

HOUSE BILL No. 4118

January 20, 2011, Introduced by Reps. Tlaib, Barnett, Liss, Bauer, Segal, Santana, Geiss, Smiley, Hovey-Wright, Irwin, Howze, Townsend, Brown, Cavanagh, Stapleton, Lane and Slavens and referred to the Committee on Government Operations.

A bill to amend 1966 PA 346, entitled "State housing development authority act of 1966," by amending section 49a (MCL 125.1449a), as added by 1981 PA 173, and by adding sections 49w, 49x, 49y, 49z, 49aa, and 49bb; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 49a. (1) ~~To entitle the~~ **THE** authority ~~to give a notice as~~
 2 ~~prescribed in sections 49b and 49c, and to make such foreclosure,~~
 3 **MAY COMMENCE PROCEEDINGS TO FORECLOSE A MORTGAGE BY ADVERTISEMENT**
 4 **IF** all of the following are ~~required~~ **CIRCUMSTANCES EXIST:**

5 (a) ~~That some~~ **A** default in a condition of ~~such~~ **THE** mortgage
 6 ~~shall have~~ **HAS** occurred, by which the power to sell became

1 operative.

2 (b) ~~That no suit~~ **AN ACTION** or proceeding shall have ~~HAS NOT~~
3 been instituted, at law, to recover the debt ~~then remaining~~ secured
4 by ~~such~~ **THE** mortgage, or any part thereof ~~OF THE MORTGAGE~~; or if
5 ~~any suit~~ **AN ACTION** or proceeding has been instituted, ~~that the suit~~
6 **THE ACTION** or proceeding has been discontinued, or ~~that an~~
7 execution ~~upon the~~ **ON A** judgment rendered therein **IN AN ACTION OR**
8 **PROCEEDING** has been returned unsatisfied, in whole or in part.

9 (c) ~~That the~~ **THE** mortgage containing ~~such~~ **THE** power of sale
10 has been ~~duly~~ **PROPERLY** recorded; and if it shall have ~~HAS~~ been
11 assigned, ~~that all the assignments thereof~~ have been recorded.

12 (2) ~~In cases of mortgages~~ **IF A MORTGAGE IS** given to secure the
13 payment of money by installments, each of the installments
14 mentioned in ~~such~~ **THE** mortgage after the first ~~,~~ shall be ~~taken and~~
15 ~~deemed to be,~~ **TREATED AS** a separate and independent mortgage. ~~,~~ and
16 ~~such~~ **THE** mortgage for each of ~~such~~ **THE** installments may be
17 foreclosed in the same manner and with the ~~identical~~ **SAME** effect as
18 if ~~such~~ **A** separate mortgages **MORTGAGE** were given for each of ~~such~~
19 subsequent installments and a **INSTALLMENT**. **A** redemption of any ~~such~~
20 **A** sale by the mortgagor shall have ~~HAS~~ the ~~identical~~ **SAME** effect as
21 if the sale for ~~such~~ **THE** installments had been made upon an
22 independent prior mortgage.

23 (3) **THE AUTHORITY SHALL NOT COMMENCE PROCEEDINGS UNDER THIS**
24 **CHAPTER TO FORECLOSE A MORTGAGE OF PROPERTY DESCRIBED IN SECTION**
25 **49X(1) IF 1 OR MORE OF THE FOLLOWING APPLY:**

26 (A) **NOTICE HAS NOT BEEN MAILED TO THE MORTGAGOR AS REQUIRED BY**
27 **SECTION 49X.**

1 (B) AFTER A NOTICE IS MAILED TO THE MORTGAGOR UNDER SECTION
2 49X, THE TIME FOR A HOUSING COUNSELOR TO NOTIFY THE PERSON
3 DESIGNATED UNDER SECTION 49X(1)(C) OF A REQUEST BY THE MORTGAGOR
4 UNDER SECTION 49Y(1) HAS NOT EXPIRED.

5 (C) WITHIN 14 DAYS AFTER A NOTICE IS MAILED TO THE MORTGAGOR
6 UNDER SECTION 49X, THE MORTGAGOR HAS REQUESTED A MEETING UNDER
7 SECTION 49Y WITH THE PERSON DESIGNATED UNDER SECTION 49X(1)(C) AND
8 90 DAYS HAVE NOT PASSED AFTER THE NOTICE WAS MAILED.

9 (D) THE MORTGAGOR HAS REQUESTED A MEETING UNDER SECTION 49X
10 WITH THE PERSON DESIGNATED UNDER SECTION 49X(1)(C), THE MORTGAGOR
11 HAS PROVIDED DOCUMENTS IF REQUESTED UNDER SECTION 49Y(2), AND THE
12 PERSON DESIGNATED UNDER SECTION 49X(1)(C) HAS NOT MET OR NEGOTIATED
13 WITH THE MORTGAGOR UNDER THIS CHAPTER.

14 (E) THE MORTGAGOR AND THE AUTHORITY HAVE AGREED TO MODIFY THE
15 MORTGAGE LOAN AND THE MORTGAGOR IS NOT IN DEFAULT UNDER THE
16 MODIFIED AGREEMENT.

17 (F) CALCULATIONS UNDER SECTION 49Z(1) SHOW THAT THE MORTGAGOR
18 IS ELIGIBLE FOR A LOAN MODIFICATION AND FORECLOSURE UNDER THIS
19 CHAPTER IS NOT ALLOWED UNDER SECTION 49Z(7).

20 (4) SUBSECTION (3) APPLIES ONLY TO PROCEEDINGS UNDER THIS
21 CHAPTER IN WHICH THE FIRST NOTICE UNDER SECTION 49B IS PUBLISHED
22 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
23 SUBSECTION AND BEFORE JULY 5, 2011.

24 SEC. 49W. AS USED IN THIS SECTION AND SECTIONS 49X TO 49AA:

25 (A) "BORROWER" MEANS THE MORTGAGOR.

26 (B) "MORTGAGE SERVICER" MEANS THE SERVICING AGENT OF THE
27 MORTGAGE.

1 SEC. 49X. (1) SUBJECT TO SUBSECTION (6), BEFORE PROCEEDING
2 WITH A SALE UNDER THIS CHAPTER OF PROPERTY CLAIMED AS A PRINCIPAL
3 RESIDENCE EXEMPT FROM TAX UNDER SECTION 7CC OF THE GENERAL PROPERTY
4 TAX ACT, 1893 PA 206, MCL 211.7CC, THE AUTHORITY SHALL SERVE A
5 WRITTEN NOTICE ON THE BORROWER THAT CONTAINS ALL OF THE FOLLOWING
6 INFORMATION:

7 (A) THE REASONS THAT THE MORTGAGE LOAN IS IN DEFAULT AND THE
8 AMOUNT THAT IS DUE AND OWING UNDER THE MORTGAGE LOAN.

9 (B) THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF THE
10 AUTHORITY, THE MORTGAGE SERVICER, OR ANY AGENT DESIGNATED BY THE
11 AUTHORITY OR MORTGAGE SERVICER.

12 (C) A DESIGNATION OF 1 OF THE PERSONS NAMED IN SUBDIVISION (B)
13 AS THE PERSON TO CONTACT AND THAT HAS THE AUTHORITY TO MAKE
14 AGREEMENTS UNDER SECTIONS 49Y AND 49Z.

15 (D) THAT ENCLOSED WITH THE NOTICE IS A LIST OF HOUSING
16 COUNSELORS PREPARED BY THE AUTHORITY AND THAT WITHIN 14 DAYS AFTER
17 THE NOTICE IS SENT, THE BORROWER MAY REQUEST A MEETING WITH THE
18 PERSON DESIGNATED UNDER SUBDIVISION (C) TO ATTEMPT TO WORK OUT A
19 MODIFICATION OF THE MORTGAGE LOAN TO AVOID FORECLOSURE AND THAT THE
20 BORROWER MAY ALSO REQUEST A HOUSING COUNSELOR TO ATTEND THE
21 MEETING.

22 (E) THAT IF THE BORROWER REQUESTS A MEETING WITH THE PERSON
23 DESIGNATED UNDER SUBDIVISION (C), FORECLOSURE PROCEEDINGS WILL NOT
24 BE COMMENCED UNTIL 90 DAYS AFTER THE DATE THE NOTICE IS MAILED TO
25 THE BORROWER.

26 (F) THAT IF THE BORROWER AND THE PERSON DESIGNATED UNDER
27 SUBDIVISION (C) REACH AN AGREEMENT TO MODIFY THE MORTGAGE LOAN, THE

1 MORTGAGE WILL NOT BE FORECLOSED IF THE BORROWER ABIDES BY THE TERMS
2 OF THE AGREEMENT.

3 (G) THAT IF THE BORROWER AND THE PERSON DESIGNATED UNDER
4 SUBDIVISION (C) DO NOT AGREE TO MODIFY THE MORTGAGE LOAN BUT IT IS
5 DETERMINED THAT THE BORROWER MEETS CRITERIA FOR A MODIFICATION
6 UNDER SECTION 49Z(1) AND FORECLOSURE UNDER THIS CHAPTER IS NOT
7 ALLOWED UNDER SECTION 49Z(7), THE FORECLOSURE OF THE MORTGAGE WILL
8 PROCEED BEFORE A JUDGE INSTEAD OF BY ADVERTISEMENT.

9 (H) THAT THE BORROWER HAS THE RIGHT TO CONTACT AN ATTORNEY,
10 AND THE TELEPHONE NUMBERS OF THE STATE BAR OF MICHIGAN'S LAWYER
11 REFERRAL SERVICE AND OF A LOCAL LEGAL AID OFFICE SERVING THE AREA
12 IN WHICH THE PROPERTY IS SITUATED.

13 (2) THE AUTHORITY SHALL ENCLOSE WITH A NOTICE UNDER SUBSECTION
14 (1) A LIST PREPARED BY THE AUTHORITY UNDER SECTION 49AA OF THE
15 NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF HOUSING COUNSELORS
16 APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN
17 DEVELOPMENT OR THE AUTHORITY.

18 (3) THE AUTHORITY SHALL SERVE A NOTICE UNDER SUBSECTION (1) BY
19 MAILING THE NOTICE BY REGULAR FIRST-CLASS MAIL AND BY CERTIFIED
20 MAIL, RETURN RECEIPT REQUESTED, WITH DELIVERY RESTRICTED TO THE
21 BORROWER, BOTH SENT TO THE BORROWER'S LAST KNOWN ADDRESS.

22 (4) WITHIN 7 DAYS AFTER MAILING A NOTICE UNDER SUBSECTION (3),
23 THE AUTHORITY SHALL PUBLISH A NOTICE INFORMING THE BORROWER OF THE
24 BORROWER'S RIGHTS UNDER THIS SECTION. THE AUTHORITY SHALL PUBLISH
25 THE INFORMATION 1 TIME IN THE SAME MANNER AS IS REQUIRED FOR
26 PUBLISHING A NOTICE OF FORECLOSURE SALE UNDER SECTION 49B. THE
27 NOTICE UNDER THIS SUBSECTION SHALL CONTAIN ALL OF THE FOLLOWING

1 INFORMATION:

2 (A) THE BORROWER'S NAME AND THE PROPERTY ADDRESS.

3 (B) A STATEMENT THAT INFORMS THE BORROWER OF ALL OF THE
4 FOLLOWING:

5 (i) THAT THE BORROWER HAS THE RIGHT TO REQUEST A MEETING WITH
6 THE AUTHORITY OR MORTGAGE SERVICER.

7 (ii) THE NAME OF THE PERSON DESIGNATED UNDER SUBSECTION (1) (C)
8 AS THE PERSON TO CONTACT AND THAT HAS THE AUTHORITY TO MAKE
9 AGREEMENTS UNDER SECTIONS 49Y AND 49Z.

10 (iii) THAT THE BORROWER MAY CONTACT A HOUSING COUNSELOR BY
11 VISITING THE AUTHORITY'S WEBSITE OR BY CALLING THE AUTHORITY.

12 (iv) THE WEBSITE ADDRESS AND TELEPHONE NUMBER OF THE AUTHORITY.

13 (v) THAT IF THE BORROWER REQUESTS A MEETING WITH THE PERSON
14 DESIGNATED UNDER SUBSECTION (1) (C), FORECLOSURE PROCEEDINGS WILL
15 NOT BE COMMENCED UNTIL 90 DAYS AFTER THE DATE NOTICE IS MAILED TO
16 THE BORROWER.

17 (vi) THAT IF THE BORROWER AND THE PERSON DESIGNATED UNDER
18 SUBSECTION (1) (C) REACH AN AGREEMENT TO MODIFY THE MORTGAGE LOAN,
19 THE MORTGAGE WILL NOT BE FORECLOSED IF THE BORROWER ABIDES BY THE
20 TERMS OF THE AGREEMENT.

21 (vii) THAT THE BORROWER HAS THE RIGHT TO CONTACT AN ATTORNEY,
22 AND THE TELEPHONE NUMBER OF THE STATE BAR OF MICHIGAN'S LAWYER
23 REFERRAL SERVICE.

24 (5) A BORROWER ON WHOM NOTICE IS REQUIRED TO BE SERVED UNDER
25 THIS SECTION WHO IS NOT SERVED AND AGAINST WHOM FORECLOSURE
26 PROCEEDINGS ARE COMMENCED UNDER THIS CHAPTER MAY BRING AN ACTION IN
27 THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE MORTGAGED PROPERTY IS

1 SITUATED TO ENJOIN THE FORECLOSURE.

2 (6) IF THE BORROWER AND THE PERSON DESIGNATED UNDER SUBSECTION
3 (1) (C) HAVE PREVIOUSLY AGREED TO MODIFY THE MORTGAGE LOAN UNDER
4 SECTION 49Y, THIS SECTION AND SECTIONS 49Y AND 49Z DO NOT APPLY
5 UNLESS THE BORROWER HAS COMPLIED WITH THE TERMS OF THE MORTGAGE
6 LOAN, AS MODIFIED, FOR 1 YEAR AFTER THE DATE OF THE MODIFICATION.

7 SEC. 49Y. (1) A BORROWER WHO WISHES TO PARTICIPATE IN
8 NEGOTIATIONS TO ATTEMPT TO WORK OUT A MODIFICATION OF A MORTGAGE
9 LOAN SHALL CONTACT A HOUSING COUNSELOR FROM THE LIST PROVIDED UNDER
10 SECTION 49X WITHIN 14 DAYS AFTER THE LIST IS MAILED TO THE
11 BORROWER. WITHIN 10 DAYS AFTER BEING CONTACTED BY A BORROWER, A
12 HOUSING COUNSELOR SHALL INFORM THE PERSON DESIGNATED UNDER SECTION
13 49X(1) (C) IN WRITING OF THE BORROWER'S REQUEST.

14 (2) AFTER BEING INFORMED OF A BORROWER'S REQUEST TO MEET UNDER
15 THIS SECTION, THE PERSON DESIGNATED UNDER SECTION 49X(1) (C) MAY
16 REQUEST THE BORROWER TO PROVIDE ANY DOCUMENTS THAT ARE NECESSARY TO
17 DETERMINE WHETHER THE BORROWER IS ELIGIBLE FOR A MODIFICATION UNDER
18 SECTION 49Z. THE BORROWER SHALL GIVE THE PERSON DESIGNATED UNDER
19 SECTION 49X(1) (C) COPIES OF ANY DOCUMENTS REQUESTED UNDER THIS
20 SECTION.

21 (3) A HOUSING COUNSELOR CONTACTED BY A BORROWER UNDER THIS
22 SECTION SHALL SCHEDULE A MEETING BETWEEN THE BORROWER AND THE
23 PERSON DESIGNATED UNDER SECTION 49X(1) (C) TO ATTEMPT TO WORK OUT A
24 MODIFICATION OF THE MORTGAGE LOAN. AT THE REQUEST OF THE BORROWER,
25 THE HOUSING COUNSELOR WILL ATTEND THE MEETING. THE MEETING AND ANY
26 LATER MEETINGS SHALL BE HELD AT A TIME AND PLACE THAT IS CONVENIENT
27 TO ALL PARTIES, OR IN THE COUNTY WHERE THE PROPERTY IS SITUATED.

1 SEC. 49Z. (1) IF A BORROWER HAS CONTACTED A HOUSING COUNSELOR
2 UNDER SECTION 49Y BUT THE PROCESS HAS NOT RESULTED IN AN AGREEMENT
3 TO MODIFY THE MORTGAGE LOAN, THE PERSON DESIGNATED UNDER SECTION
4 49X(1) (C) SHALL WORK WITH THE BORROWER TO DETERMINE WHETHER THE
5 BORROWER QUALIFIES FOR A LOAN MODIFICATION. UNLESS THE LOAN IS
6 DESCRIBED IN SUBSECTION (2) OR (3), IN MAKING THE DETERMINATION
7 UNDER THIS SUBSECTION, THE PERSON DESIGNATED UNDER SECTION
8 49X(1) (C) SHALL USE A LOAN MODIFICATION PROGRAM OR PROCESS THAT
9 INCLUDES ALL OF THE FOLLOWING FEATURES:

10 (A) THE LOAN MODIFICATION PROGRAM OR PROCESS TARGETS A RATIO
11 OF THE BORROWER'S HOUSING-RELATED DEBT TO THE BORROWER'S GROSS
12 INCOME OF 38% OR LESS, ON AN AGGREGATE BASIS. HOUSING-RELATED DEBT
13 UNDER THIS SUBDIVISION INCLUDES MORTGAGE PRINCIPAL AND INTEREST,
14 PROPERTY TAXES, INSURANCE, AND HOMEOWNER'S FEES.

15 (B) TO REACH THE 38% TARGET SPECIFIED IN SUBDIVISION (A), 1 OR
16 MORE OF THE FOLLOWING FEATURES:

17 (i) AN INTEREST RATE REDUCTION, AS NEEDED, SUBJECT TO A FLOOR
18 OF 3%, FOR A FIXED TERM OF AT LEAST 5 YEARS.

19 (ii) AN EXTENSION OF THE AMORTIZATION PERIOD FOR THE LOAN TERM,
20 TO 40 YEARS OR LESS FROM THE DATE OF THE LOAN MODIFICATION.

21 (iii) DEFERRAL OF SOME PORTION OF THE AMOUNT OF THE UNPAID
22 PRINCIPAL BALANCE OF 20% OR LESS, UNTIL MATURITY, REFINANCING OF
23 THE LOAN, OR SALE OF THE PROPERTY.

24 (iv) REDUCTION OR ELIMINATION OF LATE FEES.

25 (2) IN MAKING THE DETERMINATION UNDER SUBSECTION (1), IF THE
26 MORTGAGE LOAN IS POOLED FOR SALE TO AN INVESTOR THAT IS A
27 GOVERNMENTAL ENTITY, THE PERSON DESIGNATED UNDER SECTION 49X(1) (C)

1 SHALL FOLLOW THE MODIFICATION GUIDELINES DICTATED BY THE
2 GOVERNMENTAL ENTITY.

3 (3) IN MAKING THE DETERMINATION UNDER SUBSECTION (1), IF THE
4 MORTGAGE LOAN HAS BEEN SOLD TO A GOVERNMENT-SPONSORED ENTERPRISE,
5 THE PERSON DESIGNATED UNDER SECTION 49X(1)(C) SHALL FOLLOW THE
6 MODIFICATION GUIDELINES DICTATED BY THE GOVERNMENT-SPONSORED
7 ENTERPRISE.

8 (4) THIS SECTION DOES NOT PROHIBIT A LOAN MODIFICATION ON
9 OTHER TERMS OR ANOTHER LOSS MITIGATION STRATEGY INSTEAD OF
10 MODIFICATION IF THE OTHER MODIFICATION OR STRATEGY IS AGREED TO BY
11 THE BORROWER AND THE PERSON DESIGNATED UNDER SECTION 49X(1)(C).

12 (5) THE PERSON DESIGNATED UNDER SECTION 49X(1)(C) SHALL
13 PROVIDE THE BORROWER WITH BOTH OF THE FOLLOWING:

14 (A) A COPY OF ANY CALCULATIONS MADE BY THE PERSON UNDER THIS
15 SECTION.

16 (B) IF REQUESTED BY THE BORROWER, A COPY OF THE PROGRAM,
17 PROCESS, OR GUIDELINES UNDER WHICH THE DETERMINATION UNDER
18 SUBSECTION (1) WAS MADE.

19 (6) SUBJECT TO SUBSECTION (7), IF THE RESULTS OF THE
20 CALCULATION UNDER SUBSECTION (1) ARE THAT THE BORROWER IS ELIGIBLE
21 FOR A MODIFICATION, THE AUTHORITY OR MORTGAGE SERVICER SHALL NOT
22 FORECLOSE THE MORTGAGE BY ADVERTISEMENT BUT MAY PROCEED TO
23 FORECLOSE THE MORTGAGE JUDICIALLY. IF THE RESULTS OF THE
24 CALCULATION UNDER SUBSECTION (1) ARE THAT THE BORROWER IS NOT
25 ELIGIBLE FOR A MODIFICATION OR IF SUBSECTION (7) APPLIES, THE
26 AUTHORITY OR MORTGAGE SERVICER MAY FORECLOSE THE MORTGAGE BY
27 ADVERTISEMENT.

1 (7) IF THE DETERMINATION UNDER SUBSECTION (1) IS THAT THE
2 BORROWER IS ELIGIBLE FOR A MODIFICATION, THE AUTHORITY OR MORTGAGE
3 SERVICER MAY PROCEED TO FORECLOSE THE MORTGAGE BY ADVERTISEMENT IF
4 BOTH OF THE FOLLOWING APPLY:

5 (A) THE PERSON DESIGNATED UNDER SECTION 49X(1)(C) HAS IN GOOD
6 FAITH OFFERED THE BORROWER A MODIFICATION AGREEMENT PREPARED IN
7 ACCORDANCE WITH THE MODIFICATION DETERMINATION.

8 (B) FOR REASONS NOT RELATED TO ANY ACTION OR INACTION OF THE
9 AUTHORITY OR MORTGAGE SERVICER, THE BORROWER HAS NOT EXECUTED AND
10 RETURNED THE MODIFICATION AGREEMENT WITHIN 14 DAYS AFTER THE
11 BORROWER RECEIVED THE AGREEMENT.

12 (8) IF THE AUTHORITY OR MORTGAGE SERVICER BEGINS FORECLOSURE
13 PROCEEDINGS UNDER THIS CHAPTER IN VIOLATION OF THIS SECTION, THE
14 BORROWER MAY FILE AN ACTION IN THE CIRCUIT COURT FOR THE COUNTY
15 WHERE THE MORTGAGED PROPERTY IS SITUATED TO CONVERT THE FORECLOSURE
16 PROCEEDING TO A JUDICIAL FORECLOSURE. IF A BORROWER FILES AN ACTION
17 UNDER THIS SECTION AND THE COURT DETERMINES THAT THE BORROWER
18 PARTICIPATED IN THE PROCESS UNDER SECTION 49Y, A MODIFICATION
19 AGREEMENT WAS NOT REACHED, AND THE BORROWER IS ELIGIBLE FOR
20 MODIFICATION UNDER SUBSECTION (1), AND SUBSECTION (7) DOES NOT
21 APPLY, THE COURT SHALL ENJOIN FORECLOSURE OF THE MORTGAGE BY
22 ADVERTISEMENT AND ORDER THAT THE FORECLOSURE PROCEED JUDICIALLY.

23 SEC. 49AA. THE AUTHORITY SHALL DEVELOP THE LIST OF HOUSING
24 COUNSELORS APPROVED BY THE UNITED STATES DEPARTMENT OF HOUSING AND
25 URBAN DEVELOPMENT OR BY THE AUTHORITY WHO MAY PERFORM THE DUTIES OF
26 HOUSING COUNSELOR UNDER SECTIONS 49X TO 49Z.

27 SEC. 49BB. SECTIONS 49W TO 49AA ARE REPEALED EFFECTIVE JULY 5,

1 2011.