

**CHAPTER 1216**  
**REAL ESTATE FORECLOSURE PROCEDURES**  
*S.F. 2270*

**AN ACT** relating to certain loans, debts and obligations, by providing for the separate redemption of a homestead, delaying the enforceability of certain deficiency judgments or general executions related to obligations secured by agricultural land, providing for certain exemptions from execution and garnishment, providing for the eligibility of certain types of real estate for a foreclosure continuance, providing time limits for applying for a foreclosure continuance and for the term of a foreclosure continuance, providing immediate foreclosure continuance eligibility to real estate used for small business, providing an extension of time under the current declaration of economic emergency, extending the period for grants under the agricultural assistance program, and providing an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

**Section 1. LEGISLATIVE FINDINGS.**

The general assembly finds and declares as follows:

1. The state of Iowa is suffering from a financial crisis in agriculture that affects the entire economic health of this state.
2. This financial crisis has grown to include the business communities which, together with the agricultural producers, form the core of the state's economy.
3. A large number of producers and farm families are being forced to leave farming and make a new start.
4. It is deemed to be in the best interest of the state to protect the business communities and the dislocated farm families affected by the financial crisis in agriculture.

**Sec. 2. NEW SECTION. 654.16 SEPARATE REDEMPTION OF HOMESTEAD.**

If a foreclosure sale is ordered on agricultural land used for farming, as defined in section 175.2, the mortgagor may, by a date set by the court but not later than ten days before the sale, designate to the court the portion of the land which the mortgagor claims as a homestead. The homestead may be any contiguous portion of forty acres or less of the real estate subject to the foreclosure. The homestead shall contain the residence of the mortgagor and shall be as compact as practicable.

If the homestead is not sold separately, but rather is sold in conjunction with the nonhomestead property in order to satisfy the judgment, the court shall determine the fair market value of the homestead. The court may consult with the county appraisers appointed pursuant to section 450.24 to determine the fair market value of the homestead. The mortgagor may redeem the homestead separately by tendering the fair market value of the homestead pursuant to chapter 628.

**Sec. 3.** Section 654.6, Code 1985, is amended by adding the following new unnumbered paragraphs:

**NEW UNNUMBERED PARAGRAPH.** However, a deficiency judgment or general execution premised upon the deficiency judgment issued against the mortgagor shall not be enforceable until July 1, 1991 if all of the following apply:

1. The mortgaged property is agricultural land.
2. The mortgagor was actively engaged in farming the agricultural land upon the commencement of the action which resulted in a deficiency judgment.
3. The action was for the foreclosure of a first mortgage on the agricultural land or for the enforcement of an obligation secured by a first mortgage on the agricultural land.
4. The first mortgage secures a loan obligation, where a condition for the making of the loan was that the borrower purchase or own stock in the entity making the loan or in an entity

related to the lending entity. This requirement is satisfied if there was such a condition at the time the original loan was made.

5. The mortgagor does not exercise the exemptions provided under section 627.6 in relation to the deficiency judgment or a general execution premised upon the deficiency judgment.

**NEW UNNUMBERED PARAGRAPH.** The running of time periods affecting the enforceability of the deficiency judgment or general execution is suspended until July 1, 1991. Assets of the mortgagor sufficient to satisfy the deficiency judgment shall be held by the mortgagor during the period of delay provided in this section. The court shall determine which assets shall be held, and a sale, disposition, or further encumbrance of these assets is not permitted without the consent of the court. The delay may not be waived before the issuance of the deficiency judgment. After the issuance of the deficiency judgment, the mortgagor may waive the delay by filing a waiver signed by the mortgagor with the court. This section applies to actions pending on the effective date of this Act and actions commenced on or after the effective date of this Act but before July 1, 1991.

Sec. 4. Section 627.6, subsection 5, Code 1985, is amended by striking the subsection.

Sec. 5. Section 627.6, subsection 10, Code 1985, is amended by striking the subsection and inserting in lieu thereof the following:

10. Any combination of the following, not to exceed a value of five thousand dollars in the aggregate:

a. Musical instruments, not including radios, television sets, or record or tape playing machines, held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

b. One motor vehicle.

c. In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed one thousand dollars in the aggregate. This exemption is in addition to the limitations contained in sections 642.21 and 537.5105.

Sec. 6. Section 627.6, Code 1985, is amended by adding the following new subsections:

**NEW SUBSECTION. 11.** If the debtor is engaged in any profession or occupation other than farming, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate.

**NEW SUBSECTION. 12.** If the debtor is engaged in farming and does not exercise the delay of the enforceability of a deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, any combination of the following, not to exceed a value of ten thousand dollars in the aggregate:

a. Implements and equipment reasonably related to a normal farming operation. This exemption is in addition to a motor vehicle held exempt under subsection 10.

b. Livestock and feed for the livestock reasonably related to a normal farming operation.

**NEW SUBSECTION. 13.** If the debtor is engaged in farming the agricultural land upon the commencement of an action for the foreclosure of a mortgage on the agricultural land or for the enforcement of an obligation secured by a mortgage on the agricultural land, if a deficiency judgment is issued against the debtor, and if the debtor does not exercise the delay of the enforceability of the deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, the disposable earnings of the debtor are exempt from garnishment to enforce the deficiency judgment after two years from the entry of the deficiency judgment, sections 642.21 and 642.22 notwithstanding. However, earnings paid to the debtor directly or indirectly by the debtor are not exempt.

Sec. 7. Section 654.15, subsection 1, Code Supplement 1985, is amended by adding the following new unnumbered paragraph:

**NEW UNNUMBERED PARAGRAPH.** An owner of a small business may apply for a continuance as provided in this subsection if the real estate subject to foreclosure is used for

the small business. The court may continue the foreclosure proceeding if the court finds that the application is made in good faith and is supported by competent evidence showing that the default in payment or inability to pay is due to the economic condition of the customers of the small business, because the customers of the small business have been significantly economically distressed as a result of drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests. The length of the continuance shall be determined by the court, but shall not exceed two years.

Sec. 8. Section 654.15, subsection 2, Code Supplement 1985, is amended to read as follows:

2. In all actions for the foreclosure of real estate mortgages, deeds of trust of real ~~property~~ estate, and contracts for the purchase of real estate, an owner of real estate may apply for a moratorium as provided in this subsection if the governor declares a state of economic emergency. ~~The declaration by the governor of a state of economic emergency shall be valid for no more than one year for the purposes of this subsection.~~ The governor shall state in the declaration ~~whether the types of real estate eligible for a moratorium is applicable to~~ continuance, which may include real estate used for farming; designated types of real estate not used for farming, including real estate used for small business; or all real estate. Only property of ~~the a~~ a type specified in the declaration which is subject to a mortgage, deed of trust, or contract for purchase entered into before the date of the declaration is eligible for a moratorium. In an action for the foreclosure of a mortgage, deed of trust, or contract for purchase of real ~~property~~ estate eligible for a moratorium, the owner may apply for a continuation of the foreclosure if the owner has entered an appearance and filed an answer admitting some indebtedness and breach of the terms of the designated instrument. The admissions cannot be withdrawn or denied after a continuance is granted. Applications for continuance made pursuant to this subsection must be filed within one year of the governor's declaration of economic emergency. Upon the filing of an application as provided in this subsection, the court shall set a date for hearing and provide by order for notice to the parties of the time for the hearing. If the court finds that the application is made in good faith and the owner is unable to pay or perform, the court may continue the foreclosure proceeding as follows:

a. ~~If the application is made in regard to real estate used for farming, and if the default or breach of terms of the written instrument occurs on or before the first day of March of the year in which the governor declares a state of economic emergency, then the continuance shall terminate on the first day of March of the succeeding year two years from the date of the order. If the application is made in regard to real estate not used for farming, the continuance shall terminate one year from the date of the order.~~

b. Only one continuance shall be granted the applicant ~~or petitioner~~ for each written instrument or contract under each declaration. ~~Except as provided in paragraph "a", the continuance shall not exceed one year.~~

c. The court shall appoint a receiver to take charge of the property and to rent the property. ~~The owner or person in possession of the property applicant shall be given preference in the occupancy of the property. The receiver, who may be the owner or person in possession applicant, shall collect the rents and income and distribute the proceeds as follows:~~

(1) For the payment of the costs of receivership, including the required interest on the written instrument and the costs of operation.

(2) For the payment of taxes due or becoming due during the period of receivership.

(3) For the payment of insurance deemed necessary by the court including but not limited to insurance on the buildings on the premises and liability insurance.

(4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure was based, to be credited against the deferred interest and then against the principal due on the written instrument.

d. A continuance granted under this subsection may be terminated if the court finds, after notice and hearing, all of the following:

(1) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to restructure the debt obligations of the applicant.

(2) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to utilize state and federal programs designed and implemented to provide debtor relief options. For the purposes of subparagraph (1) and this subparagraph, the determination of reasonableness shall take into account the financial condition of the party seeking foreclosure, and the financial strength and the long-term financial survivorship potential of the applicant.

(3) The applicant has failed to pay interest due on the written instrument.

Sec. 9. Section 654.15, Code Supplement 1985, is amended by adding the following new subsection:

**NEW SUBSECTION. 3.** As used in this section, "small business" means the same as defined in section 220.1.

Sec. 10. 1986 Iowa Acts, House File 2353, section 5, is amended to read as follows:

**SEC. 5.** There is appropriated from the general fund of the state to the Iowa family farm agricultural development authority for the fiscal year period beginning July 1, 1985 and ending June August 30, 1986, the amount of five million (5,000,000) dollars or so much thereof as is necessary, to be used for providing financial assistance to Iowa farmers under and through the agricultural loan assistance program, by providing moneys for grants under agreements subject to section 175.35 entered into on or after March 1, 1986 but before July September 1, 1986. If the grants under the agreements exceed two million dollars, the excess shall be transferred from the Iowa plan fund for economic development, notwithstanding the provisions of 1985 Acts, chapter 33. Not more than one hundred thousand (100,000) dollars, or so much thereof as is necessary, shall be used for general administration, including salaries, support, and miscellaneous purposes. Moneys appropriated by this section which are committed for grants under agreements entered into on or after March 1, 1986 but before July September 1, 1986, do not revert to the general fund or the Iowa plan fund. Moneys appropriated by this section which are committed for agreements but which are not utilized for the grants by July 1, 1987 revert on a pro rata basis to the general fund and the Iowa plan fund.

Sec. 11. Notwithstanding section 654.15, subsection 2, the declaration of economic emergency made by the governor on October 1, 1985, is in effect until March 30, 1987.

Sec. 12. Notwithstanding the provisions of the declaration of economic emergency made by the governor on October 1, 1985, real estate used for small business is eligible for a moratorium continuance after the effective date of this Act and through the remaining effective period of the declaration.

Sec. 13. This Act applies to actions filed on or after the effective date of this Act.

Sec. 14. Section 3 of this Act is repealed effective July 1, 1991.

Sec. 15. This Act, being deemed of immediate importance, takes effect from and after its publication in The Algona Upper Des Moines, a newspaper published in Algona, Iowa, and in the Audubon News-Advocate, a newspaper published in Audubon, Iowa, but not later than July 1, 1986.

Approved May 23, 1986

Pursuant to the authority vested in the undersigned Secretary of State of the State of Iowa, because of inherent and imperative need, I hereby designate that Senate File 2270 be published in the Kossuth County Advance, a newspaper published in Algona, Iowa.

I hereby certify that the foregoing Act, Senate File 2270, was published in the Audubon News-Advocate, Audubon, Iowa, on May 28, 1986, and in the Kossuth County Advance, Algona, Iowa, on May 31, 1986.

MARY JANE ODELL, *Secretary of State*