

Act No. 29
Public Acts of 2009
Approved by the Governor
May 20, 2009
Filed with the Secretary of State
May 21, 2009
EFFECTIVE DATE: July 5, 2009

**STATE OF MICHIGAN
95TH LEGISLATURE
REGULAR SESSION OF 2009**

Introduced by Reps. Jackson, Roy Schmidt, Simpson, Robert Jones, Cushingberry, Slavens, Lisa Brown, Roberts, Corriveau, Scripps, Kennedy, Huckleberry, Haase, Haugh, Liss, Tlaib, Segal, Switalski, Bledsoe, Nerat, Smith, Ebli, Barnett, Melton, Miller, Nathan and Leland

ENROLLED HOUSE BILL No. 4453

AN ACT to amend 1961 PA 236, entitled "An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of such courts, and of the judges and other officers thereof; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in said courts; pleading, evidence, practice and procedure in civil and criminal actions and proceedings in said courts; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending the title and section 3204 (MCL 600.3204), the title as amended by 1999 PA 239 and section 3204 as amended by 2004 PA 186, and by adding section 3205.

The People of the State of Michigan enact:

TITLE

An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts.

Sec. 3204. (1) Subject to subsection (4), a party may foreclose a mortgage by advertisement if all of the following circumstances exist:

- (a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.
- (b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage; or, if an action or proceeding has been instituted, the action or proceeding has been discontinued; or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.
- (c) The mortgage containing the power of sale has been properly recorded.
- (d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

(2) If a mortgage is given to secure the payment of money by installments, each of the installments mentioned in the mortgage after the first shall be treated as a separate and independent mortgage. The mortgage for each of the installments may be foreclosed in the same manner and with the same effect as if a separate mortgage were given for each subsequent installment. A redemption of a sale by the mortgagor has the same effect as if the sale for the installment had been made upon an independent prior mortgage.

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

(4) A party shall not commence proceedings under this chapter to foreclose a mortgage of property described in section 3205a(1) if 1 or more of the following apply:

(a) Notice has not been mailed to the mortgagor as required by section 3205a.

(b) After a notice is mailed to the mortgagor under section 3205a, the time for a housing counselor to notify the person designated under section 3205a(1)(c) of a request by the mortgagor under section 3205b(1) has not expired.

(c) Within 14 days after a notice is mailed to the mortgagor under section 3205a, the mortgagor has requested a meeting under section 3205b with the person designated under section 3205a(1)(c) and 90 days have not passed after the notice was mailed.

(d) The mortgagor has requested a meeting under section 3205b with the person designated under section 3205a(1)(c), the mortgagor has provided documents if requested under section 3205b(2), and the person designated under section 3205a(1)(c) has not met or negotiated with the mortgagor under this chapter.

(e) The mortgagor and mortgagee have agreed to modify the mortgage loan and the mortgagor is not in default under the modified agreement.

(f) Calculations under section 3205c(1) show that the mortgagor is eligible for a loan modification and foreclosure under this chapter is not allowed under section 3205c(7).

(5) Subsection (4) applies only to proceedings under this chapter in which the first notice under section 3208 is published after the effective date of the amendatory act that added this subsection and before 2 years after the effective date of the amendatory act that added this subsection.

Sec. 3205. As used in this section and sections 3205a to 3205d:

(a) "Borrower" means the mortgagor.

(b) "Mortgage holder" means the owner of the indebtedness or of an interest in the indebtedness that is secured by the mortgage.

(c) "Mortgage servicer" means the servicing agent of the mortgage.

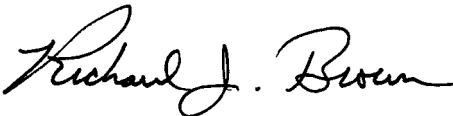
Enacting section 1. This amendatory act takes effect 45 days after the date it is enacted into law.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 95th Legislature are enacted into law:

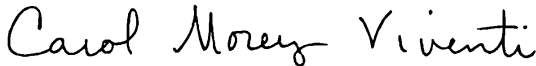
(a) House Bill No. 4454.

(b) House Bill No. 4455.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Compiler's note: House Bill No. 4454, referred to in enacting section 2, was filed with the Secretary of State May 21, 2009, and became 2009 PA 30, Eff. July 5, 2009.

House Bill No. 4455, also referred to in enacting section 2, was filed with the Secretary of State May 21, 2009, and became 2009 PA 31, Eff. July 5, 2009.