



CHESTER J. CULVER
GOVERNOR

OFFICE OF THE GOVERNOR

PATTY JUDGE
LT. GOVERNOR

April 9, 2009

The Honorable Michael Mauro
Secretary of State
State Capitol Building
LOCAL

Dear Mr. Secretary:

I hereby transmit:

Senate File 364, an Act relating to civil actions including certain limitations on actions, judgments, and executions and including actions relating to the foreclosure of real estate mortgages, and providing effective date and applicability provisions.

The above Senate File is hereby approved this date.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Culver".

Chester J. Culver
Governor

CJC:bdj

cc: Secretary of the Senate
Chief Clerk of the House





SENATE FILE 364

AN ACT

RELATING TO CIVIL ACTIONS INCLUDING CERTAIN LIMITATIONS ON ACTIONS, JUDGMENTS, AND EXECUTIONS AND INCLUDING ACTIONS RELATING TO THE FORECLOSURE OF REAL ESTATE MORTGAGES, AND PROVIDING EFFECTIVE DATE AND APPLICABILITY PROVISIONS.

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

Section 1. NEW SECTION. 614.18A JUDGMENT AND DECREE AFFECTING REAL PROPERTY.

In an action in which the court had jurisdiction of the aggrieved party, a motion or other legal proceeding attacking the validity of the judgment or decree based on noncompliance with the requirements of rule of civil procedure 1.972 shall not affect the interests of any purchaser or mortgagee for value of the real property involved unless the motion or proceeding is initiated within thirty days after the recording of the sheriff's deed or within ninety days after the filing of a judgment or decree not providing for the issuance of a sheriff's deed.

Sec. 2. Section 615.1, subsection 1, Code 2009, is amended to read as follows:

1. After the expiration of a period of two years from the date of entry of judgment, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action or order of court, a judgment entered in ~~either~~ any of the following actions shall be null and void, all liens shall be extinguished, and no execution shall be issued ~~for any purpose other than~~ except as a setoff or counterclaim:

a. (1) An For a real estate mortgage, deed of trust, or real estate contract executed prior to July 1, 2009, an action for the foreclosure of a the real estate mortgage, deed of trust, or real estate contract upon property which at the time

~~of-judgment~~ the foreclosure is commenced is either used for an agricultural purpose as defined in section 535.13 or as a one-family or two-family dwelling which is the residence of the mortgagor.

(2) For a real estate mortgage, deed of trust, or real estate contract executed on or after July 1, 2009, an action for the foreclosure of the real estate mortgage, deed of trust, or real estate contract upon property which at the time of the execution of the mortgage, deed, or contract is either used for, or is being acquired for, an agricultural purpose as defined in section 535.13 or as a one-family or two-family dwelling which is the residence of the mortgagor.

b. An action on a claim for rent.

Sec. 3. Section 626.81, Code 2009, is amended to read as follows:

626.81 SALE POSTPONED.

When there are no bidders, or when the amount offered is grossly inadequate, ~~or~~ when from any cause the sale is prevented from taking place on the day fixed, when requested by the judgment creditor, or when the parties so agree, the officer may postpone the sale ~~for-not-more-than-three-days~~ without being required to give any further notice thereof, which postponement shall be publicly announced at the time the sale was to have been made, but not more than two such adjournments of not more than sixty days in the aggregate shall be made, except by agreement of the parties in writing and made a part of the return upon the execution.

Sec. 4. NEW SECTION. 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.

Sec. 5. NEW SECTION. 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.

Sec. 6. NEW SECTION. 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.

Sec. 7. Section 654.5, Code 2009, is amended to read as follows:

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~~ Render judgment for the entire amount found to be due, ~~and must direct,~~

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 ~~accordingly~~ 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.

Sec. 8. Section 654.15B, Code 2009, is amended to read as follows:

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)

Plaintiff (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 ~~(description of creditor's interest)~~ 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 plaintiff (name of foreclosing party).

Sec. 9. Section 654.17, Code 2009, is amended to read as follows:

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, ~~with-the-written-consent-of-the mortgagor~~ 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 rescision, 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 rescision 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 ~~shall-be-assessed~~ for the costs, including reasonable attorney fees, of foreclosure and rescision if provided-by-the-mortgage-agreement agreed to in writing by the mortgagor.

Sec. 10. NEW SECTION. 654.17B DIVESTMENT OF JUNIOR LIENS PURSUANT TO LOAN MODIFICATION.

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.

Sec. 11. Section 655A.3, subsection 1, paragraph a, Code 2009, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (4) Specify a postal or electronic mail address where rejection of the notice may be served.

Sec. 12. Section 655A.4, Code 2009, is amended to read as follows:

655A.4 SERVICE.

Notice ~~or-rejection-of-notice~~ under this chapter shall be served as provided in the rules of civil procedure for service of original notice. Rejection of notice under this chapter shall be served by ordinary or electronic mail addressed as provided in the notice, or if no address is provided, to the last address of the mortgagee known to the mortgagor.

Sec. 13. Section 655A.6, Code 2009, is amended to read as follows:

655A.6 REJECTION OF NOTICE.

If either the mortgagor, or successor in interest of record including a contract purchaser, within thirty days of service of the notice pursuant to section 655A.3, files with the recorder of the county where the mortgaged property is located, a rejection of the notice reasonably identifying ~~by-a document-reference-number~~ the notice which is rejected together with proofs of service required under section 655A.4 that the rejection has been served on the mortgagee, the notice served upon the mortgagor pursuant to section 655A.3 is of no force or effect.

Sec. 14. Section 655A.8, Code 2009, is amended to read as follows:

655A.8 EFFECT OF FORECLOSURE -- REOPENING.

Upon completion of the filings required under section 655A.7 and if no rejection of notice has been filed pursuant to section 655A.6, then without further act or deed:

1. The mortgagee acquires and succeeds to all interest of the mortgagor in the real estate.

2. All liens which are inferior to the lien of the foreclosed mortgage are extinguished.

3. The indebtedness secured by the foreclosed mortgage is extinguished.

4. If, after completion of the filings required under section 655A.7, it appears that a junior lienholder was not properly served with a notice pursuant to section 655A.3, the mortgagee may serve the lienholder with an amended notice specifying the provisions of the mortgage currently in default. Unless, within thirty days, the junior lienholder performs pursuant to section 655A.5, the mortgagee may file a supplemental affidavit indicating service and nonperformance to extinguish the lien.

5. A foreclosure under this chapter shall not bar a mortgagee or its successor in interest from action under chapter 654 to resolve matters which have not been resolved under this chapter.

Sec. 15. Section 655A.9, Code 2009, is amended to read as follows:

655A.9 APPLICATION OF CHAPTER.

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

Sec. 16. EFFECTIVE DATE. The section of this Act enacting section 654.4B takes effect May 1, 2009.

Sec. 17. APPLICABILITY.

1. The section of this Act enacting section 614.18A applies to sheriff's deeds recorded and judgments entered on or after the effective date of this Act.

2. The portion of the section of this Act amending section 615.1, subsection 1, paragraph "a", by designating subparagraph (1) applies to judgments entered on or after the effective date of this Act.

3. The sections of this Act enacting sections 654.1A, 654.4A and 654.17B and the section of this Act amending section 654.15B apply to all actions commenced on or after the effective date of this Act.

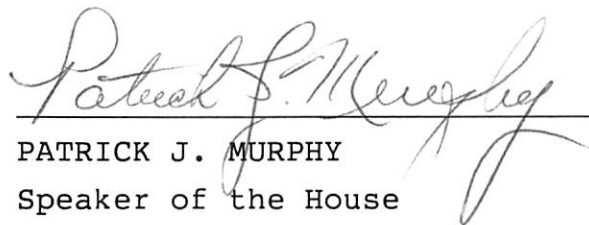
4. The sections of this Act amending sections 655A.3, 655A.4, 655A.6, 655A.8, and 655A.9 apply to all nonjudicial foreclosures of nonagricultural mortgages commenced on or after the effective date of this Act.

5. The section of this Act enacting section 654.4B, subsection 1, and sections 626.81, 654.5, and 654.17 apply to judgments entered on or after the effective date of this Act.

Sec. 18. The section of this Act amending section 655A.9 is intended to be a continuation of the prior statute pursuant to section 4.10 and the amendment does not affect the prior operation of the statute or any prior action taken under the statute pursuant to section 4.13, subsection 1.



JOHN P. KIBBIE
President of the Senate



PATRICK J. MURPHY
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 364, Eighty-third General Assembly.



MICHAEL E. MARSHALL
Secretary of the Senate

Approved April 9th, 2009



CHESTER J. CULVER
Governor