

# HOUSE BILL No. 5340

October 23, 2007, Introduced by Rep. Young 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 3110, 3120, 3204, and 3212 (MCL 600.3110, 600.3120, 600.3204, and 600.3212), sections 3204 and 3212 as amended by 2004 PA 186.

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

1           Sec. 3110. (1) ~~Whenever~~ **IF** a complaint is filed for the  
2 satisfaction or foreclosure of ~~any~~ **A** mortgage on real estate or  
3 land contract, upon which there is due ~~any~~ interest or ~~any~~ **A**  
4 portion or installment of the principal and there are other  
5 portions or installments to become due subsequently, the complaint  
6 shall be dismissed ~~upon the defendant's bringing into court~~ **IF THE**  
7 **DEFENDANT**, at any time before the judgment of sale, **PAYS TO THE**  
8 **COURT** the principal and interest due, with costs.

9           (2) **IF THE COMPLAINT DESCRIBED IN SUBSECTION (1) IS FOR THE**

1 FORECLOSURE OF A MORTGAGE OF RESIDENTIAL REAL ESTATE, AND IF 18  
2 MONTHS HAVE PASSED SINCE THE DEFENDANT FIRST FAILED TO PAY AN  
3 INSTALLMENT UNDER THE MORTGAGE, THE COMPLAINT SHALL BE DISMISSED  
4 IF, REGARDLESS OF WHETHER THE MORTGAGEE HAS ACCELERATED THE BALANCE  
5 SECURED BY THE MORTGAGE, THE DEFENDANT PAYS TO THE COURT ONLY THE  
6 PORTIONS OR INSTALLMENTS THAT ARE UNPAID AND INTEREST ON THOSE  
7 PORTIONS AND INSTALLMENTS, NOT PORTIONS OR INSTALLMENTS TO BECOME  
8 DUE SUBSEQUENTLY.

9 Sec. 3120. (1) If, after a judgment of sale is entered,  
10 ~~against him, the defendant brings into~~ PAYS TO THE court the  
11 principal and interest due with costs, the proceedings in the  
12 action shall be stayed, ~~but~~ the court shall enter a judgment of  
13 foreclosure and sale. ~~to be enforced by a further order of the~~  
14 ~~court upon a subsequent default~~ IF THE DEFENDANT LATER DEFAULTS in  
15 the payment of any portion or installment of the principal ~~or~~ of  
16 any interest thereafter ~~to become~~ THAT LATER BECOMES due, THE COURT  
17 SHALL ENTER AN ORDER TO ENFORCE THE JUDGMENT OF FORECLOSURE AND  
18 SALE.

19 (2) IF THE REAL ESTATE THAT IS THE SUBJECT OF THE JUDGMENT OF  
20 FORECLOSURE AND SALE UNDER SUBSECTION (1) IS RESIDENTIAL REAL  
21 ESTATE, AND IF LESS THAN 18 MONTHS HAVE PASSED SINCE THE DEFENDANT  
22 FIRST FAILED TO PAY AN INSTALLMENT UNDER THE MORTGAGE, THE AMOUNT  
23 OF PRINCIPAL AND INTEREST DUE SHALL NOT INCLUDE ANY ACCELERATED  
24 BALANCE SECURED BY THE MORTGAGE.

25 Sec. 3204. (1) A party may foreclose a mortgage by  
26 advertisement if all of the following circumstances exist:

27 (a) A default in a condition of the mortgage has occurred, by

1 which the power to sell became operative.

2 (b) An action or proceeding has not been instituted, at law,  
3 to recover the debt secured by the mortgage or any part of the  
4 mortgage; or, if an action or proceeding has been instituted, the  
5 action or proceeding has been discontinued; or an execution on a  
6 judgment rendered in an action or proceeding has been returned  
7 unsatisfied, in whole or in part.

8 (c) The mortgage containing the power of sale has been  
9 properly recorded.

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

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

22 **(3) IF THE REAL ESTATE THAT IS THE SUBJECT OF THE MORTGAGE**  
23 **BEING FORECLOSED IS RESIDENTIAL REAL ESTATE, AND IF LESS THAN 18**  
24 **MONTHS HAVE PASSED SINCE THE MORTGAGOR FIRST FAILED TO PAY AN**  
25 **INSTALLMENT UNDER THE MORTGAGE, THE MORTGAGE SHALL ONLY BE**  
26 **FORECLOSED AS TO THE INSTALLMENTS THAT ARE DUE AND HAVE NOT BEEN**  
27 **PAID, ANY INTEREST ON THE UNPAID INSTALLMENTS, AND COSTS, AND NOT**

1 AS TO ANY ACCELERATED INDEBTEDNESS SECURED BY THE MORTGAGE.

2 (4) ~~(3)~~—If the party foreclosing a mortgage by advertisement  
3 is not the original mortgagee, a record chain of title shall exist  
4 prior to the date of sale under section 3216 evidencing the  
5 assignment of the mortgage to the party foreclosing the mortgage.

6 Sec. 3212. (1) Every notice of foreclosure by advertisement  
7 shall include all of the following:

8 (a) The names of the mortgagor, the original mortgagee, and  
9 the foreclosing assignee, if any.

10 (b) The date of the mortgage and the date the mortgage was  
11 recorded.

12 (c) The amount claimed to be due on the mortgage on the date  
13 of the notice.

14 (d) A description of the mortgaged premises that substantially  
15 conforms with the description contained in the mortgage.

16 (e) For a mortgage executed on or after January 1, 1965, the  
17 length of the redemption period as determined under section 3240.

18 (2) IF THE REAL ESTATE THAT IS THE SUBJECT OF THE MORTGAGE  
19 BEING FORECLOSED IS RESIDENTIAL REAL ESTATE, AND IF LESS THAN 18  
20 MONTHS HAVE PASSED SINCE THE MORTGAGOR FIRST FAILED TO PAY AN  
21 INSTALLMENT UNDER THE MORTGAGE, THE AMOUNT CLAIMED TO BE DUE ON THE  
22 MORTGAGE UNDER SUBSECTION (1) SHALL ONLY INCLUDE THE INSTALLMENTS  
23 THAT ARE DUE AND HAVE NOT BEEN PAID, ANY INTEREST ON THE UNPAID  
24 INSTALLMENTS, AND COSTS AND SHALL NOT INCLUDE ANY ACCELERATED  
25 INDEBTEDNESS SECURED BY THE MORTGAGE.