

H- 3/6/96 Commerce
H- 3/22/96 Do Pass

FILED FEB 26 1996

SENATE FILE **2305**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2171)

Passed Senate, Date 3/5/96 (P. 610) Passed House, Date 4-9-96 (P. 1481)
Vote: Ayes 49 Nays 1 Vote: Ayes 95 Nays 1
Approved 4/18/96

A BILL FOR

1 An Act relating to purchase money mortgages and providing a
2 retroactive applicability provision.

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

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S.F. 2305

1 Section 1. Section 654.12B, Code Supplement 1995, is
2 amended to read as follows:

3 654.12B PRIORITY OF RECORDED PURCHASE MONEY MORTGAGE LIEN.

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

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

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

22 ~~The~~ If more than one purchase money mortgage exists, the
23 first mortgage to be recorded has priority. In order to be
24 entitled to the rights provided by this section, the mortgage
25 ~~shall~~ must contain a recital that it is a purchase money
26 mortgage ~~in order to provide notice to third parties of its~~
27 ~~priority. If there is more than one purchase money mortgage,~~
28 ~~a prior recorded mortgage has priority unless "the prior~~
29 ~~recorded mortgage" or "a mortgage recorded earlier" provides~~
30 ~~otherwise.~~ However, failure to include the recital in the
31 mortgage shall not prevent a mortgage otherwise qualifying as
32 a purchase money mortgage from being a purchase money mortgage
33 for purposes other than this section. The rights in this
34 section are in addition to, and the obligations are not in
35 derogation of, all rights provided by common law.

1 Sec. 2. RETROACTIVE APPLICABILITY. This Act applies
2 retroactively to purchase money mortgages taken or retained on
3 or after July 1, 1995.

4 EXPLANATION

5 This bill provides rights, in addition to those found at
6 common law, for holders of purchase money mortgages. The bill
7 provides that where more than one purchase money mortgage
8 against a purchaser exists, the first to be recorded has
9 priority. The bill also provides that the protection afforded
10 through purchase money mortgages is limited to the purchase
11 amount and related costs. In addition, the bill provides that
12 the failure to provide notice that a mortgage is a purchase
13 money mortgage does not prevent the mortgage from being a
14 purchase money mortgage if it otherwise meets the requirements
15 for a purchase money mortgage.

16 The bill is retroactively applicable to purchase money
17 mortgages taken or retained on or after July 1, 1995.

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Newhauser
Giannetto
Vilsack
Redfern
Drake

SSB 2171
Judiciary

Succeeded By

(SF) HF 2305

SENATE FILE
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON GIANNETTO)

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

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7 interest, or lien arising either directly or indirectly by,
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15 purchaser to acquire rights in the real estate, including all
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17 fact so used. Except when it is a refinancing of an existing
18 purchase money mortgage between the same lender and purchaser
19 and no new funds are advanced, a mortgage given to secure
20 funds which are used to pay off another mortgage is not a
21 purchase money mortgage.

22 ~~The~~ If more than one purchase money mortgage exists, the
23 first mortgage to be recorded has priority. In order to be
24 entitled to the rights provided by this section, the mortgage
25 shall ~~must~~ contain a recital that it is a purchase money
26 mortgage in-order-to-provide-notice-to-third-parties-of-its
27 priority. If-there-is-more-than-one-purchase-money-mortgage,
28 a-prior-recorded-mortgage-has-priority-unless-"the-prior
29 recorded-mortgage"-or-"a-mortgage-recorded-earlier"-provides
30 otherwise. However, failure to include the recital in the
31 mortgage shall not prevent a mortgage otherwise qualifying as
32 a purchase money mortgage from being a purchase money mortgage
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34 section are in addition to, and the obligations are not in
35 derogation of, all rights provided by common law.

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2 retroactively to purchase money mortgages taken or retained on
3 or after July 1, 1995.

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6 common law, for holders of purchase money mortgages. The bill
7 provides that where more than one purchase money mortgage
8 against a purchaser exists, the first to be recorded has
9 priority. The bill also provides that the protection afforded
10 through purchase money mortgages is limited to the purchase
11 amount and related costs. In addition, the bill provides that
12 the failure to provide notice that a mortgage is a purchase
13 money mortgages does not prevent the mortgage from being a
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SENATE FILE 2305

AN ACT

RELATING TO PURCHASE MONEY MORTGAGES AND PROVIDING A
RETROACTIVE APPLICABILITY PROVISION.

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

Section 1. Section 654.12B, Code Supplement 1995, is amended to read as follows:

654.12B PRIORITY OF RECORDED PURCHASE MONEY MORTGAGE LIEN.

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

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

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

~~The~~ If more than one purchase money mortgage exists, the first mortgage to be recorded has priority. In order to be entitled to the rights provided by this section, the mortgage shall must contain a recital that it is a purchase money mortgage in order to provide notice to third parties of its priority. If there is more than one purchase money mortgage,

~~a-prior-recorded-mortgage-has-priority-unless-"the-prior recorded-mortgage"-or-"a-mortgage-recorded-earlier"-provides otherwise. However, failure to include the recital in the mortgage shall not prevent a mortgage otherwise qualifying as a purchase money mortgage from being a purchase money mortgage for purposes other than this section. The rights in this section are in addition to, and the obligations are not in derogation of, all rights provided by common law.~~

Sec. 2. RETROACTIVE APPLICABILITY. This Act applies retroactively to purchase money mortgages taken or retained on or after July 1, 1995.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2305, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved 4/18, 1996

TERRY E. BRANSTAD
Governor

SF 2305