

# Stays of Mortgage Foreclosure Proceedings against Military Service Members

This Act enables a court to stay mortgage foreclosure proceedings against members of the military under certain conditions. It also invalidates a foreclosure by advertisement or the sale of mortgaged property of members of the military under certain conditions. It prohibits a person from selling or foreclosing real estate owned by members of the military if the person knew the foreclosure or sale was invalid, and prescribes a civil fine of \$2,000 for a violation. The Act directs the Attorney General to deposit such fines in a Military Family Relief Fund established under state law.

Submitted as:

Michigan

[Public Act 138 of 2008](#)

Status: Enacted into law in 2008.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as “An Act to Stay Foreclosing Mortgages  
2 Held by U.S. Military Service Members.”

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          Section 2. [*Definitions.*] As used in this Act:

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          (1) “Active duty” means full-time duty in the active military service of the United States.  
6 Active duty includes full-time training duty, annual training duty, and attendance, while in the  
7 active military service, at a school designated as a service school by law or by the secretary of  
8 the military department concerned. Active duty does not include full-time national guard duty.

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          (2) “Military service” means any of the following:

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          (a) Active duty.

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          (b) If the service member is a member of the national guard, service under a call  
12 to active service authorized by the President or Secretary of Defense of the United States for a  
13 period of more than [thirty] consecutive days under 32 USC 502(f) to respond to a national  
14 emergency declared by the President and supported by federal money.

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          (c) A period during which the service member is absent from active duty because  
16 of sickness, wounds, leave, or other lawful cause.

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          (3) “Period of military service” means the period beginning on the date on which the  
18 service member enters military service and ending on the date on which the service member is  
19 released from military service or dies while in military service.

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          (4) “Service member” means an individual who is in military service and is a member of  
21 the armed services or reserve forces of the United States or a member of the [insert state]  
22 national guard.

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          Section 3. [*Court Authority to Stay Foreclosing On Mortgages or Land Contracts Held  
25 by Military Service Members.*]

26

          (A) If a defendant in an action to foreclose a mortgage on real estate or a land contract is  
27 a service member and either the defendant entered into the mortgage or land contract before

28 becoming a service member or the defendant is deployed in overseas service, the court on its  
29 own motion may, or on motion of or in behalf of the service member shall, do either or both of  
30 the following, unless the court determines that the ability of the defendant to comply with the  
31 terms of the obligation secured by the mortgage or land contract is not materially affected by the  
32 service member's military service:

33 (1) Stay proceedings in the action until [six] months after the end of the service  
34 member's period of military service.

35 (2) Issue another order that is equitable to conserve the interests of the parties.

36 (B) If a mortgage is a service member, either the mortgagor entered into the mortgage  
37 before becoming a service member or the mortgagor is deployed in overseas service, and, during  
38 the service member's period of military service or within [six] months after the end of the period  
39 of military service, the mortgage given by the service member is foreclosed by advertisement or  
40 the mortgaged real estate sold under a power of sale, the foreclosure or sale is invalid unless the  
41 foreclosure or sale was ordered by a court.

42 (C) A person shall not, individually or acting through another person, foreclose, sell, or  
43 attempt to foreclose or sell real estate with the knowledge that the foreclosure or sale is invalid  
44 under this section. A person who violates this subsection is subject to a civil fine of [\$2,000].

45 (D) The [attorney general] may file an action in the [circuit court] to collect a civil fine  
46 under this section. A civil fine collected under this section shall be deposited in the [Military  
47 Family Relief Fund] created under [insert citation].

48 (E) This Act does not apply to a mortgage or land contract entered into before the  
49 effective date of this Act.

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51 Section 4. [*Severability*.] [Insert severability clause.]

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53 Section 5. [*Repealer*.] [Insert repealer clause.]

54

55 Section 6. [*Effective Date*.] [Insert effective date.]