

## F I N A L   R E P O R T

### PHASE-IN OF INTEREST PAYMENTS STUDY COMMITTEE

January, 1986

The Phase-In of Interest Study Committee was mandated by Senate File 459 which was enacted by the First Session of the Seventy-first General Assembly. The Committee was established to study the status of the moratorium legislation, specifically to determine whether the payment of interest during a moratorium period should be phased in.

Members of the Study Committee included:

Senator Patrick J. Deluhery, Co-chairperson  
Representative Edward G. Parker, Co-chairperson  
Senator Leonard L. Boswell  
Senator Berl E. Priebe  
Senator Edgar H. Holden  
Senator John E. Soorholtz  
Representative Dale M. Cochran  
Representative Myron B. Oxley  
Representative Wendell C. Pellett  
Representative Hugo Schnekloth

#### DISCUSSION OF COMMITTEE MEETINGS

The Study Committee was initially granted one meeting and was subsequently granted one additional meeting upon petition to the Legislative Council.

The first meeting was on November 1, 1985. The Study Committee received an overview of the moratorium legislation from Ms. Lynette Donner of the Legislative Service Bureau, and an update from Dr. Neil Harl of Iowa State University on developments since the adoption of Senate File 459 and the Governor's declaration of economic emergency on October 1, 1985. Mr. Keith Heffernan from the Office for Planning and Programming also commented on the 1985 legislation.

The second meeting was held on December 13, 1985. The Study Committee reviewed and amended a proposed draft. In addition, comments on Senate File 459 and the proposed draft were made by Mr. Timothy Benton from the Office of the Attorney General and Mr. Michael Dunn from the Farm Credit Banks of Omaha. Further

information was received from Dr. Neil Harl. The Study Committee then adopted the proposed draft as amended as a recommendation of the Committee. The Study Committee recommended that certain issues in the bill be given attention in the standing committees.

#### RECOMMENDATIONS

It was the consensus of the Study Committee that there is a need for continuing the monitoring of farmers and lenders in Iowa and that it is important that data be collected every thirty days as to the number of farmers under real estate foreclosures, statistics on the number who have been able to utilize the moratorium, enumeration on the incidence of farm contract foreclosures, the number of repossessions of farm property under the Uniform Commercial Code, and data of other creditors' actions which are taken. Iowa State University, through Dr. Neil Harl, was directed to collect this information and make thirty day reports to the legislature and the standing committees on agriculture.

The Committee approved as a Committee recommendation: An Act relating to real estate foreclosures.

The Committee recommended that the standing committees examine the following issues when reviewing the Committee's bill:

1. Should the bill address circumstances in which the borrower is already in default on the interest?
2. Should the bill be applied retroactively?
3. Should the reference to "required interest" be clarified in light of the phase-in language?
4. Should the bill state explicitly that interest shall not be compounded on the deferred interest?
5. Should there be a time limit placed on the scheduled phase-in of the deferred one-half of the interest?

A copy of the Study Committee bill is attached.

SENATE/HOUSE FILE \_\_\_\_\_  
BY PHASE-IN OF INTEREST  
PAYMENTS STUDY COMMITTEE

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to real estate foreclosures.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

1 emergency~~7~~-then the continuance shall terminate ~~on-the-first~~  
2 ~~day-of-March-of-the-succeeding-year~~ two years from the date of  
3 the order. If the application is made in regard to real  
4 estate not used for farming, the continuance shall terminate  
5 one year from the date of the order.

6 b. Only one continuance shall be granted the applicant or  
7 petitioner for each written instrument or contract under each  
8 declaration. ~~Except-as-provided-in-paragraph-"a"-the~~  
9 ~~continuance-shall-not-exceed-one-year-~~

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

16 (1) For the payment of the costs of receivership,  
17 including the required interest on the written instrument and  
18 the costs of operation.

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

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

23 (4) The remaining balance shall be paid to the owner of  
24 the written instrument upon which the foreclosure was based,  
25 to be credited against the deferred interest and then against  
26 the principal due on the written instrument.

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

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

33 (2) The party seeking foreclosure has made reasonable  
34 efforts in good faith to work with the applicant to utilize  
35 state and federal programs designed and implemented to provide

1 debtor relief options. For the purposes of subparagraph (1)  
2 and this subparagraph, the determination of reasonableness  
3 shall take into account the financial condition of the party  
4 seeking foreclosure, and the financial strength and the long-  
5 term financial survivorship potential of the applicant.

6 (3) The applicant has failed to pay interest due on the  
7 written instrument as required in this subparagraph. An  
8 applicant who has been granted a continuance under this  
9 subsection shall pay one half of the interest due on the  
10 written instrument. A schedule shall be determined and  
11 structured by the court for the payment of the remaining half  
12 of the interest. The schedule of interest payments structured  
13 for interest due during the continuance may allow for  
14 repayment beyond the continuation period. However, the  
15 applicant may, at any time prior to the required payment date,  
16 pay all or any part of the interest payment due without  
17 penalty.

18 EXPLANATION

19 This bill modifies the Iowa foreclosure moratorium  
20 provisions.

21 First, the one-year period of validity of the governor's  
22 declaration is changed to specify that applicants must file  
23 within one year from the declaration.

24 Second, the continuance periods for various situations are  
25 specified. If a declaration makes land used for farming  
26 eligible, the continuance is for two years from the date of  
27 the order. If a declaration makes land not used for farming  
28 eligible, the continuance is for one year from the date of the  
29 order.

30 Some of the items includable as "costs of receivership" are  
31 specified. These are the interest due and the operating  
32 expenses. The remaining balance after other distributions may  
33 be credited to deferred interest and principal.

34 Finally, the applicant need pay only half of the interest  
35 when due to maintain the continuance, with the other half due  
36 on a schedule determined by the court.