

HOUSE BILL No. 4543

April 13, 2011, Introduced by Reps. Pettalia, Lyons and Farrington and referred to the Committee on Banking and Financial Services.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3205a. (1) Subject to subsection (6), before **COMMENCING A**
2 proceeding ~~with a sale under this chapter of property claimed as a~~
3 ~~principal residence exempt from tax under section 7cc of the~~
4 ~~general property tax act, 1893 PA 206, MCL 211.7cc, 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
7 information:

8 (a) The reasons that the mortgage loan is in default and the

1 amount that is due and owing under the mortgage loan.

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

5 (c) A designation of 1 of the persons named in subdivision (b)
6 as the person to contact and that has the authority to make
7 agreements under sections 3205b and 3205c. **HOWEVER, AFTER THE**
8 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED SECTION 3205(1),**
9 **THE PERSON DESIGNATED UNDER THIS SUBSECTION SHALL BE THE INDIVIDUAL**
10 **DESIGNATED UNDER SECTION 3205(1) AND THE NOTICE SHALL GIVE THE**
11 **NAME, ADDRESS, AND TELEPHONE NUMBER OF THE INDIVIDUAL.**

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

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

24 (f) That if the borrower and the person designated under
25 subdivision (c) reach an agreement to modify the mortgage loan, the
26 mortgage will not be foreclosed if the borrower abides by the terms
27 of the agreement.

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

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

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

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

21 (4) Within 7 days after mailing a notice under subsection (3),
22 the person who mails the notice shall publish a notice informing
23 the borrower of the borrower's rights under this section. The
24 person shall publish the information 1 time in the same manner as
25 is required for publishing a notice of foreclosure sale under
26 section 3208. The notice under this subsection shall contain all of
27 the following information:

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

2 (b) A statement that informs the borrower of all of the
3 following:

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

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

9 (iii) That the borrower may contact a housing counselor by
10 visiting the Michigan state housing development authority's website
11 or by calling the Michigan state housing development authority.

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

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

18 (vi) That if the borrower and the person designated under
19 subsection (1)(c) reach an agreement to modify the mortgage loan,
20 the mortgage will not be foreclosed if the borrower abides by the
21 terms of the agreement.

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

25 (5) A borrower on whom notice is required to be served under
26 this section who is not served and against whom foreclosure
27 proceedings are commenced under this chapter may bring an action in

1 the circuit court for the county in which the mortgaged property is
2 situated to enjoin the foreclosure.

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

9 Sec. 3205b. (1) A borrower who wishes to participate in
10 negotiations to attempt to work out a modification of a mortgage
11 loan shall contact a housing counselor from the list provided under
12 section 3205a within ~~14~~20 days after the list is mailed to the
13 borrower. Within 10 days after being contacted by a borrower, a
14 housing counselor shall inform the person designated under section
15 3205a(1)(c) in writing of the borrower's request.

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

26 (3) A housing counselor **FROM THE LIST PROVIDED UNDER SECTION**
27 **3205A** contacted by a borrower under this section shall schedule a

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

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) A PERSON WHO IS NOT AN ATTORNEY OR ON THE LIST OF HOUSING**
 14 **COUNSELORS DEVELOPED UNDER THIS SECTION SHALL NOT PERFORM THE**
 15 **DUTIES OF HOUSING COUNSELOR UNDER SECTIONS 3205A TO 3205C.**

16 **(3) A PERSON WHO IS NOT AN ATTORNEY OR ON THE LIST OF HOUSING**
 17 **COUNSELORS DEVELOPED UNDER THIS SECTION SHALL NOT REPRESENT THAT**
 18 **THE PERSON IS ENTITLED TO PERFORM THE DUTIES OF HOUSING COUNSELOR**
 19 **UNDER SECTIONS 3205A TO 3205C.**

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

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

26 Enacting section 1. This amendatory act does not take effect
 27 unless all of the following bills of the 96th Legislature are

1 enacted into law:

2 (a) Senate Bill No. _____ or House Bill No. 4542
3 (request no. 01989'11).

4 (b) Senate Bill No. _____ or House Bill No. 4544
5 (request no. 01991'11).