

SENATE BILL No. 1092

April 25, 2012, Introduced by Senators JONES, NOFS, HILDENBRAND, BIEDA, BRANDENBURG, PROOS, MOOLENAAR, PAPPAGEORGE and SCHUITMAKER and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 2803, 2805, 2807, 2811, and 2819 (MCL
600.2803, 600.2805, 600.2807, 600.2811, and 600.2819), as added by
2004 PA 136.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2803. (1) A judgment lien attaches to a judgment debtor's
2 interest in real property if a notice of judgment lien is recorded
3 in accordance with this chapter in the land title records of the
4 register of deeds for the county ~~where~~ **IN WHICH** the property is
5 located. The judgment lien attaches at the time the notice of
6 judgment lien is recorded or, for after acquired property, at the
7 time the judgment debtor acquires the interest in the property.

8 (2) **AT THE REQUEST OF THE JUDGMENT CREDITOR, THE FEE CHARGED**
9 **BY A REGISTER OF DEEDS FOR RECORDING A NOTICE OF JUDGMENT LIEN**

1 **SHALL BE TAXED AND AWARDED AS A COST AGAINST THE JUDGMENT DEBTOR.**

2 Sec. 2805. (1) The clerk of a court that entered a judgment
3 shall certify a notice of judgment lien that has been filed with
4 the court and that includes all of the following:

5 (a) The case caption and docket number.

6 (b) The current name and address of the judgment creditor and,
7 if the judgment creditor has an attorney, the attorney.

8 (c) The name, last 4 digits of the social security or tax
9 identification number, and last known address of the judgment
10 debtor.

11 (d) The current balance due on the judgment.

12 (e) The date the judgment was entered, the expiration date of
13 the judgment, and the expiration date of the judgment lien.

14 (f) The signature of the judgment creditor or the judgment
15 creditor's attorney.

16 (2) A notice of judgment lien need not include a legal
17 description of the debtor's interest in real property.

18 (3) ~~Except as provided by subsection (4), a~~ A copy of a notice
19 of judgment lien that has been certified under subsection (1) shall
20 be served by ~~certified~~ **FIRST-CLASS** mail on the judgment debtor at
21 the judgment debtor's last known address. Proof of service shall be
22 filed with the court that issued the judgment.

23 ~~—— (4) If the judgment that is the subject of the judgment lien~~
24 ~~is for \$25,000.00 or more, a copy of a notice of judgment lien that~~
25 ~~has been certified under subsection (1) shall be personally served~~
26 ~~on the judgment debtor and proof of service filed with the court~~
27 ~~that issued the judgment.~~

1 Sec. 2807. (1) A judgment lien does not attach to an interest
2 in real property owned as tenants by the entirety unless the
3 underlying judgment is entered against both the husband and wife.

4 (2) With the following exceptions, **AND SUBJECT TO SECTION**
5 **2819**, a judgment lien has priority over a lien recorded with the
6 register of deeds after the notice of judgment lien is recorded:

7 (a) A purchase money mortgage.

8 (b) A mortgage to the extent that proceeds of the mortgage are
9 used to pay 1 or more of the following:

10 (i) Purchase money mortgage debt.

11 (ii) A subsequent refinancing of purchase money mortgage debt.

12 (iii) A nonpurchase money mortgage recorded before attachment of
13 the judgment lien.

14 (c) A lien that secures an advance made under a previously
15 recorded future-advance mortgage.

16 (d) A lien that has or acquires priority by operation of law.

17 (e) A claim of lien recorded with the register of deeds under
18 section 111 of the construction lien act, 1980 PA 497, MCL
19 570.1111.

20 (f) A lien for unpaid assessments or charges due to a
21 condominium association, homeowners' association, or property
22 owners' association that arises from or pursuant to recorded
23 restrictions that run with the land.

24 (g) A state or federal tax lien.

25 (3) If property subject to a judgment lien recorded under this
26 chapter is sold or refinanced, proceeds of the sale or refinancing
27 due to a judgment creditor are limited to the judgment debtor's

1 equity in the property at the time of the sale or refinancing after
2 all liens senior to the judgment lien, property taxes, and costs
3 and fees necessary to close the sale or refinancing are paid or
4 extinguished.

5 Sec. 2811. (1) Within 28 days after payment in full of the
6 amount due on a judgment that is the basis for a judgment lien, the
7 judgment creditor or the judgment creditor's attorney shall record
8 a discharge of judgment lien with the office of the register of
9 deeds ~~where~~ **WITH WHICH** the judgment lien is recorded.

10 (2) If payment on a judgment lien is made from the judgment
11 debtor's equity ~~as described in~~ **FROM PROCEEDS OF THE PARCEL OR**
12 **PARCELS OF PROPERTY SOLD UNDER** section 2807(3) and is not payment
13 in full of the amount due on the lien, the judgment creditor or the
14 judgment creditor's attorney shall record a partial discharge of
15 judgment lien for the amount paid.

16 (3) **A PARTIAL DISCHARGE OF JUDGMENT LIEN UNDER SUBSECTION (2)**
17 **SHALL INCLUDE THE LEGAL DESCRIPTION OF THE PARCEL OR PARCELS SOLD**
18 **AND SHALL FULLY RELEASE THE PARCEL OR PARCELS FROM THE LIEN.**

19 Sec. 2819. (1) ~~There~~ **EXCEPT AS PROVIDED IN SUBSECTION (2),**
20 **THERE** is no right to foreclose a judgment lien created under this
21 chapter. At the time the judgment debtor makes a conveyance, as
22 that term is defined in section 35 of 1846 RS 65, MCL 565.35, of,
23 sells under an executory contract, or refinances the interest in
24 real property that is subject to the judgment lien, the judgment
25 debtor shall pay the amount due to the judgment creditor, as
26 determined under section 2807(3), to the judgment creditor.

27 **(2) IF A JUDGMENT DEBTOR CONVEYS, SELLS, OR REFINANCE REAL**

1 PROPERTY ENCUMBERED BY A JUDGMENT LIEN AND DOES NOT PAY THE AMOUNT
2 DUE TO THE JUDGMENT CREDITOR AS REQUIRED BY SUBSECTION (1), THE
3 JUDGMENT LIEN CONTINUES TO ENCUMBER THE REAL PROPERTY WITH PRIORITY
4 OVER ALL INTERESTS PERFECTED AFTER THE JUDGMENT LIEN, INCLUDING ANY
5 LIEN, DEED, ENCUMBRANCE, OR MORTGAGE THAT RESULTS FROM THE
6 CONVEYANCE, SALE, OR REFINANCING, AND THE JUDGMENT CREDITOR MAY
7 FORECLOSE THE JUDGMENT LIEN ON THE REAL PROPERTY AS PROVIDED IN
8 THIS SECTION. ON FORECLOSURE, THE JUDGMENT CREDITOR MAY RECOVER THE
9 AMOUNT THAT WAS DUE TO THE JUDGMENT CREDITOR UNDER SUBSECTION (1)
10 AND BOTH OF THE FOLLOWING:

11 (A) INTEREST ON THE AMOUNT FROM THE DATE THAT PAYMENT WAS DUE
12 AT THE APPLICABLE JUDGMENT INTEREST RATE.

13 (B) COSTS INCURRED IN THE FORECLOSURE PROCESS.

14 (3) A JUDGMENT CREDITOR FORECLOSING A JUDGMENT LIEN UNDER
15 SUBSECTION (2) SHALL OBTAIN, IN THE ACTION IN WHICH THE JUDGMENT
16 WAS ENTERED, A DETERMINATION OF THE AMOUNT THE JUDGMENT CREDITOR IS
17 ENTITLED TO RECOVER THROUGH FORECLOSURE BECAUSE OF THE NONPAYMENT
18 OF THE AMOUNT DUE UNDER SUBSECTION (1) AND A DETERMINATION OF WHICH
19 INTERESTS IN THE PROPERTY, RECORDED BEFORE THE FORECLOSURE
20 PROCEEDING IS COMMENCED, ARE INFERIOR IN PRIORITY TO THE
21 FORECLOSURE RIGHTS OF THE JUDGMENT CREDITOR. THE COURT'S
22 DETERMINATION OF THE AMOUNT THE JUDGMENT CREDITOR IS ENTITLED TO
23 RECOVER THROUGH FORECLOSURE AND THE PRIORITY AS TO OTHER CLAIMANTS
24 IN THE PROPERTY SHALL BE OBTAINED IN A PROCEEDING SUPPLEMENTARY TO
25 JUDGMENT IN THE SAME MANNER AS TITLE TO PROPERTY IS DETERMINED IN
26 SUPPLEMENTARY PROCEEDINGS UNDER SECTION 6128. IF THE JUDGMENT
27 CREDITOR ASSERTS A PRIORITY OVER AN INTEREST IN THE PROPERTY AND

1 THE PERSON HOLDING THAT INTEREST IS NOT A PARTY TO THE ACTION, THE
2 COURT SHALL BY SHOW CAUSE ORDER OR OTHERWISE ORDER THE PERSON TO BE
3 MADE A PARTY TO THE ACTION AND SET THE PROCEEDING FOR AN EARLY
4 HEARING.

5 (4) AFTER A DETERMINATION UNDER SUBSECTION (3) IN FAVOR OF A
6 JUDGMENT CREDITOR HAS BECOME FINAL, THE JUDGMENT CREDITOR MAY
7 PROCEED WITH A FORECLOSURE SALE BY ADVERTISEMENT OF THE PROPERTY TO
8 COLLECT THE AMOUNT THE JUDGMENT CREDITOR WAS ENTITLED TO RECEIVE
9 UNDER SUBSECTION (1), INTEREST, AND COURT AND FORECLOSURE COSTS.
10 THE FORECLOSURE SALE BY ADVERTISEMENT SHALL BE CONDUCTED IN THE
11 MANNER PROVIDED IN THIS SECTION BY THE SHERIFF OF THE COUNTY IN
12 WHICH THE PROPERTY IS LOCATED OR BY ANOTHER OFFICER FROM THE
13 SHERIFF'S OFFICE. FOR SERVICES RELATING TO POSTING OF PUBLIC
14 NOTICES AND CONDUCTING A SALE OF THE PROPERTY, THE SHERIFF OR
15 OFFICER MAY CHARGE THE SAME AMOUNTS AS ALLOWED FOR THOSE SERVICES
16 IN REGARD TO A MORTGAGE SALE BY FORECLOSURE.

17 (5) BEFORE THE SALE OF REAL PROPERTY IN FORECLOSING A JUDGMENT
18 LIEN, NOTICE THAT DESCRIBES THE REAL PROPERTY WITH COMMON CERTAINTY
19 BY STATING THE NAME OR NUMBER OF THE TOWNSHIP OR CITY IN WHICH IT
20 IS LOCATED AND THE NUMBER OF THE LOT, OR BY OTHER APPROPRIATE
21 DESCRIPTION OF THE PROPERTY, AND THAT GIVES THE TIME AND PLACE OF
22 THE SALE SHALL BE GIVEN AS FOLLOWS:

23 (A) A WRITTEN OR PRINTED NOTICE SHALL BE DISPLAYED IN 3 PUBLIC
24 PLACES IN THE TOWNSHIP OR CITY WHERE THE REAL PROPERTY IS LOCATED
25 AT LEAST 6 WEEKS BEFORE THE SALE.

26 (B) A COPY OF THE NOTICE SHALL BE PUBLISHED ONCE EACH WEEK FOR
27 THE 6 SUCCESSIVE WEEKS BEFORE THE SALE IN A NEWSPAPER PRINTED IN

1 THE COUNTY IN WHICH THE PROPERTY IS LOCATED OR, IF THERE IS NO SUCH
2 NEWSPAPER, IN A NEWSPAPER PRINTED IN AN ADJOINING COUNTY.

3 (C) IF THE SHERIFF OR OTHER OFFICER ADJOURNS THE SALE FOR MORE
4 THAN 1 WEEK, HE OR SHE SHALL GIVE NOTICE IN THE NEWSPAPER IN WHICH
5 THE ORIGINAL NOTICE WAS PUBLISHED AND SHALL CONTINUE TO PUBLISH
6 NOTICES WEEKLY THROUGHOUT THE ADJOURNMENT. NOTICE OF ADJOURNMENT
7 SHALL ALSO BE DISPLAYED THROUGHOUT THE ADJOURNMENT AT THE PLACE
8 WHERE THE SALE IS TO BE HELD. IF THERE IS AN ADJOURNMENT OF 1 WEEK
9 OR LESS, POSTING THE ADJOURNMENT AT THE PLACE OF THE SALE IS
10 SUFFICIENT NOTICE OF THE ADJOURNMENT.

11 (6) A SALE OF REAL PROPERTY IN FORECLOSING A JUDGMENT LIEN
12 SHALL BE BY PUBLIC SALE BETWEEN 9 A.M. AND 4 P.M. AT THE PLACE
13 WHERE THE CIRCUIT COURT IS LOCATED IN THE COUNTY IN WHICH THE REAL
14 PROPERTY TO BE SOLD IS LOCATED. THE PROPERTY SHALL BE SOLD TO THE
15 HIGHEST BIDDER. THE SHERIFF OR OTHER OFFICER CONDUCTING THE SALE
16 MAY ADJOURN THE SALE FOR REASONABLE CAUSE AND FOR A REASONABLE
17 PERIOD. THE SAME REQUIREMENTS FOR PROMPT PAYMENT OF THE PURCHASE
18 PRICE BY THE BIDDER THAT APPLY TO MORTGAGE FORECLOSURES BY
19 ADVERTISEMENT OR EXECUTION SALES OF REAL PROPERTY APPLY TO
20 SUCCESSFUL BIDDERS AT A SALE IN FORECLOSING A JUDGMENT LIEN. THE
21 JUDGMENT CREDITOR, AN ASSIGNEE OF THE JUDGMENT CREDITOR, OR A LEGAL
22 REPRESENTATIVE OF THE JUDGMENT CREDITOR OR THE ASSIGNEE MAY, FAIRLY
23 AND IN GOOD FAITH, PURCHASE THE REAL PROPERTY AT THE SALE. A
24 JUDGMENT CREDITOR, ASSIGNEE, OR LEGAL REPRESENTATIVE WHO PURCHASES
25 THE PROPERTY MAY APPLY THE AMOUNT DETERMINED TO BE OWING TO THE
26 JUDGMENT CREDITOR UNDER SUBSECTION (3) AGAINST THE BID MADE BY THE
27 JUDGMENT CREDITOR, ASSIGNEE, OR LEGAL REPRESENTATIVE AND IS ONLY

1 REQUIRED TO PAY MONEY TO THE SHERIFF OR OFFICER IF THE BID EXCEEDS
2 THE AMOUNT DETERMINED TO BE OWING.

3 (7) BEFORE THE DATE OF A SCHEDULED FORECLOSURE SALE UNDER THIS
4 SECTION, THE JUDGMENT DEBTOR OR ANY PERSON WHOSE INTEREST IN THE
5 PROPERTY WOULD BE WHOLLY OR PARTIALLY ELIMINATED BY A FINAL
6 FORECLOSURE SALE MAY CAUSE THE FORECLOSURE SALE TO BE CANCELED BY
7 PAYING TO THE JUDGMENT CREDITOR OR THE JUDGMENT CREDITOR'S ATTORNEY
8 BY CASHIER'S CHECK THE AMOUNT DETERMINED BY THE COURT UNDER
9 SUBSECTION (3) AND INTEREST AND COSTS TO THE DATE OF THE PAYMENT.

10 (8) IF REAL PROPERTY IS SOLD UNDER SUBSECTION (6), THE SHERIFF
11 OR OTHER OFFICER CONDUCTING THE SALE SHALL PAY THE PROCEEDS OF THE
12 SALE, UP TO THE AMOUNT DUE TO THE JUDGMENT CREDITOR AS DETERMINED
13 BY THE COURT UNDER SUBSECTION (3), TO THE JUDGMENT CREDITOR. THE
14 SHERIFF OR OTHER OFFICER CONDUCTING THE SALE SHALL PAY ANY
15 REMAINING SALE PROCEEDS TO THE PERSONS WHOSE INTERESTS IN THE
16 PROPERTY HAVE BEEN ELIMINATED BY THE FORECLOSURE SALE IN THE ORDER
17 OF THE PRIORITY OF THEIR INTERESTS IN THE PROPERTY.

18 (9) AFTER THE SALE OF REAL PROPERTY TO FORECLOSE A JUDGMENT
19 LIEN, THE SHERIFF OR OTHER OFFICER CONDUCTING THE SALE SHALL SIGN
20 AS MANY CERTIFICATES OF THE SALE AS ARE NECESSARY, THAT CONTAIN ALL
21 OF THE FOLLOWING INFORMATION:

22 (A) A PARTICULAR DESCRIPTION OF THE PROPERTY SOLD.

23 (B) THE PRICE BID FOR EACH DISTINCT LOT OR PARCEL SOLD.

24 (C) THE CONSIDERATION PAID FOR EACH LOT OR PARCEL.

25 (10) THE SHERIFF OR OTHER OFFICER CONDUCTING THE SALE SHALL
26 DELIVER A CERTIFICATE UNDER SUBSECTION (9) TO EACH PURCHASER AT THE
27 SALE AND, WITHIN 10 DAYS AFTER THE SALE, FILE 1 OF THE CERTIFICATES

1 TO BE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF THE COUNTY
2 IN WHICH THE PROPERTY IS LOCATED. THE REGISTER OF DEEDS SHALL
3 RECORD THE CERTIFICATE IN A BOOK KEPT FOR THAT PURPOSE. THE
4 ORIGINAL CERTIFICATE, A RECORD OF THE CERTIFICATE, OR A TRANSCRIPT
5 OF THE RECORD, CERTIFIED BY THE REGISTER OF DEEDS, IS PRIMA FACIE
6 EVIDENCE OF THE FACTS CONTAINED IN THE DEED, OF THE REGULARITY OF
7 THE SALE, AND OF ALL PROCEEDINGS IN THE ACTION BEFORE THE SALE. THE
8 SHERIFF OR OTHER OFFICER CONDUCTING THE SALE SHALL ALSO, WITHIN 10
9 DAYS AFTER THE SALE, PROVIDE TO THE PURCHASER AT THE SALE A
10 SHERIFF'S DEED MAKING A FINAL CONVEYANCE OF THE REAL PROPERTY TO
11 THE PURCHASER.

12 (11) A SHERIFF OR OTHER OFFICER WHO, AFTER THE FEES SPECIFIED
13 IN THIS SECTION HAVE BEEN TENDERED, NEGLECTS OR REFUSES ANY OF THE
14 SERVICES REQUIRED BY THIS SECTION IS LIABLE TO THE PARTY INJURED
15 FOR ALL DAMAGES THE PARTY SUSTAINS BECAUSE OF THAT NEGLECT OR
16 REFUSAL.

17 (12) A PERSON WHO REMOVES OR DEFACES A NOTICE OF SALE
18 DISPLAYED UNDER SUBSECTION (5) WITHOUT AUTHORIZATION IS LIABLE TO
19 THE JUDGMENT CREDITOR FOR \$50.00 OR MORE PER INSTANCE PLUS THE
20 AMOUNT OF ACTUAL DAMAGES SUSTAINED BY THE JUDGMENT CREDITOR.