

HOUSE BILL No. 4417

March 15, 2011, Introduced by Rep. Oakes 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 section 3204 (MCL 600.3204), as amended by 2009 PA 29; and to repeal acts and parts of acts.

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,
7 to recover the debt secured by the mortgage or any part of the
8 mortgage; or, if an action or proceeding has been instituted, the
9 action or proceeding has been discontinued; or an execution on a

1 judgment rendered in an action or proceeding has been returned
2 unsatisfied, in whole or in part.

3 (c) The mortgage containing the power of sale has been
4 properly recorded.

5 (d) The party foreclosing the mortgage is either the owner of
6 the indebtedness or of an interest in the indebtedness secured by
7 the mortgage or the servicing agent of the mortgage.

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

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

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

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

26 (b) After a notice is mailed to the mortgagor under section
27 3205a, the time for a housing counselor to notify the person

1 designated under section 3205a(1)(c) of a request by the mortgagor
2 under section 3205b(1) has not expired.

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

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

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

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

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

23 Enacting section 1. Section 3205e of the revised judicature
24 act of 1961, 1961 PA 236, MCL 600.3205e, is repealed.