

HOUSE BILL No. 4432

March 15, 2011, Introduced by Reps. Rutledge, Santana, Hobbs, Dillon, Brunner, Segal, Smiley, Haugh, Lipton, Darany, Kandrevas, Ananich, McCann, Switalski, Barnett, Geiss, Slavens, Liss, Bauer, Townsend, Jackson, Howze and Meadows and referred to the Committee on Tax Policy.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending section 3204 (MCL 600.3204), as amended by 2009 PA 29, and by adding section 3104.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 3104. (1) A PERSON SHALL NOT COMMENCE AN ACTION UNDER
2 THIS CHAPTER TO FORECLOSE A MORTGAGE UNLESS THE PERSON HAS GIVEN
3 WRITTEN NOTICE OF THE INTENT TO FORECLOSE TO THE LOCAL UNIT OF
4 GOVERNMENT WHERE THE PROPERTY IS LOCATED AT LEAST 30 DAYS BEFORE
5 FILING THE ACTION.

6 (2) A NOTICE TO A LOCAL UNIT OF GOVERNMENT UNDER THIS SECTION
7 SHALL INCLUDE ALL OF THE FOLLOWING:

1 (A) THE NAME OF THE MORTGAGOR.

2 (B) THE NAME OF THE CURRENT HOLDER OF THE MORTGAGEE'S INTEREST
3 IN THE MORTGAGE.

4 (C) THE LEGAL DESCRIPTION AND THE STREET ADDRESS OF THE
5 PROPERTY.

6 (3) A PERSON WHO FILES AN ACTION TO FORECLOSE A MORTGAGE UNDER
7 THIS CHAPTER SHALL SPECIFICALLY STATE IN THE COMPLAINT WHETHER
8 NOTICE HAS BEEN GIVEN UNDER THIS SECTION.

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

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

14 (b) An action or proceeding has not been instituted, at law,
15 to recover the debt secured by the mortgage or any part of the
16 mortgage; or, if an action or proceeding has been instituted, the
17 action or proceeding has been discontinued; or an execution on a
18 judgment rendered in an action or proceeding has been returned
19 unsatisfied, in whole or in part.

20 (c) The mortgage containing the power of sale has been
21 properly recorded.

22 (d) The party foreclosing the mortgage is either the owner of
23 the indebtedness or of an interest in the indebtedness secured by
24 the mortgage or the servicing agent of the mortgage.

25 (E) THE PARTY FORECLOSING THE MORTGAGE HAS GIVEN WRITTEN
26 NOTICE OF THE INTENT TO FORECLOSE TO THE LOCAL UNIT OF GOVERNMENT
27 WHERE THE PROPERTY IS LOCATED AT LEAST 30 DAYS BEFORE COMMENCING

1 PROCEEDINGS TO FORECLOSE THE MORTGAGE UNDER THIS CHAPTER. A NOTICE
2 TO A LOCAL UNIT OF GOVERNMENT UNDER THIS SECTION SHALL INCLUDE ALL
3 OF THE FOLLOWING:

4 (i) THE NAME OF THE MORTGAGOR.

5 (ii) THE NAME OF THE CURRENT HOLDER OF THE MORTGAGEE'S INTEREST
6 IN THE MORTGAGE.

7 (iii) THE LEGAL DESCRIPTION AND THE STREET ADDRESS OF THE
8 PROPERTY.

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, 2011.~~