

HOUSE BILL No. 6423

September 8, 2010, Introduced by Reps. Johnson and Melton 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 3204, 3205, 3205a, and 3205c (MCL 600.3204,
600.3205, 600.3205a, and 600.3205c), section 3204 as amended and
section 3205 as added by 2009 PA 29, section 3205a as added by 2009
PA 30, and section 3205c as added by 2009 PA 31.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3204. (1) Subject to subsection (4), a party may
2 foreclose a mortgage by advertisement if all of the following
3 circumstances exist:

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

1 (b) An action or proceeding has not been instituted, at law,
2 to recover the debt secured by the mortgage or any part of the
3 mortgage; or, if an action or proceeding has been instituted, the
4 action or proceeding has been discontinued; or an execution on a
5 judgment rendered in an action or proceeding has been returned
6 unsatisfied, in whole or in part.

7 (c) The mortgage containing the power of sale has been
8 properly recorded.

9 (d) The party foreclosing the mortgage is either the owner of
10 the indebtedness or of an interest in the indebtedness secured by
11 the mortgage or the servicing agent of the mortgage.

12 (2) If a mortgage is given to secure the payment of money by
13 installments, each of the installments mentioned in the mortgage
14 after the first shall be treated as a separate and independent
15 mortgage. The mortgage for each of the installments may be
16 foreclosed in the same manner and with the same effect as if a
17 separate mortgage were given for each subsequent installment. A
18 redemption of a sale by the mortgagor has the same effect as if the
19 sale for the installment had been made upon an independent prior
20 mortgage.

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

25 (4) A party shall not commence proceedings under this chapter
26 to foreclose a mortgage of property described in section 3205a(1)
27 if 1 or more of the following apply:

1 (a) Notice has not been mailed to the mortgagor as required by
2 section 3205a.

3 (b) After a notice is mailed to the mortgagor under section
4 3205a, the time for a housing counselor to notify the person
5 designated under section 3205a(1)(c) of a request by the mortgagor
6 under section 3205b(1) has not expired.

7 (c) Within 14 days after a notice is mailed to the mortgagor
8 under section 3205a, the mortgagor has requested a meeting under
9 section 3205b with the person designated under section 3205a(1)(c)
10 and 90 days have not passed after the notice was mailed.

11 (d) The mortgagor has requested a meeting under section 3205b
12 with the person designated under section 3205a(1)(c), the mortgagor
13 has provided documents if requested under section 3205b(2), and the
14 person designated under section 3205a(1)(c) has not met or
15 negotiated with the mortgagor under this chapter.

16 (e) The mortgagor and mortgagee have agreed to modify the
17 mortgage loan and the mortgagor is not in default under the
18 modified agreement.

19 (f) Calculations under section 3205c(1) show that the
20 mortgagor is eligible for a loan modification and foreclosure under
21 this chapter is not allowed under section 3205c(7).

22 **(G) THE FORECLOSING PARTY HAS NOT EXECUTED AN AGREEMENT TO**
23 **PARTICIPATE AS A SERVICER IN THE HELP FOR HARDEST HIT PROGRAM**
24 **ADMINISTERED BY OR THROUGH THE MICHIGAN STATE HOUSING DEVELOPMENT**
25 **AUTHORITY AND THE MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY HAS**
26 **NOT CERTIFIED THAT THE FORECLOSING PARTY IS ELIGIBLE TO PARTICIPATE**
27 **IN THE PROGRAM.**

1 (5) Subsection (4) applies only to proceedings under this
2 chapter in which the first notice under section 3208 is published
3 ~~after the effective date of the amendatory act that added this~~
4 ~~subsection JULY 5, 2009 and before 2 years after the effective date~~
5 ~~of the amendatory act that added this subsection JULY 5, 2011.~~

6 Sec. 3205. As used in this section and sections 3205a to
7 3205d:

8 (a) "Borrower" means the mortgagor.

9 **(B) "HELP FOR HARDEST HIT PROGRAM" MEANS THE HELP FOR HARDEST**
10 **HIT PROGRAM ADMINISTERED BY OR THROUGH THE MICHIGAN STATE HOUSING**
11 **DEVELOPMENT AUTHORITY AND APPROVED BY THE UNITED STATES DEPARTMENT**
12 **OF TREASURY.**

13 (C) ~~(b)~~ "Mortgage holder" means the owner of the indebtedness
14 or of an interest in the indebtedness that is secured by the
15 mortgage.

16 (D) ~~(e)~~ "Mortgage servicer" means the servicing agent of the
17 mortgage.

18 Sec. 3205a. (1) Subject to subsection (6), before proceeding
19 with a sale under this chapter of property claimed as a principal
20 residence exempt from tax under section 7cc of the general property
21 tax act, 1893 PA 206, MCL 211.7cc, the foreclosing party shall
22 serve a written notice on the borrower that contains all of the
23 following information:

24 (a) The reasons that the mortgage loan is in default and the
25 amount that is due and owing under the mortgage loan.

26 (b) The names, addresses, and telephone numbers of the
27 mortgage holder, the mortgage servicer, or any agent designated by

1 the mortgage holder or mortgage servicer.

2 (c) A designation of 1 of the persons named in subdivision (b)
3 as the person to contact and that has the authority to make
4 agreements under sections 3205b and 3205c.

5 (d) That enclosed with the notice is a list of housing
6 counselors prepared by the Michigan state housing development
7 authority and that within 14 days after the notice is sent, the
8 borrower may request a meeting with the person designated under
9 subdivision (c) to attempt to work out a modification of the
10 mortgage loan to avoid foreclosure and that the borrower may also
11 request a housing counselor to attend the meeting.

12 (e) That if the borrower requests a meeting with the person
13 designated under subdivision (c), foreclosure proceedings will not
14 be commenced until 90 days after the date the notice is mailed to
15 the borrower.

16 (f) That if the borrower and the person designated under
17 subdivision (c) reach an agreement to modify the mortgage loan, the
18 mortgage will not be foreclosed if the borrower abides by the terms
19 of the agreement.

20 (g) That if the borrower and the person designated under
21 subdivision (c) do not agree to modify the mortgage loan but it is
22 determined that the borrower meets criteria for a modification
23 under section 3205c(1) and foreclosure under this chapter is not
24 allowed under section 3205c(7), the foreclosure of the mortgage
25 will proceed before a judge instead of by advertisement.

26 **(H) THAT THE FORECLOSURE MAY NOT PROCEED IF THE FORECLOSING**
27 **PARTY HAS NOT EXECUTED AN AGREEMENT TO PARTICIPATE AS A SERVICER IN**

1 **THE HELP FOR HARDEST HIT PROGRAM.**

2 (I) ~~(h)~~ That the borrower has the right to contact an
3 attorney, and the telephone numbers of the state bar of Michigan's
4 lawyer referral service and of a local legal aid office serving the
5 area in which the property is situated.

6 (2) A person who serves a notice under subsection (1) shall
7 enclose with the notice a list prepared by the Michigan state
8 housing development authority under section 3205d of the names,
9 addresses, and telephone numbers of housing counselors approved by
10 the United States department of housing and urban development or
11 the Michigan state housing development authority.

12 (3) A person shall serve a notice under subsection (1) by
13 mailing the notice by regular first-class mail and by certified
14 mail, return receipt requested, with delivery restricted to the
15 borrower, both sent to the borrower's last known address.

16 (4) Within 7 days after mailing a notice under subsection (3),
17 the person who mails the notice shall publish a notice informing
18 the borrower of the borrower's rights under this section. The
19 person shall publish the information 1 time in the same manner as
20 is required for publishing a notice of foreclosure sale under
21 section 3208. The notice under this subsection shall contain all of
22 the following information:

23 (a) The borrower's name and the property address.

24 (b) A statement that informs the borrower of all of the
25 following:

26 (i) That the borrower has the right to request a meeting with
27 the mortgage holder or mortgage servicer.

1 (ii) The name of the person designated under subsection (1)(c)
2 as the person to contact and that has the authority to make
3 agreements under sections 3205b and 3205c.

4 (iii) That the borrower may contact a housing counselor by
5 visiting the Michigan state housing development authority's website
6 or by calling the Michigan state housing development authority.

7 (iv) The website address and telephone number of the Michigan
8 state housing development authority.

9 (v) That if the borrower requests a meeting with the person
10 designated under subsection (1)(c), foreclosure proceedings will
11 not be commenced until 90 days after the date notice is mailed to
12 the borrower.

13 (vi) That if the borrower and the person designated under
14 subsection (1)(c) reach an agreement to modify the mortgage loan,
15 the mortgage will not be foreclosed if the borrower abides by the
16 terms of the agreement.

17 (vii) **THAT THE FORECLOSURE MAY NOT PROCEED IF THE FORECLOSING**
18 **PARTY HAS NOT EXECUTED AN AGREEMENT TO PARTICIPATE AS A SERVICER IN**
19 **THE HELP FOR HARDEST HIT PROGRAM.**

20 (viii) ~~(vii)~~ That the borrower has the right to contact an
21 attorney, and the telephone number of the state bar of Michigan's
22 lawyer referral service.

23 (5) A borrower on whom notice is required to be served under
24 this section who is not served and against whom foreclosure
25 proceedings are commenced under this chapter may bring an action in
26 the circuit court for the county in which the mortgaged property is
27 situated to enjoin the foreclosure.

1 (6) If the borrower and the person designated under subsection
2 (1)(c) have previously agreed to modify the mortgage loan under
3 section 3205b, this section and sections 3205b and 3205c do not
4 apply unless the borrower has complied with the terms of the
5 mortgage loan, as modified, for 1 year after the date of the
6 modification.

7 Sec. 3205c. (1) If a borrower has contacted a housing
8 counselor under section 3205b but the process has not resulted in
9 an agreement to modify the mortgage loan, the person designated
10 under section 3205a(1)(c) shall work with the borrower to determine
11 whether the borrower qualifies for a loan modification. Unless the
12 loan is described in subsection (2) or (3), in making the
13 determination under this subsection, the person designated under
14 section 3205a(1)(c) shall use a loan modification program or
15 process that includes all of the following features:

16 (a) The loan modification program or process targets a ratio
17 of the borrower's housing-related debt to the borrower's gross
18 income of 38% or less, on an aggregate basis. Housing-related debt
19 under this subdivision includes mortgage principal and interest,
20 property taxes, insurance, and homeowner's fees.

21 (b) To reach the 38% target specified in subdivision (a), 1 or
22 more of the following features:

23 (i) An interest rate reduction, as needed, subject to a floor
24 of 3%, for a fixed term of at least 5 years.

25 (ii) An extension of the amortization period for the loan term,
26 to 40 years or less from the date of the loan modification.

27 (iii) Deferral of some portion of the amount of the unpaid

1 principal balance of 20% or less, until maturity, refinancing of
2 the loan, or sale of the property.

3 (iv) Reduction or elimination of late fees.

4 (2) In making the determination under subsection (1), if the
5 mortgage loan is pooled for sale to an investor that is a
6 governmental entity, the person designated under section
7 3205a(1)(c) shall follow the modification guidelines dictated by
8 the governmental entity.

9 (3) In making the determination under subsection (1), if the
10 mortgage loan has been sold to a government-sponsored enterprise,
11 the person designated under section 3205a(1)(c) shall follow the
12 modification guidelines dictated by the government-sponsored
13 enterprise.

14 (4) This section does not prohibit a loan modification on
15 other terms or another loss mitigation strategy instead of
16 modification if the other modification or strategy is agreed to by
17 the borrower and the person designated under section 3205a(1)(c).

18 (5) The person designated under section 3205a(1)(c) shall
19 provide the borrower with both of the following:

20 (a) A copy of any calculations made by the person under this
21 section.

22 (b) If requested by the borrower, a copy of the program,
23 process, or guidelines under which the determination under
24 subsection (1) was made.

25 (6) Subject to subsection (7), if the results of the
26 calculation under subsection (1) are that the borrower is eligible
27 for a modification, the mortgage holder or mortgage servicer shall

1 not foreclose the mortgage under this chapter but may proceed under
2 chapter 31. If the results of the calculation under subsection (1)
3 are that the borrower is not eligible for a modification or if
4 subsection (7) applies, **AND IF THE MORTGAGE HOLDER OR MORTGAGE**
5 **LENDER IS NOT PROHIBITED FROM FORECLOSING THE MORTGAGE UNDER**
6 **SECTION 3204(4)(G)**, the mortgage holder or mortgage lender may
7 foreclose the mortgage under this chapter.

8 (7) If the determination under subsection (1) is that the
9 borrower is eligible for a modification, the mortgage holder or
10 mortgage servicer may proceed to foreclose the mortgage under this
11 chapter if ~~both~~**ALL** of the following apply:

12 (a) The person designated under section 3205a(1)(c) has in
13 good faith offered the borrower a modification agreement prepared
14 in accordance with the modification determination.

15 (b) For reasons not related to any action or inaction of the
16 mortgage holder or mortgage servicer, the borrower has not executed
17 and returned the modification agreement within 14 days after the
18 borrower received the agreement.

19 **(C) THE MORTGAGE HOLDER OR MORTGAGE LENDER IS NOT PROHIBITED**
20 **FROM FORECLOSING THE MORTGAGE UNDER SECTION 3204(4)(G).**

21 (8) If a mortgage holder or mortgage servicer begins
22 foreclosure proceedings under this chapter in violation of this
23 section, the borrower may file an action in the circuit court for
24 the county where the mortgaged property is situated to convert the
25 foreclosure proceeding to a judicial foreclosure. If a borrower
26 files an action under this section and the court determines that
27 the borrower participated in the process under section 3205b, a

1 modification agreement was not reached, and the borrower is
2 eligible for modification under subsection (1), and subsection (7)
3 does not apply, the court shall enjoin foreclosure of the mortgage
4 by advertisement and order that the foreclosure proceed under
5 chapter 31.