

HOUSE BILL No. 4454

February 24, 2009, Introduced by Reps. Coulouris, 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, Nathan, Miller 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,"
(MCL 600.101 to 600.9947) by adding sections 3205a and 3205b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3205A. (1) SUBJECT TO SUBSECTION (6), BEFORE PROCEEDING
2 WITH A SALE UNDER THIS CHAPTER OF PROPERTY DESCRIBED IN SECTION
3 3240(8) THAT IS USED AS A PRINCIPAL RESIDENCE, THE MORTGAGE HOLDER
4 OR MORTGAGE SERVICER SHALL SERVE A WRITTEN NOTICE ON THE BORROWER
5 THAT CONTAINS ALL OF THE FOLLOWING INFORMATION:

6 (A) THE REASONS THAT THE MORTGAGE LOAN IS IN DEFAULT AND THE
7 AMOUNT THAT IS DUE AND OWING UNDER THE MORTGAGE LOAN.

8 (B) THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF THE
9 MORTGAGE HOLDER AND THE MORTGAGE SERVICER, OR AN AGENT DESIGNATED
10 BY THE MORTGAGE HOLDER OR MORTGAGE SERVICER, AND A STATEMENT OF

1 WHICH OF THEM IS DESIGNATED AS THE ENTITY TO CONTACT AND THAT HAS
2 THE AUTHORITY TO MAKE AGREEMENTS UNDER SECTIONS 3205B TO 3205C.

3 (C) THAT THE BORROWER WILL RECEIVE A LIST OF HOUSING
4 COUNSELORS FROM THE MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
5 AND WITHIN 14 DAYS AFTER RECEIVING THE LIST MAY REQUEST A MEETING
6 WITH THE MORTGAGE HOLDER OR MORTGAGE SERVICER TO ATTEMPT TO WORK
7 OUT A MODIFICATION OF THE MORTGAGE LOAN TO AVOID FORECLOSURE AND
8 THAT THE BORROWER MAY ALSO REQUEST THE HOUSING COUNSELOR TO ATTEND
9 THE MEETING.

10 (D) THAT IF THE BORROWER REQUESTS A MEETING WITH THE MORTGAGE
11 HOLDER OR MORTGAGE SERVICER, FORECLOSURE PROCEEDINGS WILL NOT BE
12 COMMENCED UNTIL 90 DAYS AFTER THE DATE THE BORROWER IS SERVED WITH
13 THE NOTICE.

14 (E) THAT IF THE BORROWER AND THE MORTGAGE HOLDER OR MORTGAGE
15 SERVICER REACH AN AGREEMENT TO MODIFY THE MORTGAGE LOAN, THE
16 MORTGAGE WILL NOT BE FORECLOSED IF THE BORROWER ABIDES BY THE TERMS
17 OF THE AGREEMENT.

18 (F) THAT IF THE BORROWER AND THE MORTGAGE HOLDER OR MORTGAGE
19 SERVICER DO NOT AGREE TO MODIFY THE MORTGAGE LOAN BUT IT IS
20 DETERMINED THAT THE BORROWER MEETS CRITERIA FOR A MODIFICATION
21 UNDER THE FDIC WORKOUT PROGRAM, THE FORECLOSURE OF THE MORTGAGE
22 WILL PROCEED BEFORE A JUDGE INSTEAD OF BY ADVERTISEMENT.

23 (G) THAT THE BORROWER HAS THE RIGHT TO CONTACT AN ATTORNEY,
24 AND THE TELEPHONE NUMBERS OF THE STATE BAR OF MICHIGAN'S LAWYER
25 REFERRAL SERVICE AND OF A LOCAL LEGAL AID OFFICE SERVING THE AREA
26 IN WHICH THE PROPERTY IS SITUATED.

27 (2) A MORTGAGE HOLDER OR MORTGAGE SERVICER SHALL SERVE THE

1 NOTICE UNDER THIS SECTION BY HAVING THE NOTICE DELIVERED PERSONALLY
2 TO THE BORROWER AND SENT BY CERTIFIED MAIL, RETURN RECEIPT
3 REQUESTED, WITH DELIVERY RESTRICTED TO THE BORROWER AT THE
4 BORROWER'S LAST KNOWN ADDRESS.

5 (3) AT THE TIME OF MAILING A NOTICE UNDER SUBSECTION (2), THE
6 MORTGAGE HOLDER OR MORTGAGE SERVICER SHALL PUBLISH A COPY OF THE
7 NOTICE 1 TIME IN THE SAME MANNER AS IS REQUIRED FOR PUBLISHING A
8 NOTICE OF FORECLOSURE SALE UNDER SECTION 3208.

9 (4) ON OBTAINING SERVICE UNDER SUBSECTION (2), A MORTGAGE
10 HOLDER OR MORTGAGE SERVICER SHALL GIVE THE MICHIGAN STATE HOUSING
11 DEVELOPMENT AUTHORITY NOTICE OF THE SERVICE AND A COPY OF THE
12 NOTICE. WITHIN 10 DAYS AFTER RECEIVING NOTICE UNDER THIS
13 SUBSECTION, THE MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY SHALL
14 SEND THE BORROWER BOTH OF THE FOLLOWING:

15 (A) A LIST PREPARED BY THE MICHIGAN STATE HOUSING DEVELOPMENT
16 AUTHORITY OF THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF HOUSING
17 COUNSELORS APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND
18 URBAN DEVELOPMENT OR THE MICHIGAN STATE HOUSING DEVELOPMENT
19 AUTHORITY.

20 (B) NOTICE THAT IF THE BORROWER WISHES TO MEET WITH THE
21 MORTGAGE HOLDER OR MORTGAGE SERVICER TO ATTEMPT TO REACH AN
22 AGREEMENT TO MODIFY THE MORTGAGE LOAN, THE BORROWER MUST CONTACT A
23 HOUSING COUNSELOR FROM THE LIST WITHIN 14 DAYS AFTER THE LIST AND
24 NOTICE UNDER THIS SUBDIVISION ARE SENT TO THE BORROWER.

25 (5) A BORROWER ON WHOM NOTICE IS REQUIRED TO BE SERVED UNDER
26 SUBSECTION (2) WHO IS NOT SERVED AND AGAINST WHOM FORECLOSURE
27 PROCEEDINGS ARE COMMENCED UNDER THIS CHAPTER MAY BRING AN ACTION IN

1 THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS
2 SITUATED TO ENJOIN THE FORECLOSURE.

3 (6) THIS SECTION AND SECTIONS 3205B TO 3205D DO NOT APPLY IF
4 THE BORROWER HAS PREVIOUSLY AGREED WITH A MORTGAGE HOLDER OR
5 MORTGAGE SERVICER TO MODIFY THE MORTGAGE LOAN AND THE BORROWER HAS
6 NOT COMPLIED WITH THE TERMS OF THE MORTGAGE LOAN, AS MODIFIED, FOR
7 1 YEAR AFTER THE DATE OF THE MODIFICATION.

8 SEC. 3205B. (1) A BORROWER WHO WISHES TO PARTICIPATE IN
9 NEGOTIATIONS TO ATTEMPT TO WORK OUT A MODIFICATION OF A MORTGAGE
10 LOAN SHALL CONTACT A HOUSING COUNSELOR FROM THE LIST PROVIDED UNDER
11 SECTION 3205A WITHIN 14 DAYS AFTER THE LIST IS SENT TO THE
12 BORROWER. WITHIN 10 DAYS AFTER BEING CONTACTED BY A BORROWER, A
13 HOUSING COUNSELOR SHALL INFORM THE MORTGAGE HOLDER OR MORTGAGE
14 SERVICER OF THE BORROWER'S REQUEST.

15 (2) IF REQUESTED BY THE MORTGAGE HOLDER OR MORTGAGE SERVICER,
16 THE BORROWER SHALL GIVE THE MORTGAGE HOLDER OR SERVICER COPIES OF
17 ANY DOCUMENTS REQUESTED BY THE MORTGAGE HOLDER OR MORTGAGE SERVICER
18 THAT ARE NECESSARY TO DETERMINE THE FINANCIAL STATUS OF THE
19 BORROWER FOR PURPOSES OF THIS CHAPTER.

20 (3) THE HOUSING COUNSELOR SHALL SCHEDULE A MEETING BETWEEN THE
21 BORROWER AND THE MORTGAGE HOLDER OR SERVICER TO ATTEMPT TO WORK OUT
22 A MODIFICATION OF THE MORTGAGE LOAN. AT THE REQUEST OF THE
23 BORROWER, THE HOUSING COUNSELOR WILL ATTEND THE MEETING. THE
24 MEETING AND ANY LATER MEETINGS SHALL BE HELD AT A TIME AND PLACE
25 THAT IS CONVENIENT TO ALL PARTIES, OR IN THE COUNTY WHERE THE
26 PROPERTY IS SITUATED.

27 Enacting section 1. This amendatory act does not take effect

1 unless all of the following bills of the 95th Legislature are
2 enacted into law:

3 (a) Senate Bill No. _____ or House Bill No. 4453 (request no.
4 02074'09).

5 (b) Senate Bill No. _____ or House Bill No. 4455 (request no.
6 02274'09).