

SENATE BILL No. 690

September 20, 2011, Introduced by Senator HUNTER 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 section 3205c (MCL 600.3205c), as added by 2009 PA 31.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3205c. (1) If a borrower has contacted a housing
2 counselor under section 3205b but the process has not resulted in
3 an agreement to modify the mortgage loan, the person designated
4 under section 3205a(1)(c) shall work with the borrower to determine
5 whether the borrower qualifies for a loan modification. Unless the
6 loan is described in subsection (2) or (3), in making the
7 determination under this subsection, the person designated under
8 section 3205a(1)(c) shall use a loan modification program or
9 process that includes all of the following features:

10 (a) The loan modification program or process targets a ratio

1 of the borrower's housing-related debt to the borrower's gross
2 income of 38% or less, on an aggregate basis. Housing-related debt
3 under this subdivision includes mortgage principal and interest,
4 property taxes, insurance, and homeowner's fees.

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

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

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

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

14 (iv) Reduction or elimination of late fees.

15 (2) In making the determination under subsection (1), if the
16 mortgage loan is pooled for sale to an investor that is a
17 governmental entity, the person designated under section
18 3205a(1)(c) shall follow the modification guidelines dictated by
19 the governmental entity.

20 (3) In making the determination under subsection (1), if the
21 mortgage loan has been sold to a government-sponsored enterprise,
22 the person designated under section 3205a(1)(c) shall follow the
23 modification guidelines dictated by the government-sponsored
24 enterprise.

25 (4) This section does not prohibit a loan modification on
26 other terms or another loss mitigation strategy instead of
27 modification if the other modification or strategy is agreed to by

1 the borrower and the person designated under section 3205a(1)(c).

2 (5) The person designated under section 3205a(1)(c) shall **MAKE**
3 **THE DETERMINATION UNDER SUBSECTION (1) BEFORE THE EXPIRATION OF THE**
4 **PERIOD WITHIN WHICH FORECLOSURE PROCEEDINGS ARE PROHIBITED UNDER**
5 **SECTION 3205A(1)(E) AND** provide the borrower with both of the
6 following:

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

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

12 (6) Subject to subsection (7), if the results of the
13 calculation under subsection (1) are that the borrower is eligible
14 for a modification, the mortgage holder or mortgage servicer shall
15 not foreclose the mortgage. ~~under this chapter but may proceed~~
16 ~~under chapter 31.~~ **THE MORTGAGE HOLDER OR MORTGAGE SERVICER SHALL**
17 **PREPARE A WRITTEN MODIFICATION AGREEMENT THAT CONTAINS THE TERMS AS**
18 **CALCULATED UNDER SUBSECTION (1). A MORTGAGE SERVICER SHALL OBTAIN**
19 **THE APPROPRIATE SIGNATURES ON THE MODIFICATION AGREEMENT FROM THE**
20 **MORTGAGE HOLDER, AND A MORTGAGE HOLDER SHALL SIGN THE MODIFICATION**
21 **AGREEMENT. THE MORTGAGE HOLDER OR MORTGAGE SERVICER SHALL SEND THE**
22 **MODIFICATION AGREEMENT TO THE BORROWER FOR THE BORROWER'S APPROVAL.**
23 If the results of the calculation under subsection (1) are that the
24 borrower is not eligible for a modification or if subsection (7)
25 applies, the mortgage holder or mortgage lender may foreclose the
26 mortgage under this chapter.

27 (7) If the determination under subsection (1) is that the

1 borrower is eligible for a modification, the mortgage holder or
2 mortgage servicer may proceed to foreclose the mortgage under this
3 chapter if both of the following apply:

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

7 (b) For reasons not related to any action or inaction of the
8 mortgage holder or mortgage servicer, the borrower has not executed
9 and returned the modification agreement within 14 days after the
10 borrower received the agreement.

11 (8) If a mortgage holder or mortgage servicer begins
12 foreclosure proceedings under this chapter in violation of this
13 section, the borrower may file an action in the circuit court for
14 the county where the mortgaged property is situated to convert the
15 foreclosure proceeding to a judicial foreclosure. If a borrower
16 files an action under this section and the court determines that
17 the borrower participated in the process under section 3205b, a
18 modification agreement was not reached, and the borrower is
19 eligible for modification under subsection (1), and subsection (7)
20 does not apply, the court shall enjoin foreclosure of the mortgage
21 ~~by advertisement and order that the foreclosure proceed under~~
22 ~~chapter 31.~~ **AND ORDER THE PREPARATION OF A WRITTEN MODIFICATION**
23 **AGREEMENT UNDER SUBSECTION (6).**