

## MORTGAGE FORECLOSURE BY ADVERTISEMENT

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**House Bill 4306 (H-2) as reported from committee**

**Sponsor: Rep. Triston Cole**

**Committee: Government Operations**

**Complete to 5-3-19**

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

### SUMMARY:

House Bill 4306 would amend the Revised Judicature Act to require a notice of foreclosure by advertisement to include certain information.

Chapter 32 of the act 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 act 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 would require that the notice also include the following:

- The street address of the property. (However, the validity of the notice and any eventual sale would not be 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, a statement addressed to the homeowner in the following form: "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 indicating that the notice is for a foreclosure by advertisement under the Revised Judicature Act. The statement would indicate the time and place of the sale. The statement would advise 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. It would encourage 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. (The language of the statement is specified by the bill.)

The bill would take effect 30 days after being enacted.

MCL 600.3212

## BACKGROUND INFORMATION:

House Bill 4306 was reported without amendment from the House Committee on Government Operations on March 19, 2019. The bill as first reported 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, 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 federal law (specifically, the Fair Debt Collection Practices Act).<sup>1</sup> The bill was re-referred to committee the same day (March 20), and the bill as reported following re-referral does not contain the provision described above, in accordance with the Supreme Court’s decision.

The bill as first reported would also have required notices for residential mortgages to include information advising that homeowners can seek assistance from the Michigan State Housing Development Authority and including contact information for that agency. These provisions are not included in the bill as reported following re-referral.

## FISCAL IMPACT:

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

## POSITIONS:

The following entities indicated support for the bill (5-1-19):

Michigan Press Association  
Detroit Legal News  
Michigan Bankers Association

The Michigan Court Officers, Deputy Sheriffs Association indicated opposition to the bill as written, and a representative testified to its proposed amendment. (5-1-19)

The Michigan Credit Union League indicated a neutral position on the bill as introduced. (3-19-19)

The Michigan Poverty Law Program indicated opposition to the bill as introduced. (3-19-19)

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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.

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<sup>1</sup> [https://www.supremecourt.gov/opinions/18pdf/17-1307\\_7lho.pdf](https://www.supremecourt.gov/opinions/18pdf/17-1307_7lho.pdf)