

# HOUSE BILL No. 4453

February 24, 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 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 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:

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### 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 ~~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

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

12 (A) REASONABLE EFFORTS HAVE NOT BEEN MADE TO SERVE NOTICE ON  
13 THE MORTGAGOR AS REQUIRED BY SECTION 3205A.

14 (B) IF THE MORTGAGOR HAS BEEN SERVED UNDER SECTION 3205A, THE  
15 TIME FOR A HOUSING COUNSELOR TO NOTIFY THE MORTGAGE HOLDER OR  
16 MORTGAGE SERVICER OF A REQUEST BY THE MORTGAGOR UNDER SECTION  
17 3205B(1) HAS NOT EXPIRED.

18 (C) THE MORTGAGOR HAS REQUESTED A MEETING WITH THE MORTGAGE  
19 HOLDER OR MORTGAGE SERVICER UNDER SECTION 3205B AND 90 DAYS HAVE  
20 NOT PASSED AFTER SERVICE OF THE NOTICE UNDER SECTION 3205A.

21 (D) THE MORTGAGOR HAS REQUESTED A MEETING WITH THE MORTGAGE  
22 HOLDER OR MORTGAGE SERVICER UNDER SECTION 3205B AND THE MORTGAGE  
23 HOLDER OR MORTGAGE SERVICER HAS NOT MET OR NEGOTIATED WITH THE  
24 BORROWER UNDER THIS CHAPTER.

25 (E) THE MORTGAGOR AND MORTGAGEE HAVE AGREED TO MODIFY THE  
26 MORTGAGE LOAN AND THE MORTGAGOR IS NOT IN DEFAULT UNDER THE  
27 MODIFIED AGREEMENT.

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

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

9 SEC. 3205. AS USED IN THIS SECTION AND SECTIONS 3205A TO  
10 3205D:

11 (A) "BORROWER" MEANS THE MORTGAGOR.

12 (B) "FDIC WORKOUT PROGRAM" MEANS THE FDIC MORTGAGE LOAN  
13 MODIFICATION PROGRAM FOR DELINQUENT RESIDENTIAL FIRST MORTGAGES  
14 DEVELOPED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION, EFFECTIVE  
15 ON OCTOBER 6, 2008.

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 does not take effect  
21 unless all of the following bills of the 95th Legislature are  
22 enacted into law:

23 (a) Senate Bill No.\_\_\_\_ or House Bill No. 4455(request no.  
24 02274'09).

25 (b) Senate Bill No.\_\_\_\_ or House Bill No. 4454(request no.  
26 02275'09).