

# HOUSE BILL No. 4800

June 4, 2013, Introduced by Reps. Schor and Abed and referred to the Committee on Financial Services.

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending sections 3201 and 3240 (MCL 600.3201 and 600.3240),  
section 3201 as amended by 1981 PA 172 and section 3240 as amended  
by 2011 PA 303, and by adding sections 3117 and 3118.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 3117. (1) IN AN ACTION UNDER THIS CHAPTER TO FORECLOSE A  
2 MORTGAGE OF 1- TO 4-UNIT RESIDENTIAL PROPERTY THAT IS OCCUPIED BY  
3 THE OWNER, THE COURT MAY MODIFY THE MORTGAGE OR GRANT OTHER RELIEF  
4 TO THE MORTGAGOR THAT THE COURT DETERMINES IS APPROPRIATE IF THE  
5 MORTGAGEE HAS ENGAGED IN 1 OR MORE OF THE FOLLOWING PRACTICES:

6            (A) PURPOSELY FAILING TO RECORD MORTGAGES OR ASSIGNMENTS OF  
7 MORTGAGES.

8            (B) ADVISING MORTGAGORS NOT TO MAKE PAYMENTS ON MORTGAGES.

1 (C) PLACING FALSE SIGNATURES ON MORTGAGE FORECLOSURE  
2 DOCUMENTS.

3 (2) A COURT SHALL NOT MODIFY A MORTGAGE OR GRANT OTHER RELIEF  
4 UNDER THIS SECTION IF DOING SO WOULD AFFECT THE RIGHTS OF TENANTS  
5 OR OTHER LEGAL OCCUPANTS OF THE PROPERTY.

6 SEC. 3118. IF A DEFENDANT PREVAILS IN AN ACTION UNDER THIS  
7 CHAPTER, THE COURT SHALL AWARD THE DEFENDANT ACTUAL COSTS AND  
8 ATTORNEY FEES.

9 Sec. 3201. ~~Every A mortgage of real estate , which THAT~~  
10 contains a power of sale, ~~upon ON A default being made in any~~  
11 condition of ~~such THE~~ mortgage, may be foreclosed by advertisement  
12 ~~, in the cases and in the manner specified in UNDER~~ this chapter.  
13 However, ~~the procedures set forth in this chapter shall DOES~~ not  
14 apply to **THE FOLLOWING** mortgages:

15 (A) A MORTGAGE of real estate held by the Michigan state  
16 housing development authority.

17 (B) A MORTGAGE OF 1- TO 4-UNIT RESIDENTIAL PROPERTY THAT IS  
18 OCCUPIED BY THE OWNER IF THE MORTGAGEE HAS ENGAGED IN 1 OR MORE OF  
19 THE FOLLOWING PRACTICES:

20 (i) PURPOSELY FAILING TO RECORD MORTGAGES OR ASSIGNMENTS OF  
21 MORTGAGES.

22 (ii) ADVISING MORTGAGORS NOT TO MAKE PAYMENTS ON MORTGAGES.

23 (iii) PLACING FALSE SIGNATURES ON MORTGAGE FORECLOSURE  
24 DOCUMENTS.

25 Sec. 3240. (1) A purchaser's deed is void if the mortgagor,  
26 the mortgagor's heirs or personal representative, or any person  
27 lawfully claiming under the mortgagor or the mortgagor's heirs or

1 personal representative redeems the entire premises sold by paying  
2 the amount required under subsection (2) and any amount required  
3 under subsection (4), within the applicable time limit prescribed  
4 in subsections (7) to (13), to the purchaser or the purchaser's  
5 personal representative or assigns, or to the register of deeds in  
6 whose office the deed is deposited for the benefit of the  
7 purchaser.

8 (2) The amount required to be paid under subsection (1) is the  
9 sum that was bid for the entire premises sold, with interest from  
10 the date of the sale at the interest rate provided for by the  
11 mortgage, together with the amount of the sheriff's fee paid by the  
12 purchaser under section 2558(2)(q), and an additional \$5.00 as a  
13 fee for the care and custody of the redemption money if the payment  
14 is made to the register of deeds. Except as provided in subsection  
15 (15), the register of deeds shall not determine the amount  
16 necessary for redemption. The purchaser shall attach an affidavit  
17 with the deed to be recorded under this section that states the  
18 exact amount required to redeem the property under this subsection,  
19 including any daily per diem amounts, and the date by which the  
20 property must be redeemed shall be stated on the certificate of  
21 sale. The purchaser may include in the affidavit the name of a  
22 designee responsible on behalf of the purchaser to assist the  
23 person redeeming the property in computing the exact amount  
24 required to redeem the property. The designee may charge a fee as  
25 stated in the affidavit and may be authorized by the purchaser to  
26 receive redemption funds. The purchaser shall accept the amount  
27 computed by the designee.

1           (3) If a distinct lot or parcel separately sold is redeemed,  
2 leaving a portion of the premises unredeemed, the deed shall be  
3 void only to the redeemed parcel or parcels.

4           (4) If, after the sale, the purchaser, the purchaser's heirs  
5 or personal representative, or any person lawfully claiming under  
6 the purchaser or the purchaser's heirs or personal representative  
7 pays taxes assessed against the property, amounts necessary to  
8 redeem senior liens from foreclosure, condominium assessments,  
9 homeowner association assessments, community association  
10 assessments, or premiums on an insurance policy covering any  
11 buildings located on the property that under the terms of the  
12 mortgage it would have been the duty of the mortgagor to pay if the  
13 mortgage had not been foreclosed and that are necessary to keep the  
14 policy in force until the expiration of the period of redemption,  
15 redemption shall be made only upon payment of the sum specified in  
16 subsection (2) plus the amounts specified in this subsection with  
17 interest on the amounts specified in this subsection from the date  
18 of the payment to the date of redemption at the interest rate  
19 specified in the mortgage. This subsection does not apply unless  
20 all of the following are filed with the register of deeds with whom  
21 the deed is deposited:

22           (a) An affidavit by the purchaser or someone in his or her  
23 behalf who has knowledge of the facts of the payment showing the  
24 amount and items paid.

25           (b) The receipt or copy of the canceled check evidencing the  
26 payment of the taxes, amounts necessary to redeem senior liens from  
27 foreclosure, condominium assessments, homeowner association

1 assessments, community association assessments, or insurance  
2 premiums.

3 (c) An affidavit of an insurance agent of the insurance  
4 company stating that the payment was made and what portion of the  
5 payment covers the premium for the period before the expiration of  
6 the period of redemption.

7 (5) If the redemption payment in subsection (4) includes an  
8 amount used to redeem a senior lien from a nonjudicial foreclosure,  
9 the mortgagor shall have the same defenses against the purchaser  
10 with respect to the amount used to redeem the senior lien as the  
11 mortgagor would have had against the senior lien.

12 (6) The register of deeds shall indorse on the documents filed  
13 under subsection (4) the time they are received. The register of  
14 deeds shall record the affidavit of the purchaser only and shall  
15 preserve in his or her files the recorded affidavit, receipts,  
16 insurance receipts, and insurance agent's affidavit until  
17 expiration of the period of redemption.

18 (7) For a mortgage executed on or after January 1, 1965, of  
19 commercial or industrial property, or multifamily residential  
20 property in excess of 4 units, the redemption period is 6 months  
21 from the date of the sale.

22 (8) Subject to subsections (9) to (12), for a mortgage  
23 executed on or after January 1, 1965, of residential property not  
24 exceeding 4 units **TO WHICH SECTION 3201(B) DOES NOT APPLY**, if the  
25 amount claimed to be due on the mortgage at the date of the notice  
26 of foreclosure is more than 66-2/3% of the original indebtedness  
27 secured by the mortgage, the redemption period is 6 months.

1           (9) Subject to subsection (10), for a mortgage of residential  
2 property not exceeding 4 units, if the property is abandoned as  
3 determined under section 3241, the redemption period is 3 months.

4           (10) For a mortgage of residential property not exceeding 4  
5 units, if the amount claimed to be due on the mortgage at the date  
6 of the notice of foreclosure is more than 66-2/3% of the original  
7 indebtedness secured by the mortgage and the property is abandoned  
8 as determined under section 3241, the redemption period is 1 month.

9           (11) If the property is abandoned as determined under section  
10 3241a, the redemption period is 30 days or until the time to  
11 provide the notice required by section 3241a(c) expires, whichever  
12 is later.

13           (12) For a mortgage of property that is used for agricultural  
14 purposes, the redemption period is 1 year from the date of the  
15 sale.

16           (13) If subsections (7) to (12) do not apply, the redemption  
17 period is 1 year from the date of the sale.

18           (14) The amount stated in any affidavits recorded under this  
19 section shall be the amount necessary to satisfy the requirements  
20 for redemption under this section.

21           (15) The register of deeds of a county having a population of  
22 more than 750,000 and less than 1,500,000, at the request of a  
23 person entitled to redeem the property under this section, shall  
24 determine the amount necessary for redemption. In determining the  
25 amount, the register of deeds shall consider only the affidavits  
26 recorded under subsections (2) and (4). A county, register of  
27 deeds, or employee of a county or register of deeds is not liable

1 for damages proximately caused by an incorrect determination of an  
2 amount necessary for redemption under subsection (2).

3 (16) A register of deeds may charge not more than \$50.00 for  
4 determining the amount necessary for redemption under this section.

5 (17) For purposes of this section, there is a presumption that  
6 the property is used for agricultural purposes if, before the  
7 foreclosure sale under this chapter, the mortgagor provides the  
8 party foreclosing the mortgage and the foreclosing party's attorney  
9 proof that the mortgagor filed a schedule F to the mortgagor's  
10 federal income tax form 1040 for the year preceding the year in  
11 which the proceedings to foreclose the mortgage were commenced and  
12 records an affidavit with the register of deeds for the county in  
13 which the property is located stating that the proof has been  
14 delivered. If the mortgagor fails to provide proof and record an  
15 affidavit as required by this subsection before the foreclosure  
16 sale, there is a presumption that the property is not used for  
17 agricultural purposes. The party foreclosing the mortgage or the  
18 mortgagor may file a civil action to produce evidence to rebut a  
19 presumption created by this subsection. An action under this  
20 section shall be filed before the expiration of the redemption  
21 period that would apply if the property is determined not to be  
22 used for agricultural purposes.