



State News



NEW MICHIGAN LAWS IMPACT FORECLOSURE

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There have been several major bills that became laws during the last year in Michigan.

Public Act 138 of 2008, effective May 21, 2008, modified the foreclosure by advertisement statute by adding MCL §600.3285 dealing with mortgagors in active duty with the military. Specifically, if the mortgagor is a service member and either gave the mortgage before becoming a service member, or is deployed in overseas service, a mortgagee may not foreclose during the person's period of military service or within 6 months following the end of military service without conducting a judicial foreclosure and obtaining a court order. It is important to note that in reading the statute, it appears to protect a service member who gives a mortgage **after** joining the military if that service member is deployed overseas prior to the foreclosure sale taking place. A mortgagee who knowingly violates this section is subject to a civil fine of \$2,000.00. If the mortgagee chooses to conduct a judicial foreclosure, MCL §600.3185 states that the court shall stay the foreclosure proceedings unless the court determines that the ability of the mortgagor to comply with the note was not materially affected by the military service.

More recently and of greater impact, is a law that further amends the foreclosure by advertisement statutes by adding a mandatory workout period prior to commencing foreclosure on property that is the principal residence of the mortgagor. Specifically, before proceeding with a foreclosure by advertisement, the mortgagee must send out a written notice containing specific statutory language and information, including amount due and owing, a specific representative who the mortgagor can contact who has the authority to perform workouts, a list of housing counselors published by the state, and legal aid numbers. Within 7 days, the mortgagee must then publish the notice one

time in the same manner as a notice to foreclose.

The mortgagor has 14 days after the notice is mailed to contact a housing counselor. The counselor must inform the lender's specified representative in writing of the mortgagor's intent to work out the default. The specified representative may then request the borrower to provide all documents necessary to determine if the mortgagor would qualify for a loan modification.

The housing counselor must then schedule a meeting between the mortgagor and the lender's specified representative to attempt to work out a modification. If the mortgagor has responded to the notice, the lender may not foreclose by advertisement until 90 days after the notice is mailed to the mortgagor.

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In addition, section 3205c has been added setting forth specific features the loan modification program must include based on the model developed by the FDIC. If the mortgagor is not eligible for modification the lender may proceed to foreclose by advertisement. However, if the borrower is eligible for a loan modification, the lender may only foreclose judicially.



Jonathan Engman is a shareholder of Fabrizio & Brook, P.C. He is the supervising attorney for the Real Estate Department where he oversees all foreclosure and REO files for the firm. Jon concentrates his law practice in the area of real estate, mortgage lending, curative title, contracts, and has extensive experience litigating foreclosure and quiet title cases. He can be reached at jonengman@fabriziobrook.com.