

MAR 30 2006
WAYS & MEANS CALENDAR

HOUSE FILE 2786
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 2737)

(SUCCESSOR TO HSB 761)

Passed House, Date 4-6-06 Passed Senate, Date 4/26/06
Vote: Ayes 98 Nays 1 Vote: Ayes 48 Nays 0
Approved 5/24/06

A BILL FOR

1 An Act relating to civil actions and the foreclosure of real
2 estate mortgages, and providing fees.

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

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HF 2786

TLSB 5463HZ 81

rh/je/5

1 Section 1. Section 602.8102, subsection 113, Code
2 Supplement 2005, is amended to read as follows:

3 113. When a judgment of foreclosure is entered, ~~file with~~
4 ~~the recorder an instrument acknowledging the foreclosure and~~
5 ~~the date of decree and upon payment of the judgment,~~ file an
6 instrument with the recorder acknowledging the satisfaction as
7 provided in sections 655.4 and 655.5.

8 Sec. 2. Section 615.1, Code 2005, is amended to read as
9 follows:

10 615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.

11 ~~From and after January 1, 1934, no~~ A judgment in an action
12 for the foreclosure of a real estate mortgage, deed of trust,
13 or real estate contract upon property which at the time of
14 judgment is either used for an agricultural purpose as defined
15 in section 535.13 or a one-family or two-family dwelling which
16 is the residence of the mortgagor, or in any action on a claim
17 for rent or judgment assigned by a receiver of a closed bank
18 or rendered upon credits assigned by the receiver of a closed
19 bank when the assignee is not a trustee for depositors or
20 creditors of the bank, the reconstruction finance corporation
21 or any other federal governmental agency to which the bank or
22 the receiver is or may be indebted shall not be enforced and
23 no execution shall be issued ~~thereon and no force or vitality~~
24 ~~given thereto~~ for any purpose other than as a setoff or
25 counterclaim after the expiration of a period of two years,
26 exclusive of any time during which execution on the judgment
27 was stayed pending a bankruptcy action, from the entry
28 thereof. As used in this section, "mortgagor" means a
29 mortgagor or a borrower executing a deed of trust as provided
30 in chapter 654 or a vendee of a real estate contract.

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

33 615.2 REVIVAL OF CERTAIN JUDGMENTS PROHIBITED.

34 ~~After January 1, 1934, no~~ An action or proceedings shall
35 not be brought in any court of this state for the purpose of

1 renewing or extending such judgment ~~or prolonging the life~~
2 thereof. Provided, however, that nothing herein shall prevent
3 the continuance of such judgment in force for a longer period
4 by the voluntary written stipulation of the parties judgment
5 creditor and the equitable titleholders, filed in ~~said cause~~
6 the action or proceedings.

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

9 NEW SUBSECTION. 7. If a case file has been sealed by the
10 court, or if by law the court records in a case are not
11 available to the general public, any judgments entered in the
12 case shall not become a lien on real property until the
13 identity of the judgment creditor and the amount of the
14 judgment, as well as any payments made on the judgment, become
15 public record.

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

18 626.78 NOTICE TO DEFENDANT.

19 If the debtor is in actual occupation and possession of any
20 part of the land levied on, the officer having the execution
21 shall, at least twenty days previous to such sale, serve the
22 debtor with written notice, stating that the execution is
23 levied on said land, and mentioning the time and place of
24 sale, which notice shall be served in the manner provided by
25 rule of civil procedure 1.305(1). However, upon the filing of
26 an affidavit that the debtor is intentionally evading service
27 of process or otherwise cannot be served despite repeated
28 attempts, the notice may be served by placing the notice in a
29 plain opaque envelope, addressed to the defendant and marked
30 personal and confidential, and by affixing the envelope to a
31 main entrance of the premises subject to sale.

32 Sec. 6. Section 626.80, unnumbered paragraph 2, Code 2005,
33 is amended to read as follows:

34 The sheriff shall receive and give a receipt for a sealed
35 written bid submitted prior to the public auction. The

1 sheriff may require all sealed written bids to be accompanied
2 by payment of any fees required to be paid at the public
3 auction by the purchaser, to be returned if the person
4 submitting the sealed written bid is not the purchaser. The
5 sheriff shall keep all written bids sealed until the
6 commencement of the public auction, at which time the sheriff
7 shall open and announce the written bids as though made in
8 person. A junior creditor who has appeared in the foreclosure
9 may submit a written bid, which shall include a facsimile
10 number or electronic mail address where the junior creditor
11 can be notified of the results of the sale. However, if upon
12 being notified of the results of the sale, the junior creditor
13 does not pay the bid in certified funds within forty-eight
14 hours in the manner in which the sheriff directs in the
15 notice, the junior creditor's bid shall be deemed cancelled
16 and the sheriff shall certify the next highest bidder as the
17 successful bidder of the sale.

18 Sec. 7. Section 654.2B, Code 2005, is amended to read as
19 follows:

20 654.2B REQUIREMENTS OF NOTICE OF RIGHT TO CURE.

21 The notice of right to cure shall be in writing and shall
22 conspicuously state the name, address, and telephone number of
23 the creditor or other person to which payment is to be made, a
24 brief identification of the obligation secured by the deed of
25 trust or mortgage and of the borrower's right to cure the
26 default, a statement of the nature of the right to cure the
27 default, a statement of the nature of the alleged default, a
28 statement of the total payment, including an itemization of
29 any delinquency or deferral charges, or other performance
30 necessary to cure the alleged default, and the exact date by
31 which the amount must be paid or performance tendered and a
32 statement that if the borrower does not cure the alleged
33 default the creditor or a person acting on behalf of the
34 creditor is entitled to proceed with initiating a foreclosure
35 action or procedure. The A mortgagor who has been

1 substantially prejudiced by the failure of the a mortgagee to
2 provide notice of right to cure to-comply-with-one-or-more
3 which substantially complies with the provisions of this
4 section is-not-a-defense-or-claim-in-any-action-pursuant-to
5 this-chapter-and-does-not-invalidate-any-procedure-pursuant-to
6 chapter-655A,unless-the-person-asserting-the-defense,claim,
7 or-invalidity-proves-that-the-person-was-substantially
8 prejudiced-by-such-failure may, by motion filed prior to the
9 answer, request an additional thirty days in which to cure any
10 outstanding defaults on the mortgage, other than costs
11 incurred by the mortgagee as a part of the foreclosure. If
12 the motion is granted, the court shall provide that upon
13 timely cure, the foreclosure shall be dismissed without
14 prejudice and costs shall be assessed against the mortgagee.
15 Failure of the mortgagee to provide proper notice of the right
16 to cure pursuant to chapter 655A shall be included in the
17 service and filing of a rejection notice pursuant to section
18 655A.6.

19 Sec. 8. NEW SECTION. 654.4A FUNDS RECEIVED DURING
20 FORECLOSURE.

21 Unless a mortgagor attaches conditions to a payment made
22 during foreclosure, the mortgagee shall apply any payments
23 received during the foreclosure as provided in the mortgage
24 loan agreement. Application of such payments shall not
25 extinguish the mortgagee's right to continue the foreclosure
26 in regard to any unpaid amounts.

27 Sec. 9. NEW SECTION. 654.9A RELEASE OF PRIOR LIENS BY
28 BOND.

29 At any time prior to the court's decree, the plaintiff, or
30 a person guaranteeing title of the plaintiff's mortgage, may
31 post a bond with sureties to be approved by the clerk and
32 apply to the court to release the claim against the property
33 of any person claiming a lien superior to that of the
34 plaintiff in the property subject to foreclosure. The bond
35 shall be in an amount not less than twice the amount of the

1 claim, and notice of the bond and the court's order of release
2 shall be served on the claimant. Unless the claimant has
3 appeared in the foreclosure action, the service shall be by
4 personal service. Unless the claimant files an action on the
5 bond within twelve months from service of the notice, the
6 claimant shall be barred from any further remedy. In a
7 successful action on the bond, the court may award the
8 claimant reasonable attorney fees.

9 Sec. 10. NEW SECTION. 654.15A NOTICE OF SALE TO JUNIOR
10 CREDITORS.

11 A junior creditor may file and serve on the judgment
12 creditor a request for notice of the sheriff's sale. Such
13 notice shall include a facsimile number or electronic mail
14 address where the creditor shall be notified of the sale. At
15 least ten days prior to the date of sale, the attorney for the
16 judgment creditor shall file proof of service of such notice.
17 Upon motion filed within thirty days of the sale, the court
18 may set aside a sale in which a junior creditor who requests
19 notice is damaged by the failure of the sheriff or the
20 judgment creditor to give notice pursuant to this section.

21 Sec. 11. NEW SECTION. 654.15B RIGHT TO INTERVENE --
22 NOTICE.

23 A lender may serve a nontitleholding claimant in a
24 foreclosure action with notice in substantially the following
25 form advising the claimant that the property that is the
26 subject of the foreclosure action shall be foreclosed and
27 describing the claimant's interest in the action and that
28 unless such claimant intervenes in the foreclosure action such
29 claimant shall lose the claimant's interest in the mortgaged
30 property. Unless the claimant intervenes within thirty days
31 of the service of notice, the court may adjudicate the
32 claimant's rights against the property as if the claimant had
33 been added as a defendant and default had been entered against
34 the defendant. The notice prescribed by this section is as
35 follows:

1 NOTICE OF PENDING FORECLOSURE

2 To: (Name of claimant)

3 Date: (Enter date)

4 Plaintiff has filed a foreclosure of mortgage against the
5 property of (titleholder) located at (street address of
6 property) which is legally described as (legal description).
7 This foreclosure was filed as (Plaintiff v. Defendant), Case #
8 (), in the Iowa District Court for () County. You have
9 an apparent interest in the property because (description of
10 claimant's interest). If you desire to protect this interest,
11 you have the right to intervene in the foreclosure action by
12 filing an intervention with the clerk of court in ()
13 County. Unless you intervene in the foreclosure the
14 foreclosure may eliminate any interest you have in the
15 property but will not otherwise affect your rights. If you
16 have any questions about this notice, contact your attorney.
17 Whether or not you intervene, the foreclosure may have certain
18 tax consequences to you about which you should consult your
19 tax advisor.

20 _____

21 Name, address, and telephone number of attorney representing
22 plaintiff.

23 Sec. 12. NEW SECTION. 654.17 RECISION OF FORECLOSURE.

24 At any time prior to the recording of the sheriff's deed,
25 the judgment creditor or a successful bidder at a sheriff's
26 sale may rescind the foreclosure action by filing a notice of
27 recision with the clerk of court in the county in which the
28 property is located along with a filing fee of fifty dollars.
29 In addition, such person shall pay a fee of twenty-five
30 dollars for documents filed in the foreclosure action. Upon
31 the filing of the notice of recision, the mortgage loan shall
32 be enforceable according to the original terms of the
33 foreclosure. However, any findings of fact or law in the
34 recision action shall be preclusive for purposes of any future
35 action unless the court, upon hearing, rules otherwise in the

1 recision action. The mortgagor shall be assessed costs,
2 including reasonable attorney fees, of foreclosure and
3 recision if provided by the mortgage agreement.

4 Sec. 13. NEW SECTION. 654.17A SALE FREE OF LIENS.

5 At any time during the pendency of the foreclosure, the
6 plaintiff, with the written consent of the equitable
7 titleholders, may apply to the court for an order authorizing
8 a commercially reasonable sale of the property free of the
9 claims of the parties to the action and other persons served
10 with notice pursuant to section 654.15B. The court may grant
11 the motion unless a party in interest objects in writing
12 during such time as the court may prescribe. A person filing
13 an objection with a claim junior to the plaintiff shall either
14 apply for assignment of senior claims pursuant to section
15 654.8 or otherwise provide adequate protection to senior
16 creditors. Pending resolution of the rights of the parties
17 and persons served with notice pursuant to section 654.15B,
18 the court shall place the net proceeds of the sale in escrow
19 after payment of reasonable closing costs. The rights of such
20 persons to the escrowed funds shall be determined in the same
21 manner as their rights to the property that was sold.

22 Sec. 14. 655A.3, Code 2005, is amended by adding the
23 following new subsection:

24 NEW SUBSECTION. 2A. The mortgagor may file a written
25 notice required in subsection 1 together with proof of service
26 on the mortgagee with the recorder of the county where the
27 mortgaged property is located. Such a filing shall have the
28 same force and effect on third parties as an indexed notation
29 entered by the clerk of the district court pursuant to section
30 617.10.

31 Sec. 15. Section 655.4, Code 2005, is repealed.

32 EXPLANATION

33 This bill relates to civil actions and the foreclosure of
34 real estate mortgages, and provides for certain fees.

35 The bill specifies that a mortgagee's two-year statute of

1 limitation period in which to commence a foreclosure action
2 after judgment shall be exclusive of any time during which
3 execution on the judgment was stayed pending a bankruptcy
4 action.

5 The bill specifies that an action shall not be brought to
6 renew or extend a judgment unless by a voluntary written
7 stipulation of a judgment creditor and the equitable
8 titleholders.

9 The bill provides that if a case file has been sealed by
10 the court, or if by law the court records in a case are not
11 available to the general public, any judgments entered in the
12 case shall not be a lien on real property until the identity
13 of the judgment creditor and the amount of the judgment, as
14 well as any payments made on the judgment, become public
15 record.

16 The bill provides for certain notice requirements for
17 persons intentionally evading service of process in a case in
18 which a debtor is in actual possession of land.

19 The bill provides that, in regard to the execution of
20 certain judgments, a junior creditor who has appeared in a
21 foreclosure action may submit a written bid that meets certain
22 requirements.

23 The bill provides that a mortgagor who has been
24 substantially prejudiced by a mortgagee's failure to provide
25 notice of a right to cure may, by motion, request additional
26 time in which to cure any outstanding defaults on the mortgage
27 and the court may dismiss the foreclosure without prejudice
28 and assess costs against the mortgagee.

29 The bill provides that unless a mortgagor attaches
30 conditions to a payment made during foreclosure, the mortgagee
31 shall apply any payments received during the foreclosure as
32 provided in the mortgage loan agreement and that such applied
33 payments shall not extinguish the mortgagee's right to
34 continue the foreclosure in regard to any unpaid amounts.

35 The bill provides that at any time prior to the court's

1 decree in a foreclosure action, the plaintiff, or a person
2 guaranteeing title of the plaintiff's mortgage may post a bond
3 not less than twice the amount of the claim with sureties to
4 be approved by the clerk of court and apply to the court to
5 release the claim against the property of any person claiming
6 a lien superior to that of the plaintiff in the property
7 subject to foreclosure. The bill provides that notice of the
8 bond and the court's order of release shall be served on the
9 claimant and unless the claimant has appeared in the
10 foreclosure action, the service shall be by personal service.
11 Unless the claimant files an action on the bond within 12
12 months from service of the notice, the claimant shall be
13 barred from any further remedy. In a successful action on the
14 bond, the court may award the claimant reasonable attorney
15 fees.

16 The bill provides that a junior creditor may file and serve
17 on the judgment creditor a request for notice of the sheriff's
18 sale prior to the date of sale and the attorney for the
19 judgment creditor shall file proof of service of such notice.
20 Upon motion, the court may set aside a sale in which a junior
21 creditor who requests notice is damaged by the failure to give
22 notice.

23 The bill provides that a lender may serve a nontitleholding
24 claimant in a foreclosure action with notice in substantially
25 the form prescribed in the bill advising the claimant that the
26 property that is the subject of the foreclosure action shall
27 be foreclosed, describing the claimant's interest in the
28 action and that unless such claimant intervenes in the
29 foreclosure action such claimant shall lose the claimant's
30 interest in the mortgaged property, and that the court may
31 adjudicate the claimant's rights against the property as if
32 the claimant had been added as a defendant and default had
33 been entered against the defendant.

34 The bill provides that at any time prior to the recording
35 of the sheriff's deed, a judgment creditor or a successful

1 bidder at a sheriff's sale may rescind the foreclosure action
2 by filing a notice of rescision with the clerk of court in the
3 county in which the property is located along with a filing
4 fee. In addition, such person shall pay a filing fee for
5 documents previously filed in the foreclosure action. Upon
6 the filing of the notice of rescision, the mortgage loan shall
7 be enforceable according to the original terms of the
8 foreclosure. However, any findings of fact or law in the
9 rescision action shall be preclusive for purposes of any future
10 action unless the court, upon hearing, rules otherwise in the
11 rescision action. The mortgagor shall be assessed costs,
12 including reasonable attorney fees, of foreclosure and
13 rescision if provided by the mortgage agreement.

14 The bill provides that at any time during the pendency of
15 the foreclosure, the plaintiff, with the written consent of
16 the equitable titleholders, may apply to the court for an
17 order authorizing a commercially reasonable sale of the
18 property free of the claims of the parties to the action and
19 other persons served with notice.

20 The bill provides that a mortgagor may file a written
21 notice together with proof of service on the mortgagee with
22 the recorder of the county where the mortgaged property is
23 located. Such a filing shall have the same force and effect
24 on third parties as an indexed notation entered by the clerk
25 of the district court pursuant to Code section 617.10.

26 The bill repeals Code section 655.4, relating to a clerk of
27 court's entry of judgment of foreclosure referring to the
28 mortgage and acknowledging that the mortgage was foreclosed
29 and giving the date of the decree.

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H-8509

1 Amend House File 2786 as follows:

2 1. Page 1, by striking lines 2 through 7 and
3 inserting the following: "Supplement 2005, is amended
4 by striking the subsection."

5 2. Page 1, by striking lines 17 through 22 and
6 inserting the following: "for rent ~~or judgment~~
7 ~~assigned by a receiver of a closed bank or rendered~~
8 ~~upon credits assigned by the receiver of a closed bank~~
9 ~~when the assignee is not a trustee for depositors or~~
10 ~~creditors of the bank, the reconstruction finance~~
11 ~~corporation or any other federal governmental agency~~
12 ~~to which the bank or the receiver is or may be~~
13 ~~indebted shall not be enforced and".~~

14 3. Page 2, line 3, by inserting after the word
15 "force" the following: "against the property subject
16 to foreclosure only".

17 4. Page 2, by striking lines 12 through 15 and
18 inserting the following: "case shall not become a
19 lien on real property until either the identity of the
20 judgment creditor becomes public record, or until the
21 judgment creditor, in a public document in the case in
22 which judgment is entered, designates an agent and
23 office, consistent with the requirements of section
24 490.501, on which process on the judgment creditor may
25 be served. Service may be made on the agent in the
26 same manner as service may be made on a corporate
27 agent pursuant to section 490.504. An agent who has
28 resigned without designating a successor agent and
29 office and who is otherwise unavailable for service
30 may be served in the manner provided in section
31 490.504, subsection 2, at the agent's office of
32 record."

33 5. Page 2, line 27, by inserting after the word
34 "repeated" the following: "and diligent".

35 6. Page 3, by striking lines 8 through 17 and
36 inserting the following: "person. A party who has
37 appeared in the foreclosure may submit a written bid,
38 which shall include a facsimile number or electronic
39 mail address where the party can be notified of the
40 results of the sale. If a party submitting a winning
41 written bid does not pay the amount of the bid in
42 certified funds in the manner in which the sheriff in
43 the notice directs, such bid shall be deemed canceled
44 and the sheriff shall certify the next highest bidder
45 as the successful bidder of the sale either within
46 twenty-four hours for an electronic funds transfer or
47 forty-eight hours otherwise, of notification of the
48 sale results. A sheriff may refuse to accept written
49 bids from a bidder other than the judgment creditor if
50 the bidder or the bidder's agent in the action has

H-8509

1 demonstrated a pattern of nonpayment on previously
2 accepted bids."

3 7. By striking page 3, line 18, through page 4,
4 line 26.

5 8. Page 4, line 27, by striking the word "PRIOR"
6 and inserting the following: "SUPERIOR".

7 9. Page 5, line 8, by inserting after the word
8 "fees." the following: "A guarantor filing such a
9 bond shall be subrogated to any defenses which the
10 plaintiff may have against the adverse claimant,
11 including but not limited to a defense of lack of
12 equity in the mortgaged property to secure the adverse
13 claim in its proper priority."

14 10. Page 5, line 23, by striking the words
15 "nontitleholding claimant" and inserting the
16 following: "judgment creditor".

17 11. Page 5, by striking lines 25 through 32 and
18 inserting the following: "form advising the creditor
19 that the property that is the subject of the
20 foreclosure action shall be foreclosed and describing
21 the creditor's interest in the action and that unless
22 such creditor intervenes in the foreclosure action
23 such creditor shall lose the creditor's interest in
24 the mortgaged property. Unless the creditor
25 intervenes within thirty days of the service of
26 notice, the court may adjudicate the creditor's rights
27 against the property as if the creditor had".

28 12. Page 5, line 34, by inserting after the word
29 "defendant." the following: "If a creditor cannot be
30 located for personal service, the plaintiff may, at
31 any time prior to sixty days before the date of trial,
32 amend the petition as a matter of right to add the
33 creditor as a defendant for service by publication as
34 provided by rule."

35 13. Page 6, line 2, by striking the word
36 "claimant" and inserting the following: "creditor".

37 14. Page 6, line 10, by striking the word
38 "claimant's" and inserting the following:
39 "creditor's".

40 15. Page 6, by striking line 25 and inserting the
41 following: "and before the mortgagee's rights become
42 unenforceable by operation of the statute of
43 limitations, the judgment creditor, or the judgment
44 creditor who is the successful bidder at the
45 sheriff's".

46 16. Page 6, line 30, by inserting after the word
47 "action" the following: "which the plaintiff requests
48 returned".

49 17. By striking page 6, line 33, through page 7,
50 line 1, and inserting the following: "foreclosure and

1 the rights of all persons with an interest in the
2 property may be enforced as if the foreclosure had not
3 been filed. However, any findings of fact or law
4 shall be preclusive for purposes of any future action
5 unless the court, upon hearing, rules otherwise. The
6 mortgagor shall be assessed costs,".

7 18. Page 7, by striking lines 6 and 7 and
8 inserting the following: "plaintiff may apply to the
9 court for an order approving an offer for".

10 19. Page 7, line 10, by inserting after the
11 figure "654.15B." the following: "A copy of the offer
12 shall be attached to the application and the
13 application shall contain a written consent to the
14 proposed sale by all equitable titleholders who have
15 not abandoned the property."

16 20. Page 7, by striking lines 15 and 16 and
17 inserting the following: "654.8, otherwise provide
18 adequate protection to senior creditors, or establish
19 that a sheriff's sale is substantially more likely
20 than the proposed sale to provide the creditor with
21 more favorable satisfaction of its lien. Pending
22 resolution of the rights of the parties".

23 21. Page 7, by inserting after line 21 the
24 following:

25 "Sec. _____. Section 655.5, Code 2005, is amended by
26 striking the section and inserting in lieu thereof the
27 following:

28 655.5 INSTRUMENT OF SATISFACTION.

29 When the judgment is paid in full, the mortgagee
30 shall file with the clerk a satisfaction of judgment
31 which shall release the mortgage underlying the
32 action. A mortgagee who fails to file a satisfaction
33 within thirty days of receiving a written request
34 shall be subject to a penalty of one hundred dollars
35 plus reasonable attorney fees incurred by the
36 aggrieved party, to be recovered in an action for the
37 satisfaction or acknowledged by the party aggrieved."

38 22. Page 7, by striking line 30 and inserting the
39 following: "617.10 and shall commence on the filing
40 of proof of service on the mortgagors and terminate on
41 the filing of a rejection pursuant to section 655A.6,
42 an affidavit of completion pursuant to section 655A.7,
43 or the expiration of ninety days from completion of
44 service on the mortgagors, whichever occurs first.

45 Sec. _____. Section 655A.9, Code 2005, is amended to
46 read as follows:

47 655A.9 APPLICATION OF CHAPTER.

48 This chapter does not apply to real estate used for
49 an agricultural purpose as defined in section 535.13,
50 or to a one or two family dwelling occupied by an

H-8509

Page 4

1 equitable titleholder."

2 23. Page 7, by inserting after line 31 the
3 following:

4 "Sec. ____ . APPLICABILITY.

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

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

10 24. Title page, line 2, by inserting after the
11 word "fees" the following: "and applicability
12 provisions".

By SWAIM of Davis
KAUFMANN of Cedar

H-8509 FILED APRIL 6, 2006

ADOPTED

HOUSE FILE 2786

H-8512

1 Amend the amendment, H-8509, to House File 2786 as
2 follows:

3 1. Page 3, line 50, by inserting after the word
4 "dwelling" the following: "which is, at the time of
5 the initiation of the foreclosure,".

6 2. Page 4, by inserting after line 1 the
7 following:

8 "____. Page 7, line 24, by striking the word
9 "mortgagor" and inserting the following: "mortgagee".

10 ____ . Page 7, line 26, by striking the word
11 "mortgagee" and inserting the following:
12 "mortgagor"."

13 3. By renumbering as necessary.

By SWAIM of Davis
KAUFMANN of Cedar

H-8512 FILED APRIL 6, 2006

ADOPTED

HOUSE FILE 2786

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 2737)

(SUCCESSOR TO HSB 761)

(As Amended and Passed by the House April 6, 2006)

Re-Passed House, Date 5-1-06 Passed Senate, Date 4-26-06
Vote: Ayes 95 Nays 0 Vote: Ayes 48 Nays 0
Approved _____

A BILL FOR

1 An Act relating to civil actions and the foreclosure of real
2 estate mortgages, and providing fees and applicability
3 provisions.

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

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6 Deleted Language *
7 House Amendments _____
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HF 2786

rh/es/25

1 Section 1. Section 602.8102, subsection 113, Code
2 Supplement 2005, is amended by striking the subsection.

3 Sec. 2. Section 615.1, Code 2005, is amended to read as
4 follows:

5 615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.

6 ~~From-and-after-January-17-19347-no~~ A judgment in an action
7 for the foreclosure of a real estate mortgage, deed of trust,
8 or real estate contract upon property which at the time of
9 judgment is either used for an agricultural purpose as defined
10 in section 535.13 or a one-family or two-family dwelling which
11 is the residence of the mortgagor, or in any action on a claim
12 for rent or judgment assigned by a receiver of a closed bank
13 or rendered upon credits assigned by the receiver of a closed
14 bank when the assignee is not a trustee for depositors or
15 creditors of the bank, the reconstruction finance corporation
16 or any other federal governmental agency to which the bank or
17 the receiver is or may be indebted shall not be enforced and
18 no execution shall be issued thereon and no force or vitality
19 given thereto for any purpose other than as a setoff or
20 counterclaim after the expiration of a period of two years,
21 exclusive of any time during which execution on the judgment
22 was stayed pending a bankruptcy action, from the entry
23 thereof. As used in this section, "mortgagor" means a
24 mortgagor or a borrower executing a deed of trust as provided
25 in chapter 654 or a vendee of a real estate contract.

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

28 615.2 REVIVAL OF CERTAIN JUDGMENTS PROHIBITED.

29 ~~After-January-17-19347-no~~ An action or proceedings shall
30 not be brought in any court of this state for the purpose of
31 renewing or extending such judgment ~~or prolonging the life~~
32 thereof. Provided, however, that nothing herein shall prevent
33 the continuance of such judgment in force against the property
34 subject to foreclosure only for a longer period by the
35 voluntary written stipulation of the parties judgment creditor

1 and the equitable titleholders, filed in said-cause the action
2 or proceedings.

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

5 NEW SUBSECTION. 7. If a case file has been sealed by the
6 court, or if by law the court records in a case are not
7 available to the general public, any judgments entered in the
8 case shall not become a lien on real property until either the
9 identity of the judgment creditor becomes public record, or
10 until the judgment creditor, in a public document in the case
11 in which judgment is entered, designates an agent and office,
12 consistent with the requirements of section 490.501, on which
13 process on the judgment creditor may be served. Service may
14 be made on the agent in the same manner as service may be made
15 on a corporate agent pursuant to section 490.504. An agent
16 who has resigned without designating a successor agent and
17 office and who is otherwise unavailable for service may be
18 served in the manner provided in section 490.504, subsection
19 2, at the agent's office of record.

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

22 626.78 NOTICE TO DEFENDANT.

23 If the debtor is in actual occupation and possession of any
24 part of the land levied on, the officer having the execution
25 shall, at least twenty days previous to such sale, serve the
26 debtor with written notice, stating that the execution is
27 levied on said land, and mentioning the time and place of
28 sale, which notice shall be served in the manner provided by
29 rule of civil procedure 1.305(1). However, upon the filing of
30 an affidavit that the debtor is intentionally evading service
31 of process or otherwise cannot be served despite repeated and
32 diligent attempts, the notice may be served by placing the
33 notice in a plain opaque envelope, addressed to the defendant
34 and marked personal and confidential, and by affixing the
35 envelope to a main entrance of the premises subject to sale.

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

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

* 26 Sec. 7. NEW SECTION. 654.9A RELEASE OF SUPERIOR LIENS BY
27 BOND.

28 At any time prior to the court's decree, the plaintiff, or
29 a person guaranteeing title of the plaintiff's mortgage, may
30 post a bond with sureties to be approved by the clerk and
31 apply to the court to release the claim against the property
32 of any person claiming a lien superior to that of the
33 plaintiff in the property subject to foreclosure. The bond
34 shall be in an amount not less than twice the amount of the
35 claim, and notice of the bond and the court's order of release

1 shall be served on the claimant. Unless the claimant has
2 appeared in the foreclosure action, the service shall be by
3 personal service. Unless the claimant files an action on the
4 bond within twelve months from service of the notice, the
5 claimant shall be barred from any further remedy. In a
6 successful action on the bond, the court may award the
7 claimant reasonable attorney fees. A guarantor filing such a
8 bond shall be subrogated to any defenses which the plaintiff
9 may have against the adverse claimant, including but not
10 limited to a defense of lack of equity in the mortgaged
11 property to secure the adverse claim in its proper priority.

12 Sec. 8. NEW SECTION. 654.15A NOTICE OF SALE TO JUNIOR
13 CREDITORS.

14 A junior creditor may file and serve on the judgment
15 creditor a request for notice of the sheriff's sale. Such
16 notice shall include a facsimile number or electronic mail
17 address where the creditor shall be notified of the sale. At
18 least ten days prior to the date of sale, the attorney for the
19 judgment creditor shall file proof of service of such notice.
20 Upon motion filed within thirty days of the sale, the court
21 may set aside a sale in which a junior creditor who requests
22 notice is damaged by the failure of the sheriff or the
23 judgment creditor to give notice pursuant to this section.

24 Sec. 9. NEW SECTION. 654.15B RIGHT TO INTERVENE --
25 NOTICE.

26 A lender may serve a judgment creditor in a foreclosure
27 action with notice in substantially the following form
28 advising the creditor that the property that is the subject of
29 the foreclosure action shall be foreclosed and describing the
30 creditor's interest in the action and that unless such
31 creditor intervenes in the foreclosure action such creditor
32 shall lose the creditor's interest in the mortgaged property.
33 Unless the creditor intervenes within thirty days of the
34 service of notice, the court may adjudicate the creditor's
35 rights against the property as if the creditor had been added

1 as a defendant and default had been entered against the
2 defendant. If a creditor cannot be located for personal
3 service, the plaintiff may, at any time prior to sixty days
4 before the date of trial, amend the petition as a matter of
5 right to add the creditor as a defendant for service by
6 publication as provided by rule. The notice prescribed by
7 this section is as follows:

8 NOTICE OF PENDING FORECLOSURE

9 To: (Name of creditor)
10 Date: (Enter date)

11 Plaintiff has filed a foreclosure of mortgage against the
12 property of (titleholder) located at (street address of
13 property) which is legally described as (legal description).
14 This foreclosure was filed as (Plaintiff v. Defendant), Case #
15 (), in the Iowa District Court for () County. You have
16 an apparent interest in the property because (description of
17 creditor's interest). If you desire to protect this interest,
18 you have the right to intervene in the foreclosure action by
19 filing an intervention with the clerk of court in ()
20 County. Unless you intervene in the foreclosure the
21 foreclosure may eliminate any interest you have in the
22 property but will not otherwise affect your rights. If you
23 have any questions about this notice, contact your attorney.
24 Whether or not you intervene, the foreclosure may have certain
25 tax consequences to you about which you should consult your
26 tax advisor.

27 _____
28 Name, address, and telephone number of attorney representing
29 plaintiff.

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

31 At any time prior to the recording of the sheriff's deed,
32 and before the mortgagee's rights become unenforceable by
33 operation of the statute of limitations, the judgment
34 creditor, or the judgment creditor who is the successful
35 bidder at the sheriff's sale may rescind the foreclosure

1 action by filing a notice of rescision with the clerk of court
2 in the county in which the property is located along with a
3 filing fee of fifty dollars. In addition, such person shall
4 pay a fee of twenty-five dollars for documents filed in the
5 foreclosure action which the plaintiff requests returned.
6 Upon the filing of the notice of rescision, the mortgage loan
7 shall be enforceable according to the original terms of the
8 foreclosure and the rights of all persons with an interest in
9 the property may be enforced as if the foreclosure had not
10 been filed. However, any findings of fact or law shall be
11 preclusive for purposes of any future action unless the court,
12 upon hearing, rules otherwise. The mortgagor shall be
13 assessed costs, including reasonable attorney fees, of
14 foreclosure and rescision if provided by the mortgage
15 agreement.

16 Sec. 11. NEW SECTION. 654.17A SALE FREE OF LIENS.

17 At any time during the pendency of the foreclosure, the
18 plaintiff may apply to the court for an order approving an
19 offer for a commercially reasonable sale of the property free
20 of the claims of the parties to the action and other persons
21 served with notice pursuant to section 654.15B. A copy of the
22 offer shall be attached to the application and the application
23 shall contain a written consent to the proposed sale by all
24 equitable titleholders who have not abandoned the property.
25 The court may grant the motion unless a party in interest
26 objects in writing during such time as the court may
27 prescribe. A person filing an objection with a claim junior
28 to the plaintiff shall either apply for assignment of senior
29 claims pursuant to section 654.8, otherwise provide adequate
30 protection to senior creditors, or establish that a sheriff's
31 sale is substantially more likely than the proposed sale to
32 provide the creditor with more favorable satisfaction of its
33 lien. Pending resolution of the rights of the parties and
34 persons served with notice pursuant to section 654.15B, the
35 court shall place the net proceeds of the sale in escrow after

1 payment of reasonable closing costs. The rights of such
2 persons to the escrowed funds shall be determined in the same
3 manner as their rights to the property that was sold.

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

6 655.5 INSTRUMENT OF SATISFACTION.

7 When the judgment is paid in full, the mortgagee shall file
8 with the clerk a satisfaction of judgment which shall release
9 the mortgage underlying the action. A mortgagee who fails to
10 file a satisfaction within thirty days of receiving a written
11 request shall be subject to a penalty of one hundred dollars
12 plus reasonable attorney fees incurred by the aggrieved party,
13 to be recovered in an action for the satisfaction or
14 acknowledged by the party aggrieved.

15 Sec. 13. 655A.3, Code 2005, is amended by adding the
16 following new subsection:

17 NEW SUBSECTION. 2A. The mortgagee may file a written
18 notice required in subsection 1 together with proof of service
19 on the mortgagor with the recorder of the county where the
20 mortgaged property is located. Such a filing shall have the
21 same force and effect on third parties as an indexed notation
22 entered by the clerk of the district court pursuant to section
23 617.10 and shall commence on the filing of proof of service on
24 the mortgagors and terminate on the filing of a rejection
25 pursuant to section 655A.6, an affidavit of completion
26 pursuant to section 655A.7, or the expiration of ninety days
27 from completion of service on the mortgagors, whichever occurs
28 first.

29 Sec. 14. Section 655A.9, Code 2005, is amended to read as
30 follows:

31 655A.9 APPLICATION OF CHAPTER.

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

1 Sec. 15. Section 655.4, Code 2005, is repealed.

2 Sec. 16. APPLICABILITY.

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

5 2. The section of this Act enacting section 624.23,
6 subsection 7, applies to judgments entered on or after July 1,
7 2007.

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S-5232

- 1 Amend House File 2786, as amended, passed, and
2 reprinted by the House, as follows:
- 3 1. Page 1, by striking lines 17 through 19 and
4 inserting the following: "~~the receiver is or may be~~
5 ~~indebted~~ shall be enforced null and void, all liens
6 shall be extinguished, and no execution shall be
7 issued thereon and no force or vitality given thereto
8 for any purpose other than as a setoff or".
- 9 2. Page 2, line 34, by striking the word "and".
- 10 3. Page 2, line 35, by inserting after the word
11 "sale" the following: ", and by mailing a copy of the
12 notice to the debtor at the debtor's last known
13 address by ordinary mail".
- 14 4. Page 4, by striking line 19 and inserting the
15 following: "junior creditor shall file proof of
16 service of such request for notice."
- 17 5. Page 5, line 18, by inserting after the word
18 "action" the following: "within thirty days of the
19 service of notice".
- 20 6. Page 5, line 35, by inserting after the word
21 "sale" the following: ", with the written consent of
22 the mortgagor".
- 23 7. Page 7, line 11, by inserting after the word
24 "to" the following: "reasonable damages and".
- 25 8. By renumbering as necessary.

By KEITH A. KREIMAN
DAVID MILLER

S-5232 FILED APRIL 26, 2006
ADOPTED

**SENATE AMENDMENT TO
HOUSE FILE 2786**

H-8585

- 1 Amend House File 2786, as amended, passed, and
2 reprinted by the House, as follows:
- 3 1. Page 1, by striking lines 17 through 19 and
4 inserting the following: "~~the receiver is or may be~~
5 ~~indebted~~ shall be ~~enforced~~ null and void, all liens
6 shall be extinguished, and no execution shall be
7 issued thereon and no force or vitality given thereto
8 for any purpose other than as a setoff or".
- 9 2. Page 2, line 34, by striking the word "and".
- 10 3. Page 2, line 35, by inserting after the word
11 "sale" the following: ", and by mailing a copy of the
12 notice to the debtor at the debtor's last known
13 address by ordinary mail".
- 14 4. Page 4, by striking line 19 and inserting the
15 following: "junior creditor shall file proof of
16 service of such request for notice."
- 17 5. Page 5, line 18, by inserting after the word
18 "action" the following: "within thirty days of the
19 service of notice".
- 20 6. Page 5, line 35, by inserting after the word
21 "sale" the following: ", with the written consent of
22 the mortgagor".
- 23 7. Page 7, line 11, by inserting after the word
24 "to" the following: "reasonable damages and".
- 25 8. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-8585 FILED APRIL 27, 2006

Kaufmann-ch

Eichman

Swain

Succeeded By
SF 2786

HSB 761

JUDICIARY

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to civil actions and the foreclosure of real
2 estate mortgages, and providing fees.

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

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1 Section 1. Section 602.8102, subsection 113, Code
2 Supplement 2005, is amended to read as follows:

3 113. When a judgment of foreclosure is entered, file an
4 instrument with the recorder acknowledging the satisfaction as
5 provided in ~~sections-655.4-and~~ section 655.5.

6 Sec. 2. Section 615.1, Code 2005, is amended to read as
7 follows:

8 615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.

9 ~~From-and-after-January-17-19347-no~~ A judgment in an action
10 for the foreclosure of a real estate mortgage, deed of trust,
11 or real estate contract upon property which at the time of
12 judgment is either used for an agricultural purpose as defined
13 in section 535.13 or a one-family or two-family dwelling which
14 is the residence of the mortgagor, or in any action on a claim
15 for rent or judgment assigned by a receiver of a closed bank
16 or rendered upon credits assigned by the receiver of a closed
17 bank when the assignee is not a trustee for depositors or
18 creditors of the bank, the reconstruction finance corporation
19 or any other federal governmental agency to which the bank or
20 the receiver is or may be indebted shall not be enforced and
21 no execution shall be issued thereon-and-no-force-or-vitality
22 given-thereto for any purpose other than as a setoff or
23 counterclaim after the expiration of a period of two years,
24 exclusive of any time during which execution on the judgment
25 was stayed pending a bankruptcy action, from the entry
26 thereof. As used in this section, "mortgagor" means a
27 mortgagor or a borrower executing a deed of trust as provided
28 in chapter 654 or a vendee of a real estate contract.

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

31 615.2 REVIVAL OF CERTAIN JUDGMENTS PROHIBITED.

32 ~~After-January-17-19347-no~~ An action or proceedings shall
33 not be brought in any court of this state for the purpose of
34 renewing or extending such judgment ~~or-prolonging-the-life~~
35 thereof. Provided, however, that nothing herein shall prevent

1 the continuance of such judgment in force for a longer period
2 by the voluntary written stipulation of the parties judgment
3 creditor and the equitable titleholders, filed in said-cause
4 the action or proceedings.

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

7 NEW SUBSECTION. 7. If a case file has been sealed by the
8 court, or if by law the court records in a case are not
9 available to the general public, any judgments entered in the
10 case shall not become a lien on real property until the
11 identity of the judgment creditor and the amount of the
12 judgment, as well as any payments made on the judgment, become
13 public record.

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

16 626.78 NOTICE TO DEFENDANT.

17 If the debtor is in actual occupation and possession of any
18 part of the land levied on, the officer having the execution
19 shall, at least twenty days previous to such sale, serve the
20 debtor with written notice, stating that the execution is
21 levied on said land, and mentioning the time and place of
22 sale, which notice shall be served in the manner provided by
23 rule of civil procedure 1.305(1). However, upon the filing of
24 an affidavit that the debtor is intentionally evading service
25 of process or otherwise cannot be served despite repeated
26 attempts, the notice may be served by placing the notice in a
27 plain opaque envelope, addressed to the defendant and marked
28 personal and confidential, and by affixing the envelope to a
29 main entrance of the premises subject to sale.

30 Sec. 6. Section 626.80, unnumbered paragraph 2, Code 2005,
31 is amended to read as follows:

32 The sheriff shall receive and give a receipt for a sealed
33 written bid submitted prior to the public auction. The
34 sheriff may require all sealed written bids to be accompanied
35 by payment of any fees required to be paid at the public

1 auction by the purchaser, to be returned if the person
2 submitting the sealed written bid is not the purchaser. The
3 sheriff shall keep all written bids sealed until the
4 commencement of the public auction, at which time the sheriff
5 shall open and announce the written bids as though made in
6 person. A junior creditor who has appeared in the foreclosure
7 may submit a written bid, which shall include a facsimile
8 number or electronic mail address where the junior creditor
9 can be notified of the results of the sale. However, if upon
10 being notified of the results of the sale, the junior creditor
11 does not pay the bid in certified funds within forty-eight
12 hours in the manner in which the sheriff directs in the
13 notice, the junior creditor's bid shall be deemed cancelled
14 and the sheriff shall certify the next highest bidder as the
15 successful bidder of the sale.

16 Sec. 7. Section 654.2B, Code 2005, is amended to read as
17 follows:

18 654.2B REQUIREMENTS OF NOTICE OF RIGHT TO CURE.

19 The notice of right to cure shall be in writing and shall
20 conspicuously state the name, address, and telephone number of
21 the creditor or other person to which payment is to be made, a
22 brief identification of the obligation secured by the deed of
23 trust or mortgage and of the borrower's right to cure the
24 default, a statement of the nature of the right to cure the
25 default, a statement of the nature of the alleged default, a
26 statement of the total payment, including an itemization of
27 any delinquency or deferral charges, or other performance
28 necessary to cure the alleged default, and the exact date by
29 which the amount must be paid or performance tendered and a
30 statement that if the borrower does not cure the alleged
31 default the creditor or a person acting on behalf of the
32 creditor is entitled to proceed with initiating a foreclosure
33 action or procedure. The A mortgagor who has been
34 substantially prejudiced by the failure of the a mortgagee to
35 provide notice of right to cure to-comply-with-one-or-more

1 which substantially complies with the provisions of this
2 section is-not-a-defense-or-claim-in-any-action-pursuant-to
3 this-chapter-and-does-not-invalidate-any-procedure-pursuant-to
4 chapter-655A,unless-the-person-asserting-the-defense,claim,
5 or-invalidity-proves-that-the-person-was-substantially
6 prejudiced-by-such-failure may, by motion filed prior to the
7 answer, request an additional thirty days in which to cure any
8 outstanding defaults on the mortgage, other than costs
9 incurred by the mortgagee as a part of the foreclosure. If
10 the motion is granted, the court shall provide that upon
11 timely cure, the foreclosure shall be dismissed without
12 prejudice and costs shall be assessed against the mortgagee.
13 Failure of the mortgagee to provide proper notice of the right
14 to cure pursuant to chapter 655A shall be included in the
15 service and filing of a rejection notice pursuant to section
16 655A.6.

17 Sec. 8. NEW SECTION. 654.4A FUNDS RECEIVED DURING
18 FORECLOSURE.

19 Unless a mortgagor attaches conditions to a payment made
20 during foreclosure, the mortgagee shall apply any payments
21 received during the foreclosure as provided in the mortgage
22 loan agreement. Application of such payments shall not
23 extinguish the mortgagee's right to continue the foreclosure
24 in regard to any unpaid amounts.

25 Sec. 9. NEW SECTION. 654.9A RELEASE OF PRIOR LIENS BY
26 BOND.

27 At any time prior to the court's decree, the plaintiff, or
28 a person guaranteeing title of the plaintiff's mortgage, may
29 post a bond with sureties to be approved by the clerk and
30 apply to the court to release the claim against the property
31 of any person claiming a lien superior to that of the
32 plaintiff in the property subject to foreclosure. The bond
33 shall be in an amount not less than twice the amount of the
34 claim, and notice of the bond and the court's order of release
35 shall be served on the claimant. Unless the claimant has

1 appeared in the foreclosure action, the service shall be by
2 personal service. Unless the claimant files an action on the
3 bond within twelve months from service of the notice, the
4 claimant shall be barred from any further remedy. In a
5 successful action on the bond, the court may award the
6 claimant reasonable attorney fees.

7 Sec. 10. NEW SECTION. 654.15A NOTICE OF SALE TO JUNIOR
8 CREDITORS.

9 A junior creditor may file and serve on the judgment
10 creditor a request for notice of the sheriff's sale. Such
11 notice shall include a facsimile number or electronic mail
12 address where the creditor shall be notified of the sale. At
13 least ten days prior to the date of sale, the attorney for the
14 judgment creditor shall file proof of service of such notice.
15 Upon motion filed within thirty days of the sale, the court
16 may set aside a sale in which a junior creditor who requests
17 notice is damaged by the failure of the sheriff or the
18 judgment creditor to give notice pursuant to this section.

19 Sec. 11. NEW SECTION. 654.15B RIGHT TO INTERVENE --
20 NOTICE.

21 A lender may serve a nontitleholding claimant in a
22 foreclosure action with notice in substantially the following
23 form advising the claimant that the property that is the
24 subject of the foreclosure action shall be foreclosed and
25 describing the claimant's interest in the action and that
26 unless such claimant intervenes in the foreclosure action such
27 claimant shall lose the claimant's interest in the mortgaged
28 property. Unless the claimant intervenes within thirty days
29 of the service of notice, the court may adjudicate the
30 claimant's rights against the property as if the claimant had
31 been added as a defendant and default had been entered against
32 the defendant. The notice prescribed by this section is as
33 follows:

34 NOTICE OF PENDING FORECLOSURE
35 To: (Name of claimant)

1 Date: (Enter date)

2 Plaintiff has filed a foreclosure of mortgage against the
3 property of (titleholder) located at (street address of
4 property) which is legally described as (legal description).
5 This foreclosure was filed as (Plaintiff v. Defendant), Case #
6 (), in the Iowa District Court for () County. You have
7 an apparent interest in the property because (description of
8 claimant's interest). If you desire to protect this interest,
9 you have the right to intervene in the foreclosure action by
10 filing an intervention with the clerk of court in ()
11 County. Unless you intervene in the foreclosure the
12 foreclosure may eliminate any interest you have in the
13 property but will not otherwise affect your rights. If you
14 have any questions about this notice, contact your attorney.
15 Whether or not you intervene, the foreclosure may have certain
16 tax consequences to you about which you should consult your
17 tax advisor.

18 _____

19 Name, address, and telephone number of attorney representing
20 plaintiff.

21 Sec. 12. NEW SECTION. 654.17 RECISION OF FORECLOSURE.

22 At any time prior to the recording of the sheriff's deed,
23 the judgment creditor or a successful bidder at a sheriff's
24 sale may rescind the foreclosure action by filing a notice of
25 recision with the clerk of court in the county in which the
26 property is located along with a filing fee of fifty dollars.
27 In addition, such person shall pay a fee of twenty-five
28 dollars for documents filed in the foreclosure action. Upon
29 the filing of the notice of recision, the mortgage loan shall
30 be enforceable according to the original terms of the
31 foreclosure. However, any findings of fact or law in the
32 recision action shall be preclusive for purposes of any future
33 action unless the court, upon hearing, rules otherwise in the
34 recision action. The mortgagor shall be assessed costs,
35 including reasonable attorney fees, of foreclosure and

1 recision if provided by the mortgage agreement.

2 Sec. 13. NEW SECTION. 654.17A SALE FREE OF LIENS.

3 At any time during the pendency of the foreclosure, the
4 plaintiff, with the written consent of the equitable
5 titleholders, may apply to the court for an order authorizing
6 a commercially reasonable sale of the property free of the
7 claims of the parties to the action and other persons served
8 with notice pursuant to section 654.15B. The court may grant
9 the motion unless a party in interest objects in writing
10 during such time as the court may prescribe. A person filing
11 an objection with a claim junior to the plaintiff shall either
12 apply for assignment of senior claims pursuant to section
13 654.8 or otherwise provide adequate protection to senior
14 creditors. Pending resolution of the rights of the parties
15 and persons served with notice pursuant to section 654.15B,
16 the court shall place the net proceeds of the sale in escrow
17 after payment of reasonable closing costs. The rights of such
18 persons to the escrowed funds shall be determined in the same
19 manner as their rights to the property that was sold.

20 Sec. 14. 655A.3, Code 2005, is amended by adding the
21 following new subsection:

22 NEW SUBSECTION. 2A. The mortgagor may file a written
23 notice required in subsection 1 together with proof of service
24 on the mortgagee with the recorder of the county where the
25 mortgaged property is located. Such a filing shall have the
26 same force and effect on third parties as an indexed notation
27 entered by the clerk of the district court pursuant to section
28 617.10.

29 Sec. 15. Section 655.4, Code 2005, is repealed.

30 EXPLANATION

31 This bill relates to civil actions and the foreclosure of
32 real estate mortgages, and provides for certain fees.

33 The bill specifies that a mortgagee's two-year statute of
34 limitation period in which to commence a foreclosure action
35 after judgment shall be exclusive of any time during which

1 execution on the judgment was stayed pending a bankruptcy
2 action.

3 The bill specifies that an action shall not be brought to
4 renew or extend a judgment unless by a voluntary written
5 stipulation of a judgment creditor and the equitable
6 titleholders.

7 The bill provides that if a case file has been sealed by
8 the court, or if by law the court records in a case are not
9 available to the general public, any judgments entered in the
10 case shall not be a lien on real property until the identity
11 of the judgment creditor and the amount of the judgment, as
12 well as any payments made on the judgment, become public
13 record.

14 The bill provides for certain notice requirements for
15 persons intentionally evading service of process in a case in
16 which a debtor is in actual possession of land.

17 The bill provides that, in regard to the execution of
18 certain judgments, a junior creditor who has appeared in a
19 foreclosure action may submit a written bid that meets certain
20 requirements.

21 The bill provides that a mortgagor who has been
22 substantially prejudiced by a mortgagee's failure to provide
23 notice of a right to cure may, by motion, request additional
24 time in which to cure any outstanding defaults on the mortgage
25 and the court may dismiss the foreclosure without prejudice
26 and assess costs against the mortgagee.

27 The bill provides that unless a mortgagor attaches
28 conditions to a payment made during foreclosure, the mortgagee
29 shall apply any payments received during the foreclosure as
30 provided in the mortgage loan agreement and that such applied
31 payments shall not extinguish the mortgagee's right to
32 continue the foreclosure in regard to any unpaid amounts.

33 The bill provides that at any time prior to the court's
34 decree in a foreclosure action, the plaintiff, or a person
35 guaranteeing title of the plaintiff's mortgage may post a bond

1 not less than twice the amount of the claim with sureties to
2 be approved by the clerk of court and apply to the court to
3 release the claim against the property of any person claiming
4 a lien superior to that of the plaintiff in the property
5 subject to foreclosure. The bill provides that notice of the
6 bond and the court's order of release shall be served on the
7 claimant and unless the claimant has appeared in the
8 foreclosure action, the service shall be by personal service.
9 Unless the claimant files an action on the bond within 12
10 months from service of the notice, the claimant shall be
11 barred from any further remedy. In a successful action on the
12 bond, the court may award the claimant reasonable attorney
13 fees.

14 The bill provides that a junior creditor may file and serve
15 on the judgment creditor a request for notice of the sheriff's
16 sale prior to the date of sale and the attorney for the
17 judgment creditor shall file proof of service of such notice.
18 Upon motion, the court may set aside a sale in which a junior
19 creditor who requests notice is damaged by the failure to give
20 notice.

21 The bill provides that a lender may serve a nontitleholding
22 claimant in a foreclosure action with notice in substantially
23 the form prescribed in the bill advising the claimant that the
24 property that is the subject of the foreclosure action shall
25 be foreclosed, describing the claimant's interest in the
26 action and that unless such claimant intervenes in the
27 foreclosure action such claimant shall lose the claimant's
28 interest in the mortgaged property, and that the court may
29 adjudicate the claimant's rights against the property as if
30 the claimant had been added as a defendant and default had
31 been entered against the defendant.

32 The bill provides that at any time prior to the recording
33 of the sheriff's deed, a judgment creditor or a successful
34 bidder at a sheriff's sale may rescind the foreclosure action
35 by filing a notice of rescision with the clerk of court in the

1 county in which the property is located along with a filing
2 fee. In addition, such person shall pay a filing fee for
3 documents previously filed in the foreclosure action. Upon
4 the filing of the notice of rescission, the mortgage loan shall
5 be enforceable according to the original terms of the
6 foreclosure. However, any findings of fact or law in the
7 rescission action shall be preclusive for purposes of any future
8 action unless the court, upon hearing, rules otherwise in the
9 rescission action. The mortgagor shall be assessed costs,
10 including reasonable attorney fees, of foreclosure and
11 rescission if provided by the mortgage agreement.

12 The bill provides that at any time during the pendency of
13 the foreclosure, the plaintiff, with the written consent of
14 the equitable titleholders, may apply to the court for an
15 order authorizing a commercially reasonable sale of the
16 property free of the claims of the parties to the action and
17 other persons served with notice.

18 The bill provides that a mortgagor may file a written
19 notice together with proof of service on the mortgagee with
20 the recorder of the county where the mortgaged property is
21 located. Such a filing shall have the same force and effect
22 on third parties as an indexed notation entered by the clerk
23 of the district court pursuant to Code section 617.10.

24 The bill repeals Code section 655.4, relating to a clerk of
25 court's entry of judgment of foreclosure referring to the
26 mortgage and acknowledging that the mortgage was foreclosed
27 and giving the date of the decree.

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HOUSE FILE 2786

AN ACT

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

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

Section 1. Section 602.8102, subsection 113, Code Supplement 2005, is amended by striking the subsection.

Sec. 2. Section 615.1, Code 2005, is amended to read as follows:

615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.

~~From and after January 17, 1994, no~~ A judgment in an action for the foreclosure of a real estate mortgage, deed of trust, or real estate contract upon property which at the time of judgment is either used for an agricultural purpose as defined in section 535.13 or a one-family or two-family dwelling which is the residence of the mortgagor, or in any action on a claim for rent ~~or judgment assigned by a receiver of a closed bank or rendered upon credits assigned by the receiver of a closed bank when the assignee is not a trustee for depositors or creditors of the bank, the reconstruction finance corporation~~

~~or any other federal governmental agency to which the bank or the receiver is or may be indebted shall be enforced null and void, all liens shall be extinguished, and no execution shall be issued thereon and no force or vitality given thereto for any purpose other than as a setoff or counterclaim after the expiration of a period of two years, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action,~~ from the entry thereof. As used in this section, "mortgagor" means a mortgagor or a borrower executing a deed of trust as provided in chapter 654 or a vendee of a real estate contract.

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

615.2 REVIVAL OF CERTAIN JUDGMENTS PROHIBITED.

~~After January 17, 1994, no~~ An action or proceedings shall not be brought in any court of this state for the purpose of renewing or extending such judgment ~~or prolonging the life thereof.~~ Provided, however, that nothing herein shall prevent the continuance of such judgment in force against the property subject to foreclosure only for a longer period by the voluntary written stipulation of the parties judgment creditor and the equitable titleholders, filed in ~~said cause~~ the action or proceedings.

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

NEW SUBSECTION. 7. If a case file has been sealed by the court, or if by law the court records in a case are not available to the general public, any judgments entered in the case shall not become a lien on real property until either the identity of the judgment creditor becomes public record, or until the judgment creditor, in a public document in the case in which judgment is entered, designates an agent and office, consistent with the requirements of section 490.501, on which process on the judgment creditor may be served. Service may

be made on the agent in the same manner as service may be made on a corporate agent pursuant to section 490.504. An agent who has resigned without designating a successor agent and office and who is otherwise unavailable for service may be served in the manner provided in section 490.504, subsection 2, at the agent's office of record.

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

626.78 NOTICE TO DEFENDANT.

If the debtor is in actual occupation and possession of any part of the land levied on, the officer having the execution shall, at least twenty days previous to such sale, serve the debtor with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale, which notice shall be served in the manner provided by rule of civil procedure 1.305(1). However, upon the filing of an affidavit that the debtor is intentionally evading service of process or otherwise cannot be served despite repeated and diligent attempts, the notice may be served by placing the notice in a plain opaque envelope, addressed to the defendant and marked personal and confidential, by affixing the envelope to a main entrance of the premises subject to sale, and by mailing a copy of the notice to the debtor at the debtor's last known address by ordinary mail.

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

The sheriff shall receive and give a receipt for a sealed written bid submitted prior to the public auction. The sheriff may require all sealed written bids to be accompanied by payment of any fees required to be paid at the public auction by the purchaser, to be returned if the person submitting the sealed written bid is not the purchaser. The sheriff shall keep all written bids sealed until the commencement of the public auction, at which time the sheriff

shall open and announce the written bids as though made in person. A party who has appeared in the foreclosure may submit a written bid, which shall include a facsimile number or electronic mail address where the party can be notified of the results of the sale. If a party submitting a winning written bid does not pay the amount of the bid in certified funds in the manner in which the sheriff in the notice directs, such bid shall be deemed canceled and the sheriff shall certify the next highest bidder as the successful bidder of the sale either within twenty-four hours for an electronic funds transfer or forty-eight hours otherwise, of notification of the sale results. A sheriff may refuse to accept written bids from a bidder other than the judgment creditor if the bidder or the bidder's agent in the action has demonstrated a pattern of nonpayment on previously accepted bids.

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

At any time prior to the court's decree, the plaintiff, or a person guaranteeing title of the plaintiff's mortgage, may post a bond with sureties to be approved by the clerk and apply to the court to release the claim against the property of any person claiming a lien superior to that of the plaintiff in the property subject to foreclosure. The bond shall be in an amount not less than twice the amount of the claim, and notice of the bond and the court's order of release shall be served on the claimant. Unless the claimant has appeared in the foreclosure action, the service shall be by personal service. Unless the claimant files an action on the bond within twelve months from service of the notice, the claimant shall be barred from any further remedy. In a successful action on the bond, the court may award the claimant reasonable attorney fees. A guarantor filing such a bond shall be subrogated to any defenses which the plaintiff may have against the adverse claimant, including but not

limited to a defense of lack of equity in the mortgaged property to secure the adverse claim in its proper priority.

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

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

Sec. 9. NEW SECTION. 654.15B RIGHT TO INTERVENE -- NOTICE.

A lender may serve a judgment creditor in a foreclosure action with notice in substantially the following form advising the creditor that the property that is the subject of the foreclosure action shall be foreclosed and describing the creditor's interest in the action and that unless such creditor intervenes in the foreclosure action such creditor shall lose the creditor's interest in the mortgaged property. Unless the creditor intervenes within thirty days of the service of notice, the court may adjudicate the creditor's rights against the property as if the creditor had been added as a defendant and default had been entered against the defendant. If a creditor cannot be located for personal service, the plaintiff may, at any time prior to sixty days before the date of trial, amend the petition as a matter of right to add the creditor as a defendant for service by publication as provided by rule. The notice prescribed by this section is as follows:

NOTICE OF PENDING FORECLOSURE

To: (Name of creditor)

Date: (Enter date)

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

Name, address, and telephone number of attorney representing plaintiff.

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

At any time prior to the recording of the sheriff's deed, and before the mortgagee's rights become unenforceable by operation of the statute of limitations, the judgment creditor, or the judgment creditor who is the successful bidder at the sheriff's sale, with the written consent of the mortgagor may rescind the foreclosure action by filing a notice of rescision with the clerk of court in the county in which the property is located along with a filing fee of fifty dollars. In addition, such person shall pay a fee of twenty-five dollars for documents filed in the foreclosure action which the plaintiff requests returned. Upon the filing of the notice of rescision, the mortgage loan shall be

enforceable according to the original terms of the foreclosure and the rights of all persons with an interest in the property may be enforced as if the foreclosure had not been filed. However, any findings of fact or law shall be preclusive for purposes of any future action unless the court, upon hearing, rules otherwise. The mortgagor shall be assessed costs, including reasonable attorney fees, of foreclosure and recision if provided by the mortgage agreement.

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

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

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

655.5 INSTRUMENT OF SATISFACTION.

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

Sec. 13. Section 655A.3, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. The mortgagee may file a written notice required in subsection 1 together with proof of service on the mortgagor with the recorder of the county where the mortgaged property is located. Such a filing shall have the same force and effect on third parties as an indexed notation entered by the clerk of the district court pursuant to section 617.10 and shall commence on the filing of proof of service on the mortgagors and terminate on the filing of a rejection pursuant to section 655A.6, an affidavit of completion pursuant to section 655A.7, or the expiration of ninety days from completion of service on the mortgagors, whichever occurs first.

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

655A.9 APPLICATION OF CHAPTER.

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

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

Sec. 16. APPLICABILITY.

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

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

CHRISTOPHER C. RANTS
Speaker of the House

JEFFREY M. LAMBERTI
President of the Senate

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

MARGARET THOMSON
Chief Clerk of the House

Approved 5/24, 2006

THOMAS J. VILSACK
Governor