

CHAPTER 654

FORECLOSURE OF REAL ESTATE MORTGAGES

[P]

See also chapter 615

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654.1 Equitable proceedings.

Except as provided in section 654.18, a deed of trust or mortgage of real estate shall not be foreclosed in any other manner than by action in court by equitable proceedings.

[C51, §2083, 2096; R60, §3660, 3673, 4179; C73, §3319; C97, §4287; C24, 27, 31, 35, 39, §12372; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.1]

85 Acts, ch 252, §45

654.1A Maintenance of mortgagor protections — discontinuation of occupation.

For purposes of sections 615.1, 615.3, 628.28, 654.2D, 654.20, 654.21, and 654.26, property shall be deemed the residence of and occupied by the mortgagor where occupation has ceased because of the effects of natural disaster, injury to the property not willfully caused by the mortgagor, or the mortgagor's state military service or federal military service as those terms are defined in section 29A.1.

2009 Acts, ch 51, §4, 17

[SP] Section applies to all actions commenced on or after July 1, 2009; 2009 Acts, ch 51, §17

654.2 Deeds of trust.

Deeds of trust of real property may be executed as securities for the performance of contracts, and shall be considered as, and foreclosed like, mortgages.

[C51, §2096; R60, §3673; C73, §3318; C97, §4284; C24, 27, 31, 35, 39, §12373; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.2]

654.2A Agricultural land — notice, right to cure default.

1. A creditor shall not initiate an action pursuant to this chapter to foreclose on a deed of trust or mortgage on agricultural land, as defined in section 9H.1, until the creditor has complied with this section.

2. A creditor who believes in good faith that a borrower on a deed of trust or mortgage on agricultural land is in default may give the borrower notice of the alleged default, and, if the borrower has a right to cure the default, shall give the borrower the notice of right to cure provided in section 654.2B. The notice is deemed received if sent by certified mail to the borrower.

3. The borrower has a right to cure the default unless the creditor has given the borrower a proper notice of right to cure with respect to two prior defaults on the obligation secured by the deed of trust or mortgage, or the borrower has voluntarily surrendered possession of the agricultural land and the creditor has accepted it in full satisfaction of any debt owing on the obligation in default. The borrower does not have a right to cure the default if the creditor has given the borrower a proper notice of right to cure with respect to a prior default within twelve months prior to the alleged default.

4. If the borrower has a right to cure a default:

a. A creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or otherwise take possession of the land, other than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until forty-five days after a proper notice of right to cure is given. The time period for a request for mediation pursuant to chapter 654A shall run concurrently with the period for the notice to cure under this section.

b. Until the expiration of forty-five days after notice is given, the borrower may cure the default by tendering either the amount of all unpaid installments due at the time of tender, without acceleration, plus a delinquency charge of the scheduled annual interest rate plus five percent per annum for the period between the giving of the notice of right to cure and the tender, or the amount stated in the notice of right to cure, whichever is less, or by tendering any performance necessary to cure a default other than nonpayment of amounts due, which is described in the notice of right to cure.

5. The act of curing a default restores to the borrower the borrower's rights under the obligation and the deed of trust or mortgage, except as provided in subsection 3.

6. This section does not prohibit a borrower from voluntarily surrendering possession of the agricultural land, and does not prohibit the creditor from enforcing the creditor's interest in the land at any time after compliance with this section.

86 Acts, ch 1214, §10

[P] Legislative findings; 86 Acts, ch 1214, §1

654.2B Requirements of notice of right to cure.

The notice of right to cure shall be in writing and shall conspicuously state the name, address, and telephone number of the creditor or other person to which payment is to be made, a brief identification of the obligation secured by the deed of trust or mortgage and of the borrower's right to cure the default, a statement of the nature of the right to cure the default, a statement of the nature of the alleged default, a statement of the total payment, including an itemization of any delinquency or deferral charges, or other performance necessary to cure the alleged default, and the exact date by which the amount must be paid or performance tendered and a statement that if the borrower does not cure the alleged default the creditor or a person acting on behalf of the creditor is entitled to proceed with initiating a foreclosure action or procedure. The failure of the notice of right to cure to comply with one or more provisions of this section is not a defense or claim in any action

pursuant to this chapter and does not invalidate any procedure pursuant to chapter 655A, unless the person asserting the defense, claim, or invalidity proves that the person was substantially prejudiced by such failure.

86 Acts, ch 1214, §11; 87 Acts, ch 142, §13; 91 Acts, ch 46, §1

[P] Legislative findings; 86 Acts, ch 1214, §1

654.2C Mediation notice — foreclosure on agricultural property.

A person shall not initiate a proceeding under this chapter to foreclose a deed of trust or mortgage on agricultural property, as defined in section 654A.1, which is subject to chapter 654A and which is subject to a debt of twenty thousand dollars or more under the deed of trust or mortgage unless the person receives 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, §12; 87 Acts, ch 73, §1

[P] Legislative findings; 86 Acts, ch 1214, §1

654.2D Nonagricultural land — notice, right to cure default.

1. Except as provided in section 654.2A, a creditor shall comply with this section before initiating an action pursuant to this chapter or initiating the procedure established pursuant to chapter 655A to foreclose on a deed of trust or mortgage.

2. A creditor who believes in good faith that a borrower on a deed of trust or mortgage on a homestead is in default shall give the borrower a notice of right to cure as provided in section 654.2B. A creditor gives the notice when the creditor delivers the notice to the consumer or mails the notice to the borrower's residence as defined in section 537.1201, subsection 4.

3. The borrower has a right to cure the default within thirty days from the date the creditor gives the notice.

4. *a.* The creditor shall not accelerate the maturity of the unpaid balance of the obligation, demand or otherwise take possession of the land, otherwise than by accepting a voluntary surrender of it, or otherwise attempt to enforce the obligation until thirty days after a proper notice of right to cure is given.

b. Until the expiration of thirty days after notice is given, the borrower may cure the default by tendering either the amount of all unpaid installments due at the time of tender, without acceleration, or the amount stated in the notice of right to cure, whichever is less, or by tendering any other performance necessary to cure a default which is described in the notice of right to cure.

5. The act of curing a default restores to the borrower the borrower's rights under the obligation and the deed of trust or mortgage.

6. This section does not prohibit the creditor from enforcing the creditor's interest in the land at any time after the creditor has complied with this section and the borrower did not cure the alleged default.

7. A borrower has a right to cure the default unless the creditor has given the borrower a proper notice of right to cure with respect to a prior default which occurred within three hundred sixty-five days of the present default.

8. This section does not apply if the creditor is an individual or individuals, or if the mortgaged property is property other than a one-family or two-family dwelling which is the residence of the mortgagor.

9. An affidavit signed by an officer of the creditor that the creditor has complied with this section is deemed to be conclusive evidence of compliance by all persons other than the creditor and the mortgagor.

10. As used in this section, "*creditor*" includes a person acting on behalf of a creditor.

87 Acts, ch 142, §14; 91 Acts, ch 46, §2

654.3 Venue.

An action for the foreclosure of a mortgage of real property, or for the sale thereof under an encumbrance or charge thereon, shall be brought in the county in which the property to be affected, or some part thereof, is situated.

[C73, §2578; C97, §3493; C24, 27, 31, 35, 39, §12374; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.3]

654.4 Separate suits on note and mortgage.

If separate actions are brought in the same county on the bond or note, and on the mortgage given to secure it, the plaintiff must elect which to prosecute. The other will be discontinued at the plaintiff's cost.

[C51, §2086; R60, §3663; C73, §3320; C97, §4288; C24, 27, 31, 35, 39, §12375; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.4]

[P] Action on certain judgments prohibited, chapter 615

[P] Related provision, §611.5

654.4A Service of process — in rem relief.

In addition to any other form of service authorized by law, where in rem relief is the only relief requested in a foreclosure action against either a party or a person to be served with a notice pursuant to section 654.15B, all of the following shall apply:

1. If the person to be served is a judgment creditor, service may be made by certified mail, with proof of delivery, to the judgment creditor's registered agent or to the judgment creditor at the judgment creditor's principal place of business in the state where the business is organized, as indicated by the records in the office of the secretary of state, or to the judgment creditor at the last address indicated in the case in which the judgment was entered.

2. Upon affidavit that service cannot be made on a judgment creditor either pursuant to subsection 1 or by personal service in this state, service may be made by certified mail, with proof of delivery, on the judgment creditor's attorney of record if that attorney is a practicing attorney in this state, along with a copy of this section, and a payment of ten dollars. The attorney shall forward the notice by ordinary mail to the judgment creditor's last known address but the attorney shall have no further duties under this section with respect to the notice.

3. An attorney who agrees to accept service on behalf of a judgment creditor may charge a reasonable fee, not to exceed ten dollars, for accepting service.

4. If a person, other than a governmental taxing unit, is an interested person with respect to a decedent's estate in probate, the person may be named generally as a person interested in the decedent's estate and service of process shall be made by personal service or certified mail, along with proof of delivery, on the attorney for the personal representative. If the estate is probated in this state and a person has requested notice pursuant to section 633.42, the mortgagee shall also serve that person or the person's attorney by ordinary mail at the address specified in the request for notice. A person so served may intervene as a named defendant as a matter of right.

5. If a defendant, other than a governmental taxing unit, is a person whose identity is not reasonably ascertainable, and the person has an interest in a decedent's estate not probated in this state, such person may be named generally as a person with an interest in the decedent's estate and service of process shall be made by publication unless the mortgagee has actual notice that the decedent's estate is probated in another state. A person so served may intervene as a named defendant as a matter of right.

2009 Acts, ch 51, §5, 17

[SP] Section applies to all actions commenced on or after July 1, 2009; 2009 Acts, ch 51, §17

654.4B Acceleration of indebtedness — notice of mortgage mediation assistance.

1. Prior to commencing a foreclosure on the accelerated balance of a mortgage loan and after termination of any applicable cure period, including but not limited to those provided in section 654.2A or 654.2D, a creditor shall give the borrower a fourteen-day demand for payment of the accelerated balance to qualify for an award of attorney fees under section 625.25 on the accelerated balance.

2. *a.* Prior to filing a petition under this chapter on a one-family or two-family dwelling that is the residence of the owner, the creditor shall inform the owner of the availability of counseling and mediation on a form as the attorney general may prescribe. The notice required by this section shall be mailed by ordinary mail to the owner along with the notice of acceleration or other initial communication from the attorney representing the creditor in the action, and shall also be served on the owner with the original notice and petition seeking foreclosure. If, following application by the owner or on its own motion, the court finds that the notice was not served on the owner as required by this subsection and that the owner desires counseling or mediation, the court shall grant to the owner a delay of the sheriff's sale or, in the event the sheriff's sale has occurred and the mortgagee or its affiliate was the winning bidder at the sheriff's sale, a delay of the recording of the sheriff's deed. In either case, the delay shall not exceed sixty days. If the affidavit of service for the original notice in the court file indicates that the notice required by this subsection was served on the owner, there shall be a rebuttable presumption that the notice was served as required by this subsection. The court may grant an application for a delay pursuant to this subsection *ex parte* only if the court file does not show service of the notice on the owner along with the original notice. Objection to the failure of the mortgagee to serve the notice is barred unless an application under this subsection is timely filed and is granted before the date of the sale or recording, respectively. If the court delays the sheriff's sale, the new sale date and time shall be announced orally by the sheriff at the time previously scheduled for sale, and the mortgagee need not republish and serve notice of the rescheduled sale.

b. This subsection is repealed July 1, 2011.

2009 Acts, ch 51, §6, 16, 17

[SP] Section takes effect May 1, 2009, and subsection 1 applies to judgments entered on or after July 1, 2009; 2009 Acts, ch 51, §16, 17

654.5 Judgment — sale and redemption.

1. When a mortgage or deed of trust is foreclosed, the court shall do all of the following:

a. Render judgment for the entire amount found to be due.

b. Direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the judgment, with interest and costs.

c. Determine issues of title raised in the pleadings to establish the rights and priorities of the parties and persons served with notice pursuant to section 654.15B in the property subject to foreclosure as may be reasonably necessary to allow a purchaser at a sheriff's sale to obtain clear title.

2. A special execution shall issue under such conditions as the decree may prescribe, and the sale under the special execution is subject to redemption as in cases of sale under general execution unless the plaintiff has elected foreclosure without redemption under section 654.20.

3. The clerk shall provide a copy of the decree by ordinary or electronic mail to all parties in the foreclosure proceeding and all persons served with notices under section 654.15B.

[C51, §2084; R60, §3661; C73, §3321; C97, §4289; C24, 27, 31, 35, 39, §12376; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.5]

87 Acts, ch 142, §2; 2009 Acts, ch 51, §7, 17

[P] Redemption, chapter 628

[SP] 2009 amendment to section applies to judgments entered on or after July 1, 2009; 2009 Acts, ch 51, §17; 2009 Acts, ch 179, §49

654.6 Deficiency — general execution.

If the mortgaged property does not sell for sufficient to satisfy the execution, a general execution may be issued against the mortgagor, unless the parties have stipulated otherwise.

[C51, §2085; R60, §3662; C73, §3322; C97, §4290; C24, 27, 31, 35, 39, §12377; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.6]

86 Acts, ch 1216, §3, 14

[P] See also §615.1

654.7 Overplus.

If there is an overplus remaining after satisfying the mortgage and costs, and if there is no other lien upon the property, such overplus shall be paid to the mortgagor.

[C51, §2089; R60, §3666; C73, §3324; C97, §4291; C24, 27, 31, 35, 39, §12378; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.7]

654.8 Junior encumbrancer entitled to assignment.

At any time prior to the sale, a person having a lien on the property which is junior to the mortgage will be entitled to an assignment of all the interest of the holder of the mortgage, by paying the holder the amount secured, with interest and costs, together with the amount of any other liens of the same holder which are paramount to the person's. The person may then proceed with the foreclosure, or discontinue it, at the person's option.

[C51, §2088; R60, §3665; C73, §3323; C97, §4292; C24, 27, 31, 35, 39, §12379; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.8]

654.9 Payment of other liens — rebate of interest.

If there are any other liens on the property sold, or other payments secured by the same mortgage, they shall be paid off in their order. If the money secured by any such lien is not yet due, a rebate of interest, to be fixed by the court must be made by the holder, or the holder's lien on such property will be postponed to those of a junior date, and if there are none such, the balance shall be paid to the mortgagor.

[C51, §2090; R60, §3667; C73, §3325; C97, §4293; C24, 27, 31, 35, 39, §12380; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.9]

654.9A Release of superior liens by bond.

At any time prior to the court's decree, the plaintiff, or a person guaranteeing title of the plaintiff's mortgage, may post a bond with sureties to be approved by the clerk and apply to the court to release the claim against the property of any person claiming a lien superior to that of the plaintiff in the property subject to foreclosure. The bond shall be in an amount not less than twice the amount of the claim, and notice of the bond and the court's order of release shall be served on the claimant. Unless the claimant has appeared in the foreclosure action, the service shall be by personal service. Unless the claimant files an action on the bond within twelve months from service of the notice, the claimant shall be barred from any further remedy. In a successful action on the bond, the court may award the claimant reasonable attorney fees. A guarantor filing such a bond shall be subrogated to any defenses which the plaintiff may have against the adverse claimant, including but not limited to a defense of lack of equity in the mortgaged property to secure the adverse claim in its proper priority.

2006 Acts, ch 1132, §7, 16

[SP] Section applies to actions commenced on or after July 1, 2006; 2006 Acts, ch 1132, §16

654.10 Amount sold.

As far as practicable, the property sold must be only sufficient to satisfy the mortgage foreclosed.

[C51, §2091; R60, §3668; C73, §3326; C97, §4294; C24, 27, 31, 35, 39, §12381; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.10]

654.11 Foreclosure of title bond.

In cases where the vendor of real estate has given a bond or other writing to convey the same on payment of the purchase money, and such money or any part thereof remains unpaid after the day fixed for payment, whether time is or is not of the essence of the contract, the vendor may file a petition asking the court to require the purchaser to perform the purchaser's contract, or to foreclose and sell the purchaser's interest in the property.

[C51, §2094; R60, §3671; C73, §3329; C97, §4297; C24, 27, 31, 35, 39, §12382; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.11]

654.12 Vendee deemed mortgagor.

The vendee shall in such cases, for the purpose of the foreclosure, be treated as a mortgagor of the property purchased, and the vendee's rights may be foreclosed in a similar manner.

[C51, §2095; R60, §3672; C73, §3330; C97, §4298; C24, 27, 31, 35, 39, §12383; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.12]

654.12A Priority of advances under mortgages.

Subject to section 572.18, if a prior recorded mortgage contains the notice prescribed in this section and identifies the maximum credit available to the borrower, then loans and advances made under the mortgage, up to the maximum amount of credit together with interest thereon, are senior to indebtedness to other creditors under subsequently recorded mortgages and other subsequently recorded or filed liens even though the holder of the prior recorded mortgage has actual notice of indebtedness under a subsequently recorded mortgage or other subsequently recorded or filed lien. So long as credit is available to the borrower, payment of the outstanding mortgage balance to zero shall not extinguish the prior recorded mortgage if it contains the notice prescribed by this section. The notice prescribed by this section for the prior recorded mortgage is as follows:

NOTICE: This mortgage secures credit in the amount of Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.

However, the priority of a prior recorded mortgage under this section does not apply to loans or advances made after receipt of notice of foreclosure or action to enforce a subsequently recorded mortgage or other subsequently recorded or filed lien.

84 Acts, ch 1272, §2; 90 Acts, ch 1001, §1

654.12B Priority of recorded purchase money mortgage lien.

The lien created by a recorded purchase money mortgage shall have priority over and is senior to preexisting judgments against the purchaser and any other right, title, interest, or lien arising either directly or indirectly by, through, or under the purchaser. A mortgage is a purchase money mortgage to the extent it is either:

1. Taken or retained by the seller of the real estate to secure all or part of its price, including all costs in connection with the purchase.

2. Taken by a lender who, by making an advance or incurring an obligation, provides funds to enable the purchaser to acquire rights in the real estate, including all costs in connection with the purchase, if the funds are in fact so used. Except when it is a refinancing of an existing purchase money mortgage between the same lender and purchaser and no new funds are advanced, a mortgage given to secure funds which are used to pay off another mortgage is not a purchase money mortgage.

If more than one purchase money mortgage exists, the first mortgage to be recorded has priority. In order to be entitled to the rights provided by this section, the mortgage must contain a recital that it is a purchase money mortgage. However, failure to include the recital in the mortgage shall not prevent a mortgage otherwise qualifying as a purchase money mortgage from being a purchase money mortgage for purposes other than this section. The rights in this section are in addition to, and the obligations are not in derogation of, all rights provided by common law.

95 Acts, ch 175, §2; 96 Acts, ch 1137, §1, 2

654.13 Pledge of rents — priority.

Whenever any real estate is encumbered by two or more real estate mortgages which in addition to the lien upon the real estate grant to the mortgagee the right to subject the rents, profits, avails and/or income from said real estate to the payment of the debt secured by such mortgage, the priority of the respective mortgagees under the provisions of their mortgages affecting the rents, profits, avails and/or incomes from the said real estate shall, as between

such mortgagees, be in the same order as the priority of the lien of their respective mortgages on the real estate.

[C35, §12383-e1; C39, §12383.1; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.13]

654.14 Preference in receivership — application of rents.

In an action to foreclose a real estate mortgage, if a receiver is appointed to take charge of the real estate, preference shall be given to the owner or person in actual possession, subject to approval of the court, in leasing the mortgaged premises. If the real estate is agricultural land used for farming, as defined in section 9H.1, the owner or person in actual possession shall be appointed as receiver without bond, provided that all parties agree to the appointment. The rents, profits, avails, and income derived from the real estate shall be applied as follows:

1. To the cost of receivership.
2. To the payment of taxes due or becoming due during said receivership.
3. To pay the insurance on buildings on the premises and/or such other benefits to the real estate as may be ordered by the court.
4. The balance shall be paid and distributed as determined by the court.

If the owner or person in actual possession of agricultural land as defined in section 9H.1 is not afforded a right of first refusal in leasing the mortgaged premises by the receiver, the owner or person in actual possession has a cause of action against the receiver to recover either actual damages or a one thousand dollar penalty, and costs, including reasonable attorney's fees. The receiver shall deliver notice to the owner or person in actual possession or the attorney of the owner or person in actual possession, of an offer made to the receiver, the terms of the offer, and the name and address of the person making the offer. The delivery shall be made personally with receipt returned or by certified or registered mail, with the proper postage on the envelope, addressed to the owner or person in actual possession or the attorney of the owner or person in actual possession. An offer shall be deemed to have been refused if the owner or person in actual possession or the attorney of the owner or person in actual possession does not respond within ten days following the date that the notice is mailed.

[C35, §12383-e2; C39, §12383.2; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.14]
86 Acts, ch 1214, §13; 87 Acts, ch 142, §3

654.15 Continuance — moratorium.

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 enters an appearance and files an answer admitting some indebtedness and breach of the terms of the designated instrument, which admissions cannot be withdrawn or denied after a continuance is granted, the owner may apply for a continuance of the foreclosure action if the default or inability of 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. The application must be in writing and filed at or before final decree. Upon the filing of the application the court shall set a day for hearing on the application and provide by order for notice to be given to the plaintiff of the time fixed for the hearing. If the court finds that the application is made in good faith and 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, the court may continue the foreclosure proceeding as follows:

a. If the default or breach of terms of the written instrument 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 specified in this subsection, causing the loss and failure of crops on the land involved in the previous year, the continuance shall end on the first day of March of the succeeding year.

b. If the default or breach of terms of 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 set out in this subsection, the continuance shall end on the first day of March of the second succeeding year.

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

d. The order shall provide for the appointment of a receiver to take charge of the property and to rent the property. The owner or person in possession 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 is based, to be credited on the instrument.

An owner of a small business may apply for a continuance as provided in this subsection if the real estate subject to foreclosure is used for the small business. The court may continue the foreclosure proceeding if the court finds that the application is made in good faith and is supported by competent evidence showing that the default in payment or inability to pay is due to the economic condition of the customers of the small business, because the customers of the small business have been significantly economically distressed as a result of drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests. The length of the continuance shall be determined by the court, but shall not exceed two years.

2. In all actions for the foreclosure of real estate mortgages, deeds of trust of real estate, 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 governor shall state in the declaration the types of real estate eligible for a moratorium continuance, which may include real estate used for farming; designated types of real estate not used for farming, including real estate used for small business; or all real estate. Only property of a 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 estate eligible for a moratorium, the owner may apply for a continuation 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. Applications for continuance made pursuant to this subsection must be filed within one year of the governor's declaration of economic emergency. 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, the continuance shall terminate two years from the date of the order. If the application is made in regard to real estate not used for farming, the continuance shall terminate one year from the date of the order.

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

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

- (1) For the payment of the costs of receivership, including the required interest on the written instrument and the costs of operation.
- (2) For the payment of taxes due or becoming due during the period of receivership.
- (3) For the payment of insurance deemed necessary by the court including but not limited to insurance on the buildings on the premises and liability insurance.
- (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 principal due on 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 subparagraph (1) and this subparagraph, 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.

[C39, §12383.3; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §654.15]

85 Acts, ch 250, §1, 2; 86 Acts, ch 1216, §7 – 9; 87 Acts, ch 115, §80; 2007 Acts, ch 54, §43

654.15A Notice of sale to junior creditors.

A junior creditor may file and serve on the judgment creditor a request for notice of the sheriff's sale. Such request for notice shall include a facsimile number or electronic mail address where the creditor shall be notified of the sale. At least ten days prior to the date of sale, the attorney for the junior creditor shall file proof of service of such request for notice. Upon motion filed within thirty days of the sale, the court may set aside a sale in which a junior creditor who requests notice is damaged by the failure of the sheriff or the judgment creditor to give notice pursuant to this section.

2006 Acts, ch 1132, §8, 16; 2007 Acts, ch 126, §105

[SP] Section applies to actions commenced on or after July 1, 2006; 2006 Acts, ch 1132, §16

654.15B Right to intervene — notice.

A lender may serve a judgment creditor in a foreclosure action with notice in substantially the following form advising the creditor that the property that is the subject of the foreclosure action shall be foreclosed and describing the creditor's interest in the action and that unless such creditor intervenes in the foreclosure action such creditor shall lose the creditor's interest in the mortgaged property. Unless the creditor intervenes within thirty days of the service of notice, the court may adjudicate the creditor's rights against the property as if the creditor had been added as a defendant and default had been entered against the defendant. If a creditor cannot be located for personal service, the plaintiff may, at any time prior to sixty days before the date of trial, amend the petition as a matter of right to add the creditor as a defendant for service by publication as provided by rule. The notice prescribed by this section is as follows:

NOTICE OF PENDING FORECLOSURE

To: (Name and address of creditor)

Date: (Enter date)

(Name of foreclosing party) has filed a foreclosure of mortgage against the property of (titleholder) located at (street address of property) which is legally described as (legal description). This foreclosure was filed as (Plaintiff v. Defendant), Case # (.....), in the Iowa District Court for (.....) County and is intended to foreclose a mortgage dated (date of mortgage) and recorded on (date of recording) in the (county recorder's office). You have an apparent interest in the property because of an apparent judgment lien in (short caption of case, case number, court where judgment entered, and judgment date). If you desire to protect this interest, you have the right to intervene in the foreclosure action within thirty days of the service of notice by filing an intervention with the clerk of court in (.....) County. Unless you intervene in the foreclosure, the foreclosure may eliminate any interest you have in the property but will not

otherwise affect your rights. If you have any questions about this notice, contact your attorney. Whether or not you intervene, the foreclosure may have certain tax consequences to you about which you should consult your tax advisor.

.....
Name, address, and telephone number of attorney representing
(name of foreclosing party).

2006 Acts, ch 1132, §9, 16; 2009 Acts, ch 51, §8, 17

[SP] Section applies to actions commenced on or after July 1, 2006; 2006 Acts, ch 1132, §16

[SP] 2009 amendment applies to all actions commenced on or after July 1, 2009; 2009 Acts, ch 51, §17

654.16 Separate redemption of homestead.

If a sheriff's sale is ordered on agricultural land used for farming, as defined in section 175.2, the mortgagor may, by a date set by the court but not later than ten days before the sale, designate to the court the portion of the land which the mortgagor claims as a homestead. The homestead may be any contiguous portion of forty acres or less of the real estate subject to the sheriff's sale. The homestead shall contain the residence of the mortgagor and shall be as compact as practicable.

If a homestead is designated, the court shall determine the fair market value of the designated homestead before the sheriff's sale. The court may consult with the county appraisers appointed pursuant to section 450.24, or with one or more independent appraisers, to determine the fair market value of the designated homestead.

The mortgagor may redeem the designated homestead by tendering the lesser of either any amount separately bid for the designated homestead at the sheriff's sale pursuant to procedures set forth in chapter 628, or the fair market value, as determined pursuant to this section, of the designated homestead at any time within one year from the date of the sheriff's sale, pursuant to the procedures set forth in chapter 628.

86 Acts, ch 1216, §2; 87 Acts, ch 142, §4, 5; 90 Acts, ch 1245, §2

654.16A Right of first refusal following recording of sheriff's deed to agricultural land.

1. Not later than the time a sheriff's deed to agricultural land used for farming, as defined in section 175.2, is recorded, the grantee recording the sheriff's deed shall notify the mortgagor of the mortgagor's right of first refusal. The grantee shall record the sheriff's deed within one year and sixty days from the date of the sheriff's sale. A copy of this section, titled "Notice of Right of First Refusal" is sufficient notice.

2. If, after a sheriff's deed is recorded, the grantee proposes to sell or otherwise dispose of the agricultural land, in a transaction other than a public auction, the grantee shall first offer the mortgagor the opportunity to repurchase the agricultural land on the same terms and at the same price that the grantee proposes to sell or dispose of the agricultural land. If the grantee seeks to sell or otherwise dispose of the agricultural land by public auction, the mortgagor must be given sixty days' notice of all of the following:

- a. The date, time, place, and procedures of the auction sale.
- b. Any minimum terms or limitations imposed upon the auction.

3. The grantee is not required to offer the mortgagor financing for the purchase of the agricultural land.

4. The mortgagor has ten business days after being given notice of the terms and price of the proposed sale or disposition, other than a public auction, in which to exercise the right to repurchase the agricultural land by submitting a binding offer to the grantee on the same terms as the proposed sale or other disposition, with closing to occur within thirty days after the offer unless otherwise agreed by the grantee. After the expiration of either the period for offer or the period for closing, without submission of an offer or a closing occurring, the grantee may sell or otherwise dispose of the agricultural land to any other person on the terms upon which it was offered to the mortgagor.

5. Notice of the mortgagor's right of first refusal, a proposed sale, auction, or other disposition, or the submission of a binding offer by the mortgagor, is considered given on the

date that notice or offer is personally served on the other party or on the date that notice or offer is mailed to the other party's last known address by registered or certified mail, return receipt requested. The right of first refusal provided in this section is not assignable, but may be exercised by the mortgagor's successor in interest, receiver, personal representative, executor, or heir only in case of bankruptcy, receivership, or death of the mortgagor.

90 Acts, ch 1245, §3

654.17 Recision of foreclosure.

1. At any time prior to the recording of the sheriff's deed, and before the mortgagee's rights become unenforceable by operation of the statute of limitations, the judgment creditor, or the judgment creditor who is the successful bidder at the sheriff's sale, may rescind the foreclosure action by filing a notice of recision with the clerk of court in the county in which the property is located along with a filing fee of fifty dollars. In addition, if the original loan documents are contained in the court file, the mortgagee shall pay a fee of twenty-five dollars to the clerk of the district court. Upon the payment of the fee, the clerk shall make copies of the original loan documents for the court file, and return the original loan documents to the mortgagee.

2. Upon the filing of the notice of recision, the mortgage loan shall be enforceable according to the original terms of the mortgage loan and the rights of all persons with an interest in the property may be enforced as if the foreclosure had not been filed. Except as otherwise provided in this section, the filing of a recision shall operate as a setting aside of the decree of foreclosure and a dismissal of the foreclosure without prejudice, with costs assessed against the plaintiff. However, any findings of fact or law shall be preclusive for purposes of any future action unless the court, upon hearing, rules otherwise and the mortgagee shall be permanently barred from a deficiency judgment if the judgment rescinded was subject to the provisions of section 615.1. The mortgagee may charge the mortgagor for the costs, including reasonable attorney fees, of foreclosure and recision if agreed to in writing by the mortgagor.

2006 Acts, ch 1132, §10, 16; 2007 Acts, ch 71, §5; 2007 Acts, ch 126, §106; 2009 Acts, ch 51, §9, 17

[SP] Section applies to actions commenced on or after July 1, 2006; 2006 Acts, ch 1132, §16

[SP] 2009 amendment to section applies to judgments entered on or after July 1, 2009; 2009 Acts, ch 51, §17; 2009 Acts, ch 179, §49

654.17A Sale free of liens.

At any time during the pendency of the foreclosure, the plaintiff may apply to the court for an order approving an offer for a commercially reasonable sale of the property free of the claims of the parties to the action and other persons served with notice pursuant to section 654.15B. A copy of the offer shall be attached to the application and the application shall contain a written consent to the proposed sale by all equitable titleholders who have not abandoned the property. The court may grant the motion unless a party in interest objects in writing during such time as the court may prescribe. A person filing an objection with a claim junior to the plaintiff shall either apply for assignment of senior claims pursuant to section 654.8, otherwise provide adequate protection to senior creditors, or establish that a sheriff's sale is substantially more likely than the proposed sale to provide the creditor with more favorable satisfaction of its lien. Pending resolution of the rights of the parties and persons served with notice pursuant to section 654.15B, the court shall place the net proceeds of the sale in escrow after payment of reasonable closing costs. The rights of such persons to the escrowed funds shall be determined in the same manner as their rights to the property that was sold.

2006 Acts, ch 1132, §11, 16

[SP] Section applies to actions commenced on or after July 1, 2006; 2006 Acts, ch 1132, §16

654.17B Divestment of junior liens pursuant to loan modification — repeal.

1. The foreclosing mortgagee and the mortgagor, including any successor in interest of the original mortgagor, of a nonagricultural one-family or two-family dwelling occupied as a residence by the mortgagor may agree in writing to a modification of the mortgage obligation to allow the mortgagor to continue to reside on the property. If such a modification provides

for a reduction of at least ten percent in the net present value of the indebtedness owing to the mortgagee, the foreclosing mortgagee and the mortgagor may move that the court divest any junior liens against the property. If the court approves divestment, the court shall order that the junior lienholder be served personally with copies of the loan modification agreement, a verified current balance of the loan as modified, and the court's order that the junior lienholder's interest in the property be divested unless the junior lienholder, within forty-five days of service, either acts pursuant to section 654.8 to obtain an assignment of the mortgagee's rights as modified or moves to quash the proposed divestment by establishing that the value of the property exceeds the amount of the mortgage debt prior to its modification. Such divestment shall prohibit the junior lienholder from any subsequent action to enforce the junior lienholder's debt against the mortgaged property, but, subject to the provisions of chapter 615, shall not otherwise prejudice any personal right of action the junior lienholder may have to proceed against the mortgagor's other assets.

2. This section is repealed July 1, 2014.

2009 Acts, ch 51, §10, 17

[SP] Section applies to all actions commenced on or after July 1, 2009; 2009 Acts, ch 51, §17

654.17C Military foreclosure protection — notice.

1. Except as provided under chapter 29A, or the federal Servicemembers Civil Relief Act of 2003, 50 U.S.C. app. 532 and 533, a creditor shall not initiate a proceeding to enforce an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, against a borrower, or a borrower's dependents, who is a member of the national guard or a member of the reserve or regular component of the armed forces of the United States in active duty service. Enforcement of an obligation shall not be permitted under the following circumstances:

a. The borrower is a member of the national guard and has been afforded protection under the Iowa national guard civil relief provisions contained in chapter 29A, subchapter VI. A creditor who enforces an obligation in violation of chapter 29A, subchapter VI, is subject to applicable penalty provisions contained in sections 29A.102 and 29A.103.

b. The borrower is a member of the reserve or regular component of the armed forces of the United States in active duty service and has been afforded protection under the federal Servicemembers Civil Relief Act of 2003, 50 U.S.C. app. 532 and 533. A creditor who enforces an obligation in violation of the federal Act is subject to applicable penalty provisions contained in the federal Act.

2. The department of veterans affairs and the department of commerce shall coordinate to develop a procedure to inform or notify members of the national guard, reserve, or regular component of the armed forces of the United States, and financial institutions as defined in section 12C.1, of the protections referenced in subsection 1. The notification procedure shall include, at a minimum, posting the information on an official internet site maintained by each department.

2009 Acts, ch 166, §3

ALTERNATIVE PROCEDURES

654.18 Alternative nonjudicial voluntary foreclosure procedure.

1. Upon the mutual written agreement of the mortgagor and mortgagee, a real estate mortgage may be foreclosed pursuant to this section by doing all of the following:

a. The mortgagor shall convey to the mortgagee all interest in the real property subject to the mortgage.

b. The mortgagee shall accept the mortgagor's conveyance and waive any rights to a deficiency or other claim against the mortgagor arising from the mortgage.

c. The mortgagee shall have immediate access to the real property for the purposes of maintaining and protecting the property.

d. The mortgagor and mortgagee shall file a jointly executed document with the county

mortgagor. However, the lien of the mortgagee shall remain prior to liens which were junior to the mortgage at the time of conveyance by the mortgagor to the mortgagee and may be foreclosed as provided otherwise by law.

4. A mortgagee who agrees to a foreclosure pursuant to this section shall not report to a credit bureau that the mortgagor is delinquent on the mortgage. However, the mortgagee may report that this foreclosure procedure was used.

85 Acts, ch 252, §46

654.19 Deed in lieu of foreclosure — agricultural land.

In lieu of a foreclosure action in court due to default on a recorded mortgage or deed of trust of real property, if the subject property is agricultural land used for farming, as defined in section 9H.1, the mortgagee and mortgagor may enter into an agreement in which the mortgagor agrees to transfer the agricultural land to the mortgagee in satisfaction of all or part of the mortgage obligation as agreed upon by the parties. The agreement may grant the mortgagor a right to purchase the agricultural land for a period not to exceed five years, and may entitle the mortgagor to lease the agricultural land. The agreement shall be recorded with the deed transferring title to the mortgagee. A transfer of title and agreement pursuant to this section does not constitute an equitable mortgage.

85 Acts, ch 252, §47

654.20 Foreclosure without redemption — nonagricultural land.

If the mortgaged property is not used for an agricultural purpose as defined in section 535.13, the plaintiff in an action to foreclose a real estate mortgage may include in the petition an election for foreclosure without redemption. The election is effective only if the first page of the petition contains the following notice in capital letters of the same type or print size as the rest of the petition:

NOTICE

THE PLAINTIFF HAS ELECTED FORECLOSURE WITHOUT REDEMPTION. THIS MEANS THAT THE SALE OF THE MORTGAGED PROPERTY WILL OCCUR PROMPTLY AFTER ENTRY OF JUDGMENT UNLESS YOU FILE WITH THE COURT A WRITTEN DEMAND TO DELAY THE SALE. IF YOU FILE A WRITTEN DEMAND, THE SALE WILL BE DELAYED UNTIL TWELVE MONTHS (or SIX MONTHS if the petition includes a waiver of deficiency judgment) FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING OR UNTIL TWO MONTHS FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS YOUR RESIDENCE BUT NOT A ONE-FAMILY OR TWO-FAMILY DWELLING. YOU WILL HAVE NO RIGHT OF REDEMPTION AFTER THE SALE. THE PURCHASER AT THE SALE WILL BE ENTITLED TO IMMEDIATE POSSESSION OF THE MORTGAGED PROPERTY. YOU MAY PURCHASE AT THE SALE.

If the plaintiff has not included in the petition a waiver of deficiency judgment, then the notice shall include the following:

IF YOU DO NOT FILE A WRITTEN DEMAND TO DELAY THE SALE AND IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT WILL NOT BE ENTERED AGAINST YOU. IF YOU DO FILE A WRITTEN DEMAND TO DELAY THE SALE, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST YOU IF THE PROCEEDS FROM THE SALE OF THE MORTGAGED PROPERTY ARE INSUFFICIENT TO SATISFY THE AMOUNT OF THE MORTGAGE DEBT AND COSTS.

IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS NOT A ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST YOU WHETHER OR NOT YOU FILE A WRITTEN DEMAND TO DELAY THE SALE.

If the election for foreclosure without redemption is made, then sections 654.21 through 654.26 apply.

87 Acts, ch 142, §6

654.20A Rights reserved.

A mortgage or deed of trust shall not contain the notice under section 654.20.

87 Acts, ch 142, §15

654.21 Demand for delay of sale.

At any time prior to entry of judgment, the mortgagor may file a demand for delay of sale. If the demand is filed, the sale shall be held promptly after the expiration of two months from entry of judgment. However, if the demand is filed and the mortgaged property is the residence of the mortgagor and is a one-family or two-family dwelling, the sale shall be held promptly after the expiration of twelve months, or six months if the petition includes a waiver of deficiency judgment, from entry of judgment. If the demand is filed, the mortgagor and mortgagee subsequently may file a stipulation that the sale may be held promptly after the stipulation is filed and that the mortgagee waives the right to entry of a deficiency judgment. If the stipulation is filed, the sale shall be held promptly after the filing. At any time prior to judgment, the mortgagor may pay the plaintiff the amount claimed in the petition and, if paid, the foreclosure action shall be dismissed. At any time after judgment and before the sale, the mortgagor may pay the plaintiff the amount of the judgment and, if paid, the judgment shall be satisfied of record and the sale shall not be held.

87 Acts, ch 142, §7

654.22 No demand for delay of sale.

If the mortgagor does not file a demand for delay of sale, the sale shall be held promptly after entry of judgment.

87 Acts, ch 142, §8

654.23 No redemption rights after sale.

The mortgagor has no right to redeem after sale. Junior lienholders have no right to redeem after sale. The mortgagor or a junior lienholder may purchase at the sale and, if so, acquire the same title as would any other purchaser. If the mortgagor at the sale bids an amount equal to the judgment, the property shall be sold to the mortgagor even though other persons may bid an amount which is more than the judgment. If the mortgagor purchases at the sale, the liens of junior lienholders shall not be extinguished. If a person other than the mortgagor purchases at the sale, the liens of junior lienholders are extinguished.

87 Acts, ch 142, §9

654.24 Deed and possession.

The purchaser at the sale is entitled to an immediate deed and immediate possession.

87 Acts, ch 142, §10

654.25 Application of other statutes.

If the plaintiff has elected foreclosure without redemption, chapter 628 does not apply. A provision in a mortgage permitted by section 628.26 or 628.27 shall not be construed as an agreement by the mortgagee not to elect foreclosure without redemption. The election may be made in any petition filed on or after June 4, 1987. The election for foreclosure without redemption is not a waiver of the plaintiff's rights under section 654.6 except as provided in section 654.26.

87 Acts, ch 142, §11

654.26 No deficiency judgment in certain cases.

If the plaintiff has elected foreclosure without redemption, the plaintiff may include in the petition a waiver of deficiency judgment. If the plaintiff has elected foreclosure without redemption and does not include in the petition a waiver of deficiency judgment, if the

mortgaged property is the residence of the mortgagor and is a one-family or two-family dwelling, and if the mortgagor does not file a demand for delay of sale under section 654.21, then the plaintiff shall not be entitled to the entry of a deficiency judgment under section 654.6.

87 Acts, ch 142, §12