

House Study Bill 192 - Introduced

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

A BILL FOR

1 An Act relating to real estate, including redemption by certain
2 persons of parcels sold at tax sale and requirements for
3 timely filing of releases or satisfactions of mortgages.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

REDEMPTION FROM TAX SALES BY CERTAIN PERSONS

Section 1. Section 445.1, Code 2015, is amended by adding the following new subsections:

NEW SUBSECTION. 3A. *“Legal representative”* means a parent, guardian, or conservator of a person with a legal disability, a person appointed by a court to act on behalf of a person with a legal disability, or a person acting on behalf of a person with a legal disability pursuant to a power of attorney.

NEW SUBSECTION. 4A. *“Person with a legal disability”* means a minor or a person of unsound mind.

Sec. 2. Section 447.7, Code 2015, is amended by striking the section and inserting in lieu thereof the following:

447.7 Redemption by minors and persons of unsound mind.

1. If a parcel of a person with a legal disability is sold at tax sale and the county treasurer has not delivered the treasurer’s deed, a legal representative of the person with the legal disability may redeem the parcel under section 447.1 and section 447.3.

2. a. If a parcel of a person with a legal disability is sold at tax sale and the county treasurer has delivered the treasurer’s deed, the person with the legal disability or the person’s legal representative may redeem the parcel at any time prior to one year after the legal disability is removed by bringing an equitable action for redemption in the district court of the county where the parcel is located, unless the action is required to be brought sooner in time by operation of subsection 3 or subsection 4.

b. To establish the right to redeem, the person maintaining the action shall prove to the court that the owner of the parcel is a person with a legal disability entitled to redeem prior to the delivery of the treasurer’s deed. If the legal disability has been removed, the person maintaining the action shall establish the date the disability was removed and explain the manner by which the legal disability was removed.

1 *c.* The person maintaining the action shall name as
2 defendants all persons claiming an interest in the parcel
3 derived from the tax sale, as shown by the record.

4 *d.* If the court determines that the person maintaining the
5 action or the person's legal representative is entitled to
6 redeem by virtue of legal disability or prior legal disability,
7 the court shall so order. The order shall determine the
8 rights, claims, and interests of all parties, including liens
9 for taxes and claims for improvements made on or to the parcel
10 by the person claiming under the tax title. The order shall
11 establish the amount necessary to effect redemption. The
12 redemption amount shall include the amount for redemption
13 computed in accordance with section 447.1 or 447.3, whichever
14 is applicable, including interest computed up to and including
15 the date of payment of the total redemption amount to the clerk
16 of court and the amount of all costs added to the redemption
17 amount in accordance with section 447.13. In addition, if
18 the person claiming under the tax title is determined by the
19 court to have made improvements on or to the parcel after the
20 treasurer's deed was issued, the court shall enter judgment in
21 favor of the person claiming under the tax title for an amount
22 equal to the value of all such improvements, and such judgment
23 shall be a lien on the parcel until paid. The order shall
24 direct that the person maintaining the action shall pay to the
25 clerk of court, within thirty days after the date of the order,
26 the total redemption amount the order sets forth.

27 *e.* Upon timely receipt of the payment, the court shall
28 enter judgment declaring the treasurer's deed to be void and
29 determining the resulting rights, claims, and interests of
30 all parties to the action. In its judgment, the court shall
31 direct the clerk of court to deliver the entire amount of the
32 redemption payment to the person claiming title under the
33 treasurer's deed.

34 *f.* If the person maintaining the action fails to timely
35 deliver payment of the total redemption amount to the clerk of

1 court, the court shall enter judgment holding that all rights
2 of redemption of the person with a legal disability who brought
3 the action, or on whose behalf the action was brought, are
4 terminated and that the validity of the tax title or purported
5 tax title is conclusively established as a matter of law
6 against the claims of such person with a legal disability.

7 3. If a person with a legal disability remains in possession
8 of the parcel after the recording of the treasurer's deed, and
9 if the person claiming under the tax title properly commences
10 an action to remove the person from possession, the person
11 with a legal disability shall forfeit any rights of redemption
12 that the person may have under this section, unless either of
13 the following actions is timely filed by or on behalf of the
14 person:

15 a. A counterclaim in the removal action asserting the
16 redemption rights under subsection 2 of the person with a legal
17 disability.

18 b. A separate action under subsection 2. Such action shall
19 be filed within thirty days after the person with a legal
20 disability and the person's legal representative were served
21 with original notice in the removal action. If an action under
22 subsection 2 is filed by or on behalf of the person with a legal
23 disability within the thirty-day period, the court may order
24 the action consolidated with the removal action.

25 4. If a person with a legal disability is not in possession
26 of the parcel at the time of the recording of the treasurer's
27 deed, the person or the person's legal representative is
28 forever barred and estopped from commencing an action under
29 this section if either of the following occurs:

30 a. An affidavit is filed pursuant to section 448.15 and
31 claims adverse to the tax title are barred by section 448.16.

32 b. An action under subsection 2 is not brought within three
33 years after the recording of the treasurer's deed.

34 Sec. 3. Section 447.8, subsection 1, Code 2015, is amended
35 to read as follows:

1 1. *a.* After the delivery of the treasurer's deed, a person
2 entitled to redeem a parcel sold at tax sale shall do so only by
3 an equitable action in the district court of the county where
4 the parcel is located. The action to redeem may be maintained
5 only by a person who was entitled to redeem the parcel during
6 the ninety-day redemption period in section 447.12, except that
7 such a person may assign the person's right of redemption or
8 right to maintain the action to another person, or by a person
9 entitled to redeem under section 447.7.

10 *b.* In order to establish the right to redeem, the person
11 maintaining the action shall be required to prove to the court
12 either that the person maintaining the action or a predecessor
13 in interest was not properly served with notice in accordance
14 with the requirements of sections 447.9 through 447.12, or that
15 the person maintaining the action or a predecessor in interest
16 acquired an interest in or possession of the parcel during
17 the ninety-day redemption period in section 447.12. A person
18 shall not be entitled to maintain such action by claiming that
19 a different person was not properly served with notice of
20 expiration of right of redemption, if the person seeking to
21 maintain the action, or the person's predecessor in interest,
22 if applicable, was properly served with the notice. A After
23 the execution and delivery of the treasurer's deed, a person
24 ~~is not allowed to~~ may only redeem a parcel sold for delinquent
25 taxes ~~in any other manner after the execution and delivery of~~
26 ~~the treasurer's deed~~ under this section or section 447.7.

27 Sec. 4. Section 448.6, subsection 1, Code 2015, is amended
28 to read as follows:

29 1. A deed executed by the county treasurer in conformity
30 with the requirements of sections 448.2 and 448.3 shall
31 be presumed to effect a valid title conveyance, and the
32 treasurer's deed may be challenged only by an equitable action
33 in the district court in the county in which the parcel is
34 located. If the action seeks an order of the court to allow
35 redemption after delivery of the treasurer's deed because the

1 person seeking to redeem is a person with a legal disability
2 who was entitled to redeem prior to the delivery of the
3 treasurer's deed, the action shall be brought in accordance
4 with section 447.7. If the action seeks an order of the court
5 to allow redemption after delivery of the treasurer's deed
6 based on improper service of notice of expiration of right of
7 redemption, the action shall be brought in accordance with
8 section 447.8. If the action is not brought ~~on that basis~~
9 under section 447.7 or section 447.8, the action shall be
10 controlled by the provisions of this section.

11 Sec. 5. Section 448.16, subsection 3, Code 2015, is amended
12 to read as follows:

13 3. An action to enforce a claim filed under subsection 1
14 shall be commenced within sixty days after the date of filing
15 the claim. The action may be commenced by the claimant, or
16 a person under whom the claimant claims title, under either
17 section 447.7, 447.8, or 448.6. If an action by the claimant,
18 or such other person, is not filed within sixty days after the
19 filing of the claim, the claim thereafter shall be forfeited
20 and canceled without any further notice or action, and the
21 claimant, or the person under whom the claimant claims title,
22 thereafter shall be forever barred and estopped from having or
23 claiming any right, title, or interest in the parcel adverse to
24 the tax title or purported tax title.

25 DIVISION II

26 RELEASES OR SATISFACTIONS OF MORTGAGES

27 Sec. 6. Section 535B.11, subsection 5, Code 2015, is amended
28 by striking the subsection.

29 Sec. 7. Section 655.1, Code 2015, is amended to read as
30 follows:

31 **655.1 Written instrument acknowledging satisfaction.**

32 1. When the amount due on a mortgage is paid off, the
33 mortgagee, the mortgagee's personal representative or assignee,
34 the mortgage servicer, or those legally acting for the
35 mortgagee, and in case of payment of a school fund mortgage,

1 the county auditor, ~~must~~ shall, within thirty days of payment
2 in full, acknowledge satisfaction thereof by execution of
3 an a proper instrument of satisfaction which is in writing,
4 referring refers to the mortgage, and is duly acknowledged
5 and recorded. For purposes of this section, an instrument of
6 satisfaction executed by a person other than the mortgagee,
7 if the mortgagee is an individual, or other than a qualified
8 officer of the mortgagee, if the mortgagee is an entity, is not
9 proper if the authority of the person executing the instrument
10 does not appear of record in relation to the mortgage or the
11 property that is the subject of the mortgage in the county
12 where the mortgage is recorded.

13 2. For purposes of this chapter, "mortgage servicer" means
14 a person, other than the mortgagee, to whom the mortgagee
15 instructs the mortgagor or mortgagor's successor in interest to
16 send payments on a loan secured by the mortgage.

17 **Sec. 8. NEW SECTION. 655.2 Written demand for satisfaction.**

18 1. At any time after payment in full of the mortgage, the
19 owner of the property subject to the mortgage, or the owner's
20 legal representative or agent, may personally serve upon the
21 current record holder of the mortgage a demand for the record
22 holder to record a proper instrument of satisfaction of the
23 record holder's interest in the mortgage. The demand must
24 include a description of the mortgage to be satisfied, and
25 include any specific requirements necessary for the mortgage to
26 be satisfied.

27 2. In addition to any other manner permitted by law for
28 personal service, the demand may be served as follows:

29 a. By certified mail, return receipt requested, on a natural
30 person who is a resident in the state or on the Iowa registered
31 agent of a person authorized to do business in Iowa.

32 b. In the manner provided in section 490.1510, subsection
33 3, on a person who is a nonresident and does not have a current
34 certificate of authority to transact business in Iowa.

35 c. A notice of intent to execute and record a certificate of

1 release sent to the mortgagee or mortgage servicer by the title
2 guaranty division of the Iowa finance authority under section
3 16.92.

4 3. If notice is served under subsection 2, paragraph "a" or
5 "b", the notice is effective at the earliest of the date the
6 record holder receives the certified mail, the date shown on
7 the return receipt, if signed on behalf of the record holder,
8 and five days after its deposit in the United States mail, as
9 evidenced by the postmark, if mailed postpaid and correctly
10 addressed. If notice is served under subsection 2, paragraph
11 "c", notice is effective under any of the circumstances
12 described in section 16.92, subsection 3, paragraph "d".

13 Sec. 9. Section 655.3, Code 2015, is amended to read as
14 follows:

15 **655.3 Penalty for failure to discharge.**

16 1. If a mortgagee, ~~or~~ a mortgagee's personal representative
17 or assignee, or mortgage servicer, upon full performance of
18 the conditions of the mortgage, fails to ~~discharge~~ record the
19 satisfaction of such mortgage ~~within~~ in accordance with section
20 655.1 by the later of ten days after service of a notice is
21 effective under section 655.2 or thirty days after a request
22 for discharge payment in full of the mortgage, the mortgagee is
23 liable to the mortgagor and the mortgagor's heirs or assigns,
24 for a damage award that is an amount equal to the greater of
25 the sum of all actual damages caused by such the failure,
26 including reasonable attorney fees and expert witness fees,
27 if any, to obtain such discharge, reasonable attorney fees to
28 collect the amounts due the mortgagor or the mortgagor's heirs,
29 assigns, or grantees under this section, and court costs or the
30 minimum damage award, as defined in subsection 2, in effect at
31 the commencement of an action to collect such damages, plus
32 court costs. A claim for ~~such damages~~ a damage award may be
33 asserted in an action for discharge of the mortgage. ~~If the~~
34 ~~defendant is not a resident of this state, such action may~~
35 ~~be maintained upon the expiration of thirty days after the~~

1 ~~conditions of the mortgage have been performed, without such~~
2 ~~previous request or tender.~~

3 2. a. The minimum damage award for the period beginning
4 July 1, 2015, and ending June 30, 2020, is seven hundred
5 dollars.

6 b. For each subsequent five-year period, if the consumer
7 price index for all urban consumers published by the United
8 States bureau of labor statistics in June of the most recently
9 ended five-year period has increased over the consumer price
10 index for all urban consumers in June of the fifth year of the
11 five-year period immediately preceding the most recently ended
12 five-year period, the minimum damage award amount will increase
13 by the same ratio that the consumer price index increased
14 over those time periods. If the consumer price index did not
15 increase over those time periods, the minimum damage award
16 amount will remain the same as for the most recently ended
17 five-year period.

18 c. If the United States bureau of labor statistics ceases
19 to publish the consumer price index for all urban consumers,
20 the calculation in paragraph "b" shall be based on the increase
21 in inflation over the most recently ended five-year period,
22 as measured by a nationally recognized index of changes in
23 inflation selected by the state treasurer and published in the
24 Iowa administrative bulletin.

25 EXPLANATION

26 The inclusion of this explanation does not constitute agreement with
27 the explanation's substance by the members of the general assembly.

28 This bill relates to real estate by modifying the mechanism
29 by which minors or persons of unsound mind, or their legal
30 representatives, who own real estate which was sold at a tax
31 sale may redeem such parcels and the requirements for timely
32 filing of releases or satisfactions of mortgages and the
33 remedies for the failure to do so.

34 The bill defines "legal representative" as a parent,
35 guardian, or conservator of a person with a legal disability, a

1 person appointed by a court to act on behalf of a person with a
2 legal disability, or a person acting on behalf of a person with
3 a legal disability pursuant to a power of attorney. The bill
4 defines "person with a legal disability" as a minor or a person
5 of unsound mind.

6 DIVISION I — REDEMPTION FROM TAX SALES BY CERTAIN PERSONS.

7 Under current law, if a person with a legal disability is the
8 owner of a parcel that is sold at a tax sale and the treasurer's
9 deed has been delivered, the person with a legal disability
10 may redeem the parcel at any time within one year after the
11 disability is removed, in the manner specified in Code section
12 447.8. Code section 447.8 specifies the manner of redemption
13 by an owner who alleges a failure by the holder of the tax title
14 to serve the parcel owner with notice of the tax sale and the
15 parcel owner's redemption rights.

16 The bill specifies the procedure by which a person with
17 a legal disability can redeem a parcel sold at a tax sale
18 after the delivery of the treasurer's deed. Before delivery
19 of the treasurer's deed, the bill provides that the person
20 with a legal disability or the person's legal representative
21 may redeem under Code sections 447.1 and 447.3, which is the
22 same as current law. After delivery of the treasurer's deed,
23 the person with a legal disability or the person's legal
24 representative must bring an equitable action for redemption in
25 the district court of the county where the parcel is located
26 and prove to the court that prior to the delivery of the
27 treasurer's deed, the person with a legal disability or the
28 person's legal representative was entitled to redeem by virtue
29 of such disability. All persons claiming an interest in the
30 parcel from the tax sale must be named as defendants. If the
31 court determines that the person with a legal disability or the
32 person's legal representative is entitled to redeem, the court
33 will determine the rights, claims, and interests of all of the
34 parties, and will establish the amount necessary to effect
35 redemption. The person with a legal disability or the person's

1 legal representative has 30 days after the date of the order
2 to pay the redemption amount. Upon timely receipt of payment,
3 the court shall declare the treasurer's deed to be invalid.
4 If the person with a legal disability or the person's legal
5 representative fails to timely deliver payment, such person's
6 redemption rights are terminated.

7 The action may be brought until one year after the disability
8 is removed unless otherwise barred. The bill bars bringing
9 the action if the person with a legal disability remained in
10 possession of the parcel, the person claiming under the tax
11 title properly commenced an action to remove the person with
12 a legal disability, and the person with a legal disability
13 or the person's legal representative fails to timely file
14 a counterclaim or separate action asserting the right of
15 redemption. The bill also bars the action if the person with
16 a legal disability is not in possession of the parcel and the
17 action is barred by Code section 448.16. Code section 448.16
18 bars actions where the person claiming under tax title records
19 an affidavit with the county recorder of the county where the
20 parcel is located and a person with redemption rights fails to
21 file a claim within 120 days after the filing of the affidavit.
22 Finally, the bill bars the action if it is not filed within
23 three years of the recording of the treasurer's deed.

24 DIVISION II — RELEASES OR SATISFACTIONS OF MORTGAGES. The
25 bill makes changes with regard to requirements of written
26 instruments of satisfaction of mortgages and the penalties for
27 failure of mortgagees or mortgage servicers to timely deliver
28 releases of mortgages.

29 The bill strikes Code section 535B.11, subsection 5.
30 Code section 535B.11, subsection 5, requires a licensee or
31 other mortgagee who services mortgages on residential real
32 estate to execute and deliver a release after payoff and
33 within 45 days after receipt of payment. If the licensee or
34 mortgagee fails to do so within 15 days, the mortgagor may
35 notify the superintendent of the division of banking of the

1 department of commerce. If the licensee or mortgagee fails
2 to make the release and deliver it to the superintendent, the
3 superintendent may assess a penalty not to exceed \$50 for each
4 day of delinquency after the 15 days.

5 Under current Code section 655.1, when the amount due on a
6 mortgage is paid off, the mortgagee or the mortgagee's personal
7 representative must acknowledge satisfaction by execution of
8 an instrument, which is duly recorded. The bill requires that
9 such an instrument of satisfaction must be recorded within
10 30 days after receipt of payment in full and extends the
11 requirement to a mortgage servicer. The bill defines "mortgage
12 servicer" as a person, other than the mortgagee, to whom the
13 mortgagee instructs the mortgagor or mortgagor's successor in
14 interest to send payments on a loan secured by the mortgage.
15 The bill provides if the mortgagee is an entity, the authority
16 of the person executing the instrument of satisfaction must
17 appear of record in relation to the mortgage or the property in
18 the county where the mortgage is recorded.

19 The bill also provides that after payment of the mortgage in
20 full, the owner of the property may serve the current record
21 holder of the mortgage and demand the recording of a proper
22 instrument of satisfaction. If the record holder of the
23 mortgage fails to record the written instrument of satisfaction
24 by the later of 10 days after the mortgagor has served notice
25 of a demand for the recordation of the written instrument of
26 satisfaction and 30 days after payment in full, the mortgagee
27 is liable. Damages are the greater of (a) all actual damages
28 caused by the failure to record the written instrument of
29 satisfaction, including reasonable attorney fees and expert
30 witness fees necessary to obtain the discharge, reasonable
31 attorney fees to collect the damages, and court costs and (b)
32 a minimum damage award plus court costs. The minimum damage
33 award amount from July 1, 2015, to June 30, 2020, is \$700. The
34 bill provides for a calculation of the minimum damage award
35 amount for each five-year period after the initial five-year

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1 period. For each subsequent five-year period, if the consumer
2 price index for all urban consumers has increased in the
3 five-year period, the minimum damage award amount will increase
4 by the same ratio that the consumer price index increased. If
5 the consumer price index did not increase, the minimum damage
6 award amount will remain the same as for the most recently
7 ended five-year period.