

SUBSTITUTE FOR
HOUSE BILL NO. 4453

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
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:

1

TITLE

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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~~ **THE** courts, and of the judges and other
officers thereof **OF THE COURTS**; the forms and attributes of civil
claims and actions; the time within which civil actions and

1 proceedings may be brought in ~~said~~**THE** courts; pleading, evidence,
2 practice, and procedure in civil and criminal actions and
3 proceedings in ~~said~~**THE** courts; **TO PROVIDE FOR THE POWERS AND**
4 **DUTIES OF CERTAIN STATE GOVERNMENTAL OFFICERS AND ENTITIES;** to
5 provide remedies and penalties for the violation of certain
6 provisions of this act; to repeal all acts and parts of acts
7 inconsistent with or contravening any of the provisions of this
8 act; and to repeal acts and parts of acts.

9 Sec. 3204. (1) ~~A~~**SUBJECT TO SUBSECTION (4),** A party may
10 foreclose a mortgage by advertisement if all of the following
11 circumstances exist:

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

14 (b) An action or proceeding has not been instituted, at law,
15 to recover the debt secured by the mortgage or any part of the
16 mortgage; or, if an action or proceeding has been instituted, the
17 action or proceeding has been discontinued; or an execution on a
18 judgment rendered in an action or proceeding has been returned
19 unsatisfied, in whole or in part.

20 (c) The mortgage containing the power of sale has been
21 properly recorded.

22 (d) The party foreclosing the mortgage is either the owner of
23 the indebtedness or of an interest in the indebtedness secured by
24 the mortgage or the servicing agent of the mortgage.

25 (2) If a mortgage is given to secure the payment of money by
26 installments, each of the installments mentioned in the mortgage
27 after the first shall be treated as a separate and independent

1 mortgage. The mortgage for each of the installments may be
2 foreclosed in the same manner and with the same effect as if a
3 separate mortgage were given for each subsequent installment. A
4 redemption of a sale by the mortgagor has the same effect as if the
5 sale for the installment had been made upon an independent prior
6 mortgage.

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

11 (4) A PARTY SHALL NOT COMMENCE PROCEEDINGS UNDER THIS CHAPTER
12 TO FORECLOSE A MORTGAGE OF PROPERTY DESCRIBED IN SECTION 3205A(1)
13 IF 1 OR MORE OF THE FOLLOWING APPLY:

14 (A) NOTICE HAS NOT BEEN MAILED TO THE MORTGAGOR AS REQUIRED BY
15 SECTION 3205A.

16 (B) AFTER A NOTICE IS MAILED TO THE MORTGAGOR UNDER SECTION
17 3205A, THE TIME FOR A HOUSING COUNSELOR TO NOTIFY THE PERSON
18 DESIGNATED UNDER SECTION 3205A(1) (C) OF A REQUEST BY THE MORTGAGOR
19 UNDER SECTION 3205B(1) HAS NOT EXPIRED.

20 (C) WITHIN 14 DAYS AFTER A NOTICE IS MAILED TO THE MORTGAGOR
21 UNDER SECTION 3205A, THE MORTGAGOR HAS REQUESTED A MEETING UNDER
22 SECTION 3205B WITH THE PERSON DESIGNATED UNDER SECTION 3205A(1) (C)
23 AND 90 DAYS HAVE NOT PASSED AFTER THE NOTICE WAS MAILED.

24 (D) THE MORTGAGOR HAS REQUESTED A MEETING UNDER SECTION 3205B
25 WITH THE PERSON DESIGNATED UNDER SECTION 3205A(1) (C), THE MORTGAGOR
26 HAS PROVIDED DOCUMENTS IF REQUESTED UNDER SECTION 3205B(2), AND THE
27 PERSON DESIGNATED UNDER SECTION 3205A(1) (C) HAS NOT MET OR

1 NEGOTIATED WITH THE MORTGAGOR UNDER THIS CHAPTER.

2 (E) THE MORTGAGOR AND MORTGAGEE HAVE AGREED TO MODIFY THE
3 MORTGAGE LOAN AND THE MORTGAGOR IS NOT IN DEFAULT UNDER THE
4 MODIFIED AGREEMENT.

5 (F) CALCULATIONS UNDER SECTION 3205C(1) SHOW THAT THE
6 MORTGAGOR IS ELIGIBLE FOR A LOAN MODIFICATION WITHOUT ANY EXCEPTION
7 BEING MADE.

8 (5) SUBSECTION (4) APPLIES ONLY TO PROCEEDINGS UNDER THIS
9 CHAPTER IN WHICH THE FIRST NOTICE UNDER SECTION 3208 IS PUBLISHED
10 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
11 SUBSECTION AND BEFORE 2 YEARS AFTER THE EFFECTIVE DATE OF THE
12 AMENDATORY ACT THAT ADDED THIS SUBSECTION.

13 SEC. 3205. AS USED IN THIS SECTION AND SECTIONS 3205A TO
14 3205D:

15 (A) "BORROWER" MEANS THE MORTGAGOR.

16 (B) "FDIC WORKOUT PROGRAM" MEANS THE FDIC MORTGAGE LOAN
17 MODIFICATION PROGRAM FOR DELINQUENT RESIDENTIAL FIRST MORTGAGES,
18 EFFECTIVE ON OCTOBER 6, 2008, PROPOSED BY THE FEDERAL DEPOSIT
19 INSURANCE CORPORATION TO BE USED FOR MODIFICATIONS OF RESIDENTIAL
20 MORTGAGE LOANS UNDER 12 USC 5220(B).

21 (C) "MORTGAGE HOLDER" MEANS THE OWNER OF THE INDEBTEDNESS OR
22 OF AN INTEREST IN THE INDEBTEDNESS THAT IS SECURED BY THE MORTGAGE.

23 (D) "MORTGAGE SERVICER" MEANS THE SERVICING AGENT OF THE
24 MORTGAGE.

25 Enacting section 1. This amendatory act does not take effect
26 unless all of the following bills of the 95th Legislature are
27 enacted into law:

- 1 (a) House Bill No. 4454.
- 2 (b) House Bill No. 4455.