

HOUSE BILL No. 4034

January 22, 2009, 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**
8 mortgage on real estate or land contract, the court ~~has power to~~

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

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

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

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

26 **(B) IF THE PROPERTY HAS BEEN SOLD UNDER THE JUDGMENT, INCLUDE**
 27 **IN THE ORDER CONFIRMING THE REPORT OF SALE OR, IF THE ORDER**

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

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

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

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

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

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

27 (4) THE COURT MAY SET ASIDE OR MODIFY AN ORDER OR JUDGMENT

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

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

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

17 (3) BEFORE 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY
 18 ACT THAT ADDED THIS SUBSECTION, IF A MORTGAGE OF RESIDENTIAL
 19 PROPERTY IS BEING FORECLOSED BY ADVERTISEMENT, THE OWNER OF THE
 20 MORTGAGED PROPERTY OR A PERSON LIABLE UNDER THE MORTGAGE OR
 21 MORTGAGE NOTE MAY FILE AN ACTION IN THE CIRCUIT COURT FOR THE
 22 COUNTY WHERE THE PROPERTY IS LOCATED TO ENJOIN FORECLOSURE OF THE
 23 MORTGAGE BY ADVERTISEMENT. THE COURT IN AN ACTION FILED UNDER THIS
 24 SUBSECTION SHALL ENJOIN FORECLOSURE OF THE MORTGAGE BY
 25 ADVERTISEMENT AND ORDER THE FORECLOSURE TO PROCEED UNDER CHAPTER 31
 26 OR, IF THE MORTGAGE IS HELD BY THE MICHIGAN STATE HOUSING
 27 DEVELOPMENT AUTHORITY, UNDER SECTIONS 48A TO 48P OF THE STATE

1 HOUSING DEVELOPMENT AUTHORITY ACT OF 1966, 1966 PA 346, MCL
2 125.1448A TO 125.1448P.

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

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

24 **SEC. 3237. (1) IF THE APPLICABLE PERIOD OF REDEMPTION PROVIDED**
25 **UNDER THIS CHAPTER FOR A MORTGAGE OF RESIDENTIAL PROPERTY THAT IS**
26 **BEING FORECLOSED BY ADVERTISEMENT HAS NOT EXPIRED BY 1 YEAR AFTER**
27 **THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, A**

1 PERSON DESCRIBED IN SUBSECTION (2) MAY FILE A COMPLAINT IN THE
2 CIRCUIT COURT FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED
3 REQUESTING THE RELIEF DESCRIBED IN SUBSECTION (3).

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

6 (A) THE MORTGAGOR.

7 (B) THE OWNER OF THE MORTGAGED PROPERTY.

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

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

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

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

1 AFFECTED BY THE ORDER REVEST IN THE PERSON EFFECTIVE THE DATE THE
2 ORDER IS SET ASIDE AS IF THE ORDER HAD NOT BEEN ENTERED.

3 Enacting section 1. This amendatory act does not take effect
4 unless Senate Bill No.____ or House Bill No. 4033(request no.
5 00656'09 a) of the 95th Legislature is enacted into law.