

## FORFEITURE OF REAL ESTATE CONTRACTS

### **656.1 Conditions prescribed.**

A contract which provides for the sale of real estate located in this state, and for the forfeiture of the vendee's rights in such contract in case the vendee fails, in specified ways, to comply with said contract, shall, nevertheless, not be forfeited or canceled except as provided in this chapter.

[C97, § 4299; S13, § 4299; C24, 27, 31, 35, 39, § **12389**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 656.1]

### **656.2 Notice.**

1. The forfeiture shall be initiated by the vendor by serving on the vendee a written notice which shall:

*a.* Reasonably identify the contract by a document reference number and accurately describe the real estate covered.

*b.* Specify the terms of the contract with which the vendee has not complied.

*c.* State that unless, within thirty days after the completed service of the notice, the vendee performs the terms in default and pays the reasonable costs of serving the notice, the contract will be forfeited.

*d.* Specify the amount of attorney fees claimed by the vendor pursuant to section 656.7 and state that payment of the attorney fees is not required to comply with the notice and prevent forfeiture.

2. The vendor shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the vendee; on all the vendee's mortgagees of record; and on a person who asserts a claim against the vendee's interest, except a government or governmental subdivision or agency holding a lien for real estate taxes or assessments, if the person has done both of the following:

*a.* Requested, on a form which substantially complies with the following form, that notice of forfeiture be served on the person at an address specified in the request. REQUEST FOR NOTICE PURSUANT TO IOWA CODE SECTION 656.2, SUBSECTION 2

The undersigned requests service of notice under Iowa Code sections 656.2 and 656.3 to forfeit the contract recorded on the ..... day of ..... (month), ..... (year), in book or roll ....., image or page ....., office of the ..... county recorder, ..... county, Iowa, wherein ..... is/are seller(s) and ..... is/are buyer(s), for sale of real estate legally described as: [insert complete legal description] ..... AME ..... DDRESS CAUTION: Your name and address must be correct. If not correct, you will not receive notice requested because notice need only be served on you at the above address. If your address changes, a new request for notice must be filed.

The request for notice shall be indexed.

*b.* Filed the request form for record in the office of the county recorder after acquisition of the vendee's interest but prior to the date of recording of the proof and record of service of notice of forfeiture required by section 656.5 and paid a fee of five dollars.

The request for notice is valid for a period of five years from the date of filing with the county recorder. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection. The request for notice may be amended at any time by the procedure specified in this subsection.

The vendee's mortgagees of record include all assignees of record for collateral purposes.

3. As used in this section, the terms "*vendor*" and "*vendee*" include a successor in interest but the term "*vendee*" excludes a vendee who assigned or conveyed of record all of the vendee's interest in the real estate.

[C97, § 4299; S13, § 4299; C24, 27, 31, 35, 39, § **12390**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 656.2]

84 Acts, ch 1203, § 2; 86 Acts, ch 1237, § 41; 87 Acts, ch 166, §1; 91 Acts, ch 161, §1; 2000 Acts, ch 1058, §56; 2001 Acts, ch 44, §32; 2003 Acts, ch 108, §112; 2003 Acts, 1st Ex, ch 2, §44, 209

### **656.3 Service.**

Said notice may be served personally or by publication, on the same conditions, and in the same manner as is provided for the service of original notices, except that when the notice is served by publication no affidavit therefor shall be required before publication. Service by publication shall be deemed complete on the day of the last publication.

[C97, § 4299; S13, § 4299; C24, 27, 31, 35, 39, § **12391**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 656.3]

### **Footnotes**

Manner and publication of service, R.C.P. 1.3021.315

### **656.4 Compliance with notice.**

If the vendee or a mortgagee of the real estate performs, within thirty days of completed service of notice, the breached terms specified in the notice and pays the vendor the reasonable cost of serving the notice, then the right to forfeit for the breach is terminated. The payment of attorney fees pursuant to section 656.7 is not necessary to comply with the notice and prevent forfeiture.

[C97, § 4300; S13, § 4300; C24, 27, 31, 35, 39, § **12392**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 656.4]

84 Acts, ch 1203, § 3

### **656.5 Proof and record of service.**

If the terms and conditions as to which there is default are not performed within said thirty days, the party serving said notice or causing the same to be served, may file for record in the office of the county recorder a copy of the notice aforesaid with proofs of service attached or endorsed thereon (and, in case of service by publication, a personal affidavit that personal service could not be made within this state), and when so filed and recorded, the said record shall be constructive notice to all parties of the due forfeiture and cancellation of said contract.

[S13, § 4300; C24, 27, 31, 35, 39, § **12393**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 656.5]

### **656.6 Scope of chapter.**

This chapter shall be operative in all cases where the intention of the parties, as gathered from the contract and surrounding circumstances, is to sell or to agree to sell an interest in real estate, any contract or agreement of the parties to the contrary notwithstanding.

[C97, § 4301; C24, 27, 31, 35, 39, § **12394**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 656.6]

### **656.7 Attorney fees.**

1. The vendee is liable to the vendor for reasonable attorney fees actually incurred by the vendor necessary for the forfeiture of a contract governed by this chapter. The demand for attorney fees must be stated in the notice served. The maximum liability under this section is fifty dollars. "*Attorney fees*", as used in this chapter, is limited to reasonable fees for services requiring a lawyer. "*Attorney fees*" does not include clerical services even if the services are performed in a lawyer's office.

2. A vendor seeking payment of attorney fees, when the vendee fails or refuses to pay them, may file a small claims action for enforcement.

84 Acts, ch 1203, § 1

### **656.8 Mediation notice.**

Notwithstanding sections 656.1 through 656.5, a person shall not initiate proceedings under this chapter to forfeit a real estate contract for the purchase of agricultural property, as defined in section 654A.1, which is subject to an outstanding obligation on the contract of twenty thousand dollars or more unless the person received a mediation release under section 654A.11, or unless the court determines after notice and hearing that the time delay required for the mediation would cause the person to suffer irreparable harm. Title to land that is agricultural property is not affected by the failure of any creditor to receive a mediation release, regardless of its validity.

86 Acts, ch 1214, § 28; 87 Acts, ch 73, §3

### **656.9 Defect in forfeiture proceedings limitation of actions.**

An action shall not be commenced after July 1, 1992, which asserts a claim against real estate previously subject to a forfeiture proceeding, based upon a defect in the forfeiture proceeding, in which the proof and record of service of notice of forfeiture required by section 656.5 has been filed for record in the office of the county recorder prior to July 1, 1991.

91 Acts, ch 161, §2