

SENATE FILE 459

BY COMMITTEE ON AGRICULTURE

*Formerly 2808 S
Approved 3-15-85 (p. 818)*

FILED MAR 15 1985

Passed Senate, Date 3-25-85 (p. 1011) Passed House, Date _____

Vote: Ayes 42 Nays 3 Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

- 1 An Act relating to real property which is subject to
- 2 foreclosure.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

S-3333

SENATE FILE 459

- 1 Amend Senate File 459 as follows:
- 2 1. Page 5, by inserting after line 2 the
- 3 following:
- 4 "Sec. ____ . This Act, being deemed of immediate
- 5 importance, takes effect from and after its
- 6 publication in The Belle Plaine Union, a newspaper
- 7 published in Belle Plaine, Iowa, and in The Schleswig
- 8 Leader, a newspaper published in Schelswig, Iowa."

S-3333 Filed

March 18, 1985

Adopted 3/25 (p. 1011)

BY HUTCHINS & HUSAK

S-3441

SENATE FILE 459

- 1 Amend Senate File 459 as follows:
- 2 1. Page 4, by striking line 34, and inserting the
- 3 following: "interest payments."

S-3441 Filed March 21, 1985

Adopted 3/25 (p. 1011)

By BOSWELL

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1 Section 1. Section 654.15, Code 1985, is amended to read
2 as follows:

3 654.15 MORATORIUM CONTINUANCE.

4 1. In all actions for the foreclosure of real estate
5 mortgages, deeds of trust of real property, and contracts for
6 the purchase of real estate, when the owner ~~or-owners-enter~~
7 enters an appearance and file files an answer admitting some
8 indebtedness and breach of the terms of the above designated
9 instrument, ~~{which admissions cannot be withdrawn or denied~~
10 ~~after a continuance is granted hereunder, be withdrawn or~~
11 ~~denied}-such,~~ the owner ~~or-owners~~ may apply for a continuance
12 of the foreclosure action ~~when-and-where~~ if the default or
13 inability of ~~such-party-or-parties~~ the owner to pay or perform
14 is mainly due or brought about by reason of drought, flood,
15 heat, hail, storm, or other climatic conditions or by reason
16 of the infestation of pests which affect the land in
17 controversy, ~~or-when-the-governor-of-the-state-of-Iowa-by~~
18 ~~reason-of-a-depression-shall-have-by-proclamation-declared-a~~
19 ~~state-of-emergency-to-exist-within-this-state.~~ Said
20 ~~applications~~ The application must be in writing and filed at
21 or before final decree. Upon the filing of such the
22 application the court shall set a day for hearing ~~of~~ on the
23 ~~same application~~ and provide by order for notice, to be given
24 to the plaintiff, of the time fixed for ~~said~~ the hearing. If
25 the court ~~shall-on-said-hearing-find~~ finds that the
26 application is made in good faith, and ~~the-same~~ is supported
27 by competent evidence showing that default in payment or
28 inability to pay is due to drought, flood, heat, hail, storm,
29 or other climatic conditions or due to infestation of pests or
30 ~~when-the-governor-of-the-state-of-Iowa-by-reason-of-a~~
31 ~~depression-shall-have-by-proclamation-declared-a-state-of~~
32 ~~emergency-to-exist-within-this-state,~~ the court may in its
33 discretion continue ~~said~~ the foreclosure proceeding or
34 proceedings as follows:

35 1 a. If the default or breach of terms of the written

1 instrument or-instruments on which the action is based occur
2 occurs on or before the first day of March of any year by
3 reason of any of the causes hereinbefore specified in this
4 subsection, causing the loss and failure of crops on the land
5 involved in the previous year, then the continuance shall end
6 on the first day of March of the succeeding year.

7 2 b. If the default or breach of terms of ~~said~~ the written
8 instrument ~~occur~~ occurs after the first day of March, but
9 during that crop year and that year's crop fails by reason of
10 any of the causes hereinbefore set out in this subsection,
11 then the continuance shall end on the first day of March of
12 the second succeeding year.

13 3 c. Only one such continuance shall be granted, except
14 upon a showing of extraordinary circumstances in which event
15 the court may ~~in-its-discretion~~ grant a second continuance for
16 such a further period as ~~to~~ the court ~~may-seem~~ deems just and
17 equitable, not to exceed one year.

18 4 d. The order shall provide for the appointment of a
19 receiver to take charge of the property and to rent the ~~same~~
20 ~~and-the~~ property. The owner or party person in possession
21 shall be given preference in the occupancy ~~thereof-and-the~~ of
22 the property. The receiver, who may be the owner or person in
23 possession, shall collect the rents and income and distribute
24 the proceeds as follows:

25 a- (1) For the payment of the costs of receivership.

26 b- (2) For the payment of taxes due or becoming due during
27 the period of receivership.

28 c- (3) For the payment of insurance on the buildings on
29 the premises.

30 d- (4) The ~~balance~~ remaining balance shall be paid to the
31 owner of the written instrument upon which the foreclosure is
32 based, to be credited ~~thereon~~ on the instrument.

33 Sec. 2. Section 654.15, Code 1985, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 2. In all actions for the foreclosure of

1 real estate mortgages, deeds of trust of real property, and
2 contracts for the purchase of real estate, an owner of real
3 estate may apply for a moratorium as provided in this
4 subsection if the governor declares a state of economic
5 emergency. The declaration by the governor of a state of
6 economic emergency shall be valid for no more than one year
7 for the purposes of this subsection. The governor shall state
8 in the declaration whether a moratorium is applicable to real
9 estate used for farming, real estate not used for farming, or
10 all real estate. Only property of the type specified in the
11 declaration which is subject to a mortgage, deed of trust, or
12 contract for purchase entered into before the date of the
13 declaration is eligible for a moratorium. In an action for
14 the foreclosure of a mortgage, deed of trust, or contract for
15 purchase of real property eligible for a moratorium, the owner
16 may apply for a continuance of the foreclosure if the owner
17 has entered an appearance and filed an answer admitting some
18 indebtedness and breach of the terms of the designated
19 instrument. The admissions cannot be withdrawn or denied
20 after a continuance is granted. Upon the filing of an
21 application as provided in this subsection, the court shall
22 set a date for hearing and provide by order for notice to the
23 parties of the time for the hearing. If the court finds that
24 the application is made in good faith and the owner is unable
25 to pay or perform, the court may continue the foreclosure
26 proceeding as follows:

27 a. If the application is made in regard to real estate
28 used for farming, and if the default or breach of terms of the
29 written instrument occurs on or before the first day of March
30 of the year in which the governor declares a state of economic
31 emergency, then the continuance shall terminate on the first
32 day of March of the succeeding year.

33 b. Only one continuance shall be granted the applicant or
34 petitioner for each written instrument or contract under each
35 declaration. Except as provided in paragraph "a", the

1 continuance shall not exceed one year.

2 c. The court shall appoint a receiver to take charge of
3 the property and to rent the property. The owner or person in
4 possession of the property shall be given preference in the
5 occupancy of the property. The receiver, who may be the owner
6 or person in possession, shall collect the rents and income
7 and distribute the proceeds as follows:

8 (1) For the payment of the costs of receivership.

9 (2) For the payment of taxes due or becoming due during
10 the period of receivership.

11 (3) For the payment of insurance on the buildings on the
12 premises.

13 (4) The remaining balance shall be paid to the owner of
14 the written instrument upon which the foreclosure was based,
15 to be credited against the written instrument.

16 d. A continuance granted under this subsection may be
17 terminated if the court finds, after notice and hearing, all
18 of the following:

19 (1) The party seeking foreclosure has made reasonable
20 efforts in good faith to work with the applicant to
21 restructure the debt obligations of the applicant.

22 (2) The party seeking foreclosure has made reasonable
23 efforts in good faith to work with the applicant to utilize
24 state and federal programs designed and implemented to provide
25 debtor relief options. For the purposes of subparagraphs (1)
26 and (2), the determination of reasonableness shall take into
27 account the financial condition of the party seeking
28 foreclosure, and the financial strength and the long-term
29 financial survivorship potential of the applicant.

30 (3) The applicant has failed to pay interest due on the
31 written instrument.

32 Sec. 3. The legislative council shall study the short and
33 long-term effects of the implementation of a phase-in of
34 interest payments during the year following the continuance.
35 The legislative council shall report the results of the study

1 to the governor and to the general assembly within a
2 reasonable time.

3 EXPLANATION

4 This bill makes a declaration of a state of economic emer-
5 gency a separate mechanism for a moratorium. A moratorium un-
6 der the declaration, set up in a new subsection 2 of the
7 existing moratorium legislation, applies only to foreclosures.
8 The type of real property eligible is to be stated by the
9 governor in the declaration, and eligibility is further
10 limited to real estate subject to instruments executed before
11 the declaration. Certain grounds are given for lifting a
12 continuance.

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House 69 3/28/85 D. Pauer 4/8

Senate File 459

Agriculture Cochran, Chair; Carter, Rensink, Skow and Van Maanen.

SENATE FILE 459
BY COMMITTEE ON AGRICULTURE

(AS AMENDED AND PASSED BY THE SENATE MARCH 25, 1985)

Passed Senate, Date 3-25-85 (p.1011) Passed House, Date 4-19-85 (p.1702)
Vote: Ayes 42 Nays 3 Vote: Ayes 87 Nays 0
Approved May 31, 1985
motion to reconsider (p.1714) w/2 5/4/85

A BILL FOR

1 An Act relating to real property which is subject to
2 foreclosure.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4 SENATE FILE 459

5 H-3688

6 1 Amend Senate File 459, as amended, passed, and
7 2 reprinted by the Senate, as follows:

8 3 1. Page 1, by inserting before line 1 the
9 4 following:

10 5 "Section 1. Section 654.14, Code 1985, is amended
11 6 to read as follows:

12 7 654.14 PREFERENCE IN RECEIVERSHIP -- APPLICATION
13 8 OF RENTS.

14 9 In any action to foreclose a real estate mortgage,
15 10 a receiver may be appointed at any time while the
16 11 foreclosure action is pending, at the time a judgment
17 12 is rendered, or during the redemption period. ~~where~~
18 13 where a receiver is appointed to take charge of the
19 14 real estate, the receiver shall be entitled to
20 15 possession of the real estate notwithstanding the
21 16 provisions of section 628.3, but preference shall be
22 17 given to the owner in actual possession, subject to
23 18 approval of the court, in leasing the mortgaged
24 19 premises. The rents, profits, ~~avails~~ and/or and
25 20 income derived from ~~said~~ the real estate shall be
21 21 applied as follows:

- 22 22 1. To the cost of receivership.
- 23 23 2. To the payment of taxes due or becoming due
- 24 24 during said the receivership.
- 25 25 3. To pay the insurance on buildings on the
- 26 26 premises ~~and/or such~~ and other benefits to the real
- 27 27 estate as may be ordered by the court.
- 28 28 4. The balance shall be paid and distributed as
- 29 29 determined by the court."

H-3688 FILED APRIL 8, 1985 BY MCINTEE of Black Hawk

Revised new german 4/19/85 (p.1702)

1 Section 1. Section 654.15, Code 1985, is amended to read
2 as follows:

3 654.15 MORATORIUM CONTINUANCE.

4 1. In all actions for the foreclosure of real estate
5 mortgages, deeds of trust of real property, and contracts for
6 the purchase of real estate, when the owner or owners enter
7 enters an appearance and file files an answer admitting some
8 indebtedness and breach of the terms of the above designated
9 instrument, ~~{which admissions cannot be withdrawn or denied~~
10 ~~after a continuance is granted hereunder, be withdrawn or~~
11 ~~denied}~~ such, the owner or owners may apply for a continuance
12 of the foreclosure action when and where if the default or
13 inability of such party or parties the owner to pay or perform
14 is mainly due or brought about by reason of drought, flood,
15 heat, hail, storm, or other climatic conditions or by reason
16 of the infestation of pests which affect the land in
17 controversy, ~~or when the governor of the state of Iowa by~~
18 ~~reason of a depression shall have by proclamation declared a~~
19 ~~state of emergency to exist within this state.~~ Said
20 applications The application must be in writing and filed at
21 or before final decree. Upon the filing of such the
22 application the court shall set a day for hearing of on the
23 same application and provide by order for notice, to be given
24 to the plaintiff, of the time fixed for said the hearing. If
25 the court shall on said hearing find finds that the
26 application is made in good faith, and the same is supported
27 by competent evidence showing that default in payment or
28 inability to pay is due to drought, flood, heat, hail, storm,
29 or other climatic conditions or due to infestation of pests or
30 when the governor of the state of Iowa by reason of a
31 depression shall have by proclamation declared a state of
32 emergency to exist within this state, the court may in its
33 discretion continue said the foreclosure proceeding or
34 proceedings as follows:

35 2 a. If the default or breach of terms of the written

1 instrument or-instruments on which the action is based occur
2 occurs on or before the first day of March of any year by
3 reason of any of the causes hereinbefore specified in this
4 subsection, causing the loss and failure of crops on the land
5 involved in the previous year, then the continuance shall end
6 on the first day of March of the succeeding year.

7 2 b. If the default or breach of terms of ~~said~~ the written
8 instrument ~~occur~~ occurs after the first day of March, but
9 during that crop year and that year's crop fails by reason of
10 any of the causes hereinbefore set out in this subsection,
11 then the continuance shall end on the first day of March of
12 the second succeeding year.

13 3 c. Only one such continuance shall be granted, except
14 upon a showing of extraordinary circumstances in which event
15 the court may in its discretion grant a second continuance for
16 such a further period as to the court may seem deems just and
17 equitable, not to exceed one year.

18 4 d. The order shall provide for the appointment of a
19 receiver to take charge of the property and to rent the same
20 ~~and-the~~ property. The owner or party person in possession
21 shall be given preference in the occupancy thereof-and-the of
22 the property. The receiver, who may be the owner or person in
23 possession, shall collect the rents and income and distribute
24 the proceeds as follows:

25 a: (1) For the payment of the costs of receivership.

26 b: (2) For the payment of taxes due or becoming due during
27 the period of receivership.

28 c: (3) For the payment of insurance on the buildings on
29 the premises.

30 d: (4) The ~~balance~~ balance remaining shall be paid to the
31 owner of the written instrument upon which the foreclosure is
32 based, to be credited thereon on the instrument.

33 Sec. 2. Section 654.15, Code 1985, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 2. In all actions for the foreclosure of

1 real estate mortgages, deeds of trust of real property, and
2 contracts for the purchase of real estate, an owner of real
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4 subsection if the governor declares a state of economic
5 emergency. The declaration by the governor of a state of
6 economic emergency shall be valid for no more than one year
7 for the purposes of this subsection. The governor shall state
8 in the declaration whether a moratorium is applicable to real
9 estate used for farming, real estate not used for farming, or
10 all real estate. Only property of the type specified in the
11 declaration which is subject to a mortgage, deed of trust, or
12 contract for purchase entered into before the date of the
13 declaration is eligible for a moratorium. In an action for
14 the foreclosure of a mortgage, deed of trust, or contract for
15 purchase of real property eligible for a moratorium, the owner
16 may apply for a continuance of the foreclosure if the owner
17 has entered an appearance and filed an answer admitting some
18 indebtedness and breach of the terms of the designated
19 instrument. The admissions cannot be withdrawn or denied
20 after a continuance is granted. Upon the filing of an
21 application as provided in this subsection, the court shall
22 set a date for hearing and provide by order for notice to the
23 parties of the time for the hearing. If the court finds that
24 the application is made in good faith and the owner is unable
25 to pay or perform, the court may continue the foreclosure
26 proceeding as follows:

27 a. If the application is made in regard to real estate
28 used for farming, and if the default or breach of terms of the
29 written instrument occurs on or before the first day of March
30 of the year in which the governor declares a state of economic
31 emergency, then the continuance shall terminate on the first
32 day of March of the succeeding year.

33 b. Only one continuance shall be granted the applicant or
34 petitioner for each written instrument or contract under each
35 declaration. Except as provided in paragraph "a", the

1 continuance shall not exceed one year.

2 c. The court shall appoint a receiver to take charge of
3 the property and to rent the property. The owner or person in
4 possession of the property shall be given preference in the
5 occupancy of the property. The receiver, who may be the owner
6 or person in possession, shall collect the rents and income
7 and distribute the proceeds as follows:

8 (1) For the payment of the costs of receivership.

9 (2) For the payment of taxes due or becoming due during
10 the period of receivership.

11 (3) For the payment of insurance on the buildings on the
12 premises.

13 (4) The remaining balance shall be paid to the owner of
14 the written instrument upon which the foreclosure was based,
15 to be credited against the written instrument.

16 d. A continuance granted under this subsection may be
17 terminated if the court finds, after notice and hearing, all
18 of the following:

19 (1) The party seeking foreclosure has made reasonable
20 efforts in good faith to work with the applicant to
21 restructure the debt obligations of the applicant.

22 (2) The party seeking foreclosure has made reasonable
23 efforts in good faith to work with the applicant to utilize
24 state and federal programs designed and implemented to provide
25 debtor relief options. For the purposes of subparagraphs (1)
26 and (2), the determination of reasonableness shall take into
27 account the financial condition of the party seeking
28 foreclosure, and the financial strength and the long-term
29 financial survivorship potential of the applicant.

30 (3) The applicant has failed to pay interest due on the
31 written instrument.

32 Sec. 3. The legislative council shall study the short and
33 long-term effects of the implementation of a phase-in of
34 interest payments. The legislative council shall report the
35 results of the study to the governor and to the general

1 assembly within a reasonable time.

2 Sec. 4. This Act, being deemed of immediate importance,
3 takes effect from and after its publication in The Belle
4 Plaine Union, a newspaper published in Belle Plaine, Iowa, and
5 in The Schleswig Leader, a newspaper published in Schleswig,
6 Iowa.

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SENATE FILE 459

AN ACT

RELATING TO REAL PROPERTY WHICH IS SUBJECT TO FORECLOSURE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 654.15, Code 1985, is amended to read as follows:

654.15 MORATORIUM CONTINUANCE.

1. In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, when the owner or owners enter enters an appearance and files an answer admitting some indebtedness and breach of the terms of the above designated instrument, (which admissions cannot be withdrawn or denied after a continuance is granted hereunder; be withdrawn or denied) such, the owner or owners may apply for a continuance of the foreclosure action when and where if the default or inability of such party or parties the owner to pay or perform is mainly due or brought about by reason of drought, flood, heat, hail, storm, or other climatic conditions or by reason of the infestation of pests which affect the land in controversy, or when the governor of the state of Iowa by reason of a depression shall have by proclamation declared a state of emergency to exist within this state. Said applications The application must be in writing and filed at or before final decree. Upon the filing of such the application the court shall set a day for hearing of on the same application and provide by order for notice, to be given to the plaintiff, of the time fixed for said the hearing. If the court shall on said hearing find finds that the application is made in good faith, and the same is supported by competent evidence showing that default in payment or inability to pay is due to drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests or when the governor of the state of Iowa by reason of a

depression shall have by proclamation declared a state of emergency to exist within this state, the court may in its discretion continue said the foreclosure proceeding or proceedings as follows:

1 a. If the default or breach of terms of the written instrument or instruments on which the action is based occurs on or before the first day of March of any year by reason of any of the causes hereinbefore specified in this subsection, causing the loss and failure of crops on the land involved in the previous year, then the continuance shall end on the first day of March of the succeeding year.

2 b. If the default or breach of terms of said the written instrument occurs after the first day of March, but during that crop year and that year's crop fails by reason of any of the causes hereinbefore set out in this subsection, then the continuance shall end on the first day of March of the second succeeding year.

3 c. Only one such continuance shall be granted, except upon a showing of extraordinary circumstances in which event the court may in its discretion grant a second continuance for such a further period as to the court may seem deems just and equitable, not to exceed one year.

4 d. The order shall provide for the appointment of a receiver to take charge of the property and to rent the same and the property. The owner or party person in possession shall be given preference in the occupancy thereof and the of the property. The receiver, who may be the owner or person in possession, shall collect the rents and income and distribute the proceeds as follows:

a. (1) For the payment of the costs of receivership.

b. (2) For the payment of taxes due or becoming due during the period of receivership.

c. (3) For the payment of insurance on the buildings on the premises.

d. (4) The balance remaining balance shall be paid to the owner of the written instrument upon which the foreclosure is based, to be credited thereon on the instrument.

Sec. 2. Section 654.15, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 2. In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, an owner of real estate may apply for a moratorium as provided in this subsection if the governor declares a state of economic emergency. The declaration by the governor of a state of economic emergency shall be valid for no more than one year for the purposes of this subsection. The governor shall state in the declaration whether a moratorium is applicable to real estate used for farming, real estate not used for farming, or all real estate. Only property of the type specified in the declaration which is subject to a mortgage, deed of trust, or contract for purchase entered into before the date of the declaration is eligible for a moratorium. In an action for the foreclosure of a mortgage, deed of trust, or contract for purchase of real property eligible for a moratorium, the owner may apply for a continuance of the foreclosure if the owner has entered an appearance and filed an answer admitting some indebtedness and breach of the terms of the designated instrument. The admissions cannot be withdrawn or denied after a continuance is granted. Upon the filing of an application as provided in this subsection, the court shall set a date for hearing and provide by order for notice to the parties of the time for the hearing. If the court finds that the application is made in good faith and the owner is unable to pay or perform, the court may continue the foreclosure proceeding as follows:

a. If the application is made in regard to real estate used for farming, and if the default or breach of terms of the written instrument occurs on or before the first day of March of the year in which the governor declares a state of economic emergency, then the continuance shall terminate on the first day of March of the succeeding year.

b. Only one continuance shall be granted the applicant or petitioner for each written instrument or contract under each

declaration. Except as provided in paragraph "a", the continuance shall not exceed one year.

c. The court shall appoint a receiver to take charge of the property and to rent the property. The owner or person in possession of the property shall be given preference in the occupancy of the property. The receiver, who may be the owner or person in possession, shall collect the rents and income and distribute the proceeds as follows:

- (1) For the payment of the costs of receivership.
- (2) For the payment of taxes due or becoming due during the period of receivership.
- (3) For the payment of insurance on the buildings on the premises.
- (4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure was based, to be credited against the written instrument.

d. A continuance granted under this subsection may be terminated if the court finds, after notice and hearing, all of the following:

- (1) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to restructure the debt obligations of the applicant.
- (2) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to utilize state and federal programs designed and implemented to provide debtor relief options. For the purposes of subparagraphs (1) and (2), the determination of reasonableness shall take into account the financial condition of the party seeking foreclosure, and the financial strength and the long-term financial survivorship potential of the applicant.
- (3) The applicant has failed to pay interest due on the written instrument.

Sec. 3. The legislative council shall study the short and long-term effects of the implementation of a phase-in of interest payments. The legislative council shall report the results of the study to the governor and to the general assembly within a reasonable time.

Sec. 4. This Act, being deemed of immediate importance, takes effect from and after its publication in The Belle Plaine Union, a newspaper published in Belle Plaine, Iowa, and in The Schleswig Leader, a newspaper published in Schleswig, Iowa.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 459, Seventy-first General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved May 31, 1985

TERRY E. BRANSTAD
Governor

S.F. 459