

House File 2786 - Enrolled

PAG LIN

HOUSE FILE 2786

AN ACT

RELATING TO CIVIL ACTIONS AND THE FORECLOSURE OF REAL ESTATE
MORTGAGES, AND PROVIDING FEES AND APPLICABILITY PROVISIONS.

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

Section 1. Section 602.8102, subsection 113, Code Supplement 2005, is amended by striking the subsection.
Sec. 2. Section 615.1, Code 2005, is amended to read as follows:

615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.
~~From and after January 1, 1934, no A~~ judgment in an action for the foreclosure of a real estate mortgage, deed of trust, or real estate contract upon property which at the time of judgment is either used for an agricultural purpose as defined in section 535.13 or a one-family or two-family dwelling which is the residence of the mortgagor, or in any action on a claim for rent or judgment assigned by a receiver of a closed bank or rendered upon credits assigned by the receiver of a closed bank when the assignee is not a trustee for depositors or creditors of the bank, the reconstruction finance corporation or any other federal governmental agency to which the bank or the receiver is or may be indebted shall be enforced null and void, all liens shall be extinguished, and no execution shall be issued thereon and no force or vitality given thereto for any purpose other than as a setoff or counterclaim after the expiration of a period of two years, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action, from the entry thereof. As used in this section, "mortgagor" means a mortgagor or a borrower executing a deed of trust as provided in chapter 654 or a vendee of a real estate contract.

Sec. 3. Section 615.2, Code 2005, is amended to read as follows:

615.2 REVIVAL OF CERTAIN JUDGMENTS PROHIBITED.
~~After January 1, 1934, no An~~ action or proceedings shall not be brought in any court of this state for the purpose of renewing or extending such judgment or prolonging the life thereof. Provided, however, that nothing herein shall prevent the continuance of such judgment in force against the property subject to foreclosure only for a longer period by the voluntary written stipulation of the ~~parties~~ judgment creditor and the equitable titleholders, filed in ~~said cause~~ the action or proceedings.

Sec. 4. Section 624.23, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 7. If a case file has been sealed by the court, or if by law the court records in a case are not available to the general public, any judgments entered in the case shall not become a lien on real property until either the identity of the judgment creditor becomes public record, or until the judgment creditor, in a public document in the case in which judgment is entered, designates an agent and office, consistent with the requirements of section 490.501, on which process on the judgment creditor may be served. Service may be made on the agent in the same manner as service may be made on a corporate agent pursuant to section 490.504. An agent who has resigned without designating a successor agent and office and who is otherwise unavailable for service may be served in the manner provided in section 490.504, subsection 2, at the agent's office of record.

Sec. 5. Section 626.78, Code 2005, is amended to read as follows:

626.78 NOTICE TO DEFENDANT.
If the debtor is in actual occupation and possession of any part of the land levied on, the officer having the execution shall, at least twenty days previous to such sale, serve the debtor with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale, which notice shall be served in the manner provided by rule of civil procedure 1.305(1). However, upon the filing of

3 4 an affidavit that the debtor is intentionally evading service
3 5 of process or otherwise cannot be served despite repeated and
3 6 diligent attempts, the notice may be served by placing the
3 7 notice in a plain opaque envelope, addressed to the defendant
3 8 and marked personal and confidential, by affixing the envelope
3 9 to a main entrance of the premises subject to sale, and by
3 10 mailing a copy of the notice to the debtor at the debtor's
3 11 last known address by ordinary mail.

3 12 Sec. 6. Section 626.80, unnumbered paragraph 2, Code 2005,
3 13 is amended to read as follows:

3 14 The sheriff shall receive and give a receipt for a sealed
3 15 written bid submitted prior to the public auction. The
3 16 sheriff may require all sealed written bids to be accompanied
3 17 by payment of any fees required to be paid at the public
3 18 auction by the purchaser, to be returned if the person
3 19 submitting the sealed written bid is not the purchaser. The
3 20 sheriff shall keep all written bids sealed until the
3 21 commencement of the public auction, at which time the sheriff
3 22 shall open and announce the written bids as though made in
3 23 person. A party who has appeared in the foreclosure may
3 24 submit a written bid, which shall include a facsimile number
3 25 or electronic mail address where the party can be notified of
3 26 the results of the sale. If a party submitting a winning
3 27 written bid does not pay the amount of the bid in certified
3 28 funds in the manner in which the sheriff in the notice
3 29 directs, such bid shall be deemed canceled and the sheriff
3 30 shall certify the next highest bidder as the successful bidder
3 31 of the sale either within twenty-four hours for an electronic
3 32 funds transfer or forty-eight hours otherwise, of notification
3 33 of the sale results. A sheriff may refuse to accept written
3 34 bids from a bidder other than the judgment creditor if the
3 35 bidder or the bidder's agent in the action has demonstrated a
4 1 pattern of nonpayment on previously accepted bids.

4 2 Sec. 7. NEW SECTION. 654.9A RELEASE OF SUPERIOR LIENS BY
4 3 BOND.

4 4 At any time prior to the court's decree, the plaintiff, or
4 5 a person guaranteeing title of the plaintiff's mortgage, may
4 6 post a bond with sureties to be approved by the clerk and
4 7 apply to the court to release the claim against the property
4 8 of any person claiming a lien superior to that of the
4 9 plaintiff in the property subject to foreclosure. The bond
4 10 shall be in an amount not less than twice the amount of the
4 11 claim, and notice of the bond and the court's order of release
4 12 shall be served on the claimant. Unless the claimant has
4 13 appeared in the foreclosure action, the service shall be by
4 14 personal service. Unless the claimant files an action on the
4 15 bond within twelve months from service of the notice, the
4 16 claimant shall be barred from any further remedy. In a
4 17 successful action on the bond, the court may award the
4 18 claimant reasonable attorney fees. A guarantor filing such a
4 19 bond shall be subrogated to any defenses which the plaintiff
4 20 may have against the adverse claimant, including but not
4 21 limited to a defense of lack of equity in the mortgaged
4 22 property to secure the adverse claim in its proper priority.

4 23 Sec. 8. NEW SECTION. 654.15A NOTICE OF SALE TO JUNIOR
4 24 CREDITORS.

4 25 A junior creditor may file and serve on the judgment
4 26 creditor a request for notice of the sheriff's sale. Such
4 27 notice shall include a facsimile number or electronic mail
4 28 address where the creditor shall be notified of the sale. At
4 29 least ten days prior to the date of sale, the attorney for the
4 30 junior creditor shall file proof of service of such request
4 31 for notice. Upon motion filed within thirty days of the sale,
4 32 the court may set aside a sale in which a junior creditor who
4 33 requests notice is damaged by the failure of the sheriff or
4 34 the judgment creditor to give notice pursuant to this section.

4 35 Sec. 9. NEW SECTION. 654.15B RIGHT TO INTERVENE ==
5 1 NOTICE.

5 2 A lender may serve a judgment creditor in a foreclosure
5 3 action with notice in substantially the following form
5 4 advising the creditor that the property that is the subject of
5 5 the foreclosure action shall be foreclosed and describing the
5 6 creditor's interest in the action and that unless such
5 7 creditor intervenes in the foreclosure action such creditor
5 8 shall lose the creditor's interest in the mortgaged property.
5 9 Unless the creditor intervenes within thirty days of the
5 10 service of notice, the court may adjudicate the creditor's
5 11 rights against the property as if the creditor had been added
5 12 as a defendant and default had been entered against the
5 13 defendant. If a creditor cannot be located for personal
5 14 service, the plaintiff may, at any time prior to sixty days

5 15 before the date of trial, amend the petition as a matter of
5 16 right to add the creditor as a defendant for service by
5 17 publication as provided by rule. The notice prescribed by
5 18 this section is as follows:

5 19 NOTICE OF PENDING FORECLOSURE

5 20 To: (Name of creditor)

5 21 Date: (Enter date)

5 22 Plaintiff has filed a foreclosure of mortgage against the
5 23 property of (titleholder) located at (street address of
5 24 property) which is legally described as (legal description).
5 25 This foreclosure was filed as (Plaintiff v. Defendant), Case #
5 26 (), in the Iowa District Court for () County. You have
5 27 an apparent interest in the property because (description of
5 28 creditor's interest). If you desire to protect this interest,
5 29 you have the right to intervene in the foreclosure action
5 30 within thirty days of the service of notice by filing an
5 31 intervention with the clerk of court in () County. Unless
5 32 you intervene in the foreclosure the foreclosure may eliminate
5 33 any interest you have in the property but will not otherwise
5 34 affect your rights. If you have any questions about this
5 35 notice, contact your attorney. Whether or not you intervene,
6 1 the foreclosure may have certain tax consequences to you about
6 2 which you should consult your tax advisor.

6 3
6 4 _____
6 4 Name, address, and telephone number of attorney representing
6 5 plaintiff.

6 6 Sec. 10. NEW SECTION. 654.17 REVISION OF FORECLOSURE.

6 7 At any time prior to the recording of the sheriff's deed,
6 8 and before the mortgagee's rights become unenforceable by
6 9 operation of the statute of limitations, the judgment
6 10 creditor, or the judgment creditor who is the successful
6 11 bidder at the sheriff's sale, with the written consent of the
6 12 mortgagor may rescind the foreclosure action by filing a
6 13 notice of rescision with the clerk of court in the county in
6 14 which the property is located along with a filing fee of fifty
6 15 dollars. In addition, such person shall pay a fee of
6 16 twenty-five dollars for documents filed in the foreclosure
6 17 action which the plaintiff requests returned. Upon the filing
6 18 of the notice of rescision, the mortgage loan shall be
6 19 enforceable according to the original terms of the foreclosure
6 20 and the rights of all persons with an interest in the property
6 21 may be enforced as if the foreclosure had not been filed.
6 22 However, any findings of fact or law shall be preclusive for
6 23 purposes of any future action unless the court, upon hearing,
6 24 rules otherwise. The mortgagor shall be assessed costs,
6 25 including reasonable attorney fees, of foreclosure and
6 26 rescision if provided by the mortgage agreement.

6 27 Sec. 11. NEW SECTION. 654.17A SALE FREE OF LIENS.

6 28 At any time during the pendency of the foreclosure, the
6 29 plaintiff may apply to the court for an order approving an
6 30 offer for a commercially reasonable sale of the property free
6 31 of the claims of the parties to the action and other persons
6 32 served with notice pursuant to section 654.15B. A copy of the
6 33 offer shall be attached to the application and the application
6 34 shall contain a written consent to the proposed sale by all
6 35 equitable titleholders who have not abandoned the property.
7 1 The court may grant the motion unless a party in interest
7 2 objects in writing during such time as the court may
7 3 prescribe. A person filing an objection with a claim junior
7 4 to the plaintiff shall either apply for assignment of senior
7 5 claims pursuant to section 654.8, otherwise provide adequate
7 6 protection to senior creditors, or establish that a sheriff's
7 7 sale is substantially more likely than the proposed sale to
7 8 provide the creditor with more favorable satisfaction of its
7 9 lien. Pending resolution of the rights of the parties and
7 10 persons served with notice pursuant to section 654.15B, the
7 11 court shall place the net proceeds of the sale in escrow after
7 12 payment of reasonable closing costs. The rights of such
7 13 persons to the escrowed funds shall be determined in the same
7 14 manner as their rights to the property that was sold.

7 15 Sec. 12. Section 655.5, Code 2005, is amended by striking
7 16 the section and inserting in lieu thereof the following:

7 17 655.5 INSTRUMENT OF SATISFACTION.

7 18 When the judgment is paid in full, the mortgagee shall file
7 19 with the clerk a satisfaction of judgment which shall release
7 20 the mortgage underlying the action. A mortgagee who fails to
7 21 file a satisfaction within thirty days of receiving a written
7 22 request shall be subject to reasonable damages and a penalty
7 23 of one hundred dollars plus reasonable attorney fees incurred
7 24 by the aggrieved party, to be recovered in an action for the
7 25 satisfaction or acknowledged by the party aggrieved.

7 26 Sec. 13. Section 655A.3, Code 2005, is amended by adding
7 27 the following new subsection:
7 28 NEW SUBSECTION. 2A. The mortgagee may file a written
7 29 notice required in subsection 1 together with proof of service
7 30 on the mortgagor with the recorder of the county where the
7 31 mortgaged property is located. Such a filing shall have the
7 32 same force and effect on third parties as an indexed notation
7 33 entered by the clerk of the district court pursuant to section
7 34 617.10 and shall commence on the filing of proof of service on
7 35 the mortgagors and terminate on the filing of a rejection
8 1 pursuant to section 655A.6, an affidavit of completion
8 2 pursuant to section 655A.7, or the expiration of ninety days
8 3 from completion of service on the mortgagors, whichever occurs
8 4 first.

8 5 Sec. 14. Section 655A.9, Code 2005, is amended to read as
8 6 follows:

8 7 655A.9 APPLICATION OF CHAPTER.

8 8 This chapter does not apply to real estate used for an
8 9 agricultural purpose as defined in section 535.13, or to a one
8 10 or two family dwelling which is, at the time of the initiation
8 11 of the foreclosure, occupied by an equitable titleholder.

8 12 Sec. 15. Section 655.4, Code 2005, is repealed.

8 13 Sec. 16. APPLICABILITY.

8 14 1. Except as provided in subsection 2, this Act applies to
8 15 actions commenced on or after July 1, 2006.

8 16 2. The section of this Act enacting section 624.23,
8 17 subsection 7, applies to judgments entered on or after July 1,
8 18 2007.

8 19

8 20

8 21

8 22

CHRISTOPHER C. RANTS
Speaker of the House

8 24

8 25

8 26

8 27

JEFFREY M. LAMBERTI
President of the Senate

8 28

8 29

8 30 I hereby certify that this bill originated in the House and
8 31 is known as House File 2786, Eighty-first General Assembly.

8 32

8 33

8 34

8 35

MARGARET THOMSON
Chief Clerk of the House

9 1

9 2 Approved _____, 2006

9 3

9 4

9 5

9 6 THOMAS J. VILSACK

9 7 Governor