

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 4543

(As amended December 14, 2011)

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending sections 3205a, 3205b, 3205c, 3205d, and 3205e (MCL  
600.3205a, 600.3205b, 600.3205c, 600.3205d, and 600.3205e),  
sections 3205a and 3205b as added by 2009 PA 30, sections 3205c and  
3205d as added by 2009 PA 31, and section 3205e as amended by 2011  
PA 72.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 3205a. (1) Subject to subsection <<(6)>>, before  
2       **COMMENCING A** proceeding ~~with a sale under this chapter of property~~  
3       ~~claimed as a principal residence exempt from tax under section 7ee~~  
4       ~~of the general property tax act, 1893 PA 206, MCL 211.7ee, TO WHICH~~  
5       **SECTION 3204(4) APPLIES**, the foreclosing party shall serve a  
6       written notice on the borrower that contains all of the following

1 information:

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

4 (b) The names, addresses, and telephone numbers of the  
5 mortgage holder, the mortgage servicer, or any agent designated by  
6 the mortgage holder or mortgage servicer.

7 (c) A designation of 1 of the persons named in subdivision (b)  
8 as the person to contact and that has the authority to make  
9 agreements under sections 3205b and 3205c. **HOWEVER, IF SECTION**  
10 **3205(1) APPLIES TO THE FORECLOSURE PROCEEDING, THE PERSON**  
11 **DESIGNATED UNDER THIS SUBSECTION SHALL BE THE INDIVIDUAL,**  
12 **DEPARTMENT, OR UNIT DESIGNATED UNDER SECTION 3205(1) AND THE NOTICE**  
13 **SHALL GIVE THE NAME AND ADDRESS AND A DEDICATED TELEPHONE NUMBER**  
14 **AND A DEDICATED ELECTRONIC MAIL ADDRESS OF THE INDIVIDUAL,**  
15 **DEPARTMENT, OR UNIT.**

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 14-30 days after the notice is sent, the~~  
19 ~~borrower may, EITHER BY CONTACTING THE PERSON DIRECTLY OR BY~~  
20 ~~CONTACTING A HOUSING COUNSELOR FROM THE LIST ENCLOSED WITH THE~~  
21 ~~NOTICE, request a meeting with the person designated under~~  
22 ~~subdivision (c) to attempt to work out a modification of the~~  
23 ~~mortgage loan to avoid foreclosure. and that the borrower may also~~  
24 ~~request a housing counselor to attend the meeting.~~

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

1 the borrower.

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

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

12 (H) THAT ENCLOSED WITH THE NOTICE IS A LIST OF HOUSING  
13 COUNSELORS PREPARED BY THE MICHIGAN STATE HOUSING DEVELOPMENT  
14 AUTHORITY AND THAT THE BORROWER MAY REQUEST A HOUSING COUNSELOR  
15 FROM THE LIST TO ATTEND ANY MEETINGS WITH A PERSON DESIGNATED UNDER  
16 SUBDIVISION (C).

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

21 (J) THE NUMBER OF DAYS IN THE REDEMPTION PERIOD THAT WILL BE  
22 AVAILABLE TO THE BORROWER IF THE PROPERTY IS EVENTUALLY SOLD AT A  
23 FORECLOSURE SALE UNDER THIS CHAPTER, UNLESS THE PROPERTY IS  
24 ABANDONED AND SECTION 3241 OR 3241A APPLIES.

25 (K) THAT, UNDER SECTION 3278, IF THE PROPERTY IS SOLD AT A  
26 FORECLOSURE SALE UNDER THIS CHAPTER, THE BORROWER WILL BE HELD  
27 RESPONSIBLE TO THE PERSON WHO BUYS THE PROPERTY AT THE MORTGAGE

House Bill No. 4543 as amended December 14, 2011

1    **FORECLOSURE SALE OR TO THE MORTGAGE HOLDER FOR DAMAGING THE**  
 2    **PROPERTY DURING THE REDEMPTION PERIOD.**

3            (2) A person who serves a notice under subsection (1) shall  
 4    enclose with the notice a list prepared by the Michigan state  
 5    housing development authority under section 3205d of the names,  
 6    addresses, and telephone numbers of housing counselors approved by  
 7    the United States department of housing and urban development or  
 8    the Michigan state housing development authority.

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

13            <<(4) Within 7 days after mailing a notice under subsection (3),  
 14   the person who mails the notice ~~shall~~**MAY** publish a notice informing  
 15   the borrower of the borrower's rights under this section. ~~The~~**A**  
 16   person **WHO ELECTS TO PUBLISH A NOTICE UNDER THIS SUBSECTION** shall  
 17   publish the information 1 time in the same manner as  
 18   is required for publishing a notice of foreclosure sale under  
 19   section 3208. The notice under this subsection shall contain all of  
 20   the following information:

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

22            (b) A statement that informs the borrower of all of the  
 23   following:

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

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

House Bill No. 4543 as amended December 14, 2011

1           (iii) That the borrower may contact a housing counselor by  
2 visiting the Michigan state housing development authority's website  
3 or by calling the Michigan state housing development authority.

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

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

10          (vi) That if the borrower and the person designated under  
11 subsection (1)(c) reach an agreement to modify the mortgage loan,  
12 the mortgage will not be foreclosed if the borrower abides by the  
13 terms of the agreement.

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

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

22          <<(6)>> If the borrower and the person designated under  
23 subsection (1)(c) have previously agreed to modify the mortgage  
24 loan under section 3205b, this section and sections 3205b and 3205c  
25 do not apply unless the borrower has complied with the terms of the  
26 mortgage loan, as modified, for 1 year after the date of the  
27 modification.

1       Sec. 3205b. (1) ~~A-IF A~~ borrower ~~who~~ wishes to participate in  
 2 negotiations to attempt to work out a modification of a mortgage  
 3 loan, **WITHIN 30 DAYS AFTER THE NOTICE UNDER SECTION 3205A IS MAILED**  
 4 **TO THE BORROWER, THE BORROWER shall EITHER CONTACT THE PERSON**  
 5 **DESIGNATED UNDER SECTION 3205A(1) (C) DIRECTLY OR** contact a housing  
 6 counselor from the list provided under section 3205a. ~~within 14~~  
 7 ~~days after the list is mailed to the borrower. Within 10 days after~~  
 8 ~~being contacted by a borrower, a~~ **AFTER BEING CONTACTED BY A**  
 9 **BORROWER UNDER THIS SUBSECTION AND WITHIN 30 DAYS AFTER THE NOTICE**  
 10 **UNDER SECTION 3205A IS MAILED TO THE BORROWER, THE** housing  
 11 counselor shall inform the person designated under section  
 12 3205a(1)(c) in writing of the borrower's request.

13       (2) ~~After~~ **WITHIN 10 DAYS AFTER** being informed of ~~CONTACTED BY~~  
 14 ~~a borrower's request to meet under this section,~~ **BORROWER OR**  
 15 **HOUSING COUNSELOR UNDER SUBSECTION (1),** the person designated under  
 16 section 3205a(1)(c) may request the borrower to provide any  
 17 documents that are necessary to determine whether the borrower is  
 18 eligible for a modification under section 3205c. The borrower shall  
 19 give the person designated under section 3205a(1)(c) copies of any  
 20 documents requested under this section **WITHIN 60 DAYS AFTER THE**  
 21 **NOTICE UNDER SECTION 3205A IS MAILED TO THE BORROWER. IF THE**  
 22 **BORROWER DOES NOT PROVIDE THE DOCUMENTS REQUESTED AS REQUIRED BY**  
 23 **THIS SUBSECTION, A PARTY ENTITLED TO FORECLOSE THE MORTGAGE MAY**  
 24 **PROCEED WITH THE FORECLOSURE.**

25       (3) ~~A housing counselor contacted by~~ **AFTER BEING INFORMED THAT**  
 26 a borrower **WISHES TO MEET** under this section, **A PERSON DESIGNATED**  
 27 **UNDER SECTION 3205A(1) (C)** shall schedule a meeting ~~between~~ **WITH** the

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

8       Sec. 3205c. (1) If a borrower has, **EITHER DIRECTLY OR THROUGH**  
9 **A HOUSING COUNSELOR**, contacted a ~~housing counselor~~ **PERSON**  
10 **DESIGNATED UNDER SECTION 3205A(1)(C)** under section 3205b but the  
11 process has not resulted in an agreement to modify the mortgage  
12 loan, the person designated under section 3205a(1)(c) shall work  
13 with the borrower to determine whether the borrower qualifies for a  
14 loan modification. Unless the loan is described in subsection (2)  
15 or (3), in making the determination under this subsection, the  
16 person designated under section 3205a(1)(c) shall use a loan  
17 modification program or process that includes all of the following  
18 features:

19       (a) The loan modification program or process targets a ratio  
20 of the borrower's housing-related debt to the borrower's gross  
21 income of 38% or less, on an aggregate basis. Housing-related debt  
22 under this subdivision includes mortgage principal and interest,  
23 property taxes, insurance, and homeowner's fees.

24       (b) To reach the 38% target specified in subdivision (a), 1 or  
25 more of the following features:

26       (i) An interest rate reduction, as needed, subject to a floor  
27 of 3%, for a fixed term of at least 5 years.

1           (ii) An extension of the amortization period for the loan term,  
2 to 40 years or less from the date of the loan modification.

3           (iii) Deferral of some portion of the amount of the unpaid  
4 principal balance of 20% or less, until maturity, refinancing of  
5 the loan, or sale of the property.

6           (iv) Reduction or elimination of late fees.

7           (2) In making the determination under subsection (1), if the  
8 mortgage loan is pooled for sale to an investor that is a  
9 governmental entity, the person designated under section  
10 3205a(1)(c) shall follow the modification guidelines dictated by  
11 the governmental entity.

12           (3) In making the determination under subsection (1), if the  
13 mortgage loan has been sold to a government-sponsored enterprise,  
14 the person designated under section 3205a(1)(c) shall follow the  
15 modification guidelines dictated by the government-sponsored  
16 enterprise.

17           (4) This section does not prohibit a loan modification on  
18 other terms or another loss mitigation strategy instead of  
19 modification if the other modification or strategy is agreed to by  
20 the borrower and the person designated under section 3205a(1)(c).

21           (5) ~~The~~**BEFORE 90 DAYS AFTER THE NOTICE REQUIRED UNDER SECTION**  
22 **3205A(1) IS SENT OR 10 DAYS AFTER THE MEETING BETWEEN THE BORROWER**  
23 **AND THE PERSON DESIGNATED UNDER SECTION 3205A(1)(C), WHICHEVER IS**  
24 **LATER, THE** person designated under section 3205a(1)(c) shall  
25 provide the borrower with both of the following:

26           (a) A copy of any calculations made by the person under this  
27 section.



1 (b) If requested by the borrower, a copy of the program,  
2 process, or guidelines under which the determination under  
3 subsection (1) was made.

4 (6) Subject to subsection (7), if the results of the  
5 calculation under subsection (1) are that the borrower is eligible  
6 for a modification, the mortgage holder or mortgage servicer shall  
7 not foreclose the mortgage under this chapter but may proceed under  
8 chapter 31. If the results of the calculation under subsection (1)  
9 are that the borrower is not eligible for a modification or if  
10 subsection (7) applies, the mortgage holder or mortgage lender may  
11 foreclose the mortgage under this chapter.

12 (7) If the determination under subsection (1) is that the  
13 borrower is eligible for a modification, the mortgage holder or  
14 mortgage servicer may proceed to foreclose the mortgage under this  
15 chapter if both of the following apply:

16 (a) The person designated under section 3205a(1)(c) has in  
17 good faith offered the borrower a modification agreement prepared  
18 in accordance with the modification determination.

19 (b) For reasons not related to any action or inaction of the  
20 mortgage holder or mortgage servicer, the borrower has not executed  
21 and returned the modification agreement within 14 days after the  
22 borrower received the agreement.

23 (8) If a mortgage holder or mortgage servicer begins  
24 foreclosure proceedings under this chapter in violation of this  
25 section, the borrower may file an action in the circuit court for  
26 the county where the mortgaged property is situated to convert the  
27 foreclosure proceeding to a judicial foreclosure. If a borrower

1 files an action under this section and the court determines that  
2 the borrower participated in the process under section 3205b, a  
3 modification agreement was not reached, and the borrower is  
4 eligible for modification under subsection (1), and subsection (7)  
5 does not apply, the court shall enjoin foreclosure of the mortgage  
6 by advertisement and order that the foreclosure proceed under  
7 chapter 31.

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

13 (2) **SUBJECT TO SUBSECTION (5), A PERSON WHO IS NOT ON THE LIST**  
14 **OF HOUSING COUNSELORS DEVELOPED UNDER THIS SECTION SHALL NOT**  
15 **PERFORM THE DUTIES OF HOUSING COUNSELOR UNDER SECTIONS 3205A TO**  
16 **3205C.**

17 (3) **SUBJECT TO SUBSECTION (5), A PERSON WHO IS NOT ON THE LIST**  
18 **OF HOUSING COUNSELORS DEVELOPED UNDER THIS SECTION SHALL NOT**  
19 **REPRESENT THAT THE PERSON IS ENTITLED TO PERFORM THE DUTIES OF**  
20 **HOUSING COUNSELOR UNDER SECTIONS 3205A TO 3205C.**

21 (4) **A PERSON WHO VIOLATES SUBSECTION (2) OR (3) IS GUILTY OF A**  
22 **MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR**  
23 **A FINE OF NOT MORE THAN \$2,000.00, OR BOTH.**

24 (5) **SUBSECTIONS (2) AND (3) DO NOT APPLY TO AN ATTORNEY TO**  
25 **WHOM BOTH OF THE FOLLOWING APPLY:**

26 (A) **THE ATTORNEY IS LICENSED TO PRACTICE LAW IN THIS STATE.**

27 (B) **THE ATTORNEY PROVIDES MORTGAGE ASSISTANCE RELIEF SERVICES**

House Bill No. 4543 as amended December 14, 2011

1 AS PART OF HIS OR HER PRACTICE OF LAW.

2 Sec. 3205e. Sections 3205a to 3205d are repealed effective  
3 ~~January 5, 2012.~~ **DECEMBER 31, 2012.**

4 Enacting section 1. Sections 3205a, 3205b, 3205c, and 3205d of  
5 the revised judicature act of 1961, 1961 PA 236, MCL 600.3205a,  
6 600.3205b, 600.3205c, and 600.3205d, as amended by this amendatory  
7 act, apply to foreclosure proceedings in which the first notice  
8 under section 3205a of the revised judicature act of 1961, 1961 PA  
9 236, MCL 600.3205a, is mailed to the mortgagor on or after February  
10 1, <<2012>>.

11 Enacting section 2. This amendatory act does not take effect  
12 unless all of the following bills of the 96th Legislature are  
13 enacted into law:

14 (a) House Bill No. 4542.

15 (b) House Bill No. 4544.