

House Study Bill 767

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON SWAIM)

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

A BILL FOR

1 An Act relating to mortgage foreclosures.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 6526YC 82
4 rh/nh/8

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1 1 Section 1. Section 615.1, Code 2007, is amended to read as
1 2 follows:
1 3 615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.
1 4 1. ~~After the expiration of a period of two years from~~
1 5 ~~the date of entry of judgment, exclusive of any time during~~
1 6 ~~which execution on the judgment was stayed pending a~~
1 7 ~~bankruptcy action, a judgment entered in an action for either~~
1 8 ~~of the following actions the foreclosure of a real estate~~
1 9 ~~mortgage, deed of trust, or real estate contract upon property~~
1 10 ~~which at the time of judgment is either used for an~~
1 11 ~~agricultural purpose as defined in section 535.13 or a~~
1 12 ~~one-family or two-family dwelling which is the residence of~~
1 13 ~~the mortgagor, or in any action on a claim for rent shall be~~
1 14 ~~null and void, all liens shall be extinguished, and no~~
1 15 ~~execution shall be issued for any purpose other than as a~~
1 16 ~~setoff or counterclaim after the expiration of a period of two~~
1 17 ~~years, exclusive of any time during which execution on the~~
1 18 ~~judgment was stayed pending a bankruptcy action, from the~~
1 19 ~~entry thereof.:~~
1 20 a. An action for the foreclosure of a real estate
1 21 mortgage, deed of trust, or real estate contract upon property
1 22 which at the time the foreclosure is commenced is either used
1 23 for an agricultural purpose as defined in section 535.13 or as
1 24 a one-family or two-family dwelling which is the residence of
1 25 the mortgagor.
1 26 b. An action on a claim for rent.
1 27 2. As used in this section, "mortgagor" means a mortgagor
1 28 or a borrower executing a deed of trust as provided in chapter
1 29 654 or a vendee of a real estate contract.
1 30 Sec. 2. Section 615.3, Code 2007, is amended to read as
1 31 follows:
1 32 615.3 FUTURE JUDGMENTS WITHOUT FORECLOSURE.
1 33 A judgment hereafter rendered on a promissory obligation
1 34 secured by a mortgage, deed of trust, or real estate contract
1 35 upon property which at the time of either the judgment or the
2 1 commencement of a foreclosure proceeding of a prior mortgage
2 2 is either used for an agricultural purpose as defined in
2 3 section 535.13 or a one-family or two-family dwelling which is
2 4 the residence of the mortgagor, but without foreclosure
2 5 against the security, shall not be subject to renewal by
2 6 action thereon, and, after the lapse of two years from the
2 7 date of rendition, shall be without force and effect for any
2 8 purpose whatsoever except as a setoff or counterclaim. As
2 9 used in this section, "mortgagor" means a mortgagor of a
2 10 mortgage or a borrower executing a deed of trust as provided
2 11 in chapter 654 or the vendee of a real estate contract.
2 12 Sec. 3. Section 654.17, Code Supplement 2007, is amended
2 13 to read as follows:
2 14 654.17 RECISION OF FORECLOSURE.
2 15 1. At any time prior to the recording of the sheriff's
2 16 deed, and before the mortgagee's rights become unenforceable
2 17 by operation of the statute of limitations, the judgment
2 18 creditor, or the judgment creditor who is the successful
2 19 bidder at the sheriff's sale, ~~with the written consent of the~~

2 20 mortgagor may rescind the foreclosure action by filing a
2 21 notice of rescision with the clerk of court in the county in
2 22 which the property is located along with a filing fee of fifty
2 23 dollars. In addition, if the original loan documents are
2 24 contained in the court file, the mortgagee shall pay a fee of
2 25 twenty-five dollars to the clerk of the district court. Upon
2 26 the payment of the fee, the clerk shall make copies of the
2 27 original loan documents for the court file, and return the
2 28 original loan documents to the mortgagee.

2 29 2. Upon the filing of the notice of rescision, the mortgage
2 30 loan shall be enforceable according to the original terms of
2 31 the mortgage loan and the rights of all persons with an
2 32 interest in the property may be enforced as if the foreclosure
2 33 had not been filed. However, any findings of fact or law
2 34 shall be preclusive for purposes of any future action unless
2 35 the court, upon hearing, rules otherwise, and the mortgagee
3 1 shall not be subject to a deficiency judgment if the judgment

3 2 upon which the rescision was based was subject to the
3 3 provisions of section 615.1. The mortgagor shall be assessed
3 4 costs, including reasonable attorney fees, of foreclosure and
3 5 rescision if provided by the mortgage agreement.

3 6 Sec. 4. Section 655A.9, Code 2007, is amended to read as
3 7 follows:

3 8 655A.9 APPLICATION OF CHAPTER.

3 9 This chapter does not apply to real estate used for an
3 10 agricultural purpose as defined in section 535.13, or to a one
3 11 or two family dwelling which is, at the time of the initiation
3 12 of the foreclosure, occupied by ~~an~~ a legal or equitable
3 13 titleholder.

3 14 EXPLANATION

3 15 This bill relates to mortgage foreclosures.

3 16 The bill specifies that, in regard to mortgage foreclosure
3 17 deficiency judgments, a judgment in an action for the
3 18 foreclosure of a real estate mortgage, deed of trust, or real
3 19 estate contract upon property which at the time the
3 20 foreclosure is commenced is either used for an agricultural
3 21 purpose or a one-family or two-family dwelling which is the
3 22 residence of the mortgagor, or in any action on a claim for
3 23 rent, shall be null and void, all liens shall be extinguished,
3 24 and no execution shall be issued for any purpose other than as
3 25 a setoff or counterclaim after the expiration of two years
3 26 from the date of entry of judgment.

3 27 The bill provides that a judgment entered on a promissory
3 28 obligation secured by a mortgage, deed of trust, or real
3 29 estate contract upon property which at the time of either the
3 30 judgment or the commencement of a foreclosure proceeding of a
3 31 prior mortgage is either used for an agricultural purpose as
3 32 defined in Code section 535.13 or a one-family or two-family
3 33 dwelling which is the residence of the mortgagor, but without
3 34 foreclosure against the security, shall not be subject to
3 35 renewal by action thereon, and, after the lapse of two years
4 1 from the date of rescision, shall be without force and effect
4 2 for any purpose whatsoever except as a setoff or counterclaim.

4 3 The bill eliminates the requirement that written consent of
4 4 a mortgagor must be obtained prior to utilizing the rescision
4 5 procedure in a foreclosure action pursuant to Code section
4 6 654.17. The bill also provides that in a rescision of
4 7 foreclosure proceeding, the mortgagee shall not be subject to
4 8 a deficiency judgment if the judgment upon which the rescision
4 9 was based was subject to the provisions of Code section 615.1.

4 10 The bill specifies that the nonjudicial foreclosure process
4 11 specified in Code chapter 655A does not apply to a situation
4 12 where a one-family or two-family dwelling is occupied by
4 13 either a legal or equitable titleholder.

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