

HOUSE BILL No. 4542

April 13, 2011, Introduced by Reps. Farrington, Pettalia, Lyons, Knollenberg and Liss and referred to the Committee on Banking and Financial Services.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 3204 and 3205 (MCL 600.3204 and 600.3205),
section 3204 as amended and section 3205 as added by 2009 PA 29.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3204. (1) Subject to subsection (4), a party may
2 foreclose a mortgage by advertisement if all of the following
3 circumstances exist:

4 (a) A default in a condition of the mortgage has occurred, by
5 which the power to sell became operative.

6 (b) An action or proceeding has not been instituted, at law,
7 to recover the debt secured by the mortgage or any part of the
8 mortgage; or, if an action or proceeding has been instituted, the
9 action or proceeding has been discontinued; or an execution on a
10 judgment rendered in an action or proceeding has been returned

1 unsatisfied, in whole or in part.

2 (c) The mortgage containing the power of sale has been
3 properly recorded.

4 (d) The party foreclosing the mortgage is either the owner of
5 the indebtedness or of an interest in the indebtedness secured by
6 the mortgage or the servicing agent of the mortgage.

7 (2) If a mortgage is given to secure the payment of money by
8 installments, each of the installments mentioned in the mortgage
9 after the first shall be treated as a separate and independent
10 mortgage. The mortgage for each of the installments may be
11 foreclosed in the same manner and with the same effect as if a
12 separate mortgage were given for each subsequent installment. A
13 redemption of a sale by the mortgagor has the same effect as if the
14 sale for the installment had been made upon an independent prior
15 mortgage.

16 (3) If the party foreclosing a mortgage by advertisement is
17 not the original mortgagee, a record chain of title shall exist
18 prior to the date of sale under section 3216 evidencing the
19 assignment of the mortgage to the party foreclosing the mortgage.

20 (4) A party shall not commence proceedings under this chapter
21 to foreclose a mortgage of property ~~described in section 3205a(1)~~
22 **CLAIMED AS A PRINCIPAL RESIDENCE EXEMPT FROM TAX UNDER SECTION 7CC**
23 **OF THE GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.7CC,** if 1 or
24 more of the following apply:

25 (a) Notice has not been mailed to the mortgagor as required by
26 section 3205a.

27 (b) After a notice is mailed to the mortgagor under section

1 3205a, the time for a housing counselor to notify the person
2 designated under section 3205a(1)(c) of a request by the mortgagor
3 under section 3205b(1) has not expired.

4 (c) Within ~~14-20~~ days after a notice is mailed to the
5 mortgagor under section 3205a, the mortgagor has requested a
6 meeting under section 3205b with the person designated under
7 section 3205a(1)(c) and 90 days have not passed after the notice
8 was mailed. **THIS SUBDIVISION DOES NOT APPLY IF THE MORTGAGOR HAS**
9 **FAILED TO PROVIDE DOCUMENTS AS REQUIRED UNDER SECTION 3205B(2).**

10 (D) **DOCUMENTS HAVE BEEN REQUESTED UNDER SECTION 3205B(2) AND**
11 **THE TIME FOR PRODUCING THE DOCUMENTS HAS NOT EXPIRED.**

12 (E) ~~(d)~~—The mortgagor has requested a meeting under section
13 3205b with the person designated under section 3205a(1)(c), the
14 mortgagor has provided documents ~~if requested~~ **AS REQUIRED** under
15 section 3205b(2), and the person designated under section
16 3205a(1)(c) has not met or negotiated with the mortgagor under this
17 chapter.

18 (F) ~~(e)~~—The mortgagor and mortgagee have agreed to modify the
19 mortgage loan and the mortgagor is not in default under the
20 modified agreement.

21 (G) ~~(f)~~—Calculations under section 3205c(1) show that the
22 mortgagor is eligible for a loan modification and foreclosure under
23 this chapter is not allowed under section 3205c(7).

24 (5) Subsection (4) applies only to proceedings under this
25 chapter in which the first notice under section 3208 is published
26 ~~after the effective date of the amendatory act that added this~~
27 ~~subsection~~ **JULY 5, 2009** and before ~~2 years after the effective date~~

~~of the amendatory act that added this subsection JULY 5, 2012.~~

Sec. 3205. (1) AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, BEFORE A PARTY FORECLOSING A MORTGAGE SENDS A NOTICE UNDER SECTION 3205A(1), THE MORTGAGE HOLDER OR MORTGAGE SERVICER SHALL DESIGNATE AN INDIVIDUAL WHO IS AN EMPLOYEE OR AGENT OF THE MORTGAGE HOLDER, THE MORTGAGE SERVICER, OR ANOTHER ENTITY THAT IS AN AGENT OF THE MORTGAGE HOLDER OR MORTGAGE SERVICER TO SERVE AS A CONTACT UNDER SECTIONS 3205A TO 3205C.

(2) THE MORTGAGE HOLDER OR MORTGAGE SERVICER THAT DESIGNATES AN INDIVIDUAL UNDER SUBSECTION (1) SHALL AUTHORIZE THE INDIVIDUAL TO FACILITATE NEGOTIATIONS AND ATTEND MEETINGS WITH THE BORROWER. IF THE INDIVIDUAL IS NOT ALSO DESIGNATED AS THE INDIVIDUAL AUTHORIZED TO MAKE AGREEMENTS TO MODIFY THE MORTGAGE UNDER SECTIONS 3205A TO 3205C ON BEHALF OF THE MORTGAGE HOLDER OR MORTGAGE SERVICER, THE MORTGAGE HOLDER OR MORTGAGE SERVICER SHALL ENSURE THAT AN INDIVIDUAL WHO IS SO AUTHORIZED IS AVAILABLE BY TELEPHONE AT ALL MEETINGS WITH THE BORROWER.

(3) As used in this section and sections 3205a to 3205d:

(a) "Borrower" means the mortgagor.

(b) "Mortgage holder" means the owner of the indebtedness or of an interest in the indebtedness that is secured by the mortgage.

(c) "Mortgage servicer" means the servicing agent of the mortgage.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 96th Legislature are enacted into law:

(a) Senate Bill No. _____ or House Bill No. 4543

1 (request no. 01990'11).

2 (b) Senate Bill No. _____ or House Bill No. 4544

3 (request no. 01991'11).