

SENATE BILL No. 860

December 1, 2011, Introduced by Senator JOHNSON and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 2977.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2977. (1) AN OWNER OF RESIDENTIAL PROPERTY THAT IS
2 MORTGAGED MAY BRING AN ACTION IN THE CIRCUIT COURT REQUESTING THE
3 COURT TO REFORM THE MORTGAGE AND THE NOTE OR OTHER DOCUMENT THAT
4 EVIDENCES THE INDEBTEDNESS SECURED BY THE MORTGAGE.

5 (2) AN OWNER OF RESIDENTIAL PROPERTY IS ENTITLED TO RELIEF
6 UNDER THIS SECTION IF THE AMOUNT DUE ON THE INDEBTEDNESS SECURED BY
7 THE MORTGAGE EXCEEDS THE FAIR MARKET VALUE OF THE PROPERTY.

8 (3) IF THE COURT IN AN ACTION UNDER THIS SECTION DETERMINES
9 THAT SUBSECTION (2) APPLIES, THE COURT SHALL ORDER REFORMATION OF
10 THE MORTGAGE AND THE NOTE OR OTHER DOCUMENT THAT EVIDENCES THE

1 INDEBTEDNESS SECURED BY THE MORTGAGE, ORDERING ALL OF THE
2 FOLLOWING:

3 (A) THAT THE INDEBTEDNESS SECURED BY THE MORTGAGE BE REDUCED
4 TO WHICHEVER OF THE FOLLOWING AMOUNTS IS GREATER:

5 (i) SIXTY-FOUR PERCENT OF THE UNPAID PRINCIPAL OF THE
6 INDEBTEDNESS.

7 (ii) THE FAIR MARKET VALUE OF THE PROPERTY. THE BURDEN OF
8 PROVING THAT THE FAIR MARKET VALUE OF THE PROPERTY EXCEEDS THE
9 AMOUNT UNDER SUBPARAGRAPH (i) IS ON THE HOLDER OF THE MORTGAGE OR
10 THE NOTE OR OTHER DOCUMENT.

11 (B) THAT THE PAYMENT SCHEDULE OF THE REDUCED INDEBTEDNESS BE
12 ADJUSTED TO AMORTIZE THE NEW AMOUNT OVER THE REMAINING AMORTIZATION
13 PERIOD OF THE UNREFORMED INDEBTEDNESS.

14 (C) THAT IF THE PROPERTY IS SOLD BY THE PROPERTY OWNER OR THE
15 PROPERTY OWNER'S SUCCESSOR IN INTEREST, THE PROPERTY OWNER AND THE
16 MORTGAGE HOLDER, OR THEIR SUCCESSORS IN INTEREST, WILL DIVIDE
17 EQUALLY ANY AMOUNT RECEIVED THAT REFLECTS EQUITY IN THE PROPERTY.
18 THE AMOUNT RECEIVED BY THE MORTGAGE HOLDER OR THE MORTGAGE HOLDER'S
19 SUCCESSOR UNDER THIS SUBSECTION SHALL NOT EXCEED THE AMOUNT OF THE
20 REDUCTION IN INDEBTEDNESS ORDERED UNDER THIS SECTION.

21 (4) AN INDIVIDUAL SEEKING RELIEF UNDER THIS SECTION SHALL
22 BRING THE ACTION BEFORE 9 MONTHS AFTER THE EFFECTIVE DATE OF THE
23 AMENDATORY ACT THAT ADDED THIS SECTION.

24 (5) AS USED IN THIS SECTION, "RESIDENTIAL PROPERTY" MEANS A
25 PRINCIPAL RESIDENCE EXEMPT FROM TAX UNDER SECTION 7CC OF THE
26 GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.7CC.