

SENATE BILL No. 29

January 28, 2009, Introduced by Senator CLARKE 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 3115, 3201, and 3236 (MCL 600.3115, 600.3201, and 600.3236), section 3201 as amended by 1981 PA 172, and by adding sections 3116 and 3237.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3115. ~~Whenever a complaint is filed~~ **SUBJECT TO SECTION**
 2 **3116, IN AN ACTION** for the foreclosure or satisfaction of ~~any~~ **A**
 3 mortgage on real estate or land contract, the court ~~has power to~~
 4 **MAY** order a sale of the premises ~~which~~ **THAT** are the subject of the
 5 mortgage ~~on real estate or land contract, or of that part of the~~
 6 premises ~~which~~ **THAT** is sufficient to discharge the amount due on
 7 the mortgage ~~on real estate or land contract plus costs. But the~~
 8 ~~circuit judge~~ **THE COURT** shall not order that the lands subject to

1 the mortgage be sold within 6 months after the filing of the
2 complaint for foreclosure of the mortgage or that the lands ~~which~~
3 **THAT** are the subject of the land contract be sold within 3 months
4 after the filing of the complaint for foreclosure of the land
5 contract.

6 **SEC. 3116. (1) IN AN ACTION TO FORECLOSE A MORTGAGE OR LAND**
7 **CONTRACT OF RESIDENTIAL PROPERTY IN WHICH A JUDGMENT OF FORECLOSURE**
8 **HAS NOT BEEN ENTERED BY THE EFFECTIVE DATE OF THE AMENDATORY ACT**
9 **THAT ADDED THIS SECTION, THE COURT, ON MOTION OF A DEFENDANT, SHALL**
10 **ORDER THE ACTION STAYED FOR 2 YEARS AFTER THE ENTRY OF THE STAY**
11 **ORDER.**

12 **(2) IN AN ACTION TO FORECLOSE A MORTGAGE OR LAND CONTRACT OF**
13 **RESIDENTIAL PROPERTY IN WHICH A JUDGMENT OF FORECLOSURE HAS BEEN**
14 **ENTERED BUT THE PERIOD OF REDEMPTION HAS NOT EXPIRED BY THE**
15 **EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE**
16 **COURT, ON MOTION OF A DEFENDANT, SHALL DO 1 OF THE FOLLOWING:**

17 **(A) IF THE PROPERTY HAS NOT BEEN SOLD UNDER THE JUDGMENT,**
18 **AMEND THE JUDGMENT TO INCLUDE A STAY OF THE SALE FOR 2 YEARS AFTER**
19 **THE ENTRY OF THE AMENDMENT THAT INCLUDES THE STAY.**

20 **(B) IF THE PROPERTY HAS BEEN SOLD UNDER THE JUDGMENT, INCLUDE**
21 **IN THE ORDER CONFIRMING THE REPORT OF SALE OR, IF THE ORDER**
22 **CONFIRMING THE REPORT OF SALE HAS BEEN ENTERED, AMEND THE ORDER TO**
23 **INCLUDE A PROVISION EXTENDING THE PERIOD OF REDEMPTION FOR 2 YEARS**
24 **AFTER THE ENTRY OF THE ORDER THAT INCLUDES THE STAY. THE REGISTER**
25 **OF DEEDS SHALL ENDORSE, RECORD, AND INDEX AN ORDER AMENDING AN**
26 **ORDER CONFIRMING THE REPORT OF SALE UNDER THIS SUBDIVISION IN THE**
27 **MANNER PROVIDED FOR DEEDS OF SALE UNDER SECTION 3130 AND NOTE THE**

1 EXISTENCE OF THE ORDER AMENDING THE ORDER CONFIRMING THE REPORT OF
2 SALE ON THE RECORD OF THE DEED OF SALE.

3 (3) THE COURT MAY INCLUDE IN AN ORDER ENTERED UNDER SUBSECTION
4 (1) OR A JUDGMENT OR ORDER ENTERED UNDER SUBSECTION (2) ANY OF THE
5 FOLLOWING PROVISIONS RELATING TO THE PROPERTY DURING THE STAY OR
6 EXTENSION:

7 (A) POSSESSION OF THE PROPERTY. IN MAKING AN ORDER UNDER THIS
8 SUBDIVISION, THE COURT SHALL GIVE PREFERENCE TO THE CONTINUED
9 OCCUPATION OF THE PROPERTY. UNLESS THE DEFENDANT HAS ABANDONED THE
10 PROPERTY, THE PREFERENCE SHALL BE FOR THE DEFENDANT TO REMAIN IN
11 POSSESSION OF THE PROPERTY.

12 (B) A FAIR AMOUNT TO BE PAID IN LIEU OF MORTGAGE OR LAND
13 CONTRACT PAYMENTS BY THE PERSON IN POSSESSION. IN DETERMINING
14 PAYMENTS TO BE MADE UNDER THIS SECTION, THE COURT SHALL CONSIDER
15 ALL OF THE FOLLOWING:

16 (i) THE ABILITY OF THE DEFENDANT TO PAY.

17 (ii) THE FINANCIAL STATUS OF THE HOLDER OF THE MORTGAGE OR
18 SELLER UNDER THE LAND CONTRACT.

19 (iii) ANY OTHER FACTOR THAT THE COURT DETERMINES TO BE RELEVANT.

20 (C) THAT MONEY RECEIVED UNDER SUBDIVISION (B) BE APPLIED TO
21 THE MORTGAGE OR LAND CONTRACT DEBT OR ANY OTHER INDEBTEDNESS
22 ARISING FROM A DEFAULT UNDER THE MORTGAGE OR LAND CONTRACT. THE
23 COURT MAY ORDER THAT PAYMENT AND DISTRIBUTION OF MONEY BE MADE
24 THROUGH THE CLERK OF THE COURT OR ANOTHER PERSON.

25 (D) PRESERVATION OF THE PROPERTY, INCLUDING PAYMENT OF TAXES
26 AND MAINTENANCE OF INSURANCE.

27 (E) A STAY OF ANY FORECLOSURE OF THE PROPERTY, OR OF ANY

1 PERIOD OF REDEMPTION IF FORECLOSURE HAS ALREADY OCCURRED, FOR
2 NONPAYMENT OF TAXES ON THE PROPERTY.

3 (4) THE COURT MAY SET ASIDE OR MODIFY AN ORDER OR JUDGMENT
4 ENTERED UNDER SUBSECTION (1) OR (2) IF A DEFENDANT SUBSTANTIALLY
5 VIOLATES A PROVISION ORDERED UNDER SUBSECTION (3) OR FOR ANY OTHER
6 REASON THAT THE COURT DETERMINES IN ITS DISCRETION TO JUSTIFY THE
7 CHANGE. IF AN ORDER OR JUDGMENT ENTERED UNDER SUBSECTION (1) OR (2)
8 IS SET ASIDE, THE RIGHTS OF A PERSON INTERESTED IN THE PROPERTY
9 THAT WERE AFFECTED BY THE ORDER OR JUDGMENT REVEST IN THE PERSON
10 EFFECTIVE THE DATE THE ORDER OR JUDGMENT IS SET ASIDE AS IF THE
11 ORDER OR JUDGMENT HAD NOT BEEN ENTERED.

12 (5) THE HOLDER OF A MORTGAGE THAT IS THE SUBJECT OF A STAY OR
13 EXTENSION ORDER UNDER THIS SECTION MAY APPLY FOR A GUARANTEE OF
14 PAYMENT OF THE MORTGAGE LOAN UNDER SECTION 44H OF THE STATE HOUSING
15 DEVELOPMENT AUTHORITY ACT OF 1966, 1966 PA 346, MCL 125.1444H.

16 (6) AFTER 3 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY
17 ACT THAT ADDED THIS SECTION, A COURT SHALL NOT ENTER AN ORDER OR
18 JUDGMENT UNDER THIS SECTION TO STAY AN ACTION OR SALE OR TO EXTEND
19 A PERIOD OF REDEMPTION.

20 Sec. 3201. (1) ~~Every~~ SUBJECT TO SUBSECTION (3), EVERY mortgage
21 of real estate ~~, which~~ THAT contains a power of sale, upon default
22 ~~being made in any condition of such~~ THE mortgage, may be foreclosed
23 by advertisement ~~, in the cases and in the manner specified~~ AS
24 PROVIDED in this chapter. ~~However, the procedures set forth in this~~

25 (2) THIS chapter shall ~~DOES~~ not apply to mortgages of real
26 estate held by the Michigan state housing development authority.

27 (3) BEFORE 3 YEARS AFTER THE EFFECTIVE DATE OF THE AMENDATORY

1 ACT THAT ADDED THIS SUBSECTION, IF A MORTGAGE OF RESIDENTIAL
 2 PROPERTY IS BEING FORECLOSED BY ADVERTISEMENT, THE OWNER OF THE
 3 MORTGAGED PROPERTY OR A PERSON LIABLE UNDER THE MORTGAGE OR
 4 MORTGAGE NOTE MAY FILE AN ACTION IN THE CIRCUIT COURT FOR THE
 5 COUNTY WHERE THE PROPERTY IS LOCATED TO ENJOIN FORECLOSURE OF THE
 6 MORTGAGE BY ADVERTISEMENT. THE COURT IN AN ACTION FILED UNDER THIS
 7 SUBSECTION SHALL ENJOIN FORECLOSURE OF THE MORTGAGE BY
 8 ADVERTISEMENT AND ORDER THE FORECLOSURE TO PROCEED UNDER CHAPTER
 9 31.

10 (4) AN INDIVIDUAL WHO FILES AN ACTION UNDER SUBSECTION (3)
 11 SHALL BE PRESUMED TO BE INDIGENT AND UNABLE TO PAY COURT FEES IN
 12 THE ACTION FOR PURPOSES OF SECTION 2529.

13 Sec. 3236. (1) ~~Unless~~ EXCEPT AS PROVIDED IN SECTION 3237,
 14 UNLESS the premises described in ~~such~~ THE deed ~~shall be~~ OF SALE ARE
 15 redeemed within the ~~time limited for such~~ APPLICABLE PERIOD OF
 16 redemption as ~~hereinafter~~ provided, ~~such~~ IN THIS CHAPTER, THE deed
 17 ~~shall thereupon become~~ BECOMES operative, ~~ON~~ ON THE EXPIRATION OF THE
 18 PERIOD OF REDEMPTION and ~~shall vest~~ VESTS in the grantee therein
 19 named, ~~his~~ IN THE DEED OR THE GRANTEE'S heirs or assigns, ~~all the~~
 20 right, title, and interest ~~which~~ the mortgagor had at the time of
 21 the execution of the mortgage, or at any time ~~thereafter~~ AFTER THE
 22 EXECUTION, except as to any parcel or parcels ~~which may~~ THAT have
 23 been redeemed and ~~canceled,~~ as hereinafter provided, ~~and the~~ IN
 24 THIS CHAPTER.

25 (2) AFTER THE PERIOD OF REDEMPTION EXPIRES, THE record thereof
 26 ~~shall thereafter,~~ OF THE DEED OF SALE IS for all purposes ~~be deemed~~
 27 a valid record of ~~said~~ THE deed OF SALE without being re-recorded.

1 ~~, but no~~ **HOWEVER, A person having any WHO HAS A** valid subsisting
 2 ~~lien upon~~ **ON** the mortgaged premises, or any part thereof ~~OF THE~~
 3 **MORTGAGED PREMISES**, created before the lien of ~~such~~ **THE** mortgage
 4 took effect, shall **NOT** be prejudiced by ~~any such~~ **THE** sale, ~~nor~~
 5 ~~shall his~~ **AND THE PERSON'S** rights or interests ~~be~~ **ARE NOT** in any
 6 way affected ~~thereby~~ **BY THE SALE**.

7 **SEC. 3237. (1) IF THE APPLICABLE PERIOD OF REDEMPTION PROVIDED**
 8 **UNDER THIS CHAPTER FOR A MORTGAGE OF RESIDENTIAL PROPERTY THAT IS**
 9 **BEING FORECLOSED BY ADVERTISEMENT HAS NOT EXPIRED BY 3 YEARS AFTER**
 10 **THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SECTION, A**
 11 **PERSON DESCRIBED IN SUBSECTION (2) MAY FILE A COMPLAINT IN THE**
 12 **CIRCUIT COURT FOR THE COUNTY IN WHICH THE PROPERTY IS LOCATED**
 13 **REQUESTING THE RELIEF DESCRIBED IN SUBSECTION (3). SECTION 3201(4)**
 14 **APPLIES TO AN ACTION FILED UNDER THIS SECTION.**

15 **(2) ONE OR MORE OF THE FOLLOWING MAY FILE AN ACTION UNDER THIS**
 16 **SECTION:**

17 **(A) THE OWNER OF THE MORTGAGED PROPERTY.**

18 **(B) A PERSON WHO IS LIABLE ON THE MORTGAGE OR NOTE.**

19 **(3) THE COURT IN AN ACTION UNDER THIS SECTION SHALL ENTER AN**
 20 **ORDER ENJOINING FOR 2 YEARS AFTER THE ENTRY OF THE ORDER THE**
 21 **ISSUANCE OF A WRIT OF RESTITUTION OR OTHER ORDER TO GIVE A**
 22 **PURCHASER UNDER A DEED OF SALE POSSESSION OF THE MORTGAGED**
 23 **PROPERTY. THE COURT MAY INCLUDE IN THE ORDER A PROVISION LISTED IN**
 24 **SECTION 3116(3).**

25 **(4) THE REGISTER OF DEEDS SHALL ENDORSE, RECORD, AND INDEX AN**
 26 **ORDER UNDER SUBSECTION (3) IN THE MANNER PROVIDED FOR DEEDS OF SALE**
 27 **UNDER SECTION 3232 AND NOTE THE EXISTENCE OF THE ORDER ON THE**

1 RECORD OF THE DEED OF SALE.

2 (5) THE COURT MAY SET ASIDE OR MODIFY AN ORDER ENTERED UNDER
3 SUBSECTION (3) IF A DEFENDANT SUBSTANTIALLY VIOLATES A PROVISION
4 LISTED IN SECTION 3116(3) THAT IS INCLUDED IN THE ORDER OR FOR ANY
5 OTHER REASON THAT THE COURT DETERMINES IN ITS DISCRETION TO JUSTIFY
6 THE CHANGE. IF AN ORDER ENTERED UNDER SUBSECTION (3) IS SET ASIDE,
7 THE RIGHTS OF A PERSON INTERESTED IN THE PROPERTY THAT WERE
8 AFFECTED BY THE ORDER REVEST IN THE PERSON EFFECTIVE THE DATE THE
9 ORDER IS SET ASIDE AS IF THE ORDER HAD NOT BEEN ENTERED.

10 (6) THE HOLDER OF A MORTGAGE THAT IS THE SUBJECT OF AN ORDER
11 UNDER SUBSECTION (3) MAY APPLY FOR A GUARANTEE OF PAYMENT OF THE
12 MORTGAGE LOAN UNDER SECTION 44H OF THE STATE HOUSING DEVELOPMENT
13 AUTHORITY ACT OF 1966, 1966 PA 346, MCL 125.1444H.

14 Enacting section 1. This amendatory act does not take effect
15 unless all of the following bills of the 95th Legislature are
16 enacted into law:

17 (a) Senate Bill No. 31.

18

19 (b) Senate Bill No. 30.

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