

MAR 1 0 2006
WAYS AND MEANS

HOUSE FILE 2737
BY COMMITTEE ON JUDICIARY

(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.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF-2737

1 Section 1. Section 602.8102, subsection 113, Code
2 Supplement 2005, is amended to read as follows:

3 113. When a judgment of foreclosure is entered, ~~file with~~
4 ~~the recorder an instrument acknowledging the foreclosure and~~
5 ~~the date of decree and upon payment of the judgment,~~ file an
6 instrument with the recorder acknowledging the satisfaction as
7 provided in sections 655.4 and 655.5.

8 Sec. 2. Section 615.1, Code 2005, is amended to read as
9 follows:

10 615.1 EXECUTION ON CERTAIN JUDGMENTS PROHIBITED.

11 ~~From and after January 17, 1934, no~~ A judgment in an action
12 for the foreclosure of a real estate mortgage, deed of trust,
13 or real estate contract upon property which at the time of
14 judgment is either used for an agricultural purpose as defined
15 in section 535.13 or a one-family or two-family dwelling which
16 is the residence of the mortgagor, or in any action on a claim
17 for rent or judgment assigned by a receiver of a closed bank
18 or rendered upon credits assigned by the receiver of a closed
19 bank when the assignee is not a trustee for depositors or
20 creditors of the bank, the reconstruction finance corporation
21 or any other federal governmental agency to which the bank or
22 the receiver is or may be indebted shall not be enforced and
23 no execution shall be issued ~~thereon and no force or vitality~~
24 ~~given thereto~~ for any purpose other than as a setoff or
25 counterclaim after the expiration of a period of two years,
26 exclusive of any time during which execution on the judgment
27 was stayed pending a bankruptcy action, from the entry
28 thereof. As used in this section, "mortgagor" means a
29 mortgagor or a borrower executing a deed of trust as provided
30 in chapter 654 or a vendee of a real estate contract.

31 Sec. 3. Section 615.2, Code 2005, is amended to read as
32 follows:

33 615.2 REVIVAL OF CERTAIN JUDGMENTS PROHIBITED.

34 ~~After January 17, 1934, no~~ An action or proceedings shall
35 not be brought in any court of this state for the purpose of

1 renewing or extending such judgment ~~or prolonging the life~~
2 thereof. Provided, however, that nothing herein shall prevent
3 the continuance of such judgment in force for a longer period
4 by the voluntary written stipulation of the parties judgment
5 creditor and the equitable titleholders, filed in ~~said cause~~
6 the action or proceedings.

7 Sec. 4. Section 624.23, Code 2005, is amended by adding
8 the following new subsection:

9 NEW SUBSECTION. 7. If a case file has been sealed by the
10 court, or if by law the court records in a case are not
11 available to the general public, any judgments entered in the
12 case shall not become a lien on real property until the
13 identity of the judgment creditor and the amount of the
14 judgment, as well as any payments made on the judgment, become
15 public record.

16 Sec. 5. Section 626.78, Code 2005, is amended to read as
17 follows:

18 626.78 NOTICE TO DEFENDANT.

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

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

34 The sheriff shall receive and give a receipt for a sealed
35 written bid submitted prior to the public auction. The

1 sheriff may require all sealed written bids to be accompanied
2 by payment of any fees required to be paid at the public
3 auction by the purchaser, to be returned if the person
4 submitting the sealed written bid is not the purchaser. The
5 sheriff shall keep all written bids sealed until the
6 commencement of the public auction, at which time the sheriff
7 shall open and announce the written bids as though made in
8 person. A junior creditor who has appeared in the foreclosure
9 may submit a written bid, which shall include a facsimile
10 number or electronic mail address where the junior creditor
11 can be notified of the results of the sale. However, if upon
12 being notified of the results of the sale, the junior creditor
13 does not pay the bid in certified funds within forty-eight
14 hours in the manner in which the sheriff directs in the
15 notice, the junior creditor's bid shall be deemed cancelled
16 and the sheriff shall certify the next highest bidder as the
17 successful bidder of the sale.

18 Sec. 7. Section 654.2B, Code 2005, is amended to read as
19 follows:

20 654.2B REQUIREMENTS OF NOTICE OF RIGHT TO CURE.

21 The notice of right to cure shall be in writing and shall
22 conspicuously state the name, address, and telephone number of
23 the creditor or other person to which payment is to be made, a
24 brief identification of the obligation secured by the deed of
25 trust or mortgage and of the borrower's right to cure the
26 default, a statement of the nature of the right to cure the
27 default, a statement of the nature of the alleged default, a
28 statement of the total payment, including an itemization of
29 any delinquency or deferral charges, or other performance
30 necessary to cure the alleged default, and the exact date by
31 which the amount must be paid or performance tendered and a
32 statement that if the borrower does not cure the alleged
33 default the creditor or a person acting on behalf of the
34 creditor is entitled to proceed with initiating a foreclosure
35 action or procedure. The A mortgagor who has been

1 substantially prejudiced by the failure of the a mortgagee to
2 provide notice of right to cure to-comply-with-one-or-more
3 which substantially complies with the provisions of this
4 section is-not-a-defense-or-claim-in-any-action-pursuant-to
5 this-chapter-and-does-not-invalidate-any-procedure-pursuant-to
6 chapter-655A, unless the person asserting the defense, claim,
7 or invalidity proves that the person was substantially
8 prejudiced by such failure may, by motion filed prior to the
9 answer, request an additional thirty days in which to cure any
10 outstanding defaults on the mortgage, other than costs
11 incurred by the mortgagee as a part of the foreclosure. If
12 the motion is granted, the court shall provide that upon
13 timely cure, the foreclosure shall be dismissed without
14 prejudice and costs shall be assessed against the mortgagee.
15 Failure of the mortgagee to provide proper notice of the right
16 to cure pursuant to chapter 655A shall be included in the
17 service and filing of a rejection notice pursuant to section
18 655A.6.

19 Sec. 8. NEW SECTION. 654.4A FUNDS RECEIVED DURING
20 FORECLOSURE.

21 Unless a mortgagor attaches conditions to a payment made
22 during foreclosure, the mortgagee shall apply any payments
23 received during the foreclosure as provided in the mortgage
24 loan agreement. Application of such payments shall not
25 extinguish the mortgagee's right to continue the foreclosure
26 in regard to any unpaid amounts.

27 Sec. 9. NEW SECTION. 654.9A RELEASE OF PRIOR LIENS BY
28 BOND.

29 At any time prior to the court's decree, the plaintiff, or
30 a person guaranteeing title of the plaintiff's mortgage, may
31 post a bond with sureties to be approved by the clerk and
32 apply to the court to release the claim against the property
33 of any person claiming a lien superior to that of the
34 plaintiff in the property subject to foreclosure. The bond
35 shall be in an amount not less than twice the amount of the

1 claim, and notice of the bond and the court's order of release
2 shall be served on the claimant. Unless the claimant has
3 appeared in the foreclosure action, the service shall be by
4 personal service. Unless the claimant files an action on the
5 bond within twelve months from service of the notice, the
6 claimant shall be barred from any further remedy. In a
7 successful action on the bond, the court may award the
8 claimant reasonable attorney fees.

9 Sec. 10. NEW SECTION. 654.15A NOTICE OF SALE TO JUNIOR
10 CREDITORS.

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

21 Sec. 11. NEW SECTION. 654.15B RIGHT TO INTERVENE --
22 NOTICE.

23 A lender may serve a nontitleholding claimant in a
24 foreclosure action with notice in substantially the following
25 form advising the claimant that the property that is the
26 subject of the foreclosure action shall be foreclosed and
27 describing the claimant's interest in the action and that
28 unless such claimant intervenes in the foreclosure action such
29 claimant shall lose the claimant's interest in the mortgaged
30 property. Unless the claimant intervenes within thirty days
31 of the service of notice, the court may adjudicate the
32 claimant's rights against the property as if the claimant had
33 been added as a defendant and default had been entered against
34 the defendant. The notice prescribed by this section is as
35 follows:

1 NOTICE OF PENDING FORECLOSURE

2 To: (Name of claimant)

3 Date: (Enter date)

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

20 _____
21 Name, address, and telephone number of attorney representing
22 plaintiff.

23 Sec. 12. NEW SECTION. 654.17 RECISION OF FORECLOSURE.

24 At any time prior to the recording of the sheriff's deed,
25 the judgment creditor or a successful bidder at a sheriff's
26 sale may rescind the foreclosure action by filing a notice of
27 recision with the clerk of court in the county in which the
28 property is located along with a filing fee of fifty dollars.
29 In addition, such person shall pay a fee of twenty-five
30 dollars for documents filed in the foreclosure action. Upon
31 the filing of the notice of recision, the mortgage loan shall
32 be enforceable according to the original terms of the
33 foreclosure. However, any findings of fact or law in the
34 recision action shall be preclusive for purposes of any future
35 action unless the court, upon hearing, rules otherwise in the

1 recision action. The mortgagor shall be assessed costs,
2 including reasonable attorney fees, of foreclosure and
3 recision if provided by the mortgage agreement.

4 Sec. 13. NEW SECTION. 654.17A SALE FREE OF LIENS.

5 At any time during the pendency of the foreclosure, the
6 plaintiff, with the written consent of the equitable
7 titleholders, may apply to the court for an order authorizing
8 a commercially reasonable sale of the property free of the
9 claims of the parties to the action and other persons served
10 with notice pursuant to section 654.15B. The court may grant
11 the motion unless a party in interest objects in writing
12 during such time as the court may prescribe. A person filing
13 an objection with a claim junior to the plaintiff shall either
14 apply for assignment of senior claims pursuant to section
15 654.8 or otherwise provide adequate protection to senior
16 creditors. Pending resolution of the rights of the parties
17 and persons served with notice pursuant to section 654.15B,
18 the court shall place the net proceeds of the sale in escrow
19 after payment of reasonable closing costs. The rights of such
20 persons to the escrowed funds shall be determined in the same
21 manner as their rights to the property that was sold.

22 Sec. 14. 655A.3, Code 2005, is amended by adding the
23 following new subsection:

24 NEW SUBSECTION. 2A. The mortgagor may file a written
25 notice required in subsection 1 together with proof of service
26 on the mortgagee with the recorder of the county where the
27 mortgaged property is located. Such a filing shall have the
28 same force and effect on third parties as an indexed notation
29 entered by the clerk of the district court pursuant to section
30 617.10.

31 Sec. 15. Section 655.4, Code 2005, is repealed.

32 EXPLANATION

33 This bill relates to civil actions and the foreclosure of
34 real estate mortgages, and provides for certain fees.

35 The bill specifies that a mortgagee's two-year statute of

1 limitation period in which to commence a foreclosure action
2 after judgment shall be exclusive of any time during which
3 execution on the judgment was stayed pending a bankruptcy
4 action.

5 The bill specifies that an action shall not be brought to
6 renew or extend a judgment unless by a voluntary written
7 stipulation of a judgment creditor and the equitable
8 titleholders.

9 The bill provides that if a case file has been sealed by
10 the court, or if by law the court records in a case are not
11 available to the general public, any judgments entered in the
12 case shall not be a lien on real property until the identity
13 of the judgment creditor and the amount of the judgment, as
14 well as any payments made on the judgment, become public
15 record.

16 The bill provides for certain notice requirements for
17 persons intentionally evading service of process in a case in
18 which a debtor is in actual possession of land.

19 The bill provides that, in regard to the execution of
20 certain judgments, a junior creditor who has appeared in a
21 foreclosure action may submit a written bid that meets certain
22 requirements.

23 The bill provides that a mortgagor who has been
24 substantially prejudiced by a mortgagee's failure to provide
25 notice of a right to cure may, by motion, request additional
26 time in which to cure any outstanding defaults on the mortgage
27 and the court may dismiss the foreclosure without prejudice
28 and assess costs against the mortgagee.

29 The bill provides that unless a mortgagor attaches
30 conditions to a payment made during foreclosure, the mortgagee
31 shall apply any payments received during the foreclosure as
32 provided in the mortgage loan agreement and that such applied
33 payments shall not extinguish the mortgagee's right to
34 continue the foreclosure in regard to any unpaid amounts.

35 The bill provides that at any time prior to the court's

1 decree in a foreclosure action, the plaintiff, or a person
2 guaranteeing title of the plaintiff's mortgage may post a bond
3 not less than twice the amount of the claim with sureties to
4 be approved by the clerk of court and apply to the court to
5 release the claim against the property of any person claiming
6 a lien superior to that of the plaintiff in the property
7 subject to foreclosure. The bill provides that notice of the
8 bond and the court's order of release shall be served on the
9 claimant and unless the claimant has appeared in the
10 foreclosure action, the service shall be by personal service.
11 Unless the claimant files an action on the bond within 12
12 months from service of the notice, the claimant shall be
13 barred from any further remedy. In a successful action on the
14 bond, the court may award the claimant reasonable attorney
15 fees.

16 The bill provides that a junior creditor may file and serve
17 on the judgment creditor a request for notice of the sheriff's
18 sale prior to the date of sale and the attorney for the
19 judgment creditor shall file proof of service of such notice.
20 Upon motion, the court may set aside a sale in which a junior
21 creditor who requests notice is damaged by the failure to give
22 notice.

23 The bill provides that a lender may serve a nontitleholding
24 claimant in a foreclosure action with notice in substantially
25 the form prescribed in the bill advising the claimant that the
26 property that is the subject of the foreclosure action shall
27 be foreclosed, describing the claimant's interest in the
28 action and that unless such claimant intervenes in the
29 foreclosure action such claimant shall lose the claimant's
30 interest in the mortgaged property, and that the court may
31 adjudicate the claimant's rights against the property as if
32 the claimant had been added as a defendant and default had
33 been entered against the defendant.

34 The bill provides that at any time prior to the recording
35 of the sheriff's deed, a judgment creditor or a successful

1 bidder at a sheriff's sale may rescind the foreclosure action
2 by filing a notice of rescision with the clerk of court in the
3 county in which the property is located along with a filing
4 fee. In addition, such person shall pay a filing fee for
5 documents previously filed in the foreclosure action. Upon
6 the filing of the notice of rescision, the mortgage loan shall
7 be enforceable according to the original terms of the
8 foreclosure. However, any findings of fact or law in the
9 rescision action shall be preclusive for purposes of any future
10 action unless the court, upon hearing, rules otherwise in the
11 rescision action. The mortgagor shall be assessed costs,
12 including reasonable attorney fees, of foreclosure and
13 rescision if provided by the mortgage agreement.

14 The bill provides that at any time during the pendency of
15 the foreclosure, the plaintiff, with the written consent of
16 the equitable titleholders, may apply to the court for an
17 order authorizing a commercially reasonable sale of the
18 property free of the claims of the parties to the action and
19 other persons served with notice.

20 The bill provides that a mortgagor may file a written
21 notice together with proof of service on the mortgagee with
22 the recorder of the county where the mortgaged property is
23 located. Such a filing shall have the same force and effect
24 on third parties as an indexed notation entered by the clerk
25 of the district court pursuant to Code section 617.10.

26 The bill repeals Code section 655.4, relating to a clerk of
27 court's entry of judgment of foreclosure referring to the
28 mortgage and acknowledging that the mortgage was foreclosed
29 and giving the date of the decree.

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HSB 761

JUDICIARY

Kaufmann-ch
Eichhorn
Swain

Succeeded By
SF 02737

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

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

A BILL FOR

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2 Supplement 2005, is amended to read as follows:

3 113. When a judgment of foreclosure is entered, file an
4 instrument with the recorder acknowledging the satisfaction as
5 provided in ~~sections-655-4-and~~ section 655.5.

6 Sec. 2. Section 615.1, Code 2005, is amended to read as
7 follows:

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9 ~~From-and-after-January-17-19347-no~~ A judgment in an action
10 for the foreclosure of a real estate mortgage, deed of trust,
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13 in section 535.13 or a one-family or two-family dwelling which
14 is the residence of the mortgagor, or in any action on a claim
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35 thereof. Provided, however, that nothing herein shall prevent

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33 shall be in an amount not less than twice the amount of the
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21 A lender may serve a nontitleholding claimant in a
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34 NOTICE OF PENDING FORECLOSURE

35 To: (Name of claimant)

1 Date: (Enter date)

2 Plaintiff has filed a foreclosure of mortgage against the
3 property of (titleholder) located at (street address of
4 property) which is legally described as (legal description).
5 This foreclosure was filed as (Plaintiff v. Defendant), Case #
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19 Name, address, and telephone number of attorney representing
20 plaintiff.

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24 sale may rescind the foreclosure action by filing a notice of
25 recision with the clerk of court in the county in which the
26 property is located along with a filing fee of fifty dollars.
27 In addition, such person shall pay a fee of twenty-five
28 dollars for documents filed in the foreclosure action. Upon
29 the filing of the notice of recision, the mortgage loan shall
30 be enforceable according to the original terms of the
31 foreclosure. However, any findings of fact or law in the
32 recision action shall be preclusive for purposes of any future
33 action unless the court, upon hearing, rules otherwise in the
34 recision action. The mortgagor shall be assessed costs,
35 including reasonable attorney fees, of foreclosure and

1 recision if provided by the mortgage agreement.

2 Sec. 13. NEW SECTION. 654.17A SALE FREE OF LIENS.

3 At any time during the pendency of the foreclosure, the
4 plaintiff, with the written consent of the equitable
5 titleholders, may apply to the court for an order authorizing
6 a commercially reasonable sale of the property free of the
7 claims of the parties to the action and other persons served
8 with notice pursuant to section 654.15B. The court may grant
9 the motion unless a party in interest objects in writing
10 during such time as the court may prescribe. A person filing
11 an objection with a claim junior to the plaintiff shall either
12 apply for assignment of senior claims pursuant to section
13 654.8 or otherwise provide adequate protection to senior
14 creditors. Pending resolution of the rights of the parties
15 and persons served with notice pursuant to section 654.15B,
16 the court shall place the net proceeds of the sale in escrow
17 after payment of reasonable closing costs. The rights of such
18 persons to the escrowed funds shall be determined in the same
19 manner as their rights to the property that was sold.

20 Sec. 14. 655A.3, Code 2005, is amended by adding the
21 following new subsection:

22 NEW SUBSECTION. 2A. The mortgagor may file a written
23 notice required in subsection 1 together with proof of service
24 on the mortgagee with the recorder of the county where the
25 mortgaged property is located. Such a filing shall have the
26 same force and effect on third parties as an indexed notation
27 entered by the clerk of the district court pursuant to section
28 617.10.

29 Sec. 15. Section 655.4, Code 2005, is repealed.

30 EXPLANATION

31 This bill relates to civil actions and the foreclosure of
32 real estate mortgages, and provides for certain fees.

33 The bill specifies that a mortgagee's two-year statute of
34 limitation period in which to commence a foreclosure action
35 after judgment shall be exclusive of any time during which

1 execution on the judgment was stayed pending a bankruptcy
2 action.

3 The bill specifies that an action shall not be brought to
4 renew or extend a judgment unless by a voluntary written
5 stipulation of a judgment creditor and the equitable
6 titleholders.

7 The bill provides that if a case file has been sealed by
8 the court, or if by law the court records in a case are not
9 available to the general public, any judgments entered in the
10 case shall not be a lien on real property until the identity
11 of the judgment creditor and the amount of the judgment, as
12 well as any payments made on the judgment, become public
13 record.

14 The bill provides for certain notice requirements for
15 persons intentionally evading service of process in a case in
16 which a debtor is in actual possession of land.

17 The bill provides that, in regard to the execution of
18 certain judgments, a junior creditor who has appeared in a
19 foreclosure action may submit a written bid that meets certain
20 requirements.

21 The bill provides that a mortgagor who has been
22 substantially prejudiced by a mortgagee's failure to provide
23 notice of a right to cure may, by motion, request additional
24 time in which to cure any outstanding defaults on the mortgage
25 and the court may dismiss the foreclosure without prejudice
26 and assess costs against the mortgagee.

27 The bill provides that unless a mortgagor attaches
28 conditions to a payment made during foreclosure, the mortgagee
29 shall apply any payments received during the foreclosure as
30 provided in the mortgage loan agreement and that such applied
31 payments shall not extinguish the mortgagee's right to
32 continue the foreclosure in regard to any unpaid amounts.

33 The bill provides that at any time prior to the court's
34 decree in a foreclosure action, the plaintiff, or a person
35 guaranteeing title of the plaintiff's mortgage may post a bond

1 not less than twice the amount of the claim with sureties to
2 be approved by the clerk of court and apply to the court to
3 release the claim against the property of any person claiming
4 a lien superior to that of the plaintiff in the property
5 subject to foreclosure. The bill provides that notice of the
6 bond and the court's order of release shall be served on the
7 claimant and unless the claimant has appeared in the
8 foreclosure action, the service shall be by personal service.
9 Unless the claimant files an action on the bond within 12
10 months from service of the notice, the claimant shall be
11 barred from any further remedy. In a successful action on the
12 bond, the court may award the claimant reasonable attorney
13 fees.

14 The bill provides that a junior creditor may file and serve
15 on the judgment creditor a request for notice of the sheriff's
16 sale prior to the date of sale and the attorney for the
17 judgment creditor shall file proof of service of such notice.
18 Upon motion, the court may set aside a sale in which a junior
19 creditor who requests notice is damaged by the failure to give
20 notice.

21 The bill provides that a lender may serve a nontitleholding
22 claimant in a foreclosure action with notice in substantially
23 the form prescribed in the bill advising the claimant that the
24 property that is the subject of the foreclosure action shall
25 be foreclosed, describing the claimant's interest in the
26 action and that unless such claimant intervenes in the
27 foreclosure action such claimant shall lose the claimant's
28 interest in the mortgaged property, and that the court may
29 adjudicate the claimant's rights against the property as if
30 the claimant had been added as a defendant and default had
31 been entered against the defendant.

32 The bill provides that at any time prior to the recording
33 of the sheriff's deed, a judgment creditor or a successful
34 bidder at a sheriff's sale may rescind the foreclosure action
35 by filing a notice of rescission with the clerk of court in the

1 county in which the property is located along with a filing
 2 fee. In addition, such person shall pay a filing fee for
 3 documents previously filed in the foreclosure action. Upon
 4 the filing of the notice of rescision, the mortgage loan shall
 5 be enforceable according to the original terms of the
 6 foreclosure. However, any findings of fact or law in the
 7 rescision action shall be preclusive for purposes of any future
 8 action unless the court, upon hearing, rules otherwise in the
 9 rescision action. The mortgagor shall be assessed costs,
 10 including reasonable attorney fees, of foreclosure and
 11 rescision if provided by the mortgage agreement.

12 The bill provides that at any time during the pendency of
 13 the foreclosure, the plaintiff, with the written consent of
 14 the equitable titleholders, may apply to the court for an
 15 order authorizing a commercially reasonable sale of the
 16 property free of the claims of the parties to the action and
 17 other persons served with notice.

18 The bill provides that a mortgagor may file a written
 19 notice together with proof of service on the mortgagee with
 20 the recorder of the county where the mortgaged property is
 21 located. Such a filing shall have the same force and effect
 22 on third parties as an indexed notation entered by the clerk
 23 of the district court pursuant to Code section 617.10.

24 The bill repeals Code section 655.4, relating to a clerk of
 25 court's entry of judgment of foreclosure referring to the
 26 mortgage and acknowledging that the mortgage was foreclosed
 27 and giving the date of the decree.

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