

House Study Bill 170

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 civil actions including certain limitations on
2 actions, judgments, and executions and including actions
3 relating to the foreclosure of real estate mortgages, and
4 providing applicability provisions.

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

6 TLSB 1471HC 83

7 rh/rj/5

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1 1 Section 1. NEW SECTION. 614.18A JUDGMENT AND DECREE
1 2 AFFECTING REAL PROPERTY.

1 3 In an action in which the court had jurisdiction of the
1 4 aggrieved party, a motion or other legal proceeding attacking
1 5 the validity of the judgment or decree based on noncompliance
1 6 with the requirements of rule of civil procedure 1.972 shall
1 7 not affect the interests of any purchaser or mortgagee for
1 8 value of the real property involved unless the motion or
1 9 proceeding is initiated within thirty days after the recording
1 10 of the sheriff's deed or within ninety days after the filing
1 11 of a judgment or decree not providing for the issuance of a
1 12 sheriff's deed.

1 13 Sec. 2. Section 615.1, subsection 1, Code 2009, is amended
1 14 to read as follows:

1 15 1. After the expiration of a period of two years from the
1 16 date of entry of judgment, exclusive of any time during which
1 17 execution on the judgment was stayed pending a bankruptcy
1 18 action or order of court, a judgment entered in ~~either any~~ of
1 19 the following actions shall be null and void, all liens shall
1 20 be extinguished, and no execution shall be issued ~~for any~~
1 21 ~~purpose other than except~~ as a setoff or counterclaim:

1 22 a. (1) An For a real estate mortgage, deed of trust, or
1 23 real estate contract executed prior to July 1, 2009, an action
1 24 for the foreclosure of a the real estate mortgage, deed of
1 25 trust, or real estate contract upon property which at the time
1 26 of judgment the foreclosure is commenced is either used for an
1 27 agricultural purpose as defined in section 535.13 or as a
1 28 one-family or two-family dwelling which is the residence of
1 29 the mortgagor.

1 30 (2) For a real estate mortgage, deed of trust, or real
1 31 estate contract executed on or after July 1, 2009, an action
1 32 for the foreclosure of the real estate mortgage, deed of
1 33 trust, or real estate contract upon property which at the time
1 34 of the execution of the mortgage, deed, or contract is either
1 35 used for, or is being acquired for, an agricultural purpose as
2 1 defined in section 535.13 or as a one-family or two-family
2 2 dwelling which is the residence of the mortgagor.

2 3 b. An action on a claim for rent.

2 4 Sec. 3. Section 615.3, Code 2009, is amended to read as
2 5 follows:

2 6 615.3 FUTURE JUDGMENTS WITHOUT FORECLOSURE.

2 7 1. a. A judgment hereafter rendered on a promissory
2 8 obligation secured by a mortgage, deed of trust, or real
2 9 estate contract upon property which at the time of the
2 10 judgment is either used for an agricultural purpose as defined
2 11 in section 535.13 or a one-family or two-family dwelling which
2 12 is the residence of the mortgagor executed prior to July 1,
2 13 2009, but without foreclosure against the security, shall not
2 14 be subject to renewal by action thereon, and, after the lapse
2 15 of two years from the date of rendition judgment, shall be
2 16 without force and effect for any purpose whatsoever except as

2 17 a setoff or counterclaim, if the mortgage, deed, or contract
2 18 was upon property which at the time of either the execution of
2 19 the judgment or the commencement of a proceeding foreclosing a
2 20 prior mortgage or a disposition in lieu of a prior mortgage,
2 21 was either used for an agricultural purpose as defined in
2 22 section 535.13 or as a one-family or two-family dwelling which
2 23 was the residence of the mortgagor. As used in this section,
2 24 "mortgagor" means a mortgagor of a mortgage or a borrower
2 25 executing a deed of trust as provided in chapter 654 or the
2 26 vendee of a real estate contract.

2 27 b. A judgment rendered on a promissory obligation secured
2 28 by a real estate mortgage, deed of trust, or real estate
2 29 contract executed on or after July 1, 2009, but without
2 30 foreclosure against the security, shall not be subject to
2 31 renewal by action thereon, and, after the lapse of two years
2 32 from the date of judgment, shall be without force and effect
2 33 except as a setoff or counterclaim, if at the time of the
2 34 execution of the mortgage, deed, or contract the property
2 35 encompassed by the mortgage, deed, or contract is either used
3 1 for, or is being acquired for, an agricultural purpose as
3 2 defined in section 535.13 or as a one-family or two-family
3 3 dwelling which is the residence of the mortgagor.

3 4 2. As used in this section, "mortgagor" means a mortgagor
3 5 of a mortgage or a borrower executing a deed of trust as
3 6 provided in chapter 654 or the vendee of a real estate
3 7 contract.

3 8 Sec. 4. Section 626.81, Code 2009, is amended to read as
3 9 follows:

3 10 626.81 SALE POSTPONED.

3 11 When there are no bidders, or when the amount offered is
3 12 grossly inadequate, ~~or~~ when from any cause the sale is
3 13 prevented from taking place on the day fixed, when requested
3 14 by the judgment creditor, or when the parties so agree, the
3 15 officer may postpone the sale for not more than three days
3 16 without being required to give any further notice thereof,
3 17 which postponement shall be publicly announced at the time the
3 18 sale was to have been made, but not more than two such
3 19 adjournments of not more than sixty days in the aggregate
3 20 shall be made, except by agreement of the parties in writing
3 21 and made a part of the return upon the execution.

3 22 Sec. 5. NEW SECTION. 654.1A MAINTENANCE OF MORTGAGOR
3 23 PROTECTIONS == DISCONTINUATION OF OCCUPATION.

3 24 For purposes of sections 615.1, 615.3, 628.28, 654.2D,
3 25 654.20, 654.21, and 654.26, property shall be deemed the
3 26 residence of and occupied by the mortgagor where occupation
3 27 has ceased because of the effects of natural disaster, injury
3 28 to the property not willfully caused by the mortgagor, or the
3 29 mortgagor's state military service or federal military service
3 30 as those terms are defined in section 29A.1.

3 31 Sec. 6. NEW SECTION. 654.4A SERVICE OF PROCESS == IN REM
3 32 RELIEF.

3 33 In addition to any other form of service authorized by law,
3 34 where in rem relief is the only relief requested in a
3 35 foreclosure action against either a party or a person to be
4 1 served with a notice pursuant to section 614.15B, all of the
4 2 following shall apply:

4 3 1. If the person to be served is a judgment creditor,
4 4 service may be made by certified mail, with proof of delivery,
4 5 to the judgment creditor's registered agent or to the judgment
4 6 creditor at the judgment creditor's principal place of
4 7 business in the state where the business is organized, as
4 8 indicated by the records in the office of the secretary of
4 9 state, or to the judgment creditor at the last address
4 10 indicated in the case in which the judgment was entered.

4 11 2. Upon affidavit that service cannot be made on a
4 12 judgment creditor either pursuant to subsection 1 or by
4 13 personal service in this state, service may be made by
4 14 certified mail, with proof of delivery, on the judgment
4 15 creditor's attorney of record if that attorney is a practicing
4 16 attorney in this state, along with a copy of this section, and
4 17 a payment of ten dollars. The attorney shall forward the
4 18 notice by ordinary mail to the judgment creditor's last known
4 19 address but the attorney shall have no further duties under
4 20 this section with respect to the notice.

4 21 3. An attorney who agrees to accept service on behalf of a
4 22 judgment creditor may charge a reasonable fee, not to exceed
4 23 ten dollars, for accepting service.

4 24 4. If a person, other than a governmental taxing unit, is
4 25 an interested person with respect to a decedent's estate in
4 26 probate, the person may be named generally as a person
4 27 interested in the decedent's estate and service of process

4 28 shall be made by personal service or certified mail, along
4 29 with proof of delivery, on the attorney for the personal
4 30 representative. If the estate is probated in this state and a
4 31 person has requested notice pursuant to section 633.42, the
4 32 mortgagee shall also serve that person by ordinary mail at the
4 33 address specified in the request for notice. A person so
4 34 served may intervene as a named defendant as a matter of
4 35 right.

5 1 5. If a defendant, other than a governmental taxing unit,
5 2 is a person whose identity is not reasonably ascertainable,
5 3 and the person has an interest in a decedent's estate not
5 4 probated in this state, such person may be named generally as
5 5 a person with an interest in the decedent's estate and service
5 6 of process shall be made by publication unless the mortgagee
5 7 has actual notice that the decedent's estate is probated in
5 8 another state. A person so served may intervene as a named
5 9 defendant as a matter of right.

5 10 Sec. 7. Section 654.5, Code 2009, is amended to read as
5 11 follows:

5 12 654.5 JUDGMENT == SALE AND REDEMPTION.

5 13 1. When a mortgage or deed of trust is foreclosed, the
5 14 court shall do all of the following:

5 15 a. ~~render~~ Render judgment for the entire amount found to
5 16 be due, ~~and must direct,~~

5 17 b. Direct the mortgaged property, or so much thereof as is
5 18 necessary, to be sold to satisfy the judgment, with interest
5 19 and costs.

5 20 c. Determine issues of title raised in the pleadings to
5 21 establish the rights and priorities of the parties and persons
5 22 served with notice pursuant to section 654.15B in the property
5 23 subject to foreclosure as may be reasonably necessary to allow
5 24 a purchaser at a sheriff's sale to obtain clear title.

5 25 2. A special execution shall issue accordingly under such
5 26 conditions as the decree may prescribe, and the sale under the
5 27 special execution is subject to redemption as in cases of sale
5 28 under general execution unless the plaintiff has elected
5 29 foreclosure without redemption under section 654.20.

5 30 3. The clerk shall provide a copy of the decree by
5 31 ordinary or electronic mail to all parties in the foreclosure
5 32 proceeding and all persons served with notices under section
5 33 654.15B.

5 34 Sec. 8. Section 654.15B, Code 2009, is amended to read as
5 35 follows:

6 1 654.15B RIGHT TO INTERVENE == NOTICE.

6 2 A lender may serve a judgment creditor in a foreclosure
6 3 action with notice in substantially the following form
6 4 advising the creditor that the property that is the subject of
6 5 the foreclosure action shall be foreclosed and describing the
6 6 creditor's interest in the action and that unless such
6 7 creditor intervenes in the foreclosure action such creditor
6 8 shall lose the creditor's interest in the mortgaged property.
6 9 Unless the creditor intervenes within thirty days of the
6 10 service of notice, the court may adjudicate the creditor's
6 11 rights against the property as if the creditor had been added
6 12 as a defendant and default had been entered against the
6 13 defendant. If a creditor cannot be located for personal
6 14 service, the plaintiff may, at any time prior to sixty days
6 15 before the date of trial, amend the petition as a matter of
6 16 right to add the creditor as a defendant for service by
6 17 publication as provided by rule. The notice prescribed by
6 18 this section is as follows:

6 19 NOTICE OF PENDING FORECLOSURE

6 20 To: (Name and address of creditor)

6 21 Date: (Enter date)

6 22 Plaintiff (Name of foreclosing party) has filed a
6 23 foreclosure of mortgage against the property of (titleholder)
6 24 located at (street address of property) which is legally
6 25 described as (legal description). This foreclosure was filed
6 26 as (Plaintiff v. Defendant), Case # (..), in the Iowa District
6 27 Court for (.....) County and is intended to foreclose a
6 28 mortgage dated (date of mortgage) and recorded on (date of
6 29 recording) in the (county recorder's office). You have an
6 30 apparent interest in the property because (description of
6 31 creditor's interest) of an apparent judgment lien in (short
6 32 caption of case, case number, court where judgment entered,
6 33 and judgment date). If you desire to protect this interest,

6 34 you have the right to intervene in the foreclosure action
6 35 within thirty days of the service of notice by filing an
7 1 intervention with the clerk of court in (.....) County.
7 2 Unless you intervene in the foreclosure, the foreclosure may
7 3 eliminate any interest you have in the property but will not

7 4 otherwise affect your rights. If you have any questions about
7 5 this notice, contact your attorney. Whether or not you
7 6 intervene, the foreclosure may have certain tax consequences
7 7 to you about which you should consult your tax advisor.

7 8
7 9 Name, address, and telephone number of attorney representing
7 10 plaintiff (name of foreclosing party).

7 11 Sec. 9. Section 654.17, Code 2009, is amended to read as
7 12 follows:

7 13 654.17 RECISION OF FORECLOSURE.

7 14 1. At any time prior to the recording of the sheriff's
7 15 deed, and before the mortgagee's rights become unenforceable
7 16 by operation of the statute of limitations, the judgment
7 17 creditor, or the judgment creditor who is the successful
7 18 bidder at the sheriff's sale, ~~with the written consent of the~~
7 19 ~~mortgagor~~ may rescind the foreclosure action by filing a
7 20 notice of recision with the clerk of court in the county in
7 21 which the property is located along with a filing fee of fifty
7 22 dollars. In addition, if the original loan documents are
7 23 contained in the court file, the mortgagee shall pay a fee of
7 24 twenty-five dollars to the clerk of the district court. Upon
7 25 the payment of the fee, the clerk shall make copies of the
7 26 original loan documents for the court file, and return the
7 27 original loan documents to the mortgagee.

7 28 2. Upon the filing of the notice of recision, the mortgage
7 29 loan shall be enforceable according to the original terms of
7 30 the mortgage loan and the rights of all persons with an
7 31 interest in the property may be enforced as if the foreclosure
7 32 had not been filed. However, any findings of fact or law
7 33 shall be preclusive for purposes of any future action unless
7 34 the court, upon hearing, rules otherwise and the mortgagee
7 35 shall be permanently barred from a deficiency judgment if the

~~8 1 judgment rescinded was subject to the provisions of section~~

~~8 2 615.1. The mortgagee may charge the mortgagor shall be~~

~~8 3 assessed for the costs, including reasonable attorney fees, of~~
8 4 ~~foreclosure and recision if provided by the mortgage agreement~~
8 5 ~~agreed to in writing by the mortgagor.~~

8 6 Sec. 10. Section 655A.9, Code 2009, is amended to read as
8 7 follows:

8 8 655A.9 APPLICATION OF CHAPTER.

8 9 This chapter does not apply to real estate used for an
8 10 agricultural purpose as defined in section 535.13, or to a one
8 11 or two family dwelling which is, at the time of the initiation
8 12 of the foreclosure, occupied by ~~an~~ a legal or equitable
8 13 titleholder.

8 14 Sec. 11. APPLICABILITY DATES.

8 15 1. The section of this Act enacting section 654.1A applies
8 16 to all actions commenced on or after the effective date of
8 17 this Act.

8 18 2. The section of this Act amending section 655A.9 applies
8 19 to all nonjudicial foreclosures of nonagricultural mortgages
8 20 commenced on or after the effective date of this Act.

8 21 EXPLANATION

8 22 This bill relates to civil actions including certain
8 23 limitations on actions, judgments, and executions, and
8 24 including actions relating to the foreclosure of real estate
8 25 mortgages, and provides applicability provisions.

8 26 The bill provides that in an action in which the court had
8 27 jurisdiction of the aggrieved party, a motion or other legal
8 28 proceeding attacking the validity of the judgment or decree
8 29 based on failure to comply with the rules of civil procedure
8 30 relating to the entry of default judgments shall not affect
8 31 the interests of any purchaser or mortgagee for value of the
8 32 real property involved unless the motion or proceeding is
8 33 initiated within 30 days after the recording of the sheriff's
8 34 deed or within 90 days after the filing of a judgment or
8 35 decree not providing for the issuance of a sheriff's deed.

9 1 The bill provides that, in regard to an execution on a
9 2 judgment in a foreclosure action, a judgment entered in either
9 3 of the following situations shall be null and void, all liens
9 4 shall be extinguished, and no execution shall be issued for
9 5 any purpose except as a setoff or counterclaim:

9 6 1. For a real estate mortgage, deed of trust, or real
9 7 estate contract executed prior to July 1, 2009, an action for
9 8 the foreclosure of a real estate mortgage, deed of trust, or
9 9 real estate contract upon property which at the time the
9 10 foreclosure is commenced is either used for an agricultural
9 11 purpose or as a one-family or two-family dwelling which is the
9 12 residence of the mortgagor, borrower, or vendee.

9 13 2. For a real estate mortgage, deed of trust, or real
9 14 estate contract executed on or after July 1, 2009, an action

9 15 for the foreclosure of a real estate mortgage, deed of trust,
9 16 or real estate contract upon property which at the time of the
9 17 execution of the mortgage, deed of trust, or real estate
9 18 contract is either used for, or is being acquired for, an
9 19 agricultural purpose as defined in Code section 535.13 or as a
9 20 one-family or two-family dwelling which is the residence of
9 21 the mortgagor, borrower, or vendee.

9 22 The bill provides that a judgment rendered on a promissory
9 23 obligation secured by a mortgage, deed of trust, or real
9 24 estate contract executed prior to July 1, 2009, but without
9 25 foreclosure against the security, shall not be subject to
9 26 renewal by action thereon, and, after the lapse of two years
9 27 from the date of judgment, shall be without force and effect
9 28 except as a setoff or counterclaim, if the mortgage, deed, or
9 29 contract was upon property which at the time of either the
9 30 judgment or the commencement of a proceeding foreclosing a
9 31 prior mortgage or a disposition in lieu of a prior mortgage,
9 32 was either used for an agricultural purpose or as a one-family
9 33 or two-family dwelling which was the residence of the
9 34 mortgagor. A judgment rendered on a promissory obligation
9 35 secured by a real estate mortgage, deed of trust, or real
10 1 estate contract executed on or after July 1, 2009, but without
10 2 foreclosure against the security, shall not be subject to
10 3 renewal by action thereon, and, after the lapse of two years
10 4 from the date of judgment, shall be without force and effect
10 5 except as a setoff or counterclaim, if at the time of the
10 6 execution of the mortgage, deed, or contract the property
10 7 encompassed by the mortgage, deed, or contract is either used
10 8 for, or is being acquired for, an agricultural purpose or as a
10 9 one-family or two-family dwelling which is the residence of
10 10 the mortgagor.

10 11 The bill expands the options for allowing postponements of
10 12 a sheriff's sale to include allowing a postponement upon a
10 13 request by a judgment creditor and also extends the number of
10 14 allowable postponements from two postponements of not more
10 15 than three days each to two postponements not to exceed a
10 16 total of 60 days in the aggregate.

10 17 The bill establishes a provision preserving mortgage
10 18 protections for a mortgagor in situations where the mortgagor
10 19 ceases to occupy the mortgagor's residence because of the
10 20 effects of natural disasters, injuries to the property, and
10 21 relocations due to military service. This provision applies
10 22 to all actions commenced on or after the effective date of the
10 23 bill.

10 24 The bill provides specific service of process provisions
10 25 for judgment creditors and their attorneys as well as
10 26 executors and administrators of a decedent's estate where in
10 27 rem relief is the only relief requested in a foreclosure
10 28 action.

10 29 The bill requires courts to determine the rights of all
10 30 persons joined as parties or receiving notices of their right
10 31 to intervene in a foreclosure action where title issues have
10 32 been raised by the pleadings and resolution of such issues is
10 33 necessary to provide clear title to persons purchasing the
10 34 land at a sheriff's sale.

10 35 The bill amends notice provisions relating to pending
11 1 foreclosures to require a mortgagee to provide additional
11 2 information relevant to a judgment creditor's decision to
11 3 intervene in a foreclosure action.

11 4 The bill eliminates the requirement that the mortgagor
11 5 consent to a rescission of a foreclosure action.

11 6 The bill eliminates deficiency judgments against the
11 7 mortgagee if such judgments would otherwise be restricted and
11 8 limits the assessment of costs, including reasonable attorney
11 9 fees, of foreclosure and rescission actions to those agreed to
11 10 in writing by the mortgagor.

11 11 The bill prohibits the use of a nonjudicial foreclosure in
11 12 circumstances where the real estate that is the subject of the
11 13 foreclosure is a one-family or two-family home occupied by a
11 14 legal titleholder. This provision applies to all nonjudicial
11 15 foreclosures of nonagricultural mortgages commenced on or
11 16 after the effective date of the bill.

11 17 Unless otherwise provided, the bill takes effect July 1,
11 18 2009.

11 19 LSB 1471HC 83

11 20 rh/rj/5.1