

Senate Study Bill 1220 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON HOGG)

A BILL FOR

1 An Act concerning title to real estate.

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

1 Section 1. Section 558.5, Code 2013, is amended to read as
2 follows:

3 **558.5 Contract for deed — presumption of abandonment.**

4 1. When the record shows that a contract or bond for a deed
5 ~~has been~~ was executed more than ten years earlier, ~~and the~~
6 ~~record discloses no performance of the same and that more than~~
7 ~~ten years have elapsed since the contract by its terms was to~~
8 ~~be performed,~~ the contract or bond shall be deemed abandoned
9 by the vendee and ~~of no effect~~ void and the land shall be freed
10 from any lien or defect on account of the contract or bond in
11 any of the following situations:

12 a. The record does not indicate the contract or bond has
13 been performed and more than ten years have elapsed since the
14 contract or bond by its terms was to be performed.

15 b. A performance date for the contract or bond is not stated
16 in the contract or bond or any extensions thereof and more than
17 twenty years have elapsed from the date the contract or bond
18 was executed.

19 2. ~~On and after July 1, 1992, this~~ This section shall
20 apply to a contract or bond described in this section, if the
21 contract or bond is not filed of record but is referred to in
22 another instrument which is filed of record. The contract or
23 bond shall be deemed abandoned by the vendee ten years from the
24 date that the contract or bond is to be performed according to
25 the recorded instrument. However, if the recorded instrument
26 does not refer to a performance date for the contract or bond,
27 the contract or bond shall be deemed abandoned ~~ten~~ twenty years
28 after the date that the instrument containing the reference is
29 recorded.

30 3. This section shall not apply to a vendee or a vendee's
31 successor in interest if the vendee or the vendee's successor
32 in interest is in possession of the property or has been
33 continuously paying the total amount due, as defined in
34 section 445.1, of the taxes levied against the property for the
35 preceding five years.

1 Sec. 2. Section 614.21, Code 2013, is amended to read as
2 follows:

3 **614.21 Foreclosure of ancient mortgages.**

4 1. ~~No~~ An action ~~shall be maintained~~ to foreclose or
5 enforce any real estate mortgage, bond for deed, trust deed,
6 or contract for the sale or conveyance of real estate, after
7 twenty years from the date thereof, as shown by the record of
8 such instrument, shall be barred, unless ~~the~~ either of the
9 following:

10 a. The record of such instrument shows that less than
11 ten years have elapsed since the date of maturity of the
12 indebtedness or part thereof, secured thereby, or since the
13 right of action has accrued ~~thereon, or unless the~~.

14 b. The record shows an extension of the maturity of the
15 instrument or of the debt or a part thereof, and that ten years
16 from the expiration of the time of such extension have not yet
17 expired.

18 2. The date of maturity, when different than as appears by
19 the record of the instrument, and the date of maturity of any
20 extension of said indebtedness or part thereof, may be shown
21 at any time prior to the expiration of the ~~above~~ periods of
22 limitation specified in subsection 1 by the holder of the debt
23 or the owner or assignee of the instrument filing an extension
24 agreement, duly acknowledged as the original instrument was
25 required to be acknowledged, in the office of the recorder
26 where the instrument is recorded.

27 3. ~~From and after July 4, 1946, this~~ This section shall also
28 apply to any instrument ~~of the kind~~ described in this section
29 which is not of record but which is described or referred to
30 in any other instrument which is filed of record ~~and the~~.
31 The limitation shall be ten years from the due date of the
32 instrument referred to if disclosed in the record ~~and,~~ if not
33 so disclosed, then within ten years from the date of the record
34 ~~of the instrument containing such reference~~ is recorded.

35 4. a. A vendee of a real estate contract or bond for deed,

1 or a vendee's successor in interest, who is barred by this
2 section from maintaining an action to foreclose or enforce
3 the contract or bond and who is in physical possession of the
4 property may serve the vendor with a demand for a deed as
5 provided in the contract. The notice may be served personally
6 or by publication, on the same conditions, and in the same
7 manner as is provided for the service of original notices,
8 except that when the notice is served by publication an
9 affidavit shall not be required before publication. Service
10 by publication shall be deemed complete on the day of the last
11 publication. Service may be made on a judgment creditor of
12 the deceased vendor or any other person who is, as a matter of
13 record, interested in the estate of a deceased vendor, in the
14 manner provided in section 654.4A, subsections 4 and 5.

15 b. The demand shall state that if a deed is not provided
16 within forty-five days of service and an action to foreclose
17 or forfeit the contract has not been commenced within such
18 forty-five-day period, the vendee may file an affidavit showing
19 service and compliance with this subsection whereupon the
20 auditor shall correct the county records as provided in section
21 558.67 to indicate that the rights of the vendor have vested
22 in the vendee.

23 Sec. 3. Section 656.3, Code 2013, is amended to read as
24 follows:

25 **656.3 Service.**

26 1. ~~Said~~ The notice provided for in section 656.2 may be
27 served personally or by publication, on the same conditions,
28 and in the same manner as is provided for the service of
29 original notices, except that when the notice is served by
30 publication ~~no~~ an affidavit ~~therefor~~ shall not be required
31 before publication. Service by publication shall be deemed
32 complete on the day of the last publication.

33 2. The notice provided for in section 656.2 may be served
34 on a judgment creditor of a deceased vendor or on any other
35 person who is, as a matter of record, interested in the estate

1 of a deceased vendor in the manner provided in section 654.4A,
2 subsections 4 and 5.

3 Sec. 4. Section 656.9, Code 2013, is amended to read as
4 follows:

5 **656.9 Defect in forfeiture proceedings — limitation of**
6 **actions.**

7 1. An action shall not be commenced after July 1, 1992,
8 which that asserts a claim against real estate previously
9 subject to a forfeiture proceeding, and such claim is based
10 upon a defect in the forfeiture proceeding, in which the proof
11 and record of service of notice of forfeiture required by
12 section 656.5 has been filed for record in the office of the
13 county recorder prior to July 1, 1991.

14 2. a. An action shall not be commenced by a vendee who
15 is not in possession of the property, or by a party to the
16 forfeiture proceeding who is other than a vendee or vendor,
17 that asserts a claim against real estate previously subject to
18 a forfeiture proceeding, and such claim is based upon a defect
19 in the forfeiture proceeding, in which the proof and record of
20 service of notice of forfeiture required by section 656.6 has
21 been filed of record for more than ten years.

22 b. A vendee who is not in possession of the property, or a
23 party to the forfeiture proceeding who is other than the vendee
24 or vendor, may commence an action described in paragraph "a" at
25 any time prior to July 1, 2014, if, as of June 30, 2013, more
26 than nine years but ten years or less have elapsed since the
27 proof and record of service of notice of forfeiture required by
28 section 656.6 was filed of record.

29 c. This subsection is repealed July 1, 2014.

30

EXPLANATION

31 This bill makes changes relating to the sale of real estate
32 by contract or bond.

33 The bill amends Code section 558.5, relating to a
34 presumption of abandonment of a contract or bond for the sale
35 of real estate. Under current law, a contract or bond for the

1 sale of real estate is presumed abandoned and of no effect if
2 the record of the contract or bond was executed or recorded,
3 as applicable, more than 10 years earlier and no performance
4 had been made on the contract or bond and 10 years have elapsed
5 since the performance date stated in the record of the contract
6 or bond. The bill provides that if the record of the contract
7 or bond for the sale of real estate executed more than 10 years
8 earlier does not indicate a performance date, the contract or
9 bond is presumed abandoned and of no effect when more than 20
10 years have elapsed since the record of the contract or bond
11 was executed or recorded, as applicable. Code section 558.5
12 is also amended to remove a July 1, 1992, date relating to
13 prospective applicability of Code section 558.5 to a contract
14 or bond for the sale of real estate that is not recorded but is
15 referred to in another recorded instrument.

16 This bill amends Code section 614.21, relating to the
17 foreclosure of ancient mortgages. Current law provides that an
18 action to foreclose or enforce any real estate mortgage, bond
19 for deed, trust deed, or contract for the sale or conveyance
20 of real estate, after 20 years from the date thereof, as shown
21 by the record of such instrument, shall not be barred under
22 certain circumstances. The bill provides that a vendee of a
23 real estate contract or bond for deed, or a vendee's successor
24 in interest, who is barred under Code section 614.21 from
25 maintaining an action to foreclose or enforce the contract or
26 bond and who is in physical possession of the property may
27 serve the vendor with a demand for a deed as provided in the
28 contract. The written notice may be served personally or by
29 publication, on the same conditions, and in the same manner as
30 is provided for the service of original notices, except that
31 when the notice is served by publication an affidavit shall
32 not be required before publication. Service by publication
33 shall be deemed complete on the day of the last publication.
34 The bill also provides for service on a judgment creditor of
35 a deceased vendor or any other person who is, as a matter of

1 record, interested in the estate of a deceased vendor. The
2 demand shall state that if a deed is not provided within 45
3 days of service and an action to foreclose or forfeit the
4 contract has not been commenced within such period, the vendee
5 may file an affidavit showing service. In such a case the
6 county auditor is required to correct the county records to
7 indicate that the rights of the vendor have vested in the
8 vendee.

9 The bill amends Code section 656.3 to specify that the
10 written notice that a vendor is required to serve on a vendee
11 pursuant to Code section 656.2 to forfeit a contract for the
12 sale of real estate located in this state may be served on a
13 judgment creditor of a deceased vendor or on any other person
14 who is, as a matter of record, interested in the estate of a
15 deceased vendor in the manner provided for service of process
16 in Code section 654.4A.

17 The bill provides that an action that asserts a claim against
18 real estate previously subject to a forfeiture proceeding,
19 based upon a defect in the forfeiture proceeding, shall not be
20 commenced by a vendee who is not in possession of the property,
21 or by a party to the forfeiture proceeding who is other than
22 a vendee or vendor, in which the proof and record of service
23 of notice of forfeiture has been filed of record for more than
24 10 years. A vendee who is not in possession of the property,
25 or a party to the forfeiture proceeding who is other than the
26 vendee or vendor, may commence such an action at any time prior
27 to July 1, 2014, if, as of June 30, 2013, more than nine years
28 but 10 years or less have elapsed since the proof and record of
29 service of notice of forfeiture was filed of record. The bill
30 repeals this provision on July 1, 2014.