

HOUSE BILL No. 5243

January 11, 2012, Introduced by Reps. Talabi, Jackson, Durhal, Liss, Rutledge, Nathan, Tlaib, Darany, Roy Schmidt, Smiley, Opsommer, Ananich, Cavanagh, Howze, Stallworth, Stapleton, Lipton and Oakes 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 section 3204 (MCL 600.3204), as amended by 2011 PA 72,
and by adding sections 3104 and 3204a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3104. A PERSON SHALL NOT COMMENCE AN ACTION UNDER THIS
2 CHAPTER TO FORECLOSE A MORTGAGE ON REAL ESTATE OR A LAND CONTRACT
3 IF A MORTGAGOR OR VENDEE IS A SERVICE MEMBER, AS THAT TERM IS
4 DEFINED IN SECTION 3185.

5 Sec. 3204. (1) Subject to subsection (4) **AND SECTION 3204A**, a
6 party may foreclose a mortgage by advertisement if all of the
7 following circumstances exist:

8 (a) A default in a condition of the mortgage has occurred, by
9 which the power to sell became operative.

10 (b) An action or proceeding has not been instituted, at law,

1 to recover the debt secured by the mortgage or any part of the
2 mortgage; or, if an action or proceeding has been instituted, the
3 action or proceeding has been discontinued; or an execution on a
4 judgment rendered in an action or proceeding has been returned
5 unsatisfied, in whole or in part.

6 (c) The mortgage containing the power of sale has been
7 properly recorded.

8 (d) The party foreclosing the mortgage is either the owner of
9 the indebtedness or of an interest in the indebtedness secured by
10 the mortgage or the servicing agent of the mortgage.

11 (2) If a mortgage is given to secure the payment of money by
12 installments, each of the installments mentioned in the mortgage
13 after the first shall be treated as a separate and independent
14 mortgage. The mortgage for each of the installments may be
15 foreclosed in the same manner and with the same effect as if a
16 separate mortgage were given for each subsequent installment. A
17 redemption of a sale by the mortgagor has the same effect as if the
18 sale for the installment had been made upon an independent prior
19 mortgage.

20 (3) If the party foreclosing a mortgage by advertisement is
21 not the original mortgagee, a record chain of title shall exist
22 prior to the date of sale under section 3216 evidencing the
23 assignment of the mortgage to the party foreclosing the mortgage.

24 (4) A party shall not commence proceedings under this chapter
25 to foreclose a mortgage of property described in section 3205a(1)
26 if 1 or more of the following apply:

27 (a) Notice has not been mailed to the mortgagor as required by

1 section 3205a.

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

6 (c) Within 14 days after a notice is mailed to the mortgagor
7 under section 3205a, the mortgagor has requested a meeting under
8 section 3205b with the person designated under section 3205a(1)(c)
9 and 90 days have not passed after the notice was mailed.

10 (d) The mortgagor has requested a meeting under section 3205b
11 with the person designated under section 3205a(1)(c), the mortgagor
12 has provided documents if requested under section 3205b(2), and the
13 person designated under section 3205a(1)(c) has not met or
14 negotiated with the mortgagor under this chapter.

15 (e) The mortgagor and mortgagee have agreed to modify the
16 mortgage loan and the mortgagor is not in default under the
17 modified agreement.

18 (f) Calculations under section 3205c(1) show that the
19 mortgagor is eligible for a loan modification and foreclosure under
20 this chapter is not allowed under section 3205c(7).

21 (5) Subsection (4) applies only to proceedings under this
22 chapter in which the first notice under section 3208 is published
23 after July 5, 2009 and before January 5, 2012.

24 **SEC. 3204A. A PERSON SHALL NOT COMMENCE PROCEEDINGS UNDER THIS**
25 **CHAPTER TO FORECLOSE A MORTGAGE ON REAL ESTATE IF A MORTGAGOR IS A**
26 **SERVICE MEMBER, AS THAT TERM IS DEFINED IN SECTION 3285.**