

House File 2786 - Reprinted

HOUSE FILE _____
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 2737)
(SUCCESSOR TO HSB 761)

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

A BILL FOR

1 An Act relating to civil actions and the foreclosure of real
2 estate mortgages, and providing fees and applicability
3 provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 HF 2786
6 rh/es/25

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1 1 Section 1. Section 602.8102, subsection 113, Code
1 2 Supplement 2005, is amended by striking the subsection.
1 3 Sec. 2. Section 615.1, Code 2005, is amended to read as
1 4 follows:
1 5 615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.
1 6 ~~From and after January 1, 1934, no A~~ judgment in an action
1 7 for the foreclosure of a real estate mortgage, deed of trust,
1 8 or real estate contract upon property which at the time of
1 9 judgment is either used for an agricultural purpose as defined
1 10 in section 535.13 or a one-family or two-family dwelling which
1 11 is the residence of the mortgagor, or in any action on a claim
1 12 for rent ~~or judgment assigned by a receiver of a closed bank~~
~~1 13 or rendered upon credits assigned by the receiver of a closed~~
~~1 14 bank when the assignee is not a trustee for depositors or~~
~~1 15 creditors of the bank, the reconstruction finance corporation~~
~~1 16 or any other federal governmental agency to which the bank or~~
~~1 17 the receiver is or may be indebted shall not be enforced and~~
1 18 no execution shall be issued thereon and no force or vitality
~~1 19 given thereto for any purpose other than as a setoff or~~
1 20 counterclaim after the expiration of a period of two years,
1 21 exclusive of any time during which execution on the judgment
~~1 22 was stayed pending a bankruptcy action,~~ from the entry
1 23 thereof. As used in this section, "mortgagor" means a
1 24 mortgagor or a borrower executing a deed of trust as provided
1 25 in chapter 654 or a vendee of a real estate contract.
1 26 Sec. 3. Section 615.2, Code 2005, is amended to read as
1 27 follows:
1 28 615.2 REVIVAL OF CERTAIN JUDGMENTS PROHIBITED.
1 29 ~~After January 1, 1934, no An~~ action or proceedings shall
1 30 not be brought in any court of this state for the purpose of
1 31 renewing or extending such judgment ~~or prolonging the life~~
~~1 32 thereof.~~ Provided, however, that nothing herein shall prevent
1 33 the continuance of such judgment in force against the property
1 34 subject to foreclosure only for a longer period by the
1 35 voluntary written stipulation of the parties judgment creditor
~~2 1 and the equitable titleholders, filed in said cause the action~~
~~2 2 or proceedings.~~
2 3 Sec. 4. Section 624.23, Code 2005, is amended by adding
2 4 the following new subsection:
2 5 NEW SUBSECTION. 7. If a case file has been sealed by the
2 6 court, or if by law the court records in a case are not
2 7 available to the general public, any judgments entered in the
2 8 case shall not become a lien on real property until either the
2 9 identity of the judgment creditor becomes public record, or
2 10 until the judgment creditor, in a public document in the case
2 11 in which judgment is entered, designates an agent and office,
2 12 consistent with the requirements of section 490.501, on which
2 13 process on the judgment creditor may be served. Service may
2 14 be made on the agent in the same manner as service may be made
2 15 on a corporate agent pursuant to section 490.504. An agent
2 16 who has resigned without designating a successor agent and

2 17 office and who is otherwise unavailable for service may be
2 18 served in the manner provided in section 490.504, subsection
2 19 2, at the agent's office of record.

2 20 Sec. 5. Section 626.78, Code 2005, is amended to read as
2 21 follows:

2 22 626.78 NOTICE TO DEFENDANT.

2 23 If the debtor is in actual occupation and possession of any
2 24 part of the land levied on, the officer having the execution
2 25 shall, at least twenty days previous to such sale, serve the
2 26 debtor with written notice, stating that the execution is
2 27 levied on said land, and mentioning the time and place of
2 28 sale, which notice shall be served in the manner provided by
2 29 rule of civil procedure 1.305(1). However, upon the filing of
2 30 an affidavit that the debtor is intentionally evading service
2 31 of process or otherwise cannot be served despite repeated and
2 32 diligent attempts, the notice may be served by placing the
2 33 notice in a plain opaque envelope, addressed to the defendant
2 34 and marked personal and confidential, and by affixing the
2 35 envelope to a main entrance of the premises subject to sale.

3 1 Sec. 6. Section 626.80, unnumbered paragraph 2, Code 2005,
3 2 is amended to read as follows:

3 3 The sheriff shall receive and give a receipt for a sealed
3 4 written bid submitted prior to the public auction. The
3 5 sheriff may require all sealed written bids to be accompanied
3 6 by payment of any fees required to be paid at the public
3 7 auction by the purchaser, to be returned if the person
3 8 submitting the sealed written bid is not the purchaser. The
3 9 sheriff shall keep all written bids sealed until the
3 10 commencement of the public auction, at which time the sheriff
3 11 shall open and announce the written bids as though made in
3 12 person. A party who has appeared in the foreclosure may
3 13 submit a written bid, which shall include a facsimile number
3 14 or electronic mail address where the party can be notified of
3 15 the results of the sale. If a party submitting a winning
3 16 written bid does not pay the amount of the bid in certified
3 17 funds in the manner in which the sheriff in the notice
3 18 directs, such bid shall be deemed canceled and the sheriff
3 19 shall certify the next highest bidder as the successful bidder
3 20 of the sale either within twenty-four hours for an electronic
3 21 funds transfer or forty-eight hours otherwise, of notification
3 22 of the sale results. A sheriff may refuse to accept written
3 23 bids from a bidder other than the judgment creditor if the
3 24 bidder or the bidder's agent in the action has demonstrated a
3 25 pattern of nonpayment on previously accepted bids.

3 26 Sec. 7. NEW SECTION. 654.9A RELEASE OF SUPERIOR LIENS BY
3 27 BOND.

3 28 At any time prior to the court's decree, the plaintiff, or
3 29 a person guaranteeing title of the plaintiff's mortgage, may
3 30 post a bond with sureties to be approved by the clerk and
3 31 apply to the court to release the claim against the property
3 32 of any person claiming a lien superior to that of the
3 33 plaintiff in the property subject to foreclosure. The bond
3 34 shall be in an amount not less than twice the amount of the
3 35 claim, and notice of the bond and the court's order of release
4 1 shall be served on the claimant. Unless the claimant has
4 2 appeared in the foreclosure action, the service shall be by
4 3 personal service. Unless the claimant files an action on the
4 4 bond within twelve months from service of the notice, the
4 5 claimant shall be barred from any further remedy. In a
4 6 successful action on the bond, the court may award the
4 7 claimant reasonable attorney fees. A guarantor filing such a
4 8 bond shall be subrogated to any defenses which the plaintiff
4 9 may have against the adverse claimant, including but not
4 10 limited to a defense of lack of equity in the mortgaged
4 11 property to secure the adverse claim in its proper priority.

4 12 Sec. 8. NEW SECTION. 654.15A NOTICE OF SALE TO JUNIOR
4 13 CREDITORS.

4 14 A junior creditor may file and serve on the judgment
4 15 creditor a request for notice of the sheriff's sale. Such
4 16 notice shall include a facsimile number or electronic mail
4 17 address where the creditor shall be notified of the sale. At
4 18 least ten days prior to the date of sale, the attorney for the
4 19 judgment creditor shall file proof of service of such notice.
4 20 Upon motion filed within thirty days of the sale, the court
4 21 may set aside a sale in which a junior creditor who requests
4 22 notice is damaged by the failure of the sheriff or the
4 23 judgment creditor to give notice pursuant to this section.

4 24 Sec. 9. NEW SECTION. 654.15B RIGHT TO INTERVENE ==
4 25 NOTICE.

4 26 A lender may serve a judgment creditor in a foreclosure
4 27 action with notice in substantially the following form

4 28 advising the creditor that the property that is the subject of
4 29 the foreclosure action shall be foreclosed and describing the
4 30 creditor's interest in the action and that unless such
4 31 creditor intervenes in the foreclosure action such creditor
4 32 shall lose the creditor's interest in the mortgaged property.
4 33 Unless the creditor intervenes within thirty days of the
4 34 service of notice, the court may adjudicate the creditor's
4 35 rights against the property as if the creditor had been added
5 1 as a defendant and default had been entered against the
5 2 defendant. If a creditor cannot be located for personal
5 3 service, the plaintiff may, at any time prior to sixty days
5 4 before the date of trial, amend the petition as a matter of
5 5 right to add the creditor as a defendant for service by
5 6 publication as provided by rule. The notice prescribed by
5 7 this section is as follows:

5 8 NOTICE OF PENDING FORECLOSURE

5 9 To: (Name of creditor)

5 10 Date: (Enter date)

5 11 Plaintiff has filed a foreclosure of mortgage against the
5 12 property of (titleholder) located at (street address of
5 13 property) which is legally described as (legal description).
5 14 This foreclosure was filed as (Plaintiff v. Defendant), Case #
5 15 (), in the Iowa District Court for () County. You have
5 16 an apparent interest in the property because (description of
5 17 creditor's interest). If you desire to protect this interest,
5 18 you have the right to intervene in the foreclosure action by
5 19 filing an intervention with the clerk of court in ()
5 20 County. Unless you intervene in the foreclosure the
5 21 foreclosure may eliminate any interest you have in the
5 22 property but will not otherwise affect your rights. If you
5 23 have any questions about this notice, contact your attorney.
5 24 Whether or not you intervene, the foreclosure may have certain
5 25 tax consequences to you about which you should consult your
5 26 tax advisor.

5 27 _____
5 28 Name, address, and telephone number of attorney representing
5 29 plaintiff.

5 30 Sec. 10. NEW SECTION. 654.17 RECISION OF FORECLOSURE.

5 31 At any time prior to the recording of the sheriff's deed,
5 32 and before the mortgagee's rights become unenforceable by
5 33 operation of the statute of limitations, the judgment
5 34 creditor, or the judgment creditor who is the successful
5 35 bidder at the sheriff's sale may rescind the foreclosure
6 1 action by filing a notice of recision with the clerk of court
6 2 in the county in which the property is located along with a
6 3 filing fee of fifty dollars. In addition, such person shall
6 4 pay a fee of twenty-five dollars for documents filed in the
6 5 foreclosure action which the plaintiff requests returned.
6 6 Upon the filing of the notice of recision, the mortgage loan
6 7 shall be enforceable according to the original terms of the
6 8 foreclosure and the rights of all persons with an interest in
6 9 the property may be enforced as if the foreclosure had not
6 10 been filed. However, any findings of fact or law shall be
6 11 preclusive for purposes of any future action unless the court,
6 12 upon hearing, rules otherwise. The mortgagor shall be
6 13 assessed costs, including reasonable attorney fees, of
6 14 foreclosure and recision if provided by the mortgage
6 15 agreement.

6 16 Sec. 11. NEW SECTION. 654.17A SALE FREE OF LIENS.

6 17 At any time during the pendency of the foreclosure, the
6 18 plaintiff may apply to the court for an order approving an
6 19 offer for a commercially reasonable sale of the property free
6 20 of the claims of the parties to the action and other persons
6 21 served with notice pursuant to section 654.15B. A copy of the
6 22 offer shall be attached to the application and the application
6 23 shall contain a written consent to the proposed sale by all
6 24 equitable titleholders who have not abandoned the property.
6 25 The court may grant the motion unless a party in interest
6 26 objects in writing during such time as the court may
6 27 prescribe. A person filing an objection with a claim junior
6 28 to the plaintiff shall either apply for assignment of senior
6 29 claims pursuant to section 654.8, otherwise provide adequate
6 30 protection to senior creditors, or establish that a sheriff's
6 31 sale is substantially more likely than the proposed sale to
6 32 provide the creditor with more favorable satisfaction of its
6 33 lien. Pending resolution of the rights of the parties and
6 34 persons served with notice pursuant to section 654.15B, the
6 35 court shall place the net proceeds of the sale in escrow after
7 1 payment of reasonable closing costs. The rights of such
7 2 persons to the escrowed funds shall be determined in the same
7 3 manner as their rights to the property that was sold.

7 4 Sec. 12. Section 655.5, Code 2005, is amended by striking
7 5 the section and inserting in lieu thereof the following:
7 6 655.5 INSTRUMENT OF SATISFACTION.
7 7 When the judgment is paid in full, the mortgagee shall file
7 8 with the clerk a satisfaction of judgment which shall release
7 9 the mortgage underlying the action. A mortgagee who fails to
7 10 file a satisfaction within thirty days of receiving a written
7 11 request shall be subject to a penalty of one hundred dollars
7 12 plus reasonable attorney fees incurred by the aggrieved party,
7 13 to be recovered in an action for the satisfaction or
7 14 acknowledged by the party aggrieved.
7 15 Sec. 13. 655A.3, Code 2005, is amended by adding the
7 16 following new subsection:
7 17 NEW SUBSECTION. 2A. The mortgagee may file a written
7 18 notice required in subsection 1 together with proof of service
7 19 on the mortgagor with the recorder of the county where the
7 20 mortgaged property is located. Such a filing shall have the
7 21 same force and effect on third parties as an indexed notation
7 22 entered by the clerk of the district court pursuant to section
7 23 617.10 and shall commence on the filing of proof of service on
7 24 the mortgagors and terminate on the filing of a rejection
7 25 pursuant to section 655A.6, an affidavit of completion
7 26 pursuant to section 655A.7, or the expiration of ninety days
7 27 from completion of service on the mortgagors, whichever occurs
7 28 first.
7 29 Sec. 14. Section 655A.9, Code 2005, is amended to read as
7 30 follows:
7 31 655A.9 APPLICATION OF CHAPTER.
7 32 This chapter does not apply to real estate used for an
7 33 agricultural purpose as defined in section 535.13, or to a one
7 34 or two family dwelling which is, at the time of the initiation
7 35 of the foreclosure, occupied by an equitable titleholder.
8 1 Sec. 15. Section 655.4, Code 2005, is repealed.
8 2 Sec. 16. APPLICABILITY.
8 3 1. Except as provided in subsection 2, this Act applies to
8 4 actions commenced on or after July 1, 2006.
8 5 2. The section of this Act enacting section 624.23,
8 6 subsection 7, applies to judgments entered on or after July 1,
8 7 2007.
8 8 HF 2786
8 9 rh:rj/es/25