

SENATE BILL No. 1172

June 6, 2012, Introduced by Senators BOOHER, RICHARDVILLE and MARLEAU 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 2011 PA 301 and section 3205e as amended
by 2011 PA 302.

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 claimed as a principal
24 residence exempt from tax under section 7cc of the general property
25 tax act, 1893 PA 206, MCL 211.7cc, if 1 or more of the following
26 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 the mortgagor to request, either directly or
4 through a housing counselor, a meeting with the person designated
5 under section 3205a(1)(c) under section 3205b has not expired.

6 (c) Within 30 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. This
10 subdivision does not apply if the mortgagor has failed to provide
11 documents as required under section 3205b(2).

12 (d) Documents have been requested under section 3205b(2) and
13 the time for producing the documents has not expired.

14 (e) The mortgagor has requested a meeting under section 3205b
15 with the person designated under section 3205a(1)(c), the mortgagor
16 has provided documents as required under section 3205b(2), and the
17 person designated under section 3205a(1)(c) has not met or
18 negotiated with the mortgagor under this chapter.

19 (f) The mortgagor and mortgagee have agreed to modify the
20 mortgage loan and the mortgagor is not in default under the
21 modified agreement.

22 (g) Calculations under section 3205c(1) show that the
23 mortgagor is eligible for a loan modification and foreclosure under
24 this chapter is not allowed under section 3205c(7).

25 (5) Subsection (4) applies only to proceedings under this
26 chapter in which the first notice under section 3208 is published
27 after July 5, 2009 and before December 31, ~~2012~~**2014**.

1 (6) Subsection (4) does not apply to a mortgage of property
2 used for agricultural purposes if the mortgage is subject to
3 borrower's rights under the federal acts and is subject to the
4 restructuring of distressed loans or the debt restructuring and
5 loan servicing provisions of the federal acts, if the applicable
6 period to apply for a restructuring required under the federal acts
7 is longer than the period within which a borrower may request a
8 meeting under section 3205b, and if compliance with the federal
9 acts will not result in proceedings being commenced under this
10 chapter within 90 days after a default under the mortgage. As used
11 in this subsection, "federal acts" means the farm credit act of
12 1971, Public Law 92-181, as amended, or the consolidated farm and
13 rural development act, Public Law 87-128, and rules and regulations
14 promulgated under those acts.

15 Sec. 3205e. Sections 3205a to 3205d are repealed effective
16 December 31, ~~2012~~-2014.