

MORTGAGE FORECLOSURE BY ADVERTISEMENT

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House Bill 4306 as enacted

Public Act 142 of 2019

Sponsor: Rep. Triston Cole

House Committee: Government Operations

Senate Committee: Judiciary and Public Safety

Complete to 12-19-19

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4306 amends the Revised Judicature Act (RJA) to require a notice of foreclosure by advertisement to include certain information.

Chapter 32 of the RJA provides a process under which certain mortgages may be foreclosed by advertising the foreclosure sale rather than by filing a lawsuit against the borrower. (The foreclosure sale is a public auction won by the highest bidder.) The RJA requires a notice to be published in a local newspaper at least once a week, for four consecutive weeks, that the mortgage will be foreclosed by sale of the property. The notice must contain such information as the names of the parties to the mortgage, a description of the property, and the current amount due under the mortgage.

House Bill 4306 further requires that the notice include the following:

- The street address of the property. (However, the validity of the notice and any eventual sale are not affected by a wrong or missing street address.)
- The name, address, and telephone number of the attorney for the foreclosing party.
- For a residential mortgage, the following statement addressed to the homeowner: “If you are a military service member on active duty, if your period of active duty has concluded less than 90 days ago, or if you have been ordered to active duty, please contact the attorney for the party foreclosing the mortgage at the telephone number stated in this notice.”
- A statement that does the following (in language specified by the bill):
 - Indicates that the notice is for a foreclosure by advertisement under the RJA and the time and place of the sale.
 - Advises that the amount due on the mortgage might be greater on the day of the sale and that placing the highest bid does not automatically convey free and clear ownership.
 - Encourages a potential purchaser to contact the county register of deeds or a title insurance company, either of which might charge a fee, for further information.

Finally, the bill prohibits the party foreclosing the mortgage from publishing a notice of foreclosure by advertisement in a newspaper in which that party or its agent has a majority ownership interest.

The bill takes effect January 11, 2020.

MCL 600.3212

BACKGROUND INFORMATION:

House Bill 4306 as introduced and as reported from the House Committee on Government Operations on March 19, 2019, would have required foreclosure notices to contain the statement “This firm [the attorney for the foreclosing party] is a debt collector attempting to collect a debt. Any information we obtain will be used for that purpose.”

On March 20, 2019, however, the United States Supreme Court held in *Obduskey v McCarthy & Holthus LLP* that a business engaged in foreclosure by advertisement is not a debt collector, except for limited purposes, under the federal Fair Debt Collection Practices Act.¹

The bill was re-referred to House committee the same day (March 20), and the bill as subsequently substituted and enacted does not contain the provision described above.

FISCAL IMPACT:

House Bill 4306 would have no fiscal impact on the state or on local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ https://www.supremecourt.gov/opinions/18pdf/17-1307_7lho.pdf