

SENATE BILL No. 1510

September 23, 2010, Introduced by Senators RICHARDVILLE, HUNTER, SANBORN and PAPPAGEORGE and referred to the Committee on Banking and Financial Institutions.

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

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 if 1 or more of the following apply:

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

3 (b) After a notice is mailed to the mortgagor under section
4 3205a, the time for a housing counselor to notify the person
5 designated under section 3205a(1)(c) of a request by the mortgagor
6 under section 3205b(1) has not expired.

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

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

18 (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 (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 and before 2 years after the effective date of the~~

1 ~~amendatory act that added this subsection~~ **JULY 5, 2009.**

2 Sec. 3205a. (1) Subject to subsection (6), before proceeding
3 with a sale under this chapter of property claimed as a principal
4 residence exempt from tax under section 7cc of the general property
5 tax act, 1893 PA 206, MCL 211.7cc, the foreclosing party shall
6 serve a written notice on the borrower that contains all of the
7 following information:

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

10 (b) The names, addresses, and telephone numbers of the
11 mortgage holder, the mortgage servicer, or any agent designated by
12 the mortgage holder or mortgage servicer.

13 (c) A designation of 1 of the persons named in subdivision (b)
14 as the person to contact and that has the authority to make
15 agreements under sections 3205b and 3205c.

16 (d) That enclosed with the notice is a list of housing
17 counselors prepared by the Michigan state housing development
18 authority and that within 14 days after the notice is sent, the
19 borrower may request a meeting with the person designated under
20 subdivision (c) to attempt to work out a modification of the
21 mortgage loan to avoid foreclosure and that the borrower may also
22 request a housing counselor **FROM THE ENCLOSED LIST** to attend the
23 meeting.

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

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

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

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

15 (2) A person who serves a notice under subsection (1) shall
16 enclose with the notice a list prepared by the Michigan state
17 housing development authority under section 3205d of the names,
18 addresses, and telephone numbers of housing counselors approved by
19 the United States department of housing and urban development or
20 the Michigan state housing development authority.

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

25 (4) Within 7 days after mailing a notice under subsection (3),
26 the person who mails the notice shall publish a notice informing
27 the borrower of the borrower's rights under this section. The

1 person shall publish the information 1 time in the same manner as
2 is required for publishing a notice of foreclosure sale under
3 section 3208. The notice under this subsection shall contain all of
4 the following information:

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

6 (b) A statement that informs the borrower of all of the
7 following:

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

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

13 (iii) That the borrower may contact a housing counselor by
14 visiting the Michigan state housing development authority's website
15 or by calling the Michigan state housing development authority.

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

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

22 (vi) That if the borrower and the person designated under
23 subsection (1)(c) reach an agreement to modify the mortgage loan,
24 the mortgage will not be foreclosed if the borrower abides by the
25 terms of the agreement.

26 (vii) That the borrower has the right to contact an attorney,
27 and the telephone number of the state bar of Michigan's lawyer

1 referral service.

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

7 (6) If the borrower and the person designated under subsection
8 (1)(c) have previously agreed to modify the mortgage loan under
9 section 3205b, this section and sections 3205b and 3205c do not
10 apply unless the borrower has complied with the terms of the
11 mortgage loan, as modified, for 1 year after the date of the
12 modification.

13 Sec. 3205b. (1) A borrower who wishes to participate in
14 negotiations to attempt to work out a modification of a mortgage
15 loan shall contact a housing counselor from the list provided under
16 section 3205a within 14 days after the list is mailed to the
17 borrower. Within 10 days after being contacted by a borrower, a
18 housing counselor shall inform the person designated under section
19 3205a(1)(c) in writing of the borrower's request.

20 (2) After being informed of a borrower's request to meet under
21 this section, the person designated under section 3205a(1)(c) may
22 request the borrower to provide any documents that are necessary to
23 determine whether the borrower is eligible for a modification under
24 section 3205c. The borrower shall give the person designated under
25 section 3205a(1)(c) copies of any documents requested under this
26 section **WITHIN 10 BUSINESS DAYS AFTER THE REQUEST FOR THE**
27 **DOCUMENTS. IF THE BORROWER DOES NOT PROVIDE THE DOCUMENTS REQUESTED**

1 AS REQUIRED BY THIS SUBSECTION, A PARTY ENTITLED TO FORECLOSE THE
2 MORTGAGE MAY PROCEED WITH THE FORECLOSURE.

3 (3) A housing counselor **FROM THE LIST PROVIDED UNDER SECTION**
4 **3205A** contacted by a borrower under this section shall schedule a
5 meeting between the borrower and the person designated under
6 section 3205a(1)(c) to attempt to work out a modification of the
7 mortgage loan. At the request of the borrower, ~~the~~ **A** housing
8 counselor **FROM THE LIST PROVIDED UNDER SECTION 3205A** will attend
9 the meeting. The meeting and any later meetings shall be held at a
10 time and place that is convenient to all parties, or in the county
11 where the property is situated.

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

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

20 (3) **A PERSON WHO IS NOT ON THE LIST OF HOUSING COUNSELORS**
21 **DEVELOPED UNDER THIS SECTION SHALL NOT REPRESENT THAT THE PERSON IS**
22 **ENTITLED TO PERFORM THE DUTIES OF HOUSING COUNSELOR UNDER SECTIONS**
23 **3205A TO 3205C.**

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

27 Enacting section 1. Section 3205e of the revised judicature

1 act of 1961, 1961 PA 236, MCL 600.3205e, is repealed.