

HOUSE BILL No. 4764

May 23, 2013, Introduced by Rep. Callton and referred to the Committee on Financial Services.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 3204 (MCL 600.3204), as amended by 2012 PA 521.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3204. (1) Subject to ~~subsection~~**SUBSECTIONS** (4) **AND** (6),
2 a party may foreclose a mortgage by advertisement if all of the
3 following 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
9 action or proceeding has been discontinued; or an execution on a
10 judgment rendered in an action or proceeding has been returned
11 unsatisfied, in whole or in part.

1 (c) The mortgage containing the power of sale has been
2 properly recorded.

3 (d) The party foreclosing the mortgage is either the owner of
4 the indebtedness or of an interest in the indebtedness secured by
5 the mortgage or the servicing agent of the mortgage.

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

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

19 (4) A party shall not commence proceedings under this chapter
20 to foreclose a mortgage of property claimed as a principal
21 residence exempt from tax under section 7cc of the general property
22 tax act, 1893 PA 206, MCL 211.7cc, if 1 or more of the following
23 apply:

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

26 (b) After a notice is mailed to the mortgagor under section
27 3205a, the time **HAS NOT EXPIRED** for the mortgagor to request,

1 either directly or through a housing counselor, a meeting **UNDER**
2 **SECTION 3205B** with the person designated under section 3205a(1)(c).
3 ~~under section 3205b has not expired.~~

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

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

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

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

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

23 (5) Subsection (4) applies only to proceedings under this
24 chapter in which the first notice under section 3208 is published
25 after July 5, 2009 and before ~~June 30, 2013~~. **JANUARY 10, 2014.**

26 (6) **AFTER JANUARY 9, 2014, A PARTY TO WHICH SECTION 3206**
27 **APPLIES SHALL NOT COMMENCE PROCEEDINGS UNDER THIS CHAPTER TO**

1 FORECLOSE A MORTGAGE OF PROPERTY CLAIMED AS A PRINCIPAL RESIDENCE
2 EXEMPT FROM TAX UNDER SECTION 7CC OF THE GENERAL PROPERTY TAX ACT,
3 1893 PA 206, MCL 211.7CC, IF 1 OR BOTH OF THE FOLLOWING APPLY:

4 (A) THE PARTY COMPLIES WITH 12 CFR 1024.38 TO 1024.41. THIS
5 SUBDIVISION APPLIES TO A PARTY TO WHICH 12 CFR 1024.38 TO 1024.41
6 APPLIES ONLY BECAUSE OF SECTION 3206.

7 (B) THE MORTGAGOR HAS AGREED WITH THE APPROPRIATE PERSON TO
8 MODIFY THE TERMS OF THE NOTE OR OTHER LOAN AGREEMENT SECURED BY THE
9 MORTGAGE AND THE MORTGAGOR IS NOT IN DEFAULT UNDER THE MODIFIED
10 TERMS.

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

25 Enacting section 1. This amendatory act does not take effect
26 unless all of the following bills of the 97th Legislature are
27 enacted into law:

1 (a) Senate Bill No. ____ or House Bill No. 4765 (request no.
2 02407'13).

3 (b) Senate Bill No. ____ or House Bill No. 4766 (request no.
4 02408'13).

5 (c) Senate Bill No. ____ or House Bill No. 4767 (request no.
6 02409'13).