

SENATE 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
proceedings may be brought in ~~said~~**THE** courts; pleading, evidence,
practice, and procedure in civil and criminal actions and

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1 proceedings in ~~said~~**THE** courts; **TO PROVIDE FOR THE POWERS AND**
2 **DUTIES OF CERTAIN STATE GOVERNMENTAL OFFICERS AND ENTITIES;** to
3 provide remedies and penalties for the violation of certain
4 provisions of this act; to repeal all acts and parts of acts
5 inconsistent with or contravening any of the provisions of this
6 act; and to repeal acts and parts of acts.

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

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

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

18 (c) The mortgage containing the power of sale has been
19 properly recorded.

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

23 (2) If a mortgage is given to secure the payment of money by
24 installments, each of the installments mentioned in the mortgage
25 after the first shall be treated as a separate and independent
26 mortgage. The mortgage for each of the installments may be
27 foreclosed in the same manner and with the same effect as if a

1 separate mortgage were given for each subsequent installment. A
2 redemption of a sale by the mortgagor has the same effect as if the
3 sale for the installment had been made upon an independent prior
4 mortgage.

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

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

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

14 (B) AFTER A NOTICE IS MAILED TO THE MORTGAGOR UNDER SECTION
15 3205A, THE TIME FOR A HOUSING COUNSELOR TO NOTIFY THE PERSON
16 DESIGNATED UNDER SECTION 3205A(1) (C) OF A REQUEST BY THE MORTGAGOR
17 UNDER SECTION 3205B(1) HAS NOT EXPIRED.

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

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

27 (E) THE MORTGAGOR AND MORTGAGEE HAVE AGREED IN WRITING TO

1 MODIFY THE MORTGAGE LOAN AND THE MORTGAGOR IS NOT IN DEFAULT UNDER
2 THE MODIFIED AGREEMENT.

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

8 SEC. 3205. AS USED IN THIS SECTION AND SECTIONS 3205A TO
9 3205D:

10 (A) "BORROWER" MEANS THE MORTGAGOR.

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

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

18 (D) "MORTGAGE SERVICER" MEANS THE SERVICING AGENT OF THE
19 MORTGAGE.

20 Enacting section 1. This amendatory act takes effect 30 days
21 after the date it is enacted into law.

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

25 (a) House Bill No. 4454.

26 (b) House Bill No. 4455.