

Act No. 301
Public Acts of 2011
Approved by the Governor
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Reps. Farrington, Pettalia, Lyons, Knollenberg and Liss

ENROLLED HOUSE BILL No. 4542

AN ACT to amend 1961 PA 236, entitled "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 the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts," by amending sections 3204, 3205, and 3212 (MCL 600.3204, 600.3205, and 600.3212), section 3204 as amended by 2011 PA 72, section 3205 as added by 2009 PA 29, and section 3212 as amended by 2004 PA 186, and by adding section 3278.

The People of the State of Michigan enact:

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

- (a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.
 - (b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage; or, if an action or proceeding has been instituted, the action or proceeding has been discontinued; or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.
 - (c) The mortgage containing the power of sale has been properly recorded.
 - (d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.
- (2) If a mortgage is given to secure the payment of money by installments, each of the installments mentioned in the mortgage after the first shall be treated as a separate and independent mortgage. The mortgage for each of the installments may be foreclosed in the same manner and with the same effect as if a separate mortgage were given for each subsequent installment. A redemption of a sale by the mortgagor has the same effect as if the sale for the installment had been made upon an independent prior mortgage.
- (3) If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.
- (4) A party shall not commence proceedings under this chapter to foreclose a mortgage of property claimed as a principal residence exempt from tax under section 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc, if 1 or more of the following apply:
- (a) Notice has not been mailed to the mortgagor as required by section 3205a.

(b) After a notice is mailed to the mortgagor under section 3205a, the time for the mortgagor to request, either directly or through a housing counselor, a meeting with the person designated under section 3205a(1)(c) under section 3205b has not expired.

(c) Within 30 days after a notice is mailed to the mortgagor under section 3205a, the mortgagor has requested a meeting under section 3205b with the person designated under section 3205a(1)(c) and 90 days have not passed after the notice was mailed. This subdivision does not apply if the mortgagor has failed to provide documents as required under section 3205b(2).

(d) Documents have been requested under section 3205b(2) and the time for producing the documents has not expired.

(e) The mortgagor has requested a meeting under section 3205b with the person designated under section 3205a(1)(c), the mortgagor has provided documents as required under section 3205b(2), and the person designated under section 3205a(1)(c) has not met or negotiated with the mortgagor under this chapter.

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

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

(5) Subsection (4) applies only to proceedings under this chapter in which the first notice under section 3208 is published after July 5, 2009 and before December 31, 2012.

(6) Subsection (4) does not apply to a mortgage of property used for agricultural purposes if the mortgage is subject to borrower's rights under the federal acts and is subject to the restructuring of distressed loans or the debt restructuring and loan servicing provisions of the federal acts, if the applicable period to apply for a restructuring required under the federal acts is longer than the period within which a borrower may request a meeting under section 3205b, and if compliance with the federal acts will not result in proceedings being commenced under this chapter within 90 days after a default under the mortgage. As used in this subsection, "federal acts" means the farm credit act of 1971, Public Law 92-181, as amended, or the consolidated farm and rural development act, Public Law 87-128, and rules and regulations promulgated under those acts.

Sec. 3205. (1) For a foreclosure proceeding in which the first notice under section 3205a is mailed to the borrower on or after February 1, 2012, a mortgage holder or mortgage servicer shall designate an individual who is an employee or agent of the mortgage holder, the mortgage servicer, or another entity that is an agent of the mortgage holder or mortgage servicer or a specific department or unit of the mortgage holder, the mortgage servicer, or an entity that is an agent of the mortgage holder or mortgage servicer to serve as a contact under sections 3205a to 3205c.

(2) The mortgage holder or mortgage servicer that designates an individual, department, or unit under subsection (1) shall authorize the individual or, if the designee is a department or unit, a representative of the department or unit to facilitate negotiations and attend meetings with the borrower.

(3) As used in this section and sections 3205a to 3205d:

(a) "Borrower" means the mortgagor.

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

(c) "Mortgage servicer" means the servicing agent of the mortgage.

Sec. 3212. Every notice of foreclosure by advertisement shall include all of the following:

(a) The names of the mortgagor, the original mortgagee, and the foreclosing assignee, if any.

(b) The date of the mortgage and the date the mortgage was recorded.

(c) The amount claimed to be due on the mortgage on the date of the notice.

(d) A description of the mortgaged premises that substantially conforms with the description contained in the mortgage.

(e) For a mortgage executed on or after January 1, 1965, the length of the redemption period as determined under section 3240.

(f) A statement that if the property is sold at a foreclosure sale under this chapter, under section 3278 the borrower will be held responsible to the person who buys the property at the mortgage foreclosure sale or to the mortgage holder for damaging the property during the redemption period.

Sec. 3278. (1) During the period of redemption following a foreclosure sale of property under this chapter, the mortgagor and any other person liable on the mortgage is liable to the purchaser at the sale, or the mortgagee, payee, or other holder of the obligation secured by the mortgage if the mortgagee, payee, or other holder takes or has taken

title to the property at the sale either directly or indirectly, for any physical injury to the property beyond wear and tear resulting from the normal use of the property if the physical injury is caused by or at the direction of the mortgagor or other person liable on the mortgage.

(2) In an action for damages under this section, the amount of damages may be determined by any measure of damages applicable under law, including, but not limited to, the method provided under section 5739(2).

(3) An action for damages under this section may be joined with an action for possession of the premises under chapter 57.

Enacting section 1. Sections 3204(4), 3205, and 3212 of the revised judicature act of 1961, 1961 PA 236, MCL 600.3204, 600.3205, and 600.3212, as amended by this amendatory act, and section 3278 of the revised judicature act of 1961, 1961 PA 236, as added by this amendatory act, apply to foreclosure proceedings in which the first notice under section 3205a of the revised judicature act of 1961, 1961 PA 236, MCL 600.3205a, is mailed to the mortgagor on or after February 1, 2012.

Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

(a) House Bill No. 4543.

(b) House Bill No. 4544.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor

Compiler's note: House Bill No. 4543, referred to in enacting section 2, was filed with the Secretary of State December 22, 2011, and became 2011 PA 302, Imd. Eff. Dec. 22, 2011.

House Bill No. 4544, also referred to in enacting section 2, was filed with the Secretary of State December 22, 2011, and became 2011 PA 22, Imd. Eff. Dec. 22, 2011.

