ THE mortgage
 22 took effect, shall NOT be prejudiced by ~~any such~~ THE sale, ~~nor~~
 23 ~~shall his~~ AND THE PERSON'S rights or interests ~~be~~ ARE NOT in any
 24 way affected ~~thereby~~ BY THE SALE.

25 SEC. 3237. (1) IF THE APPLICABLE PERIOD OF REDEMPTION PROVIDED
 26 UNDER THIS CHAPTER FOR A MORTGAGE OF RESIDENTIAL PROPERTY THAT IS
 27 BEING FORECLOSED BY ADVERTISEMENT HAS NOT EXPIRED BY 1 YEAR AFTER

1 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, A
2 PERSON DESCRIBED IN SUBSECTION (2) MAY FILE A COMPLAINT IN THE
3 CIRCUIT COURT FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED
4 REQUESTING THE RELIEF DESCRIBED IN SUBSECTION (3).

5 (2) ONE OR MORE OF THE FOLLOWING MAY FILE AN ACTION UNDER THIS
6 SECTION:

7 (A) THE MORTGAGOR.

8 (B) THE OWNER OF THE MORTGAGED PROPERTY.

9 (C) A PERSON WHO IS LIABLE ON THE MORTGAGE OR NOTE.

10 (3) THE COURT IN AN ACTION UNDER THIS SECTION SHALL ENTER AN
11 ORDER ENJOINING UNTIL 1 YEAR AFTER THE EFFECTIVE DATE OF THE
12 AMENDATORY ACT THAT ADDED THIS SECTION THE ISSUANCE OF A WRIT OF
13 RESTITUTION OR OTHER ORDER TO GIVE A PURCHASER UNDER A DEED OF SALE
14 POSSESSION OF THE MORTGAGED PROPERTY. THE COURT MAY INCLUDE IN THE
15 ORDER A PROVISION LISTED IN SECTION 3116(3).

16 (4) THE REGISTER OF DEEDS SHALL INDORSE, RECORD, AND INDEX AN
17 ORDER UNDER SUBSECTION (3) IN THE MANNER PROVIDED FOR DEEDS OF SALE
18 UNDER SECTION 3232 OR, IF THE MORTGAGE IS HELD BY THE MICHIGAN
19 STATE HOUSING DEVELOPMENT AUTHORITY, UNDER SECTION 49H OF THE STATE
20 HOUSING DEVELOPMENT AUTHORITY ACT OF 1966, 1966 PA 346, MCL
21 125.1449H, AND NOTE THE EXISTENCE OF THE ORDER ON THE RECORD OF THE
22 DEED OF SALE.

23 (5) THE COURT MAY SET ASIDE OR MODIFY AN ORDER ENTERED UNDER
24 SUBSECTION (3) IF A DEFENDANT SUBSTANTIALLY VIOLATES A PROVISION
25 LISTED IN SECTION 3116(3) THAT IS INCLUDED IN THE ORDER OR FOR ANY
26 OTHER REASON THAT THE COURT DETERMINES IN ITS DISCRETION TO JUSTIFY
27 THE CHANGE. IF AN ORDER ENTERED UNDER SUBSECTION (3) IS SET ASIDE,

1 THE RIGHTS OF A PERSON INTERESTED IN THE PROPERTY THAT WERE
2 AFFECTED BY THE ORDER ARE REINVESTED IN THE PERSON EFFECTIVE THE
3 DATE THE ORDER IS SET ASIDE AS IF THE ORDER HAD NOT BEEN ENTERED.

4 Enacting section 1. This amendatory act does not take effect
5 unless Senate Bill No.____ or House Bill No.____ (request no.
6 05450'07 a) of the 94th Legislature is enacted into law.