

Sec. 2. Section 249F.4, subsection 2, Code 1999, is amended to read as follows:

2. The certification shall include true copies of the original notice, the return of service, if applicable, any request for an informal conference, any subsequent notices, the written request for hearing, and true copies of any administrative orders previously entered.

Approved April 23, 1999

CHAPTER 53

FINANCIAL INSTITUTIONS INVESTMENTS IN IOWA AGRICULTURAL INDUSTRY FINANCE CORPORATIONS

S.F. 280

AN ACT providing for investments by banks in Iowa agricultural industry finance corporations.

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

Section 1. Section 12C.6A, subsection 4, paragraph g, Code 1999, is amended to read as follows:

g. Participation in local community and rural development and redevelopment projects, and in state and federal business and economic development programs, including investment in an Iowa agricultural industry finance corporation formed under the Iowa agricultural industry finance Act pursuant to chapter 15E.

Approved April 23, 1999

CHAPTER 54

REAL ESTATE TRANSFERS — MORTGAGE RELEASES

S.F. 335

AN ACT relating to the transfer of real estate, the filing of a release of mortgage, and providing a remedy.

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

Section 1. NEW SECTION. 16.92 REAL ESTATE TRANSFER — MORTGAGE RELEASE CERTIFICATE.

1. DEFINITIONS. As used in this section, unless the context otherwise requires:

a. "Division" means the title guaranty division in the Iowa finance authority.

b. "Mortgage" means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount of five hundred thousand dollars or less.

c. "Mortgagee" means the grantee of a mortgage. If a mortgage has been assigned of record, the mortgagee is the last person to whom the mortgage is assigned of record.

d. "Mortgage servicer" means the mortgagee or a person other than the mortgagee to whom a mortgagor or the mortgagor's successor in interest is instructed by the mortgagee to send payments on a loan secured by the mortgage. A person transmitting a payoff statement for a mortgage is the mortgage servicer for purposes of such mortgage.

e. "Mortgagor" means the grantor of a mortgage.

f. "Payoff statement" means a written statement furnished by the mortgage servicer which sets forth all of the following:

(1) The unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, or the amount required to be paid in order to release or partially release the mortgage.

(2) Interest on a per-day basis for an amount set forth pursuant to subparagraph (1).

(3) The address where payment is to be sent or other specific instructions for making a payment.

(4) If after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will continue to be subject to the mortgage, and the legal description of the property that will be released from the mortgage.

g. "Real estate lender or closer" means a person licensed to regularly lend moneys to be secured by a mortgage on real property in this state, a licensed real estate broker, or a licensed attorney.

2. EXECUTION OF CERTIFICATE OF RELEASE. A duly authorized officer or employee of the division may execute and record a certificate of release in the real property records of each county in which a mortgage is recorded as provided in this section if all of the following are satisfied:

a. The real estate lender or closer has certified in writing to the division all of the following:

(1) That the payoff statement satisfies one of the following:

(a) The statement does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.

(b) The statement contains the legal description of the property to be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

(2) That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(a) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(b) Other documentary evidence of payment to the mortgagee or mortgage servicer.

(3) That more than thirty days have elapsed since the date the payment was sent.

b. The division determines that an effective satisfaction or release of the mortgage has not been executed and recorded within thirty days after the date payment was sent or otherwise made in accordance with a payoff statement.

c. The division, at least thirty days prior to executing the certificate of release, sends by certified mail, to the last known address of the mortgage servicer, written notice of its intention to execute and record a certificate of release pursuant to this section after expiration of the thirty-day period following the sending of such notice, including instructions to notify the division of any reason why the certificate of release should not be executed and recorded. If, prior to executing and recording the certificate of release, the division receives written notification setting forth a reason satisfactory to the division why the certificate of release

should not be executed and recorded by the division, the division shall not execute and record the certificate of release.

3. CONTENTS. A certificate of release executed under this section must contain substantially the information set forth as follows:

a. The name of the mortgagor; the name of the original mortgagee, and, if applicable, the mortgage servicer; the date of the mortgage; the date of recording, including the volume and page or other applicable recording information in the real property records where the mortgage is recorded, and the same information for the last recorded assignment of the mortgage.

b. A statement that the original mortgage principal was in an amount of five hundred thousand dollars or less.

c. A statement that the person executing the certificate of release is a duly authorized officer or employee of the division.

d. A statement indicating one of the following:

(1) That the mortgage servicer provided a payoff statement that was used to make payment, and that does not indicate that the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee.

(2) A statement that the certificate is a partial release of the mortgage, the legal description of the property that will be released from the mortgage, and the legal description of the property that will continue to be subject to the mortgage.

e. A statement that payment was made in accordance with the payoff statement, and the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(1) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(2) Other documentary evidence of payment to the mortgagee or mortgage servicer.

f. A statement that more than thirty days have elapsed since the date payment in accordance with the payoff statement was sent.

g. A statement that the division has sent the thirty-day notice required under subsection 2, paragraph "c", and that thirty days have elapsed since the date the notice was sent.

h. A statement that the division has not received written notification of any reason satisfactory to the division why the certificate of release should not be executed and recorded after the expiration of the thirty-day notice period under subsection 2, paragraph "c".

4. EXECUTION. A certificate of release under this section shall be executed and acknowledged in the same manner as required by law for the execution of a deed.

5. EFFECT.

a. For purposes of a release or partial release of the mortgage, a certificate of release executed under this section that contains the information and statements required under subsection 3 is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

b. Recording of a wrongful or erroneous certificate of release by the division shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

c. In addition to any other remedy provided by law, if the division wrongfully or erroneously records a certificate of release under this section, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release.

d. Upon payment of a claim relating to the recording of a certificate of release, the division is subrogated to the rights of the claimant against all persons relating to the claim.

6. RECORDING. If a mortgage is recorded in more than one county and a certificate of release or partial release is recorded in one of them, a certified copy of the certificate of release may be recorded in another county with the same effect as the original. In all cases, the certificate of release or partial release shall be entered and indexed in the manner that a satisfaction of mortgage is entered and indexed.

7. PRIOR MORTGAGES. If the real estate lender or closer has notified the division that a mortgage has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release has not been filed of record, the division may execute and record a certificate of release without certification by the real estate lender or closer that payment was made pursuant to a payoff statement and the date payment was received by the mortgagee. A certificate of release filed pursuant to this subsection is subject to the requirements of subsection 2, paragraph "c".

8. APPLICATION. This section applies only to a mortgage in an original principal amount of five hundred thousand dollars or less.

Sec. 2. NEW SECTION. 655.3 PENALTY FOR FAILURE TO DISCHARGE.

If a mortgagee, or a mortgagee's personal representative or assignee, upon full performance of the conditions of the mortgage, fails to discharge such mortgage within thirty days after a request for discharge, the mortgagee is liable to the mortgagor and the mortgagor's heirs or assigns, for all actual damages caused by such failure, including reasonable attorney fees. A claim for such damages may be asserted in an action for discharge of the mortgage. If the defendant is not a resident of this state, such action may be maintained upon the expiration of thirty days after the conditions of the mortgage have been performed, without such previous request or tender.

Sec. 3. Section 655.2, Code 1999, is repealed.

Approved April 23, 1999

CHAPTER 55

FOSTER CARE-RELATED DAMAGES — STATE LIABILITY

H.F. 311

AN ACT relating to reimbursement, payment, and coverage by the state for damages involving individuals providing foster home, guardian, or conservator services and providing an effective date.

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

Section 1. Section 237.13, subsection 3, Code 1999, is amended to read as follows:

3. Except as provided in this section, the fund shall pay, on behalf of each licensed foster home, any valid and approved claim of foster children, their parents, guardians, or guardians ad litem, for damages arising from the foster care relationship and the provision of foster care services. The fund shall also ~~reimburse~~ ~~compensate~~ licensed foster homes for property damage, ~~at replacement cost~~, or for bodily injury, as a result of the activities of the foster child, and reasonable and necessary legal fees incurred in defense of civil claims filed pursuant to subsection 7, paragraph "d", and any judgments awarded as a result of such claims.