

House Study Bill 597 - Introduced

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

A BILL FOR

1 An Act relating to civil actions relating to real estate,
2 including mortgage foreclosure actions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 617.11, Code 2011, is amended to read as
2 follows:

3 **617.11 Lis pendens.**

4 1. ~~When so indexed said action~~ When a petition or municipal
5 infraction citation affecting real estate is indexed pursuant
6 to section 617.10, either action shall be considered pending so
7 as to charge all third persons with notice of its pendency, and
8 while pending no interest can be acquired by third persons in
9 the subject matter thereof as against the plaintiff's rights.

10 2. If a claim of interest against the property is acquired
11 prior to the indexing of the petition or citation and such
12 claim is not filed of record prior to indexing, it is subject
13 to the pending action as provided in subsection 1, unless any
14 of the following occurs:

15 a. The claimant intervenes in the pending action prior to
16 entry of judgment.

17 b. The claimant, prior to transfer of an interest in the
18 property to a bona fide third-party transferee, records an
19 affidavit showing that the party seeking relief under the
20 pending action had, prior to the indexing of the petition or
21 citation, actual notice of the claim of interest and of the
22 identity of the claimant.

23 3. This subsection does not apply to a mechanic's lien filed
24 pursuant to chapter 572 or to a person who has taken possession
25 of the property for value prior to the indexing of the petition
26 or citation.

27 Sec. 2. Section 654.4A, unnumbered paragraph 1, Code 2011,
28 is amended to read as follows:

29 In addition to any other form of service authorized by
30 law, where in rem relief is the only relief requested in a
31 foreclosure action or nonjudicial foreclosure under section
32 654.18 or chapter 655A against either a party or a person to be
33 served with a notice pursuant to section 654.15B, all of the
34 following shall apply:

35 Sec. 3. Section 654.18, subsection 1, paragraph e, Code

1 2011, is amended to read as follows:

2 e. (1) The mortgagee shall send by certified mail a
3 notice of the election to all junior lienholders as of the
4 date of the conveyance under paragraph "a", stating that the
5 junior lienholders have thirty days from the date of mailing
6 to exercise any rights of redemption. The notice may also be
7 given in the manner prescribed in section 656.3 in which case
8 the junior lienholders have thirty days from the completion of
9 publication to exercise the rights of redemption.

10 (2) In addition to any other form of service authorized by
11 law, service of process in an alternative nonjudicial voluntary
12 foreclosure procedure filed pursuant to this section where in
13 rem relief is the only relief requested shall be served in the
14 manner provided in section 654.4A.

15 Sec. 4. Section 655A.3, subsection 1, paragraph b, Code
16 2011, is amended to read as follows:

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

19 WITHIN THIRTY DAYS AFTER YOUR RECEIPT OF THIS NOTICE, YOU
20 MUST EITHER CURE THE DEFAULTS DESCRIBED IN THIS NOTICE OR FILE
21 WITH THE RECORDER OF THE COUNTY WHERE THE MORTGAGED PROPERTY
22 IS LOCATED A REJECTION OF THIS NOTICE AND SERVE A COPY OF YOUR
23 REJECTION ON THE MORTGAGEE IN THE MANNER PROVIDED BY THE RULES
24 OF CIVIL PROCEDURE FOR SERVICE OF ORIGINAL NOTICES IN SECTION
25 655A.4. IF YOU WISH TO REJECT THIS NOTICE, YOU SHOULD CONSULT
26 AN ATTORNEY AS TO THE PROPER MANNER TO MAKE THE REJECTION.

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

32 Sec. 5. Section 655A.4, Code 2011, is amended to read as
33 follows:

34 **655A.4 Service.**

35 Notice under this chapter shall be served as provided in

1 the rules of civil procedure for service of original notice
2 or as provided in section 654.4A. Rejection of notice under
3 this chapter shall be served by ordinary or electronic mail
4 addressed as provided in the notice, or if no address is
5 provided, to the last address of the mortgagee known to the
6 mortgagor.

7 EXPLANATION

8 Current law provides that when a petition or municipal
9 infraction citation affecting real estate is indexed pursuant
10 to Code section 617.10, either action is considered pending,
11 placing third parties on notice of its pendency, and while
12 pending no interest can be acquired by third persons. The bill
13 provides that if a claim of interest against real estate is
14 acquired prior to the indexing of a petition or citation and
15 such claim is not filed of record prior to indexing, it is
16 subject to the pending action unless the claimant intervenes in
17 the pending action prior to entry of judgment or the claimant,
18 or prior to transfer of an interest in the property to a bona
19 fide third-party transferee, the claimant records an affidavit
20 showing that the party seeking relief under the pending action
21 had, prior to the indexing of the petition or citation, actual
22 notice of the claim of interest and of the identity of the
23 claimant. The bill does not apply to a mechanic's lien filed
24 pursuant to Code chapter 572 or to a person who has taken
25 possession of the property for value prior to indexing of the
26 petition or citation.

27 The bill extends service of process requirements currently
28 in effect for foreclosure actions to nonjudicial voluntary
29 foreclosures and nonjudicial foreclosures of nonagricultural
30 mortgages and makes conforming Code changes.