

# HOUSE BILL No. 5794

September 10, 2014, Introduced by Reps. Callton and Lyons and referred to the Committee on Financial Services.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 3238 and 3241a (MCL 600.3238 and 600.3241a), section 3238 as added by 2014 PA 125 and section 3241a as amended by 2006 PA 579.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 3238. (1) After a foreclosure sale under this chapter and  
2 providing notice under section 3237, the purchaser at the sale may  
3 inspect the property, including the exterior and interior of any  
4 structures on the property, as provided in this section.

5           (2) The purchaser may conduct an initial inspection of the  
6 interior of any structures on the property. In addition to the  
7 notice provided in section 3237, the purchaser shall provide notice

1 to the mortgagor by certified mail, physical posting on the  
2 property, or in any manner reasonably calculated to achieve actual  
3 notice of the purchaser's intent to inspect the property at least  
4 72 hours in advance and shall set the time of the inspection at a  
5 reasonable time of day, in coordination with the mortgagor if  
6 possible.

7 (3) The purchaser may conduct any number of exterior  
8 inspections of the property and any structures on the property  
9 during the redemption period.

10 (4) After the initial inspection described in subsection (2),  
11 the purchaser may request by certified mail, physical posting on  
12 the property, or in any manner reasonably calculated to achieve  
13 actual notice that the mortgagor provide information on or evidence  
14 of the condition of the interior of any structures on the property,  
15 in any form reasonably necessary to assess the condition of the  
16 property. The purchaser shall not make such a request more than  
17 once in a calendar month or more often than 3 times in any 6 months  
18 of the redemption period, unless the purchaser has reasonable cause  
19 to believe that damage to the property is imminent or has occurred.

20 (5) If the mortgagor refuses to provide information or  
21 evidence requested under subsection (4) within 5 business days  
22 after receipt of the request, or if the information or evidence  
23 provided reveals that damage has occurred or is imminent, the  
24 ~~mortgagor~~**PURCHASER** may schedule an inspection of the interior of  
25 any structures on the property. For an inspection under this  
26 subsection, the purchaser shall provide notice as described in  
27 subsection (2) of the purchaser's intent to inspect the property at

1 least 72 hours in advance, and shall set the time of the inspection  
2 at a reasonable time of day, in coordination with the mortgagor if  
3 possible. If the mortgagor provides the information or evidence  
4 requested under subsection (4) and damage has not occurred or does  
5 not appear imminent, the purchaser shall not conduct an interior  
6 inspection under this subsection related to that request.

7 (6) If an inspection under this section is unreasonably  
8 refused or if damage to the property is imminent or has occurred,  
9 the purchaser may immediately commence summary proceedings for  
10 possession of the property under chapter 57 or file an action for  
11 any other relief necessary to protect the property from damage. If  
12 a purchaser commences an action for possession or any other relief  
13 under this section, the purchaser may also name as a party to the  
14 action any person who may redeem the property under section 3240.

15 (7) Before commencing summary proceedings for possession of  
16 the property under this section, the purchaser shall provide notice  
17 to the mortgagor by certified mail, physical posting on the  
18 property, or in any other manner reasonably calculated to achieve  
19 actual notice, that the purchaser intends to commence summary  
20 proceedings if the damage or condition causing reasonable belief  
21 that damage is imminent is not repaired or corrected within 7 days  
22 after receipt of the notice.

23 (8) A purchaser shall not commence summary proceedings for  
24 possession under this section if either of the following conditions  
25 exists:

26 (a) The damage or condition causing reasonable belief that  
27 damage is imminent is repaired or corrected within the 7-day period

1 described in the notice of intent under subsection (7).

2 (b) The mortgagor and the purchaser agree on procedures and a  
3 timeline to repair the damage or correct the condition causing  
4 reasonable belief that damage is imminent and the procedures are  
5 completed by the original date agreed to by the mortgagor and  
6 purchaser or by an extended date that is agreed to by the mortgagor  
7 and purchaser.

8 (9) In determining whether to enter judgment for possession in  
9 favor of the purchaser in summary proceedings under this section,  
10 the judge shall consider the totality of the circumstances  
11 surrounding the damage or condition that threatens imminent damage,  
12 including, but not limited to, all of the following:

13 (a) The cause of the damage or condition.

14 (b) Whether the mortgagor has taken appropriate steps to  
15 repair the damage or correct the condition and to secure the  
16 property from further damage.

17 (c) Whether the mortgagor has promptly contacted the purchaser  
18 and any property insurer regarding the damage or condition.

19 (d) Whether any delay in repairs or corrections is  
20 affirmatively caused by the purchaser or the property insurer.

21 (10) If a judgment for possession is entered in favor of the  
22 purchaser in an action under chapter 57 as described in subsection  
23 (6), the right of redemption under section 3240 is extinguished and  
24 title to the property vests in the purchaser as provided in section  
25 3236 as to all persons against whom judgment was entered.

26 (11) As used in this section, "damage" includes, but is not  
27 limited to, any of the following:

1 (a) The failure to comply with local ordinances regarding  
2 maintenance of the property or blight prevention, if the failure is  
3 the subject of enforcement action by the appropriate governmental  
4 unit.

5 (b) An exterior condition that presents a significant risk to  
6 the security of the property or significant risk of criminal  
7 activity occurring on the property.

8 (c) Stripped plumbing, electrical wiring, siding, or other  
9 metal material.

10 (d) Missing or destroyed structural aspects or fixtures,  
11 including, but not limited to, a furnace, water heater, air-  
12 conditioning unit, countertop, cabinetry, flooring, wall, ceiling,  
13 roofing, toilet, or any other fixtures. As used in this  
14 subdivision, "fixtures" means that term as defined in section 9102  
15 of the uniform commercial code, 1962 PA 174, MCL 440.9102.

16 (e) Deterioration below, or being in imminent danger of  
17 deteriorating below, community standards for public safety and  
18 sanitation that are established by statute or local ordinance.

19 (f) A condition that would justify recovery of the premises  
20 under section 5714(1)(d).

21 Sec. 3241a. For purposes of this chapter, if foreclosure  
22 proceedings have been commenced under this chapter against  
23 residential property not exceeding 4 units, ~~abandonment of~~ **THERE IS**  
24 **A CONCLUSIVE PRESUMPTION THAT THE** premises ~~shall be conclusively~~  
25 ~~presumed upon satisfaction of~~ **HAVE BEEN ABANDONED IF** all of the  
26 following requirements **ARE SATISFIED** before the end of the  
27 redemption period:

1 (a) The mortgagee has made a personal inspection of the  
2 mortgaged premises and the inspection does not reveal that the  
3 mortgagor or persons claiming under the mortgagor are presently  
4 occupying or will occupy the premises.

5 (b) The mortgagee has posted a notice at the time of making  
6 the personal inspection and has mailed by certified mail, return  
7 receipt requested, a notice to the mortgagor at the mortgagor's  
8 last known address, which notices state that the mortgagee  
9 considers the premises abandoned and that the mortgagor will lose  
10 all rights of ownership ~~30 days~~ **1 MONTH** after the foreclosure sale  
11 or when the time to provide the notice required by subdivision (c)  
12 expires, whichever is later, unless the mortgagor; the mortgagor's  
13 heirs ~~, executor, or administrator,~~ **OR PERSONAL REPRESENTATIVE;** or  
14 a person lawfully claiming from or under 1 of them provides the  
15 notice required by subdivision (c).

16 (c) Within 15 days after the notice required by subdivision  
17 (b) was posted and mailed, the mortgagor; the mortgagor's heirs  ~~,~~  
18 ~~executor, or administrator,~~ **OR PERSONAL REPRESENTATIVE;** or a person  
19 lawfully claiming from or under 1 of them has not given written  
20 notice by first-class mail to the mortgagee at an address provided  
21 by the mortgagee in the notices required by subdivision (b) stating  
22 that the premises are not abandoned.