Reprinted 4/87

MAR 19 1987

Place On Calendar

HOUSE FILE 599
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

(Formerly House Study Bill 171)

Passed House, Date 3-31-87 (p. 981) Passed Senate, Date _____
Vote: Ayes 93 Nays 6 Vote: Ayes _____ Nays _____
Approved _____

Motion to reconsider (p. 1006)
" prevailed 4/3
Reconsidered House 4-3-87 (p. 1150)
84-0

A BILL FOR

1 An Act relating to mortgage foreclosures by establishing an
2 alternative mortgage foreclosure proceeding with final
3 judicial sale and rights in lieu of redemption, and
4 establishing nonjudicial foreclosure proceedings upon waiver
5 of deficiency judgments.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 599

H-3627

1 Amend the amendment, H-3624, to House File 599 as
2 follows:
3 1. Page 3, by inserting after line 4, the
4 following:
5 "___. Page 4, by striking lines 16 through 21 and
6 inserting the following:
7 "Notice under this chapter shall be served as
8 provided in the rules of civil procedure.""
9 2. Renumber as necessary.

H-3627 FILED APRIL 3, 1987 BY SWARTZ of Marshall
Adopted 4/3/87 (p. 1149)

19
20
21
22
23
24

TLSB 2006HC 72
mj/jw/5

S.F. _____ H.F. 599

1 Section 1. Section 654.5, Code 1987, is amended to read as
2 follows:
3 654.5 JUDGMENT -- SALE AND REDEMPTION.
4 When a mortgage or deed of trust is foreclosed, the court
5 shall render judgment for the entire amount found to be due,
6 and must direct the mortgaged property, or so much thereof as
7 is necessary, to be sold to satisfy the same judgment, with
8 interest and costs. A special execution shall issue
9 accordingly, and the sale ~~thereunder shall be~~ under the
10 special execution is subject to redemption as in cases of sale
11 under general execution unless the plaintiff has elected
12 foreclosure without redemption under section 654.20.
13 Sec. 2. NEW SECTION. 654.20 FORECLOSURE WITHOUT REDEMP-
14 TION.
15 If the mortgaged property is not used for an agricultural
16 purpose as defined in section 535.13, the plaintiff in an
17 action to foreclose a real estate mortgage may include in the
18 petition an election for foreclosure without redemption. The
19 election is effective only if the first page of the petition
20 contains the following in capital letters of the same type or
21 print size as the rest of the petition:
22 NOTICE
23 THE PLAINTIFF HAS ELECTED FORECLOSURE WITHOUT REDEMPTION.
24 THIS MEANS THAT THE SALE OF THE MORTGAGED PROPERTY WILL OCCUR
25 PROMPTLY AFTER ENTRY OF JUDGMENT UNLESS YOU FILE WITH THE
26 COURT A WRITTEN DEMAND TO DELAY THE SALE. IF YOU FILE A
27 WRITTEN DEMAND, THE SALE WILL BE DELAYED UNTIL SIX MONTHS FROM
28 ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE
29 AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING OR UNTIL TWO MONTHS
30 FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS NOT YOUR
31 RESIDENCE OR IS YOUR RESIDENCE BUT NOT A ONE-FAMILY OR TWO-
32 FAMILY DWELLING. YOU WILL HAVE NO RIGHT OF REDEMPTION AFTER
33 THE SALE. THE PURCHASER AT THE SALE WILL BE ENTITLED TO
34 IMMEDIATE POSSESSION OF THE MORTGAGED PROPERTY. YOU MAY
35 PURCHASE AT THE SALE.

1 IF YOU DO NOT FILE A WRITTEN DEMAND TO DELAY THE SALE AND
2 IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-
3 FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT WILL
4 NOT BE ENTERED AGAINST YOU. IF YOU DO FILE A WRITTEN DEMAND
5 TO DELAY THE SALE, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED
6 AGAINST YOU IF THE PROCEEDS FROM THE SALE OF THE MORTGAGED
7 PROPERTY ARE INSUFFICIENT TO SATISFY THE AMOUNT OF THE
8 MORTGAGE DEBT AND COSTS.
9 IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS NOT A
10 ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT
11 MAY BE ENTERED AGAINST YOU WHETHER OR NOT YOU FILE A WRITTEN
12 DEMAND TO DELAY THE SALE.
13 If the election is made, then sections 654.21 through
14 654.26 apply.
15 Sec. 3. NEW SECTION. 654.21 DEMAND FOR DELAY OF SALE.
16 At any time prior to entry of judgment, the mortgagor may
17 file a demand for delay of sale. If the demand is filed, the
18 sale shall be held promptly after the expiration of two months
19 from entry of judgment. However, if the demand is filed and
20 the mortgaged property is the residence of the mortgagor and
21 is a one-family or two-family dwelling, the sale shall be held
22 promptly after the expiration of six months from entry of
23 judgment.
24 Sec. 4. NEW SECTION. 654.22 NO DEMAND FOR DELAY OF SALE.
25 If the mortgagor does not file a demand for delay of sale,
26 the sale shall be held promptly after entry of judgment.
27 Sec. 5. NEW SECTION. 654.23 NO REDEMPTION RIGHTS AFTER
28 SALE.
29 The mortgagor has no right to redeem after sale. Junior
30 lienholders have no right to redeem after sale. The mortgagor
31 or a junior lienholder may purchase at the sale and, if so,
32 acquire the same title as would any other purchaser.
33 Sec. 6. NEW SECTION. 654.24 DEED AND POSSESSION.
34 The purchaser at the sale is entitled to an immediate deed
35 and immediate possession.

1 Sec. 7. NEW SECTION. 654.25 APPLICATION OF OTHER
2 STATUTES.
3 If the plaintiff has elected foreclosure without
4 redemption, chapter 628 does not apply. A provision in a
5 mortgage permitted by section 628.26 or 628.27 shall not be
6 construed as an agreement by the mortgagee not to elect
7 foreclosure without redemption. The election may be made in
8 any petition filed on or after the effective date of this Act.
9 The election for foreclosure without redemption is not a
10 waiver of the plaintiff's rights under section 654.6 except as
11 provided in section 654.26.
12 Sec. 8. NEW SECTION. 654.26 NO DEFICIENCY JUDGMENT IN
13 CERTAIN CASES.
14 If the plaintiff has elected foreclosure without re-
15 demption, if the mortgaged property is the residence of the
16 mortgagor and is a one-family or two-family dwelling, and if
17 the mortgagor does not file a demand for delay of sale under
18 section 654.21, then the plaintiff shall not be entitled to
19 the entry of a deficiency judgment under section 654.6.
20 Sec. 9. NEW SECTION. 628.1A APPLICATION OF THIS CHAPTER.
21 This chapter does not apply in an action to foreclose a
22 real estate mortgage if the plaintiff has elected foreclosure
23 without redemption under section 654.20.
24 Sec. 10. NEW SECTION. 655A.1 TITLE.
25 This chapter shall be known as the "Nonjudicial Foreclosure
26 of Nonagricultural Mortgages".
27 Sec. 11. NEW SECTION. 655A.2 CONDITIONS PRESCRIBED.
28 Except as provided in section 655A.8, a mortgage may be
29 foreclosed, at the option of the mortgagee, as provided in
30 this chapter.
31 Sec. 12. NEW SECTION. 655A.3 NOTICE.
32 1. The nonjudicial foreclosure is initiated by the mort-
33 gagee by serving on the mortgagor a written notice which
34 shall:
35 a. Reasonably identify the mortgage and accurately de-

1 scribe the real estate covered.
2 b. Specify the terms of the mortgage with which the mort-
3 gagor has not complied. The terms shall not include any obli-
4 gation arising from acceleration of the indebtedness secured
5 by the mortgage.
6 c. State that, unless within thirty days after the com-
7 pleted service of the notice the mortgagor performs the terms
8 in default, the mortgage will be foreclosed.
9 2. The mortgagee shall also serve a copy of the notice re-
10 quired in subsection 1 on the person in possession of the real
11 estate, if different than the mortgagor, and on all junior
12 lienholders of record.
13 3. As used in this chapter, "mortgagee" and "mortgagor"
14 include a successor in interest.
15 Sec. 13. NEW SECTION. 655A.4 SERVICE.
16 The notice may be served personally or by publication, on
17 the same conditions and in the same manner as is provided for
18 the service of original notice, except that when the notice is
19 served by publication, no affidavit is required before publi-
20 cation. Service by publication is deemed complete on the day
21 of the last publication.
22 Sec. 14. NEW SECTION. 655A.5 COMPLIANCE WITH NOTICE.
23 If the mortgagor or a junior lienholder performs, within
24 thirty days of completed service of notice, the breached terms
25 specified in the notice, then the right to foreclose for the
26 breach is terminated.
27 Sec. 15. NEW SECTION. 655A.6 PROOF AND RECORD OF
28 SERVICE.
29 If the terms and conditions as to which there is default
30 are not performed within the thirty days, the party serving
31 the notice or causing it to be served may file for record in
32 the office of the county recorder a copy of the notice with
33 proofs of service attached or endorsed on it and, in case of
34 service by publication, a personal affidavit that personal
35 service could not be made within this state, and when those

1 documents are filed and recorded, the record is constructive
2 notice to all parties of the due foreclosure of the mortgage.
3 Sec. 16. NEW SECTION. 655A.7 EFFECT OF FORECLOSURE.
4 Upon completion of the filings required under section
5 655A.6 and without further act or deed:
6 1. The mortgagee acquires and succeeds to all interest of
7 the mortgagor in the real estate.
8 2. All liens which are inferior to the lien of the
9 foreclosed mortgage are extinguished.
10 3. The indebtedness secured by the foreclosed mortgage is
11 extinguished.
12 Sec. 17. NEW SECTION. 655A.8 APPLICATION OF CHAPTER.
13 This chapter does not apply to real estate used for an
14 agricultural purpose as defined in section 535.13.
15 EXPLANATION
16 Sections 1 through 9 of this bill establish an alternative
17 mortgage foreclosure proceeding without redemption. The mort-
18 gagee may elect to foreclose without redemption. If an elec-
19 tion is made, the mortgagor has no rights to redeem but may
20 demand that the sale be delayed for six months for one-or two-
21 family dwellings which are the residence of the mortgagor and
22 for two months for other types of property. The mortgagor may
23 purchase at the delayed judicial sale. At any time before
24 sale, the mortgagor may pay the judgment and remove the
25 property from the foreclosure proceedings. Junior creditors
26 may purchase at the judicial sale. The bill does not apply to
27 agricultural property. Under the bill, the judicial sale may
28 be delayed for the benefit of the mortgagor and junior
29 lienholders but at the time of the judicial sale the purchaser
30 acquires immediate title and possession. If the property is
31 the residence of the mortgagor and is a one-family or two-
32 family dwelling, and if the mortgagor does not file a demand
33 to delay the sale, then no deficiency judgment may be obtained
34 against the mortgagor.
35 Sections 10 through 18 of this bill establish a new chapter

1 655A for nonjudicial foreclosure of mortgages. If the
2 mortgagee elects to use this procedure, then no deficiency
3 judgment may be obtained against the mortgagor. After service
4 of the notice of foreclosure, the mortgagor has thirty days
5 within which to make payment of the past due installments
6 specified in the notice. If the default is not cured, then
7 the mortgagee acquires title to the property. Notice and
8 opportunity to cure is also given to any junior lienholders.
9 If the junior lienholder does not cure by paying the install-
10 ments past due, then the lien of the junior lienholder is
11 extinguished.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 599
BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT
Substituted for S.F. 468 4/10/87

(As Amended and Passed by the House April 3, 1987)

Passed House, Date 5/9/87 (J. 2274) Passed Senate, Date 4/30/87 (J. 1615)
Vote: Ayes 56 Nays 38 Vote: Ayes 46 Nays 0
Approved May 25, 1987

A BILL FOR

1 An Act relating to mortgage foreclosures by establishing an
2 alternative mortgage foreclosure proceeding with final
3 judicial sale and rights in lieu of redemption, and
4 establishing nonjudicial foreclosure proceedings upon waiver
5 of deficiency judgments.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7
8 House Amendments
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

TLSB 2006HC 72
mj/jw/5

S.F. _____ H.F. 599

1 Section 1. Section 654.5, Code 1987, is amended to read as
2 follows:
3 654.5 JUDGMENT -- SALE AND REDEMPTION.
4 When a mortgage or deed of trust is foreclosed, the court
5 shall render judgment for the entire amount found to be due,
6 and must direct the mortgaged property, or so much thereof as
7 is necessary, to be sold to satisfy the ~~same~~ judgment, with
8 interest and costs. A special execution shall issue
9 accordingly, and the sale ~~thereunder shall be~~ under the
10 special execution is subject to redemption as in cases of sale
11 under general execution unless the plaintiff has elected
12 foreclosure without redemption under section 654.20.
13 Sec. 2. NEW SECTION. 654.20 FORECLOSURE WITHOUT REDEMP-
14 TION.
15 If the mortgaged property is not used for an agricultural
16 purpose as defined in section 535.13, the plaintiff in an
17 action to foreclose a real estate mortgage may include in the
18 petition an election for foreclosure without redemption. The
19 election is effective only if the first page of the petition
20 contains the following notice in capital letters of the same
21 type or print size as the rest of the petition:
22 NOTICE
23 THE PLAINTIFF HAS ELECTED FORECLOSURE WITHOUT REDEMPTION.
24 THIS MEANS THAT THE SALE OF THE MORTGAGED PROPERTY WILL OCCUR
25 PROMPTLY AFTER ENTRY OF JUDGMENT UNLESS YOU FILE WITH THE
26 COURT A WRITTEN DEMAND TO DELAY THE SALE. IF YOU FILE A
27 WRITTEN DEMAND, THE SALE WILL BE DELAYED UNTIL TWELVE MONTHS
28 (or SIX MONTHS if the petition includes a waiver of deficiency
29 judgment) FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS
30 YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING OR
31 UNTIL TWO MONTHS FROM ENTRY OF JUDGMENT IF THE MORTGAGED
32 PROPERTY IS NOT YOUR RESIDENCE OR IS YOUR RESIDENCE BUT NOT A
33 ONE-FAMILY OR TWO-FAMILY DWELLING. YOU WILL HAVE NO RIGHT OF
34 REDEMPTION AFTER THE SALE. THE PURCHASER AT THE SALE WILL BE
35 ENTITLED TO IMMEDIATE POSSESSION OF THE MORTGAGED PROPERTY.

1 YOU MAY PURCHASE AT THE SALE.
2 If the plaintiff has not included in the petition a waiver
3 of deficiency judgment, then the notice shall include the
4 following:
5 IF YOU DO NOT FILE A WRITTEN DEMAND TO DELAY THE SALE AND
6 IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-
7 FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT WILL
8 NOT BE ENTERED AGAINST YOU. IF YOU DO FILE A WRITTEN DEMAND
9 TO DELAY THE SALE, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED
10 AGAINST YOU IF THE PROCEEDS FROM THE SALE OF THE MORTGAGED
11 PROPERTY ARE INSUFFICIENT TO SATISFY THE AMOUNT OF THE
12 MORTGAGE DEBT AND COSTS.
13 IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS NOT A
14 ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT
15 MAY BE ENTERED AGAINST YOU WHETHER OR NOT YOU FILE A WRITTEN
16 DEMAND TO DELAY THE SALE.
17 If the election for foreclosure without redemption is made,
18 then sections 654.21 through 654.26 apply.
19 Sec. 3. NEW SECTION. 654.21 DEMAND FOR DELAY OF SALE.
20 At any time prior to entry of judgment, the mortgagor may
21 file a demand for delay of sale. If the demand is filed, the
22 sale shall be held promptly after the expiration of two months
23 from entry of judgment. However, if the demand is filed and
24 the mortgaged property is the residence of the mortgagor and
25 is a one-family or two-family dwelling, the sale shall be held
26 promptly after the expiration of twelve months, or six months
27 if the petition includes a waiver of deficiency judgment, from
28 entry of judgment. If the demand is filed, the mortgagor and
29 mortgagee subsequently may file a stipulation that the sale
30 may be held promptly after the stipulation is filed and that
31 the mortgagee waives the right to entry of a deficiency
32 judgment. If the stipulation is filed, the sale shall be held
33 promptly after the filing.
34 Sec. 4. NEW SECTION. 654.22 NO DEMAND FOR DELAY OF SALE.
35 If the mortgagor does not file a demand for delay of sale,

1 the sale shall be held promptly after entry of judgment.
2 Sec. 5. NEW SECTION. 654.23 NO REDEMPTION RIGHTS AFTER
3 SALE.
4 The mortgagor has no right to redeem after sale. Junior
5 lienholders have no right to redeem after sale. The mortgagor
6 or a junior lienholder may purchase at the sale and, if so,
7 acquire the same title as would any other purchaser.
8 Sec. 6. NEW SECTION. 654.24 DEED AND POSSESSION.
9 The purchaser at the sale is entitled to an immediate deed
10 and immediate possession.
11 Sec. 7. NEW SECTION. 654.25 APPLICATION OF OTHER
12 STATUTES.
13 If the plaintiff has elected foreclosure without
14 redemption, chapter 628 does not apply. A provision in a
15 mortgage permitted by section 628.26 or 628.27 shall not be
16 construed as an agreement by the mortgagee not to elect
17 foreclosure without redemption. The election may be made in
18 any petition filed on or after the effective date of this Act.
19 The election for foreclosure without redemption is not a
20 waiver of the plaintiff's rights under section 654.6 except as
21 provided in section 654.26.
22 Sec. 8. NEW SECTION. 654.26 NO DEFICIENCY JUDGMENT IN
23 CERTAIN CASES.
24 If the plaintiff has elected foreclosure without re-
25 demption, the plaintiff may include in the petition a waiver
26 of deficiency judgment. If the plaintiff has elected
27 foreclosure without redemption and does not include in the
28 petition a waiver of deficiency judgment, if the mortgaged
29 property is the residence of the mortgagor and is a one-family
30 or two-family dwelling, and if the mortgagor does not file a
31 demand for delay of sale under section 654.21, then the
32 plaintiff shall not be entitled to the entry of a deficiency
33 judgment under section 654.6.
34 Sec. 9. Section 654.2B, Code 1987, is amended to read as
35 follows:

1 654.2B REQUIREMENTS OF NOTICE OF RIGHT TO CURE.
2 The notice of right to cure shall be in writing and shall
3 conspicuously state the name, address, and telephone number of
4 the creditor to which payment is to be made, a brief
5 identification of the obligation secured by the deed of trust
6 or mortgage and of the borrower's right to cure the default, a
7 statement of the nature of the right to cure the default, a
8 statement of the nature of the alleged default, a statement of
9 the total payment, including an itemization of any delinquency
10 or deferral charges, or other performance necessary to cure
11 the alleged default, and the exact date by which the amount
12 must be paid or performance tendered and a statement that if
13 the borrower does not cure the alleged default that the
14 creditor is entitled to proceed with initiating a foreclosure
15 action.
16 Sec. 10. NEW SECTION. 654.27 NOTICE, RIGHT TO CURE
17 DEFAULT.
18 1. A creditor shall not initiate an action pursuant to
19 this chapter to foreclose on a deed of trust or mortgage,
20 except as provided in section 654.2A, until the creditor has
21 complied with this section.
22 2. A creditor who believes in good faith that a borrower
23 on a deed of trust or mortgage on a homestead is in default
24 shall give the borrower a notice of right to cure as provided
25 in section 654.2B. A creditor gives the notice when the
26 creditor delivers the notice to the consumer or mails the
27 notice to the borrower's residence as defined in section
28 537.1201, subsection 4.
29 3. The borrower has a right to cure the default within
30 thirty days from the date the creditor gives the notice.
31 4. a. The creditor shall not accelerate the maturity of
32 the unpaid balance of the obligation, demand or otherwise take
33 possession of the land, otherwise than by accepting a
34 voluntary surrender of it, or otherwise attempt to enforce the
35 obligation until thirty days after a proper notice of right to

1 cure is given.
2 b. Until the expiration of thirty days after notice is
3 given, the borrower may cure the default by tendering either
4 the amount of all unpaid installments due at the time of
5 tender, without acceleration, or the amount stated in the
6 notice of right to cure, whichever is less, or by tendering
7 any other performance necessary to cure a default which is
8 described in the notice of right to cure.
9 5. The act of curing a default restores to the borrower
10 the borrower's rights under the obligation and the deed of
11 trust or mortgage.
12 6. This section does not prohibit the creditor from
13 enforcing the creditor's interest in the land at any time
14 after the creditor has complied with this section and the
15 borrower did not cure the alleged default.
16 7. A borrower has a right to cure the default unless, the
17 creditor has given the borrower a proper notice of right to
18 cure with respect to a prior default which occurred within
19 three hundred sixty-five days of the present default.
20 Sec. 11. NEW SECTION. 654.28 RIGHTS RESERVED.
21 A provision in the mortgage or deed of trust shall not be
22 deemed to abrogate any rights of a mortgagor under this
23 chapter.
24 Sec. 12. NEW SECTION. 628.1A APPLICATION OF THIS
25 CHAPTER.
26 This chapter does not apply in an action to foreclose a
27 real estate mortgage if the plaintiff has elected foreclosure
28 without redemption under section 654.20.
29 Sec. 13. NEW SECTION. 655A.1 TITLE.
30 This chapter shall be known as the "Nonjudicial Foreclosure
31 of Nonagricultural Mortgages".
32 Sec. 14. NEW SECTION. 655A.2 CONDITIONS PRESCRIBED.
33 Except as provided in section 655A.8, a mortgage may be
34 foreclosed, at the option of the mortgagee, as provided in
35 this chapter.

1 Sec. 15. NEW SECTION. 655A.3 NOTICE.
2 1. The nonjudicial foreclosure is initiated by the mort-
3 gagee by serving on the mortgagor a written notice which
4 shall:
5 a. Reasonably identify the mortgage and accurately de-
6 scribe the real estate covered.
7 b. Specify the terms of the mortgage with which the mort-
8 gagor has not complied. The terms shall not include any obli-
9 gation arising from acceleration of the indebtedness secured
10 by the mortgage.
11 c. State that, unless within thirty days after the com-
12 pleted service of the notice the mortgagor performs the terms
13 in default, the mortgage will be foreclosed.
14 2. The mortgagee shall also serve a copy of the notice re-
15 quired in subsection 1 on the person in possession of the real
16 estate, if different than the mortgagor, and on all junior
17 lienholders of record.
18 3. As used in this chapter, "mortgagee" and "mortgagor"
19 include a successor in interest.
20 Sec. 16. NEW SECTION. 655A.4 SERVICE.
21 Notice under this chapter shall be served as provided in
22 the rules of civil procedure.
23 Sec. 17. NEW SECTION. 655A.5 COMPLIANCE WITH NOTICE.
24 If the mortgagor or a junior lienholder performs, within
25 thirty days of completed service of notice, the breached terms
26 specified in the notice, then the right to foreclose for the
27 breach is terminated.
28 Sec. 18. NEW SECTION. 655A.6 PROOF AND RECORD OF
29 SERVICE.
30 If the terms and conditions as to which there is default
31 are not performed within the thirty days, the party serving
32 the notice or causing it to be served shall file for record in
33 the office of the county recorder a copy of the notice with
34 proofs of service required under section 655A.4 attached or
35 endorsed on it and, in case of service by publication, a

1 personal affidavit that personal service could not be made
2 within this state, and when those documents are filed and
3 recorded, the record is constructive notice to all parties of
4 the due foreclosure of the mortgage.
5 Sec. 19. NEW SECTION. 655A.7 EFFECT OF FORECLOSURE.
6 Upon completion of the filings required under section
7 655A.6 and without further act or deed:
8 1. The mortgagee acquires and succeeds to all interest of
9 the mortgagor in the real estate.
10 2. All liens which are inferior to the lien of the
11 foreclosed mortgage are extinguished.
12 3. The indebtedness secured by the foreclosed mortgage is
13 extinguished.
14 Sec. 20. NEW SECTION. 655A.8 APPLICATION OF CHAPTER.
15 This chapter does not apply to real estate used for an
16 agricultural purpose as defined in section 535.13.
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 599

S-3719

1 Amend House File 599 as amended, passed and
2 reprinted by the House as follows:
3 1. Page 1, by inserting before line 1 the
4 following:
5 "Sec. 100. Section 628.4, Code 1987, is amended to
6 read as follows:
7 628.4 REDEMPTION PROHIBITED.
8 A party who has ~~taken an appeal from the district~~
9 ~~court, or~~ stayed execution on the judgment, is not
10 entitled to redeem. This section, however, does not
11 apply to any consequences of or actions taken in a
12 case under Title XI of the United States Code, or in a
13 civil proceeding arising under Title XI of the United
14 States Code."
15 2. Page 1, by inserting after line 12 the
16 following:
17 "Sec. 101. Section 654.14, Code 1987, is amended
18 by adding the following new unnumbered paragraph:
19 NEW UNNUMBERED PARAGRAPH. If the owner or person
20 in actual possession is not afforded a right of first
21 refusal in leasing the mortgaged premises by the
22 receiver, the owner or person in actual possession has
23 a cause of action against the receiver to recover
24 either actual damages or a one thousand dollar
25 penalty, and costs, including reasonable attorney's
26 fees. The receiver shall deliver notice to the owner
27 or person in actual possession, or the attorney of the
28 owner or person in actual possession of an offer made
29 to the receiver, the terms of the offer, and the name
30 and address of the person making the offer. The
31 delivery shall be made personally with receipt
32 returned or by certified or registered mail, with the
33 proper postage on the envelope, addressed to the owner
34 or person in actual possession or the attorney of the
35 owner or person in actual possession. An offer shall
36 be deemed to have been refused if the owner or person
37 in actual possession or the attorney of the owner or
38 person in actual possession does not respond within
39 ten days following the date that the notice is mailed.
40 Sec. 102. Section 654.16, unnumbered paragraph 2,
41 Code 1987, is amended to read as follows:
42 If the homestead is not sold ~~separately, but rather~~
43 ~~is sold in conjunction with the nonhomestead property~~
44 in order to satisfy the judgment, the court shall
45 determine the fair market value of the homestead. The
46 court may consult with ~~the county~~ independent
47 appraisers ~~appointed pursuant to section 450.24~~ to
48 determine the fair market value of the homestead. ~~The~~
49 At any time within two years from the day of the sale,
50 the mortgagor may redeem the homestead separately by

1 tendering the fair market value of the homestead
2 pursuant to the procedures set forth in chapter 628."
3 3. Page 7, by inserting after line 16 the
4 following:
5 "Sec. 200. Section 100 of this Act applies to all
6 general and special execution sales held on, after, or
7 within one year before the effective date of this Act.
8 Sec. 201. Section 101 of this Act applies to all
9 leases executed by receivers on or after the effective
10 date of this Act.
11 Sec. 202. Section 654.16, Code 1987, as amended by
12 section 102 of this Act, applies to all foreclosure
13 sales of agricultural land held on or after the
14 effective date of this Act, and to foreclosure sales
15 of agricultural land held within one year before the
16 effective date of this Act if the holder of the
17 sheriff's certificate of sale is a mortgagee whose
18 mortgage was enforced by the foreclosure sale.
19 Sec. 203. This Act, being deemed of immediate
20 importance, takes effect on the tenth day after its
21 enactment."
22 4. Title page, line 1, by inserting after the
23 word "by" the following: "removing certain
24 restrictions on redemption in certain cases,".
25 5. Title page, line 3, by striking the words
26 "redemption, and" and inserting the following:
27 "redemption, providing a cause of action against the
28 receiver in certain cases, permitting the use of
29 independent appraisers to determine the value of the
30 homestead,".
31 6. Title page, line 5, by inserting after the
32 word "judgments" the following: ", providing dates of
33 applicability, and providing an effective date".
34 7. By renumbering as necessary.

S-3719
Filed April 21, 1987
Adopted as amended by 3917, 3775 4/30/87 (J. 1615)

DONALD E. GETTINGS
DONALD V. DOYLE
CHARLES P. MILLER
CHARLES BRUNER
LARRY MURPHY
WALLY E. HORN
JEAN LLOYD-JONES
EMIL J. HUSAK
JOE J. WELSH

BY JAMES R. RIORDAN
LEONARD L. BOSWELL
ALVIN V. MILLER
BERL E. PRIEBE
BEVERLY A. HANNON
WILLIAM W. DIELEMAN
TOM MANN, JR.
JAMES D. WELLS
KENNETH D. SCOTT
EUGENE S. FRAISE

April 24, 1987

HOUSE FILE 599

S-3775

1 Amend House File 599, as amended, passed, and re-
2 printed by the House, as follows:
3 1. Page 2, line 33, by inserting after the word
4 "filing." the following: "At any time prior to
5 judgment, the mortgagor may pay the plaintiff the
6 amount claimed in the petition and, if paid, the
7 foreclosure action shall be dismissed. At any time
8 after judgment and before the sale, the mortgagor may
9 pay the plaintiff the amount of the judgment and, if
10 paid, the judgment shall be satisfied of record and
11 the sale shall not be held."
12 2. Page 3, line 7, by inserting after the word
13 "purchaser." the following: "If the mortgagor at the
14 sale bids an amount equal to the judgment, the
15 property shall be sold to the mortgagor even though
16 other persons may bid an amount which is more than the
17 judgment. If the mortgagor purchases at the sale, the
18 liens of junior lienholders shall not be extinguished.
19 If a person other than the mortgagor purchases at the
20 sale, the liens of junior lienholders are
21 extinguished."
22 3. Page 4, line 15, by inserting after the word
23 "action" the words "or procedure".
24 4. Page 4, by striking lines 18 through 21 and
25 inserting the following:
26 "1. Except as provided in section 654.2A, a
27 creditor shall comply with this section before
28 initiating an action pursuant to this chapter or
29 initiating the procedure established pursuant to
30 chapter 655A to foreclose on a deed of trust or
31 mortgage."
32 5. Page 5, by inserting after line 19 the
33 following:
34 "8. This section does not apply if the creditor is
35 an individual or individuals, or if the mortgaged
36 property is property other than a one-family or two-
37 family dwelling which is the residence of the
38 mortgagor.
39 9. An affidavit signed by an officer of the
40 creditor that the creditor has complied with this
41 section is deemed to be conclusive evidence of
42 compliance by all persons other than the creditor and
43 the mortgagor."
44 6. Page 5, by striking lines 21 through 23 and
45 inserting the following:
46 "A mortgage or deed of trust shall not contain the
47 notice under section 654.20."
48 7. Page 6, line 13, by inserting after the word
49 "default" the following: "or files with the recorder
50 of the county where the mortgaged property is located

1 a rejection of the notice pursuant to section 655A.6
2 and serves a copy of the rejection upon the
3 mortgagee".
4 8. Page 6, line 21, by inserting after the word
5 "Notice" the following: "or rejection of notice".
6 9. Page 6, line 22, by inserting after the word
7 "procedure" the following: "for service of original
8 notice".
9 10. Page 6, by inserting after line 27 the
10 following:
11 "Sec. ___. NEW SECTION. 655A.6 REJECTION OF
12 NOTICE.
13 If either the mortgagor, or successor in interest
14 of record including a contract purchaser, within
15 thirty days of service of the notice pursuant to
16 section 655A.3, files with the recorder of the county
17 where the mortgaged property is located, a rejection
18 of the notice reasonably identifying the notice which
19 is rejected together with proofs of service required
20 under section 655A.4 that the rejection has been
21 served on the mortgagee, the notice served upon the
22 mortgagor pursuant to section 655A.3 is of no force or
23 effect."
24 11. Page 6, line 28, by striking the figure
25 "655A.6" and inserting the following: "655A.7".
26 12. Page 7, line 5, by striking the figure
27 "655A.7" and inserting the following: "655A.8".
28 13. Page 7, line 7, by striking the word and
29 figure "655A.6 and" and inserting the following:
30 "655A.7 and if no rejection of notice has been filed
31 pursuant to section 655A.6, then".
32 14. Page 7, line 14, by striking the figure
33 "655A.8" and inserting the following: "655A.9".
34 15. Renumber as necessary.

S-3775
Filed April 23, 1987 BY RAY TAYLOR
Adopted as amended by 3813 4/30/87 (p. 1615) DONALD V. DOYLE
RICHARD VARN

SENATE 44
April 27, 1987

HOUSE FILE 599

S-3813

1 Amend the amendment, S-3775, to House File 599 as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 2, by inserting after line 3 the fol-
5 lowing:
6 "___. Page 6, by inserting after line 13 the
7 following:
8 "The notice shall contain the following in capital
9 letters of the same type or print size as the rest of
10 the notice:
11 WITHIN THIRTY DAYS AFTER YOUR RECEIPT OF THIS
12 NOTICE, YOU MUST EITHER CURE THE DEFAULTS DESCRIBED IN
13 THIS NOTICE OR FILE WITH THE RECORDER OF THE COUNTY
14 WHERE THE MORTGAGED PROPERTY IS LOCATED A REJECTION OF
15 THIS NOTICE AND SERVE A COPY OF YOUR REJECTION ON THE
16 MORTGAGEE IN THE MANNER PROVIDED BY THE RULES OF CIVIL
17 PROCEDURE FOR SERVICE OF ORIGINAL NOTICES. IF YOU
18 WISH TO REJECT THIS NOTICE, YOU SHOULD CONSULT AN
19 ATTORNEY AS TO THE PROPER MANNER TO MAKE THE
20 REJECTION.
21 IF YOU DO NOT TAKE EITHER OF THE ACTIONS DESCRIBED
22 ABOVE WITHIN THE THIRTY-DAY PERIOD, THE FORECLOSURE
23 WILL BE COMPLETE AND YOU WILL LOSE TITLE TO THE
24 MORTGAGED PROPERTY. AFTER THE FORECLOSURE IS COMPLETE
25 THE DEBT SECURED BY THE MORTGAGED PROPERTY WILL BE
26 EXTINGUISHED."

S-3813
Filed April 24, 1987
Adopted 4/30/87 (J. 1615)

BY RICHARD VARN
DONALD V. DOYLE
RAY TAYLOR

HOUSE FILE 599

S-3891

1 Amend the amendment, S-3719, to House File 599, as
2 amended, passed, and reprinted by the House, as
3 follows:
4 1. Page 1, by striking lines 10 through 14, and
5 inserting the following: "entitled to redeem.""
6 2. Page 1, line 20, by inserting after the word
7 "possession" the following: "of agricultural land as
8 defined in section 172C.1".
9 3. By striking page 1, line 42 through page 2,
10 line 2, and inserting the following:
11 "If the designated homestead is ~~not~~ sold
12 ~~separately, but rather is sold in conjunction with the~~
13 ~~nonhomestead property~~ at a foreclosure sale in order
14 to satisfy the judgment, the court shall determine the
15 fair market value of the designated homestead. The
16 court may consult with the county appraisers appointed
17 pursuant to section 450.24, or with one or more
18 independent appraisers, to determine the fair market
19 value of the designated homestead. ~~The mortgagor may~~
20 ~~redeem the homestead separately by tendering the fair~~
21 ~~market value of the homestead pursuant to chapter 628.~~
22 Sec. 103. Section 654.16, Code 1987, is amended by
23 adding the following new unnumbered paragraphs:
24 NEW UNNUMBERED PARAGRAPH. The mortgagor may redeem
25 the designated homestead by tendering the fair market
26 value of the designated homestead at any time within
27 two years from the date of the foreclosure sale,
28 pursuant to the procedures set forth in chapter 628.
29 However, this paragraph shall not apply to a member
30 institution purchasing a designated homestead.
31 NEW UNNUMBERED PARAGRAPH. The mortgagor may redeem
32 the designated homestead from a member institution
33 purchasing the designated homestead by tendering the
34 fair market value of the designated homestead within
35 one year from the date of the foreclosure sale,
36 pursuant to the procedures set forth in chapter 628.
37 NEW UNNUMBERED PARAGRAPH. If the member
38 institution purchasing the designated homestead at a
39 foreclosure sale is not a state bank as defined in
40 section 524.103, the following shall apply:
41 1. At the time of acquisition of the designated
42 homestead by the institution, the institution shall
43 notify the mortgagor of the mortgagor's right of first
44 refusal. A copy of subsections 1 through 5 and titled
45 "Notice of Right of First Refusal" is sufficient
46 notice.
47 2. If within one year after a sheriff's deed is
48 issued to the institution, the institution proposes to
49 sell or otherwise dispose of the designated homestead,
50 in a transaction other than a public auction, the

1 institution shall first offer the mortgagor the
2 opportunity to repurchase the designated homestead on
3 the same terms the institution proposes to sell or
4 dispose of the designated homestead. If the
5 institution seeks to sell or otherwise dispose of the
6 designated homestead by public auction within one year
7 after a sheriff's deed is issued to the institution,
8 the mortgagor must be given sixty days' notice of all
9 of the following:
10 a. The date, time, place, and procedures of the
11 auction sale.
12 b. Any minimum terms or limitations imposed upon
13 the auction.
14 3. The institution is not required to offer the
15 mortgagor financing for the purchase of the homestead.
16 4. The mortgagor has ten business days after being
17 given notice of the terms of the proposed sale or
18 disposition, other than a public auction, in which to
19 exercise the right to repurchase the homestead by
20 submitting a binding offer to the institution on the
21 same terms as the proposed sale or other disposition,
22 with closing to occur within thirty days after the
23 offer unless otherwise agreed by the institution.
24 After the expiration of either the period for offers
25 or the period for closing, without submission of an
26 offer or a closing occurring, the institution may sell
27 or otherwise dispose of the designated homestead to
28 any other person on the terms upon which it was
29 offered to the mortgagor.
30 5. Notice of the mortgagor's right of first
31 refusal, a proposed sale, auction, or other
32 disposition, or the submission of a binding offer by
33 the mortgagor, is considered given on the date the
34 notice or offer is personally served on the other
35 party or on the date the notice or offer is mailed to
36 the other party's last known address by registered or
37 certified mail, return receipt requested. The right
38 of first refusal provided in this section is not
39 assignable, but may be exercised by the mortgagor's
40 successor in interest, receiver, personal represen-
41 tative, executor, or heir only in case of bankruptcy,
42 receivership, or death of the mortgagor.
43 NEW UNNUMBERED PARAGRAPH. As used in this section,
44 "member institution" means any lending institution or
45 an affiliate of such institution that is a member of
46 the federal deposit insurance corporation, the federal
47 savings and loan insurance corporation, or the
48 national credit union administration.""
49 4. Page 2, line 12, by striking the word and
50 figure "section 102" and inserting the following:

1 "sections 102 and 103".
2 5. Page 2, line 17, by inserting after the word
3 "mortgagee" the following: "who has not sold or
4 otherwise disposed of the agricultural land and".
5 6. Page 2, line 30, by inserting after the word
6 "homestead," the following: "providing for a right of
7 repurchase,".

HOUSE FILE 599

S-3917

Amend the amendment, S-3719, to House File 599, as amended, passed, and reprinted by the House, as follows:

1. Page 1, by striking lines 10 through 14, and inserting the following: "entitled to redeem.""

2. Page 1, line 20, by inserting after the word "possession" the following: "of agricultural land as defined in section 172C.1".

3. By striking page 1, line 42 through page 2, line 2, and inserting the following:

"If the designated homestead is not sold ~~separately, but rather is sold in conjunction with the nonhomestead property~~ at a foreclosure sale in order to satisfy the judgment, the court shall determine the fair market value of the designated homestead. 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 homestead separately by tendering the fair market value of the homestead pursuant to chapter 628.~~

Sec. 103. Section 654.16, Code 1987, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. The mortgagor may redeem the designated homestead by tendering the fair market value, as determined pursuant to this section, of the designated homestead at any time within two years from the date of the foreclosure sale, pursuant to the procedures set forth in chapter 628. However, this paragraph shall not apply to a member institution which has purchased a designated homestead at a foreclosure sale.

NEW UNNUMBERED PARAGRAPH. The mortgagor may redeem the designated homestead from a member institution, which has purchased the designated homestead at a foreclosure sale, by tendering the fair market value of the designated homestead within one year from the date of the foreclosure sale, pursuant to the procedures set forth in chapter 628.

NEW UNNUMBERED PARAGRAPH. If the member institution which has purchased the designated homestead at a foreclosure sale is not a state bank as defined in section 524.103, the following shall apply:

1. At the time the sheriff's deed is issued, the institution shall notify the mortgagor of the mortgagor's right of first refusal. A copy of this unnumbered paragraph and subsections 1 through 5 and titled "Notice of Right of First Refusal" is sufficient notice.

2. If within one year after a sheriff's deed is

1 issued to the institution, the institution proposes to
2 sell or otherwise dispose of the designated homestead,
3 in a transaction other than a public auction, the
4 institution shall first offer the mortgagor the
5 opportunity to repurchase the designated homestead on
6 the same terms the institution proposes to sell or
7 dispose of the designated homestead. If the
8 institution seeks to sell or otherwise dispose of the
9 designated homestead by public auction within one year
10 after a sheriff's deed is issued to the institution,
11 the mortgagor must be given sixty days' notice of all
12 of the following:
13 a. The date, time, place, and procedures of the
14 auction sale.
15 b. Any minimum terms or limitations imposed upon
16 the auction.
17 3. The institution is not required to offer the
18 mortgagor financing for the purchase of the homestead.
19 4. The mortgagor has ten business days after being
20 given notice of the terms of the proposed sale or
21 disposition, other than a public auction, in which to
22 exercise the right to repurchase the homestead by
23 submitting a binding offer to the institution on the
24 same terms as the proposed sale or other disposition,
25 with closing to occur within thirty days after the
26 offer unless otherwise agreed by the institution.
27 After the expiration of either the period for offer or
28 the period for closing, without submission of an offer
29 or a closing occurring, the institution may sell or
30 otherwise dispose of the designated homestead to any
31 other person on the terms upon which it was offered to
32 the mortgagor.
33 5. Notice of the mortgagor's right of first
34 refusal, a proposed sale, auction, or other
35 disposition, or the submission of a binding offer by
36 the mortgagor, is considered given on the date the
37 notice or offer is personally served on the other
38 party or on the date the notice or offer is mailed to
39 the other party's last known address by registered or
40 certified mail, return receipt requested. The right
41 of first refusal provided in this section is not
42 assignable, but may be exercised by the mortgagor's
43 successor in interest, receiver, personal represen-
44 tative, executor, or heir only in case of bankruptcy,
45 receivership, or death of the mortgagor.
46 NEW UNNUMBERED PARAGRAPH. As used in this section,
47 "member institution" means any lending institution
48 that is a member of the federal deposit insurance
49 corporation, the federal savings and loan insurance
50 corporation, the national credit union administration,

1 or an affiliate of such institution.""
2 4. Page 2, line 12, by striking the word and
3 figure "section 102" and inserting the following:
4 "sections 102 and 103".
5 5. Page 2, line 17, by inserting after the word
6 "mortgagee" the following: "who has not sold or
7 otherwise disposed of the agricultural land and".
8 6. Page 2, line 30, by inserting after the word
9 "homestead," the following: "providing for certain
10 redemption rights, providing for a right of
11 repurchase,".

S-3917
Filed April 30, 1987 BY JAMES R. RIORDAN
ADOPTED (g. 1615)

SENATE AMENDMENT TO HOUSE FILE 599

H-4103

1 Amend House File 599, as amended, passed, and re-
2 printed by the House, as follows:
3 1. Page 1, by inserting before line 1 the
4 following:
5 "Sec. 100. Section 628.4, Code 1987, is amended to
6 read as follows:
7 628.4 REDEMPTION PROHIBITED.
8 A party who has ~~taken an appeal from the district~~
9 ~~court, or~~ stayed execution on the judgment, is not
10 entitled to redeem."
11 2. Page 1, by inserting after line 12 the
12 following:
13 "Sec. 101. Section 654.14, Code 1987, is amended
14 by adding the following new unnumbered paragraph:
15 NEW UNNUMBERED PARAGRAPH. If the owner or person
16 in actual possession of agricultural land as defined
17 in section 172C.1 is not afforded a right of first
18 refusal in leasing the mortgaged premises by the
19 receiver, the owner or person in actual possession has
20 a cause of action against the receiver to recover
21 either actual damages or a one thousand dollar
22 penalty, and costs, including reasonable attorney's
23 fees. The receiver shall deliver notice to the owner
24 or person in actual possession, or the attorney of the
25 owner or person in actual possession of an offer made
26 to the receiver, the terms of the offer, and the name
27 and address of the person making the offer. The
28 delivery shall be made personally with receipt
29 returned or by certified or registered mail, with the
30 proper postage on the envelope, addressed to the owner
31 or person in actual possession or the attorney of the
32 owner or person in actual possession. An offer shall
33 be deemed to have been refused if the owner or person
34 in actual possession or the attorney of the owner or
35 person in actual possession does not respond within
36 ten days following the date that the notice is mailed.
37 Sec. 102. Section 654.16, unnumbered paragraph 2,
38 Code 1987, is amended to read as follows:
39 If the designated homestead is not sold ~~separately,~~
40 ~~but rather is sold in conjunction with the~~
41 ~~nonhomestead property~~ at a foreclosure sale in order
42 to satisfy the judgment, the court shall determine the
43 fair market value of the designated homestead. The
44 court may consult with the county appraisers appointed
45 pursuant to section 450.24, or with one or more
46 independent appraisers, to determine the fair market
47 value of the designated homestead. ~~The mortgagor may~~
48 ~~redeem the homestead separately by tendering the fair~~
49 ~~market value of the homestead pursuant to chapter 628.~~
50 Sec. 103. Section 654.16, Code 1987, is amended by

1 adding the following new unnumbered paragraphs:
2 NEW UNNUMBERED PARAGRAPH. The mortgagor may redeem
3 the designated homestead by tendering the fair market
4 value, as determined pursuant to this section, of the
5 designated homestead at any time within two years from
6 the date of the foreclosure sale, pursuant to the
7 procedures set forth in chapter 628. However, this
8 paragraph shall not apply to a member institution
9 which has purchased a designated homestead at a
10 foreclosure sale.
11 NEW UNNUMBERED PARAGRAPH. The mortgagor may redeem
12 the designated homestead from a member institution,
13 which has purchased the designated homestead at a
14 foreclosure sale, by tendering the fair market value
15 of the designated homestead within one year from the
16 date of the foreclosure sale, pursuant to the
17 procedures set forth in chapter 628.
18 NEW UNNUMBERED PARAGRAPH. If the member
19 institution which has purchased the designated
20 homestead at a foreclosure sale is not a state bank as
21 defined in section 524.103, the following shall apply:
22 1. At the time the sheriff's deed is issued, the
23 institution shall notify the mortgagor of the
24 mortgagor's right of first refusal. A copy of this
25 unnumbered paragraph and subsections 1 through 5 and
26 titled "Notice of Right of First Refusal" is
27 sufficient notice.
28 2. If within one year after a sheriff's deed is
29 issued to the institution, the institution proposes to
30 sell or otherwise dispose of the designated homestead,
31 in a transaction other than a public auction, the
32 institution shall first offer the mortgagor the
33 opportunity to repurchase the designated homestead on
34 the same terms the institution proposes to sell or
35 dispose of the designated homestead. If the
36 institution seeks to sell or otherwise dispose of the
37 designated homestead by public auction within one year
38 after a sheriff's deed is issued to the institution,
39 the mortgagor must be given sixty days' notice of all
40 of the following:
41 a. The date, time, place, and procedures of the
42 auction sale.
43 b. Any minimum terms or limitations imposed upon
44 the auction.
45 3. The institution is not required to offer the
46 mortgagor financing for the purchase of the homestead.
47 4. The mortgagor has ten business days after being
48 given notice of the terms of the proposed sale or
49 disposition, other than a public auction, in which to
50 exercise the right to repurchase the homestead by

H-4103
Page Three

1 submitting a binding offer to the institution on the
2 same terms as the proposed sale or other disposition,
3 with closing to occur within thirty days after the
4 offer unless otherwise agreed by the institution.
5 After the expiration of either the period for offer or
6 the period for closing, without submission of an offer
7 or a closing occurring, the institution may sell or
8 otherwise dispose of the designated homestead to any
9 other person on the terms upon which it was offered to
10 the mortgagor.
11 5. Notice of the mortgagor's right of first
12 refusal, a proposed sale, auction, or other
13 disposition, or the submission of a binding offer by
14 the mortgagor, is considered given on the date the
15 notice or offer is personally served on the other
16 party or on the date the notice or offer is mailed to
17 the other party's last known address by registered or
18 certified mail, return receipt requested. The right
19 of first refusal provided in this section is not
20 assignable, but may be exercised by the mortgagor's
21 successor in interest, receiver, personal represen-
22 tative, executor, or heir only in case of bankruptcy,
23 receivership, or death of the mortgagor.
24 NEW UNNUMBERED PARAGRAPH. As used in this section,
25 "member institution" means any lending institution
26 that is a member of the federal deposit insurance
27 corporation, the federal savings and loan insurance
28 corporation, the national credit union administration,
29 or an affiliate of such institution."
30 3. Page 2, line 33, by inserting after the word
31 "filing." the following: "At any time prior to
32 judgment, the mortgagor may pay the plaintiff the
33 amount claimed in the petition and, if paid, the
34 foreclosure action shall be dismissed. At any time
35 after judgment and before the sale, the mortgagor may
36 pay the plaintiff the amount of the judgment and, if
37 paid, the judgment shall be satisfied of record and
38 the sale shall not be held."
39 4. Page 3, line 7, by inserting after the word
40 "purchaser." the following: "If the mortgagor at the
41 sale bids an amount equal to the judgment, the
42 property shall be sold to the mortgagor even though
43 other persons may bid an amount which is more than the
44 judgment. If the mortgagor purchases at the sale, the
45 liens of junior lienholders shall not be extinguished.
46 If a person other than the mortgagor purchases at the
47 sale, the liens of junior lienholders are
48 extinguished."
49 5. Page 4, line 15, by inserting after the word
50 "action" the words "or procedure".

H-4103
Page Four

6. Page 4, by striking lines 18 through 21 and inserting the following:

"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."

7. Page 5, by inserting after line 19 the following:

"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."

8. Page 5, by striking lines 21 through 23 and inserting the following:

"A mortgage or deed of trust shall not contain the notice under section 654.2D."

9. Page 6, line 13, by inserting after the word "default" the following: "or files with the recorder of the county where the mortgaged property is located a rejection of the notice pursuant to section 655A.6 and serves a copy of the rejection upon the mortgagee".

10. Page 6, by inserting after line 13 the following:

"The notice shall contain the following in capital letters of the same type or print size as the rest of the notice:

WITHIN THIRTY DAYS AFTER YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER CURE THE DEFAULTS DESCRIBED IN THIS NOTICE OR FILE WITH THE RECORDER OF THE COUNTY WHERE THE MORTGAGED PROPERTY IS LOCATED A REJECTION OF THIS NOTICE AND SERVE A COPY OF YOUR REJECTION ON THE MORTGAGEE IN THE MANNER PROVIDED BY THE RULES OF CIVIL PROCEDURE FOR SERVICE OF ORIGINAL NOTICES. IF YOU WISH TO REJECT THIS NOTICE, YOU SHOULD CONSULT AN ATTORNEY AS TO THE PROPER MANNER TO MAKE THE REJECTION.

IF YOU DO NOT TAKE EITHER OF THE ACTIONS DESCRIBED ABOVE WITHIN THE THIRTY-DAY PERIOD, THE FORECLOSURE WILL BE COMPLETE AND YOU WILL LOSE TITLE TO THE MORTGAGED PROPERTY. AFTER THE FORECLOSURE IS COMPLETE THE DEBT SECURED BY THE MORTGAGED PROPERTY WILL BE

H-4103
Page Five

1 EXTINGUISHED."
2 11. Page 6, line 21, by inserting after the word
3 "Notice" the following: "or rejection of notice".
4 12. Page 6, line 22, by inserting after the word
5 "procedure" the following: "for service of original
6 notice".
7 13. Page 6, by inserting after line 27 the
8 following:
9 "Sec. ___. NEW SECTION. 655A.6 REJECTION OF
10 NOTICE.
11 If either the mortgagor, or successor in interest
12 of record including a contract purchaser, within
13 thirty days of service of the notice pursuant to
14 section 655A.3, files with the recorder of the county
15 where the mortgaged property is located, a rejection
16 of the notice reasonably identifying the notice which
17 is rejected together with proofs of service required
18 under section 655A.4 that the rejection has been
19 served on the mortgagee, the notice served upon the
20 mortgagor pursuant to section 655A.3 is of no force or
21 effect."
22 14. Page 6, line 28, by striking the figure
23 "655A.6" and inserting the following: "655A.7".
24 15. Page 7, line 5, by striking the figure
25 "655A.7" and inserting the following: "655A.8".
26 16. Page 7, line 7, by striking the word and
27 figure "655A.6 and" and inserting the following:
28 "655A.7 and if no rejection of notice has been filed
29 pursuant to section 655A.6, then".
30 17. Page 7, line 14, by striking the figure
31 "655A.8" and inserting the following: "655A.9".
32 18. Page 7, by inserting after line 16 the
33 following:
34 "Sec. 200. Section 100 of this Act applies to all
35 general and special execution sales held on, after, or
36 within one year before the effective date of this Act.
37 Sec. 201. Section 101 of this Act applies to all
38 leases executed by receivers on or after the effective
39 date of this Act.
40 Sec. 202. Section 654.16, Code 1987, as amended by
41 sections 102 and 103 of this Act, applies to all
42 foreclosure sales of agricultural land held on or
43 after the effective date of this Act, and to
44 foreclosure sales of agricultural land held within one
45 year before the effective date of this Act if the
46 holder of the sheriff's certificate of sale is a
47 mortgagee who has not sold or otherwise disposed of
48 the agricultural land and whose mortgage was enforced
49 by the foreclosure sale.
50 Sec. 203. This Act, being deemed of immediate

H-4103
Page Six

1 importance, takes effect on the tenth day after its
2 enactment."
3 19. Title page, line 1, by inserting after the
4 word "by" the following: "removing certain
5 restrictions on redemption in certain cases,".
6 20. Title page, line 3, by striking the words
7 "redemption, and" and inserting the following:
8 "redemption, providing a cause of action against the
9 receiver in certain cases, permitting the use of
10 independent appraisers to determine the value of the
11 homestead, providing for certain redemption rights,
12 providing for a right of repurchase,".
13 21. Title page, line 5, by inserting after the
14 word "judgments" the following: ", providing dates of
15 applicability, and providing an effective date".
16 22. By renumbering, relettering, or redesignating
17 and correcting internal references as necessary.

H-4103 FILED APRIL 30, 1987 RECEIVED FROM THE SENATE
House concurred 5/9/87 (p. 2279)

NSB 171

Judiciary & Law Enforcement

HF 599

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON JUDICIARY AND LAW ENFORCEMENT BILL)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to mortgage foreclosures by establishing an
2 alternative mortgage foreclosure proceeding with final
3 judicial sale and rights in lieu of redemption, and
4 establishing nonjudicial foreclosure proceedings upon waiver
5 of deficiency judgments.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
7
8
9
10
11
12
13
14
15
16 SUB COMMITTEE ASSIGNMENTS
17 CHAIR: Chapman
18 COMMITTEE: Judiciary
19 2/24/87
20
21
22
23

TLSB 2006HF 72
mj/jw/5

Section 1. Section 654.5, Code 1987, is amended to read as follows:

654.5 JUDGMENT -- SALE AND REDEMPTION.

When a mortgage or deed of trust is foreclosed, the court shall render judgment for the entire amount found to be due, and must direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the ~~same~~ judgment, with interest and costs. A special execution shall issue accordingly, and the sale ~~thereunder shall be~~ 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.

Sec. 2. NEW SECTION. 654.20 FORECLOSURE WITHOUT REDEMPTION.

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 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 SIX MONTHS 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.

1 If the election is made, then sections 654.21 through
2 654.25 apply.
3 Sec. 3. NEW SECTION. 654.21 DEMAND FOR DELAY OF SALE.
4 At any time prior to entry of judgment, the mortgagor may
5 file a demand for delay of sale. If the demand is filed, the
6 sale shall be held promptly after the expiration of two months
7 from entry of judgment. However, if the demand is filed and
8 the mortgaged property is the residence of the debtor and is a
9 one-family or two-family dwelling, the sale shall be held
10 promptly after the expiration of six months from entry of
11 judgment.
12 Sec. 4. NEW SECTION. 654.22 NO DEMAND FOR DELAY OF SALE.
13 If the mortgagor does not file a demand for delay of sale,
14 the sale shall be held promptly after entry of judgment.
15 Sec. 5. NEW SECTION. 654.23 NO REDEMPTION RIGHTS AFTER
16 SALE.
17 The mortgagor has no right to redeem after sale. Junior
18 lienholders have no right to redeem after sale. The mortgagor
19 or a junior lienholder may purchase at the sale and, if so,
20 acquire the same title as would any other purchaser.
21 However, the mortgagor or junior lienholder may perform the
22 breached terms specified in the petition for foreclosure
23 without redemption prior to sale. The performance of the
24 breached terms shall terminate the right to foreclose for the
25 breach.
26 Sec. 6. NEW SECTION. 654.24 DEED AND POSSESSION.
27 The purchaser at the sale is entitled to an immediate deed
28 and immediate possession.
29 Sec. 7. NEW SECTION. 654.25 APPLICATION OF OTHER
30 STATUTES.
31 If the plaintiff has elected foreclosure without
32 redemption, chapter 628 does not apply. A provision in a
33 mortgage permitted by section 628.26 or 628.27 shall not be
34 construed as an agreement by the mortgagor not to elect
35 foreclosure without redemption. The election may be made in

1 any petition filed on or after the effective date of this Act.
2 The election for foreclosure without redemption is not a
3 waiver of the plaintiff's rights under section 654.6.
4 Sec. 8. NEW SECTION. 628.1A APPLICATION OF THIS CHAPTER.
5 This chapter does not apply in an action to foreclosure a
6 real estate mortgage if the plaintiff has elected foreclosure
7 without redemption under section 654.20.
8 Sec. 9. NEW SECTION. 655A.1 TITLE.
9 This chapter shall be known as the "Nonjudicial Foreclosure
10 of Nonagricultural Mortgages".
11 Sec. 10. NEW SECTION. 655A.2 CONDITIONS PRESCRIBED.
12 Except as provided in section 655A.8, a mortgage may be
13 foreclosed, at the option of the mortgagee, as provided in
14 this chapter.
15 Sec. 11. NEW SECTION. 655A.3 NOTICE.
16 1. The nonjudicial foreclosure is initiated by the mort-
17 gagee by serving on the mortgagor a written notice which
18 shall:
19 a. Reasonably identify the mortgage and accurately de-
20 scribe the real estate covered.
21 b. Specify the terms of the mortgage with which the mort-
22 gagor has not complied. The terms shall not include any obli-
23 gation arising from acceleration of the indebtedness secured
24 by the mortgage.
25 c. State that, unless within thirty days after the com-
26 pleted service of the notice the mortgagor performs the terms
27 in default, the mortgage will be foreclosed.
28 2. The mortgagee shall also serve a copy of the notice re-
29 quired in subsection 1 on the person in possession of the real
30 estate, if different than the mortgagor, and on all junior
31 lienholders of record.
32 3. As used in this chapter, "mortgagee" and "mortgagor"
33 include a successor in interest.
34 Sec. 12. NEW SECTION. 655A.4 SERVICE.
35 The notice may be served personally or by publication, on

1 the same conditions and in the same manner as is provided for
2 the service of original notice, except that when the notice is
3 served by publication, no affidavit is required before publi-
4 cation. Service by publication is deemed complete on the day
5 of the last publication.
6 Sec. 13. NEW SECTION. 655A.5 COMPLIANCE WITH NOTICE.
7 If the mortgagor or a junior lienholder performs, within
8 thirty days of completed service of notice, the breached terms
9 specified in the notice, then the right to foreclose for the
10 breach is terminated.
11 Sec. 14. NEW SECTION. 655A.6 PROOF AND RECORD OF
12 SERVICE.
13 If the terms and conditions as to which there is default
14 are not performed within the thirty days, the party serving
15 the notice or causing it to be served may file for record in
16 the office of the county recorder a copy of the notice with
17 proofs of service attached or endorsed on it and, in case of
18 service by publication, a personal affidavit that personal
19 service could not be made within this state, and when those
20 documents are filed and recorded, the record is constructive
21 notice to all parties of the due foreclosure of the mortgage.
22 Sec. 15. NEW SECTION. 655A.7 EFFECT OF FORECLOSURE.
23 Upon completion of the filings required under section
24 655A.6 and without further act or deed:
25 1. The mortgagee acquires and succeeds to all interest of
26 the mortgagor in the real estate.
27 2. All liens which are inferior to the lien of the
28 foreclosed mortgage are extinguished.
29 3. The indebtedness secured by the foreclosed mortgage is
30 extinguished.
31 Sec. 16. NEW SECTION. 655A.8 APPLICATION OF CHAPTER.
32 This chapter does not apply to real estate used for an
33 agricultural purpose as defined in section 535.13.
34 EXPLANATION
35 Sections 1 through 8 of this bill establish an alternative

17

mortgage foreclosure proceeding without redemption. The mortgagee may elect to foreclose without redemption. If an election is made, the mortgagor has no rights to redeem but may demand that the sale be delayed for six months for one-or two-family dwellings which are the residence of the mortgagor and for two months for other types of property. The mortgagor may purchase at the delayed judicial sale. At any time before sale, the mortgagor may pay the judgment and remove the property from the foreclosure proceedings. Junior creditors may purchase at the judicial sale. The bill does not apply to agricultural property. Under the bill, the judicial sale may be delayed for the benefit of the mortgagor and junior lienholders but at the time of the judicial sale the purchaser acquires immediate title and possession.

Sections 9 through 17 of this bill establish a new chapter 655A for nonjudicial foreclosure of mortgages. If the mortgagee elects to use this procedure, then no deficiency judgment may be obtained against the mortgagor. After service of the notice of foreclosure, the mortgagor has thirty days within which to make payment of the past due installments specified in the notice. If the default is not cured, then the mortgagee acquires title to the property. Notice and opportunity to cure is also given to any junior lienholders. If the junior lienholder does not cure by paying the installments past due, then the lien of the junior lienholder is extinguished.

HOUSE FILE 599

AN ACT

RELATING TO MORTGAGE FORECLOSURES BY REMOVING CERTAIN RESTRICTIONS ON REDEMPTION IN CERTAIN CASES, ESTABLISHING AN ALTERNATIVE MORTGAGE FORECLOSURE PROCEEDING WITH FINAL JUDICIAL SALE AND RIGHTS IN LIEU OF REDEMPTION, PROVIDING A CAUSE OF ACTION AGAINST THE RECEIVER IN CERTAIN CASES, PERMITTING THE USE OF INDEPENDENT APPRAISERS TO DETERMINE THE VALUE OF THE HOMESTEAD, PROVIDING FOR CERTAIN REDEMPTION RIGHTS, PROVIDING FOR A RIGHT OF REPURCHASE, ESTABLISHING NONJUDICIAL FORECLOSURE PROCEEDINGS UPON WAIVER OF DEFICIENCY JUDGMENTS, PROVIDING DATES OF APPLICABILITY, AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 628.4, Code 1987, is amended to read as follows:

628.4 REDEMPTION PROHIBITED.

A party who has ~~taken an appeal from the district court or~~ stayed execution on the judgment, is not entitled to redeem.

Sec. 2. Section 654.5, Code 1987, is amended to read as follows:

654.5 JUDGMENT -- SALE AND REDEMPTION.

When a mortgage or deed of trust is foreclosed, the court shall render judgment for the entire amount found to be due, and must direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the ~~same~~ judgment, with interest and costs. A special execution shall issue accordingly, and the sale ~~thereunder shall be~~ 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.

Sec. 3. Section 654.14, Code 1987, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. If the owner or person in actual possession of agricultural land as defined in section 172C.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.

Sec. 4. Section 654.16, unnumbered paragraph 2, Code 1987, is amended to read as follows:

If the designated homestead is ~~not sold separately, but rather is sold in conjunction with the nonhomestead property~~ at a foreclosure sale in order to satisfy the judgment, the court shall determine the fair market value of the designated homestead. 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 homestead separately by tendering the fair market value of the homestead pursuant to chapter 628.~~

H. F. 599

Sec. 5. Section 654.16, Code 1987, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. The mortgagor may redeem the designated homestead by tendering the fair market value, as determined pursuant to this section, of the designated homestead at any time within two years from the date of the foreclosure sale, pursuant to the procedures set forth in chapter 628. However, this paragraph shall not apply to a member institution which has purchased a designated homestead at a foreclosure sale.

NEW UNNUMBERED PARAGRAPH. The mortgagor may redeem the designated homestead from a member institution, which has purchased the designated homestead at a foreclosure sale, by tendering the fair market value of the designated homestead within one year from the date of the foreclosure sale, pursuant to the procedures set forth in chapter 628.

NEW UNNUMBERED PARAGRAPH. If the member institution which has purchased the designated homestead at a foreclosure sale is not a state bank as defined in section 524.103, the following shall apply:

1. At the time the sheriff's deed is issued, the institution shall notify the mortgagor of the mortgagor's right of first refusal. A copy of this unnumbered paragraph and subsections 1 through 5 and titled "Notice of Right of First Refusal" is sufficient notice.

2. If within one year after a sheriff's deed is issued to the institution, the institution proposes to sell or otherwise dispose of the designated homestead, in a transaction other than a public auction, the institution shall first offer the mortgagor the opportunity to repurchase the designated homestead on the same terms the institution proposes to sell or dispose of the designated homestead. If the institution seeks to sell or otherwise dispose of the designated homestead by public auction within one year after a sheriff's deed is issued to the institution, 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 institution is not required to offer the mortgagor financing for the purchase of the homestead.

4. The mortgagor has ten business days after being given notice of the terms of the proposed sale or disposition, other than a public auction, in which to exercise the right to repurchase the homestead by submitting a binding offer to the institution 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 institution. After the expiration of either the period for offer or the period for closing, without submission of an offer or a closing occurring, the institution may sell or otherwise dispose of the designated homestead 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 the notice or offer is personally served on the other party or on the date the 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.

NEW UNNUMBERED PARAGRAPH. As used in this section, "member institution" means any lending institution that is a member of the federal deposit insurance corporation, the federal savings and loan insurance corporation, the national credit union administration, or an affiliate of such institution.

Sec. 6. NEW SECTION. 654.20 FORECLOSURE WITHOUT REDEMPTION.

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.

House File 599, p. 5

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.

Sec. 7. NEW SECTION. 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.

Sec. 8. NEW SECTION. 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.

Sec. 9. NEW SECTION. 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.

Sec. 10. NEW SECTION. 654.24 DEED AND POSSESSION.

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

Sec. 11. NEW SECTION. 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 the effective date of this Act. 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.

Sec. 12. NEW SECTION. 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.

Sec. 13. Section 654.2B, Code 1987, is amended to read as follows:

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 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 that the creditor is entitled to proceed with initiating a foreclosure action or procedure.

Sec. 14. NEW SECTION. 654.27 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.

Sec. 15. NEW SECTION. 654.28 RIGHTS RESERVED.

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

Sec. 16. NEW SECTION. 628.1A APPLICATION OF THIS CHAPTER.

This chapter does not apply in an action to foreclose a real estate mortgage if the plaintiff has elected foreclosure without redemption under section 654.20.

Sec. 17. NEW SECTION. 655A.1 TITLE.

This chapter shall be known as the "Nonjudicial Foreclosure of Nonagricultural Mortgages".

Sec. 18. NEW SECTION. 655A.2 CONDITIONS PRESCRIBED.

Except as provided in section 655A.9, a mortgage may be foreclosed, at the option of the mortgagee, as provided in this chapter.

Sec. 19. NEW SECTION. 655A.3 NOTICE.

1. The nonjudicial foreclosure is initiated by the mortgagee by serving on the mortgagor a written notice which shall:

a. Reasonably identify the mortgage and accurately describe the real estate covered.

b. Specify the terms of the mortgage with which the mortgagor has not complied. The terms shall not include any obligation arising from acceleration of the indebtedness secured by the mortgage.

c. State that, unless within thirty days after the completed service of the notice the mortgagor performs the terms in default or files with the recorder of the county where the mortgaged property is located a rejection of the notice pursuant to section 655A.6 and serves a copy of the rejection upon the mortgagee, the mortgage will be foreclosed.

The notice shall contain the following in capital letters of the same type or print size as the rest of the notice:

WITHIN THIRTY DAYS AFTER YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER CURE THE DEFAULTS DESCRIBED IN THIS NOTICE OR FILE WITH THE RECORDER OF THE COUNTY WHERE THE MORTGAGED PROPERTY IS LOCATED A REJECTION OF THIS NOTICE AND SERVE A COPY OF YOUR REJECTION ON THE MORTGAGEE IN THE MANNER PROVIDED BY THE RULES OF CIVIL PROCEDURE FOR SERVICE OF ORIGINAL NOTICES. IF YOU WISH TO REJECT THIS NOTICE, YOU SHOULD CONSULT AN ATTORNEY AS TO THE PROPER MANNER TO MAKE THE REJECTION.

IF YOU DO NOT TAKE EITHER OF THE ACTIONS DESCRIBED ABOVE WITHIN THE THIRTY-DAY PERIOD, THE FORECLOSURE WILL BE COMPLETE AND YOU WILL LOSE TITLE TO THE MORTGAGED PROPERTY. AFTER THE FORECLOSURE IS COMPLETE THE DEBT SECURED BY THE MORTGAGED PROPERTY WILL BE EXTINGUISHED.

2. The mortgagee shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the mortgagor, and on all junior lienholders of record.

3. As used in this chapter, "mortgagee" and "mortgagor" include a successor in interest.

Sec. 20. NEW SECTION. 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.

Sec. 21. NEW SECTION. 655A.5 COMPLIANCE WITH NOTICE.

If the mortgagor or a junior lienholder performs, within thirty days of completed service of notice, the breached terms specified in the notice, then the right to foreclose for the breach is terminated.

Sec. 22. NEW SECTION. 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 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. 23. NEW SECTION. 655A.7 PROOF AND RECORD OF SERVICE.

If the terms and conditions as to which there is default are not performed within the thirty days, the party serving the notice or causing it to be served shall file for record in

the office of the county recorder a copy of the notice with proofs of service required under section 655A.4 attached or endorsed on it and, in case of service by publication, a personal affidavit that personal service could not be made within this state, and when those documents are filed and recorded, the record is constructive notice to all parties of the due foreclosure of the mortgage.

Sec. 24. NEW SECTION. 655A.8 EFFECT OF FORECLOSURE.

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.

Sec. 25. NEW SECTION. 655A.9 APPLICATION OF CHAPTER.

This chapter does not apply to real estate used for an agricultural purpose as defined in section 535.13.

Sec. 26. Section 1 of this Act applies to all general and special execution sales held on, after, or within one year before the effective date of this Act.

Sec. 27. Section 3 of this Act applies to all leases executed by receivers on or after the effective date of this Act.

Sec. 28. Section 654.15, Code 1987, as amended by sections 4 and 5 of this Act, applies to all foreclosure sales of agricultural land held on or after the effective date of this Act, and to foreclosure sales of agricultural land held within one year before the effective date of this Act if the holder of the sheriff's certificate of sale is a mortgagee who has not sold or otherwise disposed of the agricultural land and whose mortgage was enforced by the foreclosure sale.

Sec. 29. This Act, being deemed of immediate importance, takes effect on the tenth day after its enactment.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 599, Seventy-second General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved May 25, 1987

TERRY E. BRANSTAD
Governor

H. F. 599