

SENATE BILL No. 398

May 24, 2011, Introduced by Senators GREEN, MARLEAU and RICHARDVILLE 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 sections 3204 and 3205e (MCL 600.3204 and 600.3205e),
section 3204 as amended by 2009 PA 29 and section 3205e as added by
2009 PA 31.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3204. (1) Subject to subsection (4), a party may
2 foreclose a mortgage by advertisement if all of the following
3 circumstances exist:

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

6 (b) An action or proceeding has not been instituted, at law,
7 to recover the debt secured by the mortgage or any part of the
8 mortgage; or, if an action or proceeding has been instituted, the

1 action or proceeding has been discontinued; or an execution on a
2 judgment rendered in an action or proceeding has been returned
3 unsatisfied, in whole or in part.

4 (c) The mortgage containing the power of sale has been
5 properly recorded.

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

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

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

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

25 (a) Notice has not been mailed to the mortgagor as required by
26 section 3205a.

27 (b) After a notice is mailed to the mortgagor under section

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

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

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

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

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

19 (5) Subsection (4) applies only to proceedings under this
20 chapter in which the first notice under section 3208 is published
21 ~~after the effective date of the amendatory act that added this~~
22 ~~subsection JULY 5, 2009 and before 2 years after the effective date~~
23 ~~of the amendatory act that added this subsection JULY 5, 2013.~~

24 Sec. 3205e. Sections 3205a to 3205d are repealed effective 2
25 ~~years after the effective date of the amendatory act that added~~
26 ~~this section JULY 5, 2013.~~