

Act No. 103
Public Acts of 2013
Approved by the Governor
July 3, 2013
Filed with the Secretary of State
July 3, 2013
EFFECTIVE DATE: July 3, 2013

**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2013**

Introduced by Senators Richardville and Booher

ENROLLED SENATE BILL No. 380

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 section 3204 (MCL 600.3204), as amended by 2012 PA 521.

The People of the State of Michigan enact:

Sec. 3204. (1) Subject to subsections (4) and (6), 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 has not expired for the mortgagor to request, either directly or through a housing counselor, a meeting under section 3205b with the person designated under section 3205a(1)(c).

(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 January 10, 2014.

(6) After January 9, 2014, a party to which section 3206 applies 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, unless the party has complied with section 3206.

(7) Subsections (4) and (6) do 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.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 97th Legislature are enacted into law:

(a) House Bill No. 4765.

(b) House Bill No. 4766.

(c) Senate Bill No. 383.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Ray E. Randall

Clerk of the House of Representatives

Approved

Governor

Compiler's note: The bills referred to in enacting section 1 were enacted into law as follows:

House Bill No. 4765 was filed with the Secretary of State July 3, 2013, and became 2013 PA 105, Imd. Eff. July 3, 2013.

House Bill No. 4766 was filed with the Secretary of State July 3, 2013, and became 2013 PA 106, Imd. Eff. July 3, 2013.

Senate Bill No. 383 was filed with the Secretary of State July 3, 2013, and became 2013 PA 104, Eff. Jan. 10, 2014.