

DRAFT 2

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 3204, 3205, 3205a, 3205b, 3205d, 3205e, and
3240 (MCL 600.3204, 600.3205, 600.3205a, 600.3205b, 600.3205d,
600.3205e, and 600.3240), section 3204 as amended and section 3205
as added by 2009 PA 29, sections 3205a and 3205b as added by 2009
PA 30, sections 3205d and 3205e as added by 2009 PA 31, and section
3240 as amended by 2010 PA 303.

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.



1 (b) An action or proceeding has not been instituted, at law,
2 to recover the debt secured by the mortgage or any part of the
3 mortgage; or, if an action or proceeding has been instituted, the
4 action or proceeding has been discontinued; or an execution on a
5 judgment rendered in an action or proceeding has been returned
6 unsatisfied, in whole or in part.

7 (c) The mortgage containing the power of sale has been
8 properly recorded.

9 (d) The party foreclosing the mortgage is either the owner of
10 the indebtedness or of an interest in the indebtedness secured by
11 the mortgage or the servicing agent of the mortgage.

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

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

25 (4) A party shall not commence proceedings under this chapter
26 to foreclose a mortgage of property ~~described in section 3205a(1)~~

27 **CLAIMED AS A PRINCIPAL RESIDENCE EXEMPT FROM TAX UNDER SECTION 7CC**



1 OF THE GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.7CC, if 1 or
2 more of the following apply:

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

5 (b) After a notice is mailed to the mortgagor under section
6 3205a, the time for a housing counselor to notify the person
7 designated under section 3205a(1)(c) of a request by the mortgagor
8 under section 3205b(1) has not expired.

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

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

17 **(E)** ~~(d)~~The mortgagor has requested a meeting under section
18 3205b with the person designated under section 3205a(1)(c), the
19 mortgagor has provided documents ~~if requested~~ **AS REQUIRED** under
20 section 3205b(2), and the person designated under section
21 3205a(1)(c) has not met or negotiated with the mortgagor under this
22 chapter.

23 **(F) WITHIN 15 DAYS AFTER A MEETING UNDER SECTION 3205B AT
24 WHICH THE PARTIES REACHED A VERBAL AGREEMENT TO MODIFY THE MORTGAGE
25 LOAN, THE MORTGAGOR HAS NOT RECEIVED A WRITTEN MODIFICATION
26 AGREEMENT SIGNED ON BEHALF OF THE MORTGAGEE THAT ACCURATELY STATES
27 THE VERBAL AGREEMENT.**



1 (G) ~~(e)~~ The mortgagor and mortgagee have agreed to modify the
2 mortgage loan and the mortgagor is not in default under the
3 modified agreement.

4 (H) ~~(f)~~ Calculations under section 3205c(1) show that the
5 mortgagor is eligible for a loan modification and foreclosure under
6 this chapter is not allowed under section 3205c(7).

7 (5) Subsection (4) applies only to proceedings under this
8 chapter in which the first notice under section 3208 is published
9 after ~~the effective date of the amendatory act that added this~~
10 ~~subsection~~ **JULY 5, 2009** and before ~~2 years after the effective date~~
11 ~~of the amendatory act that added this subsection~~ **JULY 5, 2012**.

12 **Sec. 3205. (1) AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT**
13 **THAT ADDED THIS SUBSECTION, BEFORE A PARTY FORECLOSING A MORTGAGE**
14 **COMMENCES A PROCEEDING UNDER THIS CHAPTER TO WHICH SECTION 3204(4)**
15 **APPLIES, THE MORTGAGE HOLDER OR MORTGAGE SERVICER SHALL DESIGNATE**
16 **AN INDIVIDUAL WHO IS AN EMPLOYEE OR AGENT OF THE MORTGAGE HOLDER,**
17 **THE MORTGAGE SERVICER, OR ANOTHER ENTITY THAT IS AN AGENT OF THE**
18 **MORTGAGE HOLDER OR MORTGAGE SERVICER TO SERVE AS A CONTACT UNDER**
19 **SECTIONS 3205A TO 3205C.**

20 **(2) THE MORTGAGE HOLDER OR MORTGAGE SERVICER THAT DESIGNATES**
21 **AN INDIVIDUAL UNDER SUBSECTION (1) SHALL AUTHORIZE THE INDIVIDUAL**
22 **TO ENTER INTO NEGOTIATIONS AND MAKE AGREEMENTS TO MODIFY THE**
23 **MORTGAGE UNDER SECTIONS 3205A TO 3205C ON BEHALF OF THE MORTGAGE**
24 **HOLDER OR MORTGAGE SERVICER.**

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

26 (a) "Borrower" means the mortgagor.

27 (b) "Mortgage holder" means the owner of the indebtedness or

1 of an interest in the indebtedness that is secured by the mortgage.

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

4 Sec. 3205a. (1) Subject to subsection (6), before **COMMENCING A**
5 proceeding ~~with a sale under this chapter of property claimed as a~~
6 ~~principal residence exempt from tax under section 7ee of the~~
7 ~~general property tax act, 1993 PA 206, MCL 211.7ee, TO WHICH~~
8 **SECTION 3204 (4) APPLIES**, the foreclosing party shall serve a
9 written notice on the borrower that contains all of the following
10 information:

11 (a) The reasons that the mortgage loan is in default and the
12 amount that is due and owing under the mortgage loan.

13 (b) The names, addresses, and telephone numbers of the
14 mortgage holder, the mortgage servicer, or any agent designated by
15 the mortgage holder or mortgage servicer.

16 (c) A designation of 1 of the persons named in subdivision (b)
17 as the person to contact and that has the authority to make
18 agreements under sections 3205b and 3205c. **HOWEVER, AFTER THE**
19 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 3205(1),**
20 **THE PERSON DESIGNATED UNDER THIS SUBSECTION SHALL BE THE INDIVIDUAL**
21 **DESIGNATED UNDER SECTION 3205(1) AND THE NOTICE SHALL GIVE THE**
22 **NAME, ADDRESS, AND TELEPHONE NUMBER OF THE INDIVIDUAL.**

23 (d) That enclosed with the notice is a list of housing
24 counselors prepared by the Michigan state housing development
25 authority and that within ~~14~~-20 days after the notice is sent, the
26 borrower may request a meeting with the person designated under
27 subdivision (c) to attempt to work out a modification of the



1 mortgage loan to avoid foreclosure and that the borrower may also
2 request a housing counselor **FROM THE ENCLOSED LIST** to attend the
3 meeting.

4 (e) That if the borrower requests a meeting with the person
5 designated under subdivision (c), foreclosure proceedings will not
6 be commenced until 90 days after the date the notice is mailed to
7 the borrower.

8 (f) That if the borrower and the person designated under
9 subdivision (c) reach an agreement to modify the mortgage loan, the
10 mortgage will not be foreclosed if the borrower abides by the terms
11 of the agreement.

12 (g) That if the borrower and the person designated under
13 subdivision (c) do not agree to modify the mortgage loan but it is
14 determined that the borrower meets criteria for a modification
15 under section 3205c(1) and foreclosure under this chapter is not
16 allowed under section 3205c(7), the foreclosure of the mortgage
17 will proceed before a judge instead of by advertisement.

18 (h) That the borrower has the right to contact an attorney,
19 and the telephone numbers of the state bar of Michigan's lawyer
20 referral service and of a local legal aid office serving the area
21 in which the property is situated.

22 (2) A person who serves a notice under subsection (1) shall
23 enclose with the notice a list prepared by the Michigan state
24 housing development authority under section 3205d of the names,
25 addresses, and telephone numbers of housing counselors approved by
26 the United States department of housing and urban development or
27 the Michigan state housing development authority.



1 (3) A person shall serve a notice under subsection (1) by
2 mailing the notice by regular first-class mail and by certified
3 mail, return receipt requested, with delivery restricted to the
4 borrower, both sent to the borrower's last known address.

5 (4) Within 7 days after mailing a notice under subsection (3),
6 the person who mails the notice shall publish a notice informing
7 the borrower of the borrower's rights under this section. The
8 person shall publish the information 1 time in the same manner as
9 is required for publishing a notice of foreclosure sale under
10 section 3208. The notice under this subsection shall contain all of
11 the following information:

12 (a) The borrower's name and the property address.

13 (b) A statement that informs the borrower of all of the
14 following:

15 (i) That the borrower has the right to request a meeting with
16 the mortgage holder or mortgage servicer.

17 (ii) The name of the person designated under subsection (1)(c)
18 as the person to contact and that has the authority to make
19 agreements under sections 3205b and 3205c.

20 (iii) That the borrower may contact a housing counselor by
21 visiting the Michigan state housing development authority's website
22 or by calling the Michigan state housing development authority.

23 (iv) The website address and telephone number of the Michigan
24 state housing development authority.

25 (v) That if the borrower requests a meeting with the person
26 designated under subsection (1)(c), foreclosure proceedings will
27 not be commenced until 90 days after the date notice is mailed to

1 the borrower.

2 (vi) That if the borrower and the person designated under
3 subsection (1)(c) reach an agreement to modify the mortgage loan,
4 the mortgage will not be foreclosed if the borrower abides by the
5 terms of the agreement.

6 (vii) That the borrower has the right to contact an attorney,
7 and the telephone number of the state bar of Michigan's lawyer
8 referral service.

9 (5) A borrower on whom notice is required to be served under
10 this section who is not served and against whom foreclosure
11 proceedings are commenced under this chapter may bring an action in
12 the circuit court for the county in which the mortgaged property is
13 situated to enjoin the foreclosure.

14 (6) If the borrower and the person designated under subsection
15 (1)(c) have previously agreed to modify the mortgage loan under
16 section 3205b, this section and sections 3205b and 3205c do not
17 apply unless the borrower has complied with the terms of the
18 mortgage loan, as modified, for 1 year after the date of the
19 modification.

20 Sec. 3205b. (1) A borrower who wishes to participate in
21 negotiations to attempt to work out a modification of a mortgage
22 loan shall contact a housing counselor from the list provided under
23 section 3205a within ~~14~~20 days after the list is mailed to the
24 borrower. Within 10 days after being contacted by a borrower, a
25 housing counselor shall inform the person designated under section
26 3205a(1)(c) in writing of the borrower's request.

27 (2) After being informed of a borrower's request to meet under



1 this section, the person designated under section 3205a(1)(c) may
2 request the borrower to provide any documents that are necessary to
3 determine whether the borrower is eligible for a modification under
4 section 3205c. The borrower shall give the person designated under
5 section 3205a(1)(c) copies of any documents requested under this
6 section **WITHIN 15 BUSINESS DAYS AFTER THE REQUEST FOR THE**
7 **DOCUMENTS. IF THE BORROWER DOES NOT PROVIDE THE DOCUMENTS REQUESTED**
8 **AS REQUIRED BY THIS SUBSECTION, A PARTY ENTITLED TO FORECLOSE THE**
9 **MORTGAGE MAY PROCEED WITH THE FORECLOSURE.**

10 (3) A housing counselor **FROM THE LIST PROVIDED UNDER SECTION**
11 **3205A** contacted by a borrower under this section shall schedule a
12 meeting between the borrower and the person designated under
13 section 3205a(1)(c) to attempt to work out a modification of the
14 mortgage loan. At the request of the borrower, ~~the~~ **A** housing
15 counselor **FROM THE LIST PROVIDED UNDER SECTION 3205A** will attend
16 the meeting. The meeting and any later meetings shall be held at a
17 time and place that is convenient to all parties, or in the county
18 where the property is situated.

19 (4) **IF THE PERSON DESIGNATED UNDER SECTION 3205A(1)(C) AND THE**
20 **BORROWER REACH A VERBAL AGREEMENT TO MODIFY THE MORTGAGE LOAN AT A**
21 **MEETING UNDER SUBSECTION (3), THE PERSON DESIGNATED UNDER SECTION**
22 **3205A(1)(C) OR SOME OTHER PERSON ACTING ON BEHALF OF THE MORTGAGE**
23 **HOLDER OR THE MORTGAGE SERVICER SHALL PREPARE A WRITTEN**
24 **MODIFICATION AGREEMENT THAT ACCURATELY STATES THE VERBAL AGREEMENT**
25 **AND SIGN THE DOCUMENT ON BEHALF OF THE MORTGAGE HOLDER OR MORTGAGE**
26 **SERVICER. IF THE WRITTEN MODIFICATION AGREEMENT IS NOT RECEIVED BY**
27 **THE BORROWER WITHIN 15 DAYS AFTER THE MEETING, THE PERSON**



1 FORECLOSING THE MORTGAGE SHALL NOT PROCEED WITH FORECLOSURE UNDER
2 THIS CHAPTER AND THE MORTGAGE SHALL ONLY BE FORECLOSED JUDICIALLY
3 UNDER CHAPTER 31.

4 Sec. 3205d. (1) The Michigan state housing development
5 authority shall develop ~~the~~ **A** list of housing counselors approved
6 by the United States department of housing and urban development or
7 by the Michigan state housing development authority who may perform
8 the duties of housing counselor under sections 3205a to 3205c.

9 (2) **A PERSON WHO IS NOT ON THE LIST OF HOUSING COUNSELORS**
10 **DEVELOPED UNDER THIS SECTION SHALL NOT PERFORM THE DUTIES OF**
11 **HOUSING COUNSELOR UNDER SECTIONS 3205A TO 3205C.**

12 (3) **A PERSON WHO IS NOT ON THE LIST OF HOUSING COUNSELORS**
13 **DEVELOPED UNDER THIS SECTION SHALL NOT REPRESENT THAT THE PERSON IS**
14 **ENTITLED TO PERFORM THE DUTIES OF HOUSING COUNSELOR UNDER SECTIONS**
15 **3205A TO 3205C.**

16 (4) **A PERSON WHO VIOLATES SUBSECTION (2) OR (3) IS GUILTY OF A**
17 **MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR**
18 **A FINE OF NOT MORE THAN \$500.00, OR BOTH.**

19 Sec. 3205e. Sections 3205a to 3205d are repealed effective ~~2~~
20 ~~years after the effective date of the amendatory act that added~~
21 ~~this section~~ **JULY 5, 2012.**

22 Sec. 3240. (1) A purchaser's deed is void if the mortgagor,
23 the mortgagor's heirs or personal representative, or any person
24 lawfully claiming under the mortgagor or the mortgagor's heirs or
25 personal representative redeems the entire premises sold by paying
26 the amount required under subsection (2) and any amount required
27 under subsection (4), within the applicable time limit prescribed



1 in subsections (7) to (12), to the purchaser or the purchaser's
2 personal representative or assigns, or to the register of deeds in
3 whose office the deed is deposited for the benefit of the
4 purchaser.

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

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

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

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

22 (b) The receipt or copy of the canceled check evidencing the
23 payment of the taxes, amounts necessary to redeem senior liens from
24 foreclosure, condominium assessments, homeowner association
25 assessments, community association assessments, or insurance
26 premiums.

27 (c) An affidavit of an insurance agent of the insurance

1 company stating that the payment was made and what portion of the
2 payment covers the premium for the period before the expiration of
3 the period of redemption.

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

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

15 (7) For a mortgage executed on or after January 1, 1965, ~~en-OF~~
16 commercial or industrial property, or multifamily residential
17 property in excess of 4 units, the redemption period is 6 months
18 from the date of the sale.

19 (8) Subject to subsections (9) to (11), for a mortgage
20 executed on or after January 1, 1965, ~~en-OF~~ residential property
21 not exceeding 4 units ~~and not more than 3 acres in size, OR~~
22 **PROPERTY USED FOR AGRICULTURAL PURPOSES**, if the amount claimed to
23 be due on the mortgage at the date of the notice of foreclosure is
24 more than 66-2/3% of the original indebtedness secured by the
25 mortgage, the redemption period is ~~6-3~~ months.

26 (9) Subject to subsection (10), for a mortgage ~~en-OF~~
27 residential property not exceeding 4 units, if the property is



1 abandoned as determined under section 3241, the redemption period
2 is 3 months.

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

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

12 (12) If subsections (7) to (11) do not apply, the redemption
13 period is 1 year from the date of the sale.

14 (13) The amount stated in any affidavits recorded under this
15 section shall be the amount necessary to satisfy the requirements
16 for redemption under this section.

17 (14) The register of deeds of a county having a population of
18 more than 750,000 and less than 1,500,000, at the request of a
19 person entitled to redeem the property under this section, shall
20 determine the amount necessary for redemption. In determining the
21 amount, the register of deeds shall consider only the affidavits
22 recorded under subsections (2) and (4). A county, register of
23 deeds, or employee of a county or register of deeds is not liable
24 for damages proximately caused by an incorrect determination of an
25 amount necessary for redemption under subsection (2).

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



1 (16) FOR PURPOSES OF THIS SECTION, THERE IS A PRESUMPTION THAT
2 THE PROPERTY IS USED FOR AGRICULTURAL PURPOSES IF, BEFORE THE
3 FORECLOSURE SALE UNDER THIS CHAPTER, THE MORTGAGOR PROVIDES THE
4 PARTY FORECLOSING THE MORTGAGE PROOF THAT THE MORTGAGOR FILED A
5 SCHEDULE F TO THE MORTGAGOR'S FEDERAL INCOME TAX FORM 1040 FOR THE
6 YEAR PRECEDING THE YEAR IN WHICH THE PROCEEDINGS TO FORECLOSE THE
7 MORTGAGE WERE COMMENCED. IF THE MORTGAGOR FAILS TO PROVIDE PROOF AS
8 DESCRIBED IN THIS SUBSECTION BEFORE THE FORECLOSURE SALE, THERE IS
9 A PRESUMPTION THAT THE PROPERTY IS NOT USED FOR AGRICULTURAL
10 PURPOSES. THE PARTY FORECLOSING THE MORTGAGE OR THE MORTGAGOR MAY
11 FILE A CIVIL ACTION TO PRODUCE EVIDENCE TO REBUT A PRESUMPTION
12 CREATED BY THIS SUBSECTION.