

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4542

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
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:

- 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.
6 (b) An action or proceeding has not been instituted, at law,

1 to recover the debt secured by the mortgage or any part of the
2 mortgage; or, if an action or proceeding has been instituted, the
3 action or proceeding has been discontinued; or an execution on a
4 judgment rendered in an action or proceeding has been returned
5 unsatisfied, in whole or in part.

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

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

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

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

24 (4) A party shall not commence proceedings under this chapter
25 to foreclose a mortgage of property ~~described in section 3205a(1)~~
26 **CLAIMED AS A PRINCIPAL RESIDENCE EXEMPT FROM TAX UNDER SECTION 7CC**
27 **OF THE GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.7CC, if 1 or**

1 more of the following apply:

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

4 (b) After a notice is mailed to the mortgagor under section
5 3205a, the time for ~~a housing counselor~~ **THE MORTGAGOR** to ~~notify~~
6 **REQUEST, EITHER DIRECTLY OR THROUGH A HOUSING COUNSELOR, A MEETING**
7 **WITH** the person designated under section 3205a(1)(c) ~~of a request~~
8 ~~by the mortgagor~~ under section ~~3205b(1)~~ **3205B** has not expired.

9 (c) Within ~~14~~ **30** days after a notice is mailed to the
10 mortgagor under section 3205a, the mortgagor has requested a
11 meeting under section 3205b with the person designated under
12 section 3205a(1)(c) and 90 days have not passed after the notice
13 was mailed. **THIS SUBDIVISION DOES NOT APPLY IF THE MORTGAGOR HAS**
14 **FAILED TO PROVIDE DOCUMENTS AS REQUIRED UNDER SECTION 3205B(2).**

15 (D) **DOCUMENTS HAVE BEEN REQUESTED UNDER SECTION 3205B(2) AND**
16 **THE TIME FOR PRODUCING THE DOCUMENTS HAS NOT EXPIRED.**

17 (E) ~~(d)~~ The mortgagor has requested a meeting under section
18 3205b with the person designated under section 3205a(1)(c), the
19 mortgagor has provided documents ~~if requested~~ **AS REQUIRED** under
20 section 3205b(2), and the person designated under section
21 3205a(1)(c) has not met or negotiated with the mortgagor under this
22 chapter.

23 (F) ~~(e)~~ The mortgagor and mortgagee have agreed to modify the
24 mortgage loan and the mortgagor is not in default under the
25 modified agreement.

26 (G) ~~(f)~~ Calculations under section 3205c(1) show that the
27 mortgagor is eligible for a loan modification and foreclosure under

1 this chapter is not allowed under section 3205c(7).

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

5 (6) **SUBSECTION (4) DOES NOT APPLY TO A MORTGAGE OF PROPERTY**
6 **USED FOR AGRICULTURAL PURPOSES IF THE MORTGAGE IS SUBJECT TO**
7 **BORROWER'S RIGHTS UNDER THE FEDERAL ACTS AND IS SUBJECT TO THE**
8 **RESTRUCTURING OF DISTRESSED LOANS OR THE DEBT RESTRUCTURING AND**
9 **LOAN SERVICING PROVISIONS OF THE FEDERAL ACTS, IF THE APPLICABLE**
10 **PERIOD TO APPLY FOR A RESTRUCTURING REQUIRED UNDER THE FEDERAL ACTS**
11 **IS LONGER THAN THE PERIOD WITHIN WHICH A BORROWER MAY REQUEST A**
12 **MEETING UNDER SECTION 3205B, AND IF COMPLIANCE WITH THE FEDERAL**
13 **ACTS WILL NOT RESULT IN PROCEEDINGS BEING COMMENCED UNDER THIS**
14 **CHAPTER WITHIN 90 DAYS AFTER A DEFAULT UNDER THE MORTGAGE. AS USED**
15 **IN THIS SUBSECTION, "FEDERAL ACTS" MEANS THE FARM CREDIT ACT OF**
16 **1971, PUBLIC LAW 92-181, AS AMENDED, OR THE CONSOLIDATED FARM AND**
17 **RURAL DEVELOPMENT ACT, PUBLIC LAW 87-128, AND RULES AND REGULATIONS**
18 **PROMULGATED UNDER THOSE ACTS.**

19 **Sec. 3205. (1) FOR A FORECLOSURE PROCEEDING IN WHICH THE FIRST**
20 **NOTICE UNDER SECTION 3205A IS MAILED TO THE BORROWER ON OR AFTER**
21 **FEBRUARY 1, 2012, A MORTGAGE HOLDER OR MORTGAGE SERVICER SHALL**
22 **DESIGNATE AN INDIVIDUAL WHO IS AN EMPLOYEE OR AGENT OF THE MORTGAGE**
23 **HOLDER, THE MORTGAGE SERVICER, OR ANOTHER ENTITY THAT IS AN AGENT**
24 **OF THE MORTGAGE HOLDER OR MORTGAGE SERVICER OR A SPECIFIC**
25 **DEPARTMENT OR UNIT OF THE MORTGAGE HOLDER, THE MORTGAGE SERVICER,**
26 **OR AN ENTITY THAT IS AN AGENT OF THE MORTGAGE HOLDER OR MORTGAGE**
27 **SERVICER TO SERVE AS A CONTACT UNDER SECTIONS 3205A TO 3205C.**

1 (2) THE MORTGAGE HOLDER OR MORTGAGE SERVICER THAT DESIGNATES
2 AN INDIVIDUAL, DEPARTMENT, OR UNIT UNDER SUBSECTION (1) SHALL
3 AUTHORIZE THE INDIVIDUAL OR, IF THE DESIGNEE IS A DEPARTMENT OR
4 UNIT, A REPRESENTATIVE OF THE DEPARTMENT OR UNIT TO FACILITATE
5 NEGOTIATIONS AND ATTEND MEETINGS WITH THE BORROWER.

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

7 (a) "Borrower" means the mortgagor.

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

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

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

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

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

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

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

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

24 (F) A STATEMENT THAT IF THE PROPERTY IS SOLD AT A FORECLOSURE
25 SALE UNDER THIS CHAPTER, UNDER SECTION 3278 THE BORROWER WILL BE
26 HELD RESPONSIBLE TO THE PERSON WHO BUYS THE PROPERTY AT THE
27 MORTGAGE FORECLOSURE SALE OR TO THE MORTGAGE HOLDER FOR DAMAGING

1 THE PROPERTY DURING THE REDEMPTION PERIOD.

2 SEC. 3278. (1) DURING THE PERIOD OF REDEMPTION FOLLOWING A
3 FORECLOSURE SALE OF PROPERTY UNDER THIS CHAPTER, THE MORTGAGOR AND
4 ANY OTHER PERSON LIABLE ON THE MORTGAGE IS LIABLE TO THE PURCHASER
5 AT THE SALE, OR THE MORTGAGEE, PAYEE, OR OTHER HOLDER OF THE
6 OBLIGATION SECURED BY THE MORTGAGE IF THE MORTGAGEE, PAYEE, OR
7 OTHER HOLDER TAKES OR HAS TAKEN TITLE TO THE PROPERTY AT THE SALE
8 EITHER DIRECTLY OR INDIRECTLY, FOR ANY PHYSICAL INJURY TO THE
9 PROPERTY BEYOND WEAR AND TEAR RESULTING FROM THE NORMAL USE OF THE
10 PROPERTY IF THE PHYSICAL INJURY IS CAUSED BY OR AT THE DIRECTION OF
11 THE MORTGAGOR OR OTHER PERSON LIABLE ON THE MORTGAGE.

12 (2) IN AN ACTION FOR DAMAGES UNDER THIS SECTION, THE AMOUNT OF
13 DAMAGES MAY BE DETERMINED BY ANY MEASURE OF DAMAGES APPLICABLE
14 UNDER LAW, INCLUDING, BUT NOT LIMITED TO, THE METHOD PROVIDED UNDER
15 SECTION 5739(2).

16 (3) AN ACTION FOR DAMAGES UNDER THIS SECTION MAY BE JOINED
17 WITH AN ACTION FOR POSSESSION OF THE PREMISES UNDER CHAPTER 57.

18 Enacting section 1. Sections 3204(4), 3205, and 3212 of the
19 revised judicature act of 1961, 1961 PA 236, MCL 600.3204,
20 600.3205, and 600.3212, as amended by this amendatory act, and
21 section 3278 of the revised judicature act of 1961, 1961 PA 236, as
22 added by this amendatory act, apply to foreclosure proceedings in
23 which the first notice under section 3205a of the revised
24 judicature act of 1961, 1961 PA 236, MCL 600.3205a, is mailed to
25 the mortgagor on or after February 1, 2012.

26 Enacting section 2. This amendatory act does not take effect
27 unless all of the following bills of the 96th Legislature are

1 enacted into law:

2 (a) House Bill No. 4543.

3 (b) House Bill No. 4544.