

Act No. 125

Public Acts of 2014

Approved by the Governor

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STATE OF MICHIGAN

97TH LEGISLATURE

REGULAR SESSION OF 2014

Introduced by Rep. Callton

ENROLLED HOUSE BILL No. 5277

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending sections 3204, 3240, and 3278 (MCL 600.3204, 600.3240, and 600.3278), section 3204 as amended by 2013 PA 103, section 3240 as amended by 2013 PA 104, and section 3278 as added by 2011 PA 301, and by adding sections 3237 and 3238; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

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

- (a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.
- (b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage or, if an action or proceeding has been instituted, either the action or proceeding has been discontinued or an execution on a judgment rendered in the action or proceeding has been returned unsatisfied, in whole or in part.
- (c) The mortgage containing the power of sale has been properly recorded.
- (d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

(2) If a mortgage is given to secure the payment of money by installments, each of the installments mentioned in the mortgage after the first shall be treated as a separate and independent mortgage. The mortgage for each

of the installments may be foreclosed in the same manner and with the same effect as if a separate mortgage were given for each subsequent installment. A redemption of a sale by the mortgagor has the same effect as if the sale for the installment had been made upon an independent prior mortgage.

(3) If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title must exist before the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.

Sec. 3237. (1) After a foreclosure sale under this chapter, if the purchaser at the sale intends to conduct an interior inspection of the property under section 3238 during the redemption period, the purchaser shall provide an initial notice to the mortgagor and any other person that has possession of the property in writing that contains all of the following:

(a) The identity of the purchaser.

(b) The residence or business address, mailing address, telephone number, and, if applicable, electronic mail address at which the purchaser may be contacted.

(c) The date of the sale, the amount of the sale, and the estimated date the redemption period expires.

(d) The details of the purchaser's rights of inspection under section 3238.

(e) One or more alternative methods for surrendering control of the property under section 3278.

(f) A statement that if the mortgagor intends to vacate the property at any time after the sale, he or she must notify the purchaser as required by section 3278, and that if the mortgagor does not do so, he or she may risk heightened liability for damage to the property.

(2) The purchaser shall provide notice under this section by certified mail, physical posting on the property, or any other method reasonably calculated to achieve actual notice.

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

(2) The purchaser may conduct an initial inspection of the interior of any structures on the property. In addition to the notice provided in section 3237, the purchaser shall provide notice to the mortgagor by certified mail, physical posting on the property, or in any manner reasonably calculated to achieve actual notice of the purchaser's intent to inspect the property at least 72 hours in advance and shall set the time of the inspection at a reasonable time of day, in coordination with the mortgagor if possible.

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

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

(5) If the mortgagor refuses to provide information or evidence requested under subsection (4) within 5 business days after receipt of the request, or if the information or evidence provided reveals that damage has

occurred or is imminent, the mortgagor may schedule an inspection of the interior of any structures on the property. For an inspection under this subsection, the purchaser shall provide notice as described in subsection (2) of the purchaser's intent to inspect the property at least 72 hours in advance, and shall set the time of the inspection at a reasonable time of day, in coordination with the mortgagor if possible. If the mortgagor provides the information or evidence requested under subsection (4) and damage has not occurred or does not appear imminent, the purchaser shall not conduct an interior inspection under this subsection related to that request.

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

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

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

(a) The damage or condition causing reasonable belief that damage is imminent is repaired or corrected within the 7-day period described in the notice of intent under subsection (7).

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

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

(a) The cause of the damage or condition.

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

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

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

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

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

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

- (b) An exterior condition that presents a significant risk to the security of the property or significant risk of criminal activity occurring on the property.
- (c) Stripped plumbing, electrical wiring, siding, or other metal material.
- (d) Missing or destroyed structural aspects or fixtures, including, but not limited to, a furnace, water heater, air-conditioning unit, countertop, cabinetry, flooring, wall, ceiling, roofing, toilet, or any other fixtures. As used in this subdivision, “fixtures” means that term as defined in section 9102 of the uniform commercial code, 1962 PA 174, MCL 440.9102.
- (e) Deterioration below, or being in imminent danger of deteriorating below, community standards for public safety and sanitation that are established by statute or local ordinance.
- (f) A condition that would justify recovery of the premises under section 5714(1)(d).

Sec. 3240. (1) A purchaser’s deed under section 3232 is void if the mortgagor, the mortgagor’s heirs or personal representative, or any person that has a recorded interest in the property lawfully claiming under the mortgagor or the mortgagor’s heirs or personal representative redeems the entire premises sold by paying the amount required under subsection (2) and any amount required under subsection (4), within the applicable time limit prescribed in subsections (7) to (12), to the purchaser or the purchaser’s personal representative or assigns, or to the register of deeds in whose office the deed is deposited for the benefit of the purchaser.

(2) The amount required to be paid under subsection (1) is the amount that was bid for the entire premises sold, interest from the date of the sale at the interest rate provided for by the mortgage, the amount of the sheriff’s fee paid by the purchaser under section 2558(2)(q), and an additional \$5.00 as a fee for the care and custody of the redemption money if the payment is made to the register of deeds. Except as provided in subsection (14), the register of deeds shall not determine the amount necessary for redemption. The purchaser shall provide an affidavit with the deed to be recorded under this section that states the exact amount required to redeem the property under this subsection, including any daily per diem amounts, and the date by which the property must be redeemed shall be stated on the certificate of sale. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee as stated in the affidavit and may be authorized by the purchaser to receive redemption money. The purchaser shall accept the amount computed by the designee.

(3) If a distinct lot or parcel separately sold is redeemed, leaving a portion of the premises unredeemed, the deed is void only to the redeemed parcel or parcels.

(4) If, after a sale under section 3216, the purchaser, the purchaser’s heirs or personal representative, or any person lawfully claiming under the purchaser or the purchaser’s heirs or personal representative pays taxes assessed against the property, amounts necessary to redeem senior liens from foreclosure, condominium assessments, homeowner association assessments, community association assessments, or premiums on an insurance policy covering any buildings located on the property that under the terms of the mortgage it would have been the duty of the mortgagor to pay if the mortgage had not been foreclosed and that are necessary to keep the policy in force until the expiration of the period of redemption, redemption shall be made only upon payment of the sum specified in subsection (2) plus the amounts specified in this subsection with interest on the amounts specified in this subsection from the date of the payment to the date of redemption at the interest rate specified in the mortgage. This subsection does not apply unless all of the following are filed with the register of deeds with whom the deed is deposited:

- (a) An affidavit by the purchaser or someone in his or her behalf who has knowledge of the facts of the payment showing the amount and items paid.

- (b) The receipt or copy of the canceled check evidencing the payment of the taxes, amounts necessary to redeem senior liens from foreclosure, condominium assessments, homeowner association assessments, community association assessments, or insurance premiums.
- (c) An affidavit of an insurance agent of the insurance company stating that the payment was made and what portion of the payment covers the premium for the period before the expiration of the period of redemption.
- (5) If the redemption payment in subsection (4) includes an amount used to redeem a senior lien from a nonjudicial foreclosure, the mortgagor has the same defenses against the purchaser with respect to the amount used to redeem the senior lien as the mortgagor would have had against the senior lien.
- (6) The register of deeds shall indorse on documents filed under subsection (4) the time they are received. The register of deeds shall record the affidavit of the purchaser only and shall preserve in his or her files the recorded affidavit, receipts, insurance receipts, and insurance agent's affidavit until expiration of the period of redemption.
- (7) Subject to section 3238, for a mortgage executed on or after January 1, 1965, of commercial or industrial property, or multifamily residential property in excess of 4 units, the redemption period is 6 months from the date of the sale.
- (8) Subject to subsections (9) to (11) and section 3238, for a mortgage executed on or after January 1, 1965, of residential property not exceeding 4 units, if the amount claimed to be due on the mortgage at the date of the notice of foreclosure is more than 66-2/3% of the original indebtedness secured by the mortgage, the redemption period is 6 months.
- (9) For a mortgage of residential property not exceeding 4 units, if the property is abandoned as determined under section 3241, the redemption period is 1 month.
- (10) If the property is abandoned as determined under section 3241a, the redemption period is 1 month or until the time to provide the notice required by section 3241a(c) expires, whichever is later.
- (11) Subject to section 3238, for a mortgage of property that is used for agricultural purposes, the redemption period is 1 year from the date of the sale.
- (12) If subsections (7) to (11) do not apply, and subject to section 3238, the redemption period is 1 year from the date of the sale.
- (13) The amount stated in any affidavits recorded under this section shall be the amount necessary to satisfy the requirements for redemption under this section.
- (14) The register of deeds of a county with a population of more than 750,000 and less than 1,500,000, at the request of a person entitled to redeem the property under this section, shall determine the amount necessary for redemption. In determining the amount, the register of deeds shall consider only the affidavits recorded under subsections (2) and (4). A county, register of deeds, or employee of a county or register of deeds is not liable for damages proximately caused by an incorrect determination of an amount necessary for redemption under subsection (2).
- (15) A register of deeds may charge not more than \$50.00 for determining the amount necessary for redemption under this section.
- (16) For purposes of this section, there is a presumption that the property is used for agricultural purposes if, before the foreclosure sale under this chapter, the mortgagor provides the party foreclosing the mortgage and the foreclosing party's attorney proof that the mortgagor filed a schedule F to the mortgagor's federal income tax form 1040 for the year preceding the year in which the proceedings to foreclose the mortgage were

commenced and records an affidavit with the register of deeds for the county in which the property is located stating that the proof has been delivered. If the mortgagor fails to provide proof and record an affidavit as required by this subsection before the foreclosure sale, there is a presumption that the property is not used for agricultural purposes. The party foreclosing the mortgage or the mortgagor may file a civil action to produce evidence to rebut a presumption created by this subsection. An action under this section shall be filed before the expiration of the redemption period that would apply if the property is determined not to be used for agricultural purposes.

Sec. 3278. (1) During the period of redemption following a foreclosure sale of property under this chapter, the mortgagor and any other person liable on the mortgage is liable to the purchaser at the sale, or the mortgagee, payee, or other holder of the obligation secured by the mortgage if the mortgagee, payee, or other holder takes or has taken title to the property at the sale either directly or indirectly, for any physical injury to the property beyond wear and tear resulting from the normal use of the property if the physical injury is caused by or at the direction of the mortgagor or other person liable on the mortgage.

(2) If the purchaser has provided notice to the mortgagor under section 3237 and the mortgagor intends to move from the property at any time after the foreclosure sale of property under this chapter, the mortgagor shall inform the purchaser by electronic mail, certified mail, or any other method reasonably calculated to achieve actual notice, at least 10 days before vacating the property so that the property may be secured. If the purchaser has provided notice to the mortgagor under section 3237, both of the following apply:

(a) There is a rebuttable presumption that the mortgagor is liable to the purchaser at the foreclosure sale for all damage to the property that occurs before the expiration of the redemption period if the mortgagor does any of the following:

(i) Subject to section 3238, fails to consent to an initial inspection, comply with a request for information on the condition of the property, or consent to an inspection of the property after the initial inspection, if requested.

(ii) Fails to provide timely notice to the purchaser under this subsection.

(iii) Fails to surrender control of the property in a manner that reasonably provides the purchaser with the opportunity to secure it.

(b) There is a rebuttable presumption that the mortgagor is not liable for damage to the property that occurs after the mortgagor surrenders control of the property if the mortgagor does all of the following:

(i) Subject to section 3238, consents to an initial inspection, complies with a request for information on the condition of the property, and consents to inspections of the property after the initial inspection, if requested.

(ii) Provides timely notice to the purchaser under this subsection.

(iii) Surrenders control of the property in a manner that reasonably provides the purchaser with the opportunity to secure it.

(3) For purposes of subsection (2)(a)(iii) and (b)(iii), the purchaser shall designate 1 or more alternative methods for surrender of control of the property.

(4) In an action for damages under this section, the amount of damages may be determined by any measure of damages applicable under law, including, but not limited to, the method provided under section 5739(2).

(5) An action for damages under this section may be joined with an action for possession of the premises under chapter 57.

Enacting section 1. Sections 3205, 3205e, and 3206 of the revised judicature act of 1961, 1961 PA 236, MCL 600.3205, 600.3205e, and 600.3206, are repealed.

Enacting section 2. This amendatory act takes effect 30 days after the date it is enacted into law.

This act is ordered to take immediate effect.

Clerk of the House of Representatives

Secretary of the Senate

Approved

Governor