9-12-2014

State and Federal Responses to the Residential Mortgage Debacle

Patrick B. Bauer

University of Iowa
STATE AND FEDERAL RESPONSES
TO THE RESIDENTIAL MORTGAGE DEBACLE

Patrick B. Bauer
College of Law
The University of Iowa

I. GENERAL DIMENSIONS OF UNDERLYING CIRCUMSTANCES

A. Contested Assessments of Causation


Conclusions of the Financial Crisis Inquiry Commission (pp. xv-xxviii)
(adopted by Chairman Phil Angelides and Commissioners Brooksley Born, Byron Georgiou, Bob Graham, Heather M. Murren, and John H. Thompson)

Dissenting Statement of Commissioners Keith Hennessy, Douglas Holtz-Eakin, and Vice Chairman Bill Thomas (pp. 413-439)

Dissenting Statement of Commissioner Peter J. Wallison (pp. 443-538)

B. Measurements of Current Conditions

OCC Mortgage Metrics Report: First Quarter 2014 (June 2014) (mortgage performance, home retention actions, and home forfeiture actions)

C. Potential Future Developments

David Dayen, You Thought the Mortgage Crisis Was Over? It’s About to Flare Up Again, The New Republic (August 24, 2014)

II. STATE LEGISLATIVE RESPONSES

A. Widespread Enactment of State Legislation Addressing Various Elements of Residential Mortgage Foreclosure Procedures

National Conference of State Legislatures, Summaries of Introduced and Enacted Foreclosures Legislation [2007-2013]

B. Overview of Previously Existing Iowa Residential Mortgage Foreclosure Procedures

Attachment A: Bauer, “Foreclosures and Debt Collection,” Iowa Judges 2011 Fall CLE, pp. 11-15

C. Omnibus Modifications of Iowa Residential Mortgage Foreclosure Procedures [2006 & 2009]

Attachment B: Bauer, “Recent Iowa Mortgage Foreclosure Legislation,” in REAL ESTATE AND PROPERTY LAW (Iowa Law School Continuing Legal Education 2009)

D. Subsequent Modifications of Particular Provisions [Attachment C]

1. Notice of Availability of Counseling and Mediation Through Iowa Mortgage Help

Initial 2009 Provision for Repeal Effective July 1, 2011 [Attachment B, p. 2]
2012 Extension to 2013 [2012 Iowa Acts, ch. 1134, §§17, 21]
2013 Elimination of Repeal Provision [2013 Iowa Acts, ch. 139, § 54]

2. Lis Pendens and Service of Foreclosure Notices


3. Limitations of Effects of Spousal Nonjoinder in Homestead Conveyances or Encumbrances

2011 Iowa Acts, ch. 11 [Attachment C, p. 3] (see also Outline § III.A. & Attachment D)

4. Forfeiture or Release of Judgment Liens Purportedly Attached to Homesteads

2010 Iowa Acts, ch. 1021 [Attachment C, p. 4]
2011 Iowa Acts, ch. 6 [Attachment C, p. 5]

5. Extension of Limitations on Judgments for Rent

2013 Iowa Acts, ch. 95 [Attachment C, p. 6]
III. IOWA CASELAW DEVELOPMENTS

A. Effects of Spousal Nonjoinder in Homestead Encumbrances

Wells Fargo Bank, N.A. v. Hudson, 742 N.W.2d 605 (table), 2007 WL 3085791 (Iowa Ct. App. Oct. 24, 2007) (homestead mortgage not signed by titleholder’s wife is void and cannot be avoided by doctrines of equitable mortgage or equitable lien)

Citimortgage, Inc. v. Danielson, 771 N.W.2d 653 (table), 2009 WL 1492644 (Iowa Ct. App. May 29, 2009) (homestead mortgage not signed by titleholder’s wife is void; no error by trial court in determination that mortgagee had failed to establish fraudulent misrepresentation of marital status; other theories raised below and advanced on appeal (mutual mistake, equitable estoppel, ratification, and denial of homestead status) not considered because trial court did not decide them) (see also Outline § II.D.3. & Attachment D)

Nationwide Advantage Mort. Co. v. Ortiz, 776 N.W.2d 111 (table), 2009 WL 2960414 (Iowa Ct. App. Sept. 2, 2009) (ineffectiveness of homestead mortgage not signed by titleholder’s separated spouse cannot be avoided by doctrines of equitable estoppel or equitable mortgage; contention that homesteads are subject to purchase money mortgages not addressed because issue not advanced below)

JP Morgan Chase Bank, N.A. v. Hawkins, 798 N.W.2d 349 (table), 2011 WL 662671 (Iowa Ct. App. Feb. 23, 2011) (homestead subject to purchase money mortgage not signed by titleholder’s spouse); see also Iowa Code §§ 561.13(3)(c) (A[n] ... encumbrance [of] the homestead is not invalid ... if ... [t]he encumbrance is a purchase money mortgage as defined in section 654.12B”) & 654.12B(1)(b) (“Except when it is a refinancing of an existing purchase money mortgage between the same lender and purchaser and no new funds are advanced, a mortgage given to secure funds which are used to pay off another mortgage is not a purchase money mortgage.”), and Wells Fargo Home Mortgage, Inc. v. Chojnacki, 668 N.W.2d 1 (Minn. Ct. App. 2003) (mortgage on loan used to satisfy prior purchase money loan not within statutory purchase money exception to requirement of spousal signature for homestead mortgages); but cf. Iowa Code §654.12B(2) (“The rights in this section are in addition to, and the obligations are not in derogation of, all rights provided by common law.”).


B. Effect of Second Voluntary Dismissal of Mortgage Foreclosure Action

Wells Fargo Bank, N.A. v. Vetick, 820 N.W.2d 160 (table), 2012 WL 2411451 (Iowa Ct. App. June 27, 2012) (third foreclosure petition not barred by “double-dismissal” provision of Iowa R. Civ. P. 1.943 where voluntary dismissal of second petition upon discovery of prior lien was based on modified loan but voluntarily dismissed first petition was based on original loan)
Onewest Bank, FSB v. Barber-Callison, 829 N.W.2d 192 (table), 2013 WL 541620 (Iowa Ct. App. Feb. 13, 2013) (third foreclosure petition not barred by Iowa R. Civ. P. 1.943 where first two petitions were voluntarily dismissed by earlier holder of mortgage subsequently transferred to present holder through an FDIC receivership and trial court’s statement that application of rule “would discourage banks and [mortgagors] from attempting to work out ... payment plan[s] for existing mortgage[s]” inherently satisfied provision that second voluntary dismissal does not “operate as an adjudication against [the dismissing party] on the merits [if] otherwise ordered by the court, in the interests of justice”)

C. Effects of Delays in Enforcement of Mortgage Foreclosure Judgments

FFMLT 04-FF10, Bank of New York v. Smith, 789 N.W.2d 164 (table), 2010 WL 2925494 (Iowa Ct. App. July 28, 2010) (reversing denial of motion to quash execution, declaring execution sale null and void, and returning legal title to mortgagor where special execution not issued until July 24, 2009 on in rem residential foreclosure decree entered July 5, 2007; exception for period of time when execution stayed by bankruptcy action in Iowa Code § 615.1 (2007) doesn’t encompass demand for six-month delay of sale under Iowa Code § 654.21, but footnote 2 and accompanying text suggest different result potentially possible under 2009 amendment expanding exception to also include period of time when execution stayed via an “order of court”)


First Iowa State Bank v. Hammond, 832 N.W.2d 384 (table), 2013 WL 1453071 (Iowa Ct. App. Apr. 10, 2013) (reversing denial of motion to quash execution, declaring execution sale null and void, and returning legal title to mortgagor where special execution not requested until November 28, 2011 on residential mortgage foreclosure decree entered September 29, 2008; limitations period extended by ninety-nine days between mortgagor’s Chapter 7 bankruptcy petition and discharge, but not otherwise affected by fifteen month interval between post-petition execution sale and subsequent judicial determination same void because of automatic stay)

Longnecker v. Deutsche Bank Nat. Trust Co., 842 N.W.2d 680 (table), 2013 WL 6700312 (Iowa Ct. App. Dec. 16, 2013) (quieting title in mortgagors after foreclosure sale held under seventh execution issued in 2011 after expiration of limitations period on 2007 judgment extended by three bankruptcy filings by husband in 2008 and 2009 and following cancellation of fifth and sixth executions based on two bankruptcy filings by wife in 2010; fourth execution timely issued in 2009 but cancelled to accommodate possibility of failed short sale; federal preemption prevents state court from considering mortgagee’s state law counterclaims based on mortgagor’s actions in bankruptcy proceedings)
D. Recision of Mortgage Foreclosure Judgments

U.S. Bank Nat. Ass'n v. Vahle, 825 N.W.2d 327 (table), 2012 N.W.2d 5539865 (Iowa Ct. App. Nov. 15, 2012) (post-rescission grantee of mortgagor’s interest unable to intervene in dismissed action to advance contention that rescission was ineffective because not made within Iowa Code § 615.1 limitations period; although Iowa Code § 654.17(2)’s express reference to § 615.1 may proscribe a deficiency judgment in a later action on the underlying mortgage, Iowa Code 654.17(1)’s provision that a foreclosure judgment may be rescinded “before the mortgagee’s rights become unenforceable by operation of the statute of limitations” might “more easily be interpreted as referring to Iowa Code §§ 614.1(5) (requiring actions on written contracts to be brought within ten years after the cause of action accrues) or 614.21 (barring foreclosures on mortgages more than twenty years old)] rather than section 615.1”)

Bank of America, N.A. v. Schulte, 843 N.W.2d 876 (Iowa Sup. Ct. Mar. 7, 2014) (affirming effectiveness of notice of rescission filed within two years of residential foreclosure decree, rejecting contention that same subject to Iowa R. Civ. P. 1.1013(1)’s one-year limitation on petitions for vacation of judgments, and noting absence of need to determine whether Iowa Code § 654.17(1) is subject to longer limitations periods prescribed by Iowa Code §§ 614.1(5) or 614.21)

E. Sales Free of Liens and Release of Superior Liens by Bond

Quad City Bank & Trust Co. v. JDHP Development, L.L.C., 808 N.W.2d 756 (table), 2011 WL 5867060 (Iowa Ct. App. Nov. 23, 2011) (appeal of order approving sale free of liens pursuant to Iowa Code § 654.17A as “commercially reasonable” rendered moot by posting of bond releasing liens pursuant to Iowa Code § 654.9A)

IV. OVERVIEW OF FEDERAL RESPONSES

A. Federal Programs Supporting Consensual Restructuring of Residential Mortgages


B. Joint State-Federal National Mortgage and Mortgage Servicing Settlements

National Mortgage Settlement (February 2012) <http://www.nationalmortgagesettlement.com>

National Mortgage Servicing Settlement (December 2013) <https://nationalocwensettlement.com/>
C. Consumer Financial Protection Board Examinations and Rules [Attachment F]

Mortgage Servicing Rules (issued January 17, 2013, effective January 10, 2014) [Attachment F, pp. 1-2]

Mortgage Origination Rules and Ability-to-Repay and Qualified Mortgage Standards (issued January 10, 2013, effective January 10, 2014) [Attachment F, pp. 3-6]
< https://federalregister.gov/a/2013-13173 >

Integrated Mortgage Disclosures Rules (issued November 20, 2013, effective August 1, 2015)
< https://federalregister.gov/a/2013-28210 >
IV. OVERVIEW OF IOWA RESIDENTIAL MORTGAGE FORECLOSURE PROCEDURES

A. THE HISTORICAL DEVELOPMENT OF IOWA MORTGAGE FORECLOSURE LAW

The Received Regime (Foreclosure by Equitable Proceedings/Sale)

Bauer, Judicial Foreclosure and Statutory Redemption: The Soundness of Iowa’s Traditional Preference for Protection over Credit, 71 Iowa L. Rev. 1 (1985)

Bauer, Farm Mortgagor Relief Legislation in Iowa During the Great Depression, 50 Annals of Iowa 23 (1989)

Iowa Foreclosure Law Changes, 1985-1990 (Mostly Agricultural)

Iowa Foreclosure Law Changes, 2006 & 2009 (Mostly Residential)

B. THE BASELINE PROCESS OF JUDICIAL FORECLOSURE AND STATUTORY REDEMPTION

1. Default, Acceleration, and Right to Cure

Note and Mortgage Clauses

Iowa Code §§ 654.2D and .2B (2011) (statutory right to cure)

Iowa Code § 654.4B (2011) (statutory right to cure) (notice of acceleration and availability of mediation)

Dunn v. Gen. Equities of Iowa, Ltd., 319 N.W.2d 515 (Iowa 1982) (acceleration right waived by course of dealing)

2. Foreclosure by Court Action

Iowa Code §§ 654.1-.2, 654.3-.4, and § 611.5 (2011)

Harrington v. Polk County Fed. Sav. & Loan Ass’n, 196 N.W.2d 543 (Iowa 1972) (mortgagee’s alleged misconduct compulsory counterclaim to foreclosure petition)

3. Equitable Redemption and Omitted Parties

Iowa Code §§ 654.8 & .5 and 628.2-.3 & .5 (2011)

Iowa Code §§ 617.10-.12 and 558.41(1) (2011)

Smith v. Shay, 62 Iowa 119, 17 N.W. 444 (1883) (equitable redemption right of senior mortgagee obtaining owner’s title has priority over equitable redemption right of omitted junior lienholder)

White v. Melchert, 208 Iowa 1404, 227 N.W. 347 (1929) (strict foreclosure of omitted owner)

Kuehl v. Eckhart, 608 N.W.2d 475 (Iowa 2000) (right of omitted junior lienholder confined to equitable redemption)

4. Interest and Attorney Fees

Note and Mortgage Clauses

Iowa Code § 668.13(2) (2011)

Fed. Land Bank v. Bryant, 445 N.W.2d 761 (Iowa 1989) (variable interest rate in mortgage carried forward into variable interest rate on judgment)

Iowa Code §§ 625.22 & .24-.25 (2011)


5. Sale Procedures and Bidding

Iowa Code §§ 654.5-.7 & .9-.10 (2011)

Iowa Code §§ 626.74-.86 & .95-.101, 648.1(4), and 655.4-.5 (2011)

Copper v. Iowa Trust & Sav. Bank, 149 Iowa 336, 128 N.W. 373 (1910) (sheriff’s sale set aside for circumstances involving defective procedures, price inadequacy, and owner excusably unaware sale had occurred)

Iowa Code §§ 561.1-.6, .13, .16, and .21-.22 (2011)


Iowa Code Ch. 588 (2011)


ATTACHMENT A
6. **Deficiency Judgments**

Iowa Code § 654.6 (2011)

Iowa Code §§ 614.1(6), 626.2 & .12, and 624.23(1) (2011)

Iowa Code §§ 615.1-.3 (2011)

Hell v. Schult, 238 Iowa 511, 28 N.W.2d 1 (1947) (shortened limitations period applicable to judgment upon debt previously secured by junior mortgage extinguished by foreclosure of senior lien)

Lincoln Joint Stock Land Bank v. Bundt, 234 Iowa 1011, 14 N.W.2d 865 (1944) (collection efforts of previously appointed receiver may extend beyond expiration of shortened limitations period)

7. **In Rem Judgments**

Fed. Land Bank v. Faught Bros., 468 N.W.2d 793 (Iowa 1991) (unsatisfied portion of in rem judgment not enforceable by general execution, and absent proper reservation, subsequent action to obtain an in personam judgment barred by claim preclusion)

8. **Statutory Redemption**

Iowa Code §§ 626.93-.94 and 654.5 (2011)

Iowa Code Chs. 628 and 629 (2011)

Iowa Code §§ 626.95-.101 (2011)


Bauer, "Judicial Sales and Lien Foreclosures," in Real Property Remedies (Iowa Law School Continuing Legal Education 1980)

Farmers Prod. Credit Ass'n v. McFarland, 374 N.W.2d 654 (Iowa 1985) (effect of owner’s redemption prior to expiration of junior lienholder redemption period)

Hawkeye Bank & Trust v. Milburn, 437 N.W.2d 919 (Iowa 1989), cert. denied 493 U.S. 822 (1989) (statutory redemption rights extinguished if enforcement of judgment automatically stayed by filing of bankruptcy petition)
9. **Rent Assignments and Receiverships**


*Iowa Code §§ 680.1 & .4 (2011)*

Mortgage Clauses

*Iowa Code §§ 654.13-.14 (2011)*

Note, *Mortgage Receiverships in Iowa*, 27 Iowa L. Rev. 626 (1942)

[Travelers Ins. Co. v. Tritsch](https://www.iowacourts.gov/pdf/08-Mar/09-Mar/travelers_ins_co_v_tritsch.pdf), 438 N.W.2d 863 (Iowa Ct. App. 1989) (appointment of receiver warranted if security shown to be inadequate)


[Presidential Realty Corp. v. Bridgewood Realty Interests](https://www.iowacourts.gov/pdf/08-Mar/09-Mar/presidential_realty_corp_v_bridgewood_realty_interests.pdf), 498 N.W.2d 694 (Iowa 1993) (first mortgagee with separate assignment of rents has right to funds collected by receiver appointed in foreclosure action by second mortgagee where right to deficiency waived)


*Iowa Code §§ 554.9102(1)(ar)(iv) and 554.9109(4)(k) (2011)*


10. **Equitable Mortgages, Deeds in Lieu of Foreclosure, and Merger**

Note, *Equitable Mortgages in Iowa*, 44 Iowa L. Rev. 716 (1959)

[Steckelberg v. Randolph](https://www.iowacourts.gov/pdf/08-Mar/09-Mar/steckelberg_v_randolph.pdf), 404 N.W.2d 144 (Iowa 1987) (deed accompanied by agreement for reconveyance upon specified terms deemed to be an equitable mortgage)
Slade v. M.L.E. Inv. Co., 566 N.W.2d 503 (Iowa 1997) (failure to raise claim in foreclosure of mortgage bars subsequent effort challenging effects of related deed accompanied by contract to reconvey)

Guttenfelder v. Iebsen, 230 Iowa 1080, 300 N.W. 299 (1941) (deed in lieu of foreclosure deemed to be an equitable mortgage)


Iowa Land Title Standard 4.3 (7th ed. 1993)

Nash Finch Co. v. Corey Dev., Ltd., 669 N.W.2d 546 (Iowa 2003) (deed in lieu of foreclosure in partial satisfaction of mortgage note does not preclude subsequent action seeking judgment for remaining balance)

Tom Riley Law Firm, P.C. v. Padzensky, 430 N.W.2d 416 (Iowa 1988) (deed in lieu of foreclosure of mortgage on vendee’s interest does not result in merger of lien into fee so as to elevate priority of intervening judgment lien)

C. RECENT MODIFICATIONS OF RESIDENTIAL MORTGAGE FORECLOSURE PROCEDURES

1. Alternative Nonjudicial Voluntary Foreclosure Procedure

Iowa Code §§ 654.18 and 628.29 (2011)

2. Judicial Foreclosure Without Redemption of Nonagricultural Land

Iowa Code §§ 654.20-.26 (2011)

3. Nonjudicial Foreclosure of Nonagricultural Mortgages

Iowa Code Ch. 655A (2011)

Putensen v. Hawkeye Bank of Clay County, 564 N.W.2d 404 (Iowa 1997) (state and federal due process challenges denied based on absence of state action)
RECENT IOWA MORTGAGE FORECLOSURE LEGISLATION

Compiled by Patrick B. Bauer
University of Iowa College of Law

A. Foundational Concerns and Purposes

1. 2006 Iowa Acts, Ch. 1132 (H.F. 2786) ........................................ 1
2. 2009 Iowa Acts, Ch. 51 (S.F. 364) ........................................ 1

B. Facilitation of Consensual Arrangements

1. Notice of Availability of Counseling and Mediation
   Through Iowa Mortgage Help ............................................. 2
2. Postponement of Sheriff’s Sale ........................................ 3
3. Rescission of Foreclosure .................................................. 3
4. Sale Free of Liens ........................................................... 5
5. Divestment of Junior Liens Pursuant to Loan Modification ......... 6

C. Adjustments of Deficiency Judgment Limitations

1. Clarifications of Deficiency Judgment Limitations ..................... 7
2. Maintenance of Mortgagor Protections Upon Involuntary
   Discontinuance of Occupancy ......................................... 8
3. Shifting Timing of Application of § 615.1 Deficiency Judgment Limitation . 9

D. Modifications of Nonjudicial Foreclosure of Nonagricultural Mortgages

1. Elimination of Availability in Situations Involving Owner-Occupied
   One or Two Family Dwellings ............................................ 11
2. Lis Pendens Effect and Reopening to Include Omitted Junior Lienholders . 13
3. Notice and Service of Rejection of Notice ................................ 15

E. Simplification of Procedures for Commencement of Foreclosure Proceedings

1. Sufficiency of Demand to Establish Entitlement to Attorney Fees ......... 16
2. Notice to Judgment Creditors of Right to Intervene ..................... 16
3. Service of Process on Judgment Creditors and Persons
   Interested in a Decedent’s Estate .................................... 18

F. Increased Stability of Titles Produced by Foreclosure Proceedings

1. Release of Superior Liens by Bond ..................................... 20
2. Limitations on Objections Based on Noncompliance with Notice
   of Intention to Seek Default Judgment ................................ 20
3. Determination of Issues of Title Raised in Pleadings ................... 21

G. Other Changes

1. Judgments in Sealed Case Files ....................................... 22
2. Simplification of Sheriff’s Sale Procedures ............................. 22
RECENT IOWA MORTGAGE FORECLOSURE LEGISLATION

Compiled by Patrick B. Bauer
University of Iowa College of Law

A. FOUNDATIONAL CONCERNS AND PURPOSES

1. **2006 Iowa Acts, Ch. 1132 (H.F. 2786)**

   Submitted Introductory Explanation *

   Mortgage foreclosures have, according to the Supreme Court’s most recent data, increased by 24.9% from 2002 to 2005; in fact, foreclosures, lien cases and other collection suits are about the only type of suit which has shown an increase in this period. This increase reflects several changes in the mortgage lending business in the last 25 years including (a) the reduction of the role in attorneys in the mortgage origination process, (b) the growth of riskier subprime and high loan-to-value loans, and perhaps most importantly, (c) the increase of late term loss mitigation by mortgage servicers. Several decades ago, most mortgages were held by local banks and savings and loans, and were written with relatively high down payments. Thus, not only were foreclosures rarer, but they were generally more final in nature. Like the fabled FBI agent, the banker did not quickly take the foreclosure pistol out of his holster; but when he did, he shot to kill. Now, it is very common for mortgage servicing companies to consider repayment plans on the eve of a sheriff’s sale. Unfortunately, Iowa’s current law is not favorable to loss mitigation, since a foreclosure decree is often treated [by] the courts as being nonreversible. It was the need to allow late loss mitigation, among other matters, which prompted an ad hoc group of mortgage attorneys to propose this bill.

2. **2009 Iowa Acts, Ch. 51 (S.F. 364)**

   Submitted Introductory Explanation **

   A number of national circumstances are leading to significant increases in Iowa mortgage foreclosure proceedings. Iowa foreclosure law did not cause these difficulties, but can play a constructive role in their resolution.

* Text of italicized explanations of elements of 2006 Iowa Acts, Ch. 1132 (H.F. 2786) derived from submitted supporting statement entitled “Explanation of HF 2786 (as passed by the House)” (7 pp.) (undated, but circa April 2006).

** Except as otherwise indicated, text of italicized explanations of elements of 2009 Iowa Acts, Ch. 51 (S.F. 364) derived from submitted supporting statements entitled “Senate Study Bill 1202/House Study Bill 170, Iowa Mortgage Foreclosure Law Changes: Explanation of Concerns and Responses” (6 pp.) and “Senate Study Bill 1202/House Study Bill 170, Explanation of Proposed Amendments” (2 pp.) (undated, but circa February 2009).
Taking the general orientation of existing Iowa mortgage foreclosure law as a given, the provisions contained in this bill adjust some of the elements of current law in ways that will improve their effectiveness as means of achieving appropriate resolutions of many current mortgage difficulties. Balance has been a guiding principal, and while some advantage to one side or the other may be found in individual provisions, the overall set of proposed changes seeks to preserve the relative rights of lenders and borrowers that Iowa foreclosure law presently reflects.

B. FACILITATION OF CONSENSUAL ARRANGEMENTS

1. **Notice of Availability of Counseling and Mediation Through Iowa Mortgage Help**
   [2009 Iowa Acts, Ch. 51, § 6 - new Iowa Code § 654.4B(2)]

Sec. 6. NEW SECTION.

654.4B. Acceleration of indebtedness—notice of mortgage mediation assistance

   * * *

2. a. Prior to filing a petition under this chapter on a one-family or two-family dwelling that is the residence of the owner, the creditor shall inform the owner of the availability of counseling and mediation on a form as the attorney general may prescribe. The notice required by this section shall be mailed by ordinary mail to the owner along with the notice of acceleration or other initial communication from the attorney representing the creditor in the action, and shall also be served on the owner with the original notice and petition seeking foreclosure. If, following application by the owner or on its own motion, the court finds that the notice was not served on the owner as required by this subsection and that the owner desires counseling or mediation, the court shall grant to the owner a delay of the sheriff's sale or, in the event the sheriff's sale has occurred and the mortgagee or its affiliate was the winning bidder at the sheriff's sale, a delay of the recording of the sheriff's deed. In either case, the delay shall not exceed sixty days. If the affidavit of service for the original notice in the court file indicates that the notice required by this subsection was served on the owner, there shall be a rebuttable presumption that the notice was served as required by this subsection. The court may grant an application for a delay pursuant to this subsection ex parte only if the court file does not show service of the notice on the owner along with the original notice. Objection to the failure of the mortgagee to serve the notice is barred unless an application under this subsection is timely filed and is granted before the date of the sale or recording, respectively. If the court delays the sheriff's sale, the new sale date and time shall be announced orally by the sheriff at the time previously scheduled for sale, and the mortgagee need not republish and serve notice of the rescheduled sale.

   b. This subsection is repealed July 1, 2011.

**Submitted Supporting Explanation**

Borrower or lender unresponsiveness sometimes results in the possibility of consensual resolutions of mortgage difficulties not being appropriately addressed until the commencement of judicial foreclosure proceedings. Deliberate consideration of possible alternatives, however, may reveal other ways of proceeding that may be less harmful to both the lender and the borrower and
(perhaps as importantly) the neighbors and communities who suffer a range of adverse effects from foreclosures that may be avoidable.

New section 654.4B would take advantage of the circumstances of such proceedings (e.g., involvement of experienced attorneys, clearer recognition of changed economic realities) to provide further opportunities for practical adjustments that may be more beneficial to both lender and borrower than the frequently mutually disadvantageous effects of litigated outcomes. New section 654.4B will require that creditors provide borrowers with written notices of the availability of mortgage counseling and mediation services provided by Iowa Mortgage Help (an existing joint effort by the Iowa Attorney General and the Iowa Finance Authority having established lines of communication with all major servicers).

2. Postponement of Sheriff’s Sale

Sec. 3. Section 626.81, Code 2009, is amended to read as follows:

626.81. Sale postponed
When there are no bidders, or when the amount offered is grossly inadequate, or when from any cause the sale is prevented from taking place on the day fixed, when requested by the judgment creditor, or when the parties so agree, the officer may postpone the sale for not more than three days without being required to give any further notice thereof, which postponement shall be publicly announced at the time the sale was to have been made, but not more than two such adjournments of not more than sixty days in the aggregate shall be made, except by agreement of the parties in writing and made a part of the return upon the execution.

Submitted Supporting Explanation

In some instances, meaningful progress on consensual arrangements does not occur until legal notices of a sheriff’s sale have been given. Cancellation of a sheriff’s sale, however, can result in ... additional months of delay and in excess of $300 in additional fees and costs. The proposed amendment of existing section 626.81 expands the grounds for continuance of a sheriff’s sale to include[] request by a judgment creditor and also extends the outer limit of permissible extensions from two postponements of not more than three days each to two postponements not to exceed sixty days in the aggregate.

3. Recision of Foreclosure

(A) Sec. 10. NEW SECTION.

654.17. Recision of foreclosure.
At any time prior to the recording of the sheriff’s deed, and before the mortgagee's rights become unenforceable by operation of the statute of limitations, the judgment creditor, or the
judgment creditor who is the successful bidder at the sheriff’s sale, with the written consent of the mortgagor may rescind the foreclosure action by filing a notice of rescission with the clerk of court in the county in which the property is located along with a filing fee of fifty dollars. In addition, such person shall pay a fee of twenty-five dollars for documents filed in the foreclosure action which the plaintiff requests returned. Upon the filing of the notice of rescission, the mortgage loan shall be enforceable according to the original terms of the foreclosure and the rights of all persons with an interest in the property may be enforced as if the foreclosure had not been filed. However, any findings of fact or law shall be preclusive for purposes of any future action unless the court, upon hearing, rules otherwise. The mortgagor shall be assessed costs, including reasonable attorney fees, of foreclosure and rescission if provided by the mortgage agreement.

Submitted Supporting Explanation

Chapter 615 currently imposes a two-year limitation on the enforcement of deficiency judgments against homeowners on residential and agricultural foreclosures. This law, which basically makes a foreclosure decree ineffective after two years, has created a problem where (as often is the case) the borrowers do not come to terms with the creditor until after the decree was entered. ... [This section] provides a new cheap and simple means of canceling the foreclosure, where the borrowers, after entry of the foreclosure decree, have agreed to a method of bringing the loan up to date. The lender need only file the cancellation certificate and pay a filing fee, and the loan would be treated as if the foreclosure had never been filed. An exception to the fresh start has been inserted so that neither party generally would be able to use this procedure to escape an adverse court ruling.

(B) [2009 Iowa Acts, Ch. 51, § 9 - amendment of Iowa Code § 654.17]

Sec. 9. Section 654.17, Code 2009, is amended to read as follows:

654.17. Recision of foreclosure

1. At any time prior to the recording of the sheriff’s deed, and before the mortgagee’s rights become unenforceable by operation of the statute of limitations, the judgment creditor, or the judgment creditor who is the successful bidder at the sheriff’s sale, with the written consent of the mortgagor may rescind the foreclosure action by filing a notice of rescission with the clerk of court in the county in which the property is located along with a filing fee of fifty dollars. In addition, if the original loan documents are contained in the court file, the mortgagee shall pay a fee of twenty-five dollars to the clerk of the district court. Upon the payment of the fee, the clerk shall make copies of the original loan documents for the court file, and return the original loan documents to the mortgagee.

2. Upon the filing of the notice of rescission, the mortgage loan shall be enforceable according to the original terms of the mortgage loan and the rights of all persons with an interest in the property may be enforced as if the foreclosure had not been filed. Except as otherwise provided in this section, the filing of a rescission shall operate as a setting aside of the decree of foreclosure and a dismissal of the foreclosure without prejudice, with costs assessed against the plaintiff. However, any findings of fact or law shall be preclusive for purposes of any future action unless the court, upon hearing, rules otherwise and the mortgagee shall be permanently barred from a deficiency judgment if the judgment rescinded was subject to the provisions of section 615.1. The mortgagee may charge the mortgagor the costs, including reasonable attorney fees, of
foreclosure and recision if provided by the mortgage agreement agreed to in writing by the mortgagor.

Submitted Supporting Explanation

Various circumstances may prevent consensual resolutions of mortgage difficulties from occurring until foreclosure proceedings have progressed a considerable way towards completion, and the late nature of such agreements should not stand as an obstacle to their implementation. The amendment of existing section 654.17 will facilitate recisions of foreclosures by eliminating a requirement of mortgagor consent that sometimes cannot be satisfied in situations involving changes in ownership and/or marital separations. Possible misuses of recision are addressed by eliminating deficiency judgments if such judgments would otherwise be restricted, and by limiting the assessment of costs to cases in which such costs have been agreed to in writing by the mortgagor.

4. Sale Free of Liens

[Ch. 1132 (H.F. 2786), § 11 (2006) - new Iowa Code § 654.17A ]

Sec. 11. NEW SECTION.

654.17A. Sale free of liens.

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

Submitted Supporting Explanation

[This section] provides for a procedure to sell property during the pendency of the foreclosure, which is similar to a procedure used in bankruptcy court. Often, a borrower who cannot afford, or does not want to keep, a house will often agree with the senior mortgage creditor to sell the house and apply the net proceeds of the sale to the mortgage, usually in exchange for an agreement that the mortgage company will not pursue the borrower further. This is commonly referred to in the industry as a "short payoff." However, under current law, this cannot be done if a junior lienholder (or a co-borrower who has abandoned the property) does not agree. Thus, a foreclosure needs to be completed, for example, whenever a junior lienholder demands payment far in excess of its equity in the property, or if a borrower who has abandoned the property is unwilling
to cooperate. This section would allow the creditor, with consent of the borrowers in possession of the property, if any, to apply to the court for authorization to accept a pending arms-length offer for sale of the property, pay customary closing costs and have the court distribute the net proceeds according to the same priorities as the former interests in the property. Junior interests would only be able to object to the proposed deal if they buy out the prior mortgage, provide adequate protection (e.g., post a bond) or show that a sheriff sale is likely to produce a better result.

5. **Divestment of Junior Liens Pursuant to Loan Modification**

[2009 Iowa Acts, Ch. 51, § 10 - new Iowa Code § 654.17B]

Sec. 10. NEW SECTION.

654.17B. Divestment of junior liens pursuant to loan modification

1. The foreclosing mortgagee and the mortgagor, including any successor in interest of the original mortgagor, of a nonagricultural one-family or two-family dwelling occupied as a residence by the mortgagor may agree in writing to a modification of the mortgage obligation to allow the mortgagor to continue to reside on the property. If such a modification provides for a reduction of at least ten percent in the net present value of the indebtedness owing to the mortgagee, the foreclosing mortgagee and the mortgagor may move that the court divest any junior liens against the property. If the court approves divestment, the court shall order that the junior lienholder be served personally with copies of the loan modification agreement, a verified current balance of the loan as modified, and the court's order that the junior lienholder's interest in the property be divested unless the junior lienholder, within forty-five days of service, either acts pursuant to section 654.8 to obtain an assignment of the mortgagee's rights as modified or moves to quash the proposed divestment by establishing that the value of the property exceeds the amount of the mortgage debt prior to its modification. Such divestment shall prohibit the junior lienholder from any subsequent action to enforce the junior lienholder's debt against the mortgaged property, but, subject to the provisions of chapter 615, shall not otherwise prejudice any personal right of action the junior lienholder may have to proceed against the mortgagor's other assets.

2. This section is repealed July 1, 2014.

*Submitted Supporting Explanation*

A common method of allowing homeowners to stay in their houses is a loan modification. Since many loans were based on inflated appraisals and other risky underwriting practices resulting in homeowners having negative equity (commonly referred as to the house being “under water”), and since deficiency judgments against homeowners are disfavored in Iowa law, it often makes sense for lenders to rewrite their loans downward as to principal, interest, or both, rather than to have it go back to the lender. However, the borrowers have no real incentive to enter a loan modification if the only effect of a first mortgagee writedown is to give a better position to previously worthless junior lienholders.

In circumstances where the senior mortgage is willing to take a 10% or more write-down on its loan as part of a loan modification (which of course it would not in practice do unless it determined that it was undersecured), the foreclosure court would be authorized to strip off the junior liens (but not the underlying indebtedness) to make the loan modification workable. Junior
liens would have an opportunity to defeat the stripdown by either buying out the senior lien, or establishing that their liens are not essentially worthless. The stripdown provision have a 5 year sunset, making it clear that this is an emergency measure for the current crisis only.

At first glance, this may seem like a radical provision; but it really does nothing which cannot be done under current law. For example, the first mortgagee can foreclose, buy at the sheriff’s sale, thus eliminating the junior liens, and then sell on contract to the current borrowers. What the proposed provision does is allow this to be done earlier in the game, without the need for making in effect a new loan to the borrowers with its attendant transactional costs. The real protection which the junior lienholders have, just as they currently have in nonjudicial foreclosures under §654.18 and Chapter 655A, and in short payoff stripdowns under §654.17A, is their §654.8 right to force a buyout of the senior lien when they determine that they actually have equity in the property worth saving. ... [T]he damage to junior lienholders is more than outweighed by the need to keep as many borrowers in houses on terms they can afford, and thus avoid adding to the bloated inventory of vacant lender-owned properties (“REOs”).

C. ADJUSTMENTS OF DEFICIENCY JUDGMENT LIMITATIONS

1. Clarifications of Deficiency Judgment Limitations

(A) [2006 Iowa Acts, Ch. 1132, § 2 - amendment of Iowa Code § 615.1]

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

615.1. Execution on certain judgments prohibited.
From and after January 1, 1934, no judgment in an action for the foreclosure of a real estate mortgage, deed of trust, or real estate contract upon property which at the time of judgment is either used for an agricultural purpose as defined in section 535.13 or a one-family or two-family dwelling which is the residence of the mortgagor, or in any action on a claim for rent or judgment assigned by a receiver of a closed bank or rendered upon credits assigned by the receiver of a closed bank when the assignee is not a trustee for depositors or creditors of the bank, the reconstruction finance corporation or any other federal governmental agency to which the bank or the receiver is or may be indebted shall be enforced, null and void, all liens shall be extinguished, and no execution shall be issued thereon and no force or vitality given thereto for any purpose other than as a setoff or counterclaim after the expiration of a period of two years, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action, from the entry thereof. As used in this section, "mortgagor" means a mortgagor or a borrower executing a deed of trust as provided in chapter 654 or a vendee of a real estate contract.

Submitted Supporting Explanation

Chapter 615 currently imposes a two-year limitation on the enforcement of deficiency judgments against homeowners on residential and agricultural foreclosures. ...[B]esides eliminating obsolete language, [this section] clarifies that the two years does not include any time during which
the borrower was in bankruptcy and a sheriff’s sale is stayed under bankruptcy law. Bankruptcy protection at least temporarily stops foreclosure; the proponents believe that this time should not be counted in the two years.

(B) [2006 Iowa Acts, Ch. 1132, § 3 - amendment of Iowa Code § 615.2]

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

**615.2. Revival of certain judgments prohibited.**

An action or proceedings shall not be brought in any court of this state for the purpose of renewing or extending such judgment or prolonging the life thereof. Provided, however, that nothing herein shall prevent the continuance of such judgment in force against the property subject to foreclosure only for a longer period by the voluntary written stipulation of the judgment creditor and the equitable titleholders, filed in said cause the action or proceedings.

Submitted Supporting Explanation

Chapter 615 currently imposes a two-year limitation on the enforcement of deficiency judgments against homeowners on residential and agricultural foreclosures. This law, which basically makes a foreclosure decree ineffective after two years, has created a problem where (as often is the case) the borrowers do not come to terms with the creditor until after the decree was entered. ... [This section] (which also eliminates obsolete language) addresses a problem created by the current wording of Ch. 615. Current law requires the parties to consent to any waiver of the two year statute of limitations, but does not indicate whether it means the parties to the foreclosure (which would often include junior creditors) or the parties to the mortgage, which may be different from the current owners, for example, when a mortgage was assumed by a buyer from the original mortgage borrower. The bill provides that the waiver only needs to be signed by the lender and the current owners, but that the waiver would only prolong the mortgage company’s right to go after the property, and would not extend its right to enforce any deficiency judgment against other assets.

2. Maintenance of Mortgagor Protections Upon Involuntary Discontinuance of Occupancy
(Also Applicable to Various Other Occupancy-Based Mortgagor Protections)
[2009 Iowa Acts, Ch. 51, § 4 - new Iowa Code § 654.1A]

Sec. 4. NEW SECTION.

**654.1A. Maintenance of mortgagor protections—discontinuation of occupation**

For purposes of sections 615.1, 615.3, 628.28, 654.2D, 654.20, 654.21, and 654.26, property shall be deemed the residence of and occupied by the mortgagor where occupation has ceased because of the effects of natural disaster, injury to the property not willfully caused by the mortgagor, or the mortgagor's state military service or federal military service as those terms are defined in section 29A.1.
Submitted Supporting Explanation

Iowa law conditions various mortgagor protections on occupation of property as a residence. Where such condition cannot be satisfied because of readily excusable circumstances (e.g., property rendered uninhabitable by natural disaster (tornado/flood) or accident (fire), or relocation necessitated by military service), such protections should not be eliminated. Because such instances of excusable non-occupation seem substantially equivalent to the circumstances presumably encompassed within the original intent of these existing provisions, new section 654.1A would apply to all subsequently commenced foreclosure proceedings.

3. Shifting Timing of Application of § 615.1 Deficiency Judgment Limitation
[2009 Iowa Acts, Ch. 51, § 2 - amendment of Iowa Code § 615.1(1)]

Sec. 2. Section 615.1, subsection 1, Code 2009, is amended to read as follows:

1. After the expiration of a period of two years from the date of entry of judgment, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action or order of court, a judgment entered in either any of the following actions shall be null and void, all liens shall be extinguished, and no execution shall be issued for any purpose other than except as a setoff or counterclaim:
   a. (1) An action for the foreclosure of a real estate mortgage, deed of trust, or real estate contract executed prior to July 1, 2009, an action for the foreclosure of a real estate mortgage, deed of trust, or real estate contract upon property which at the time of the foreclosure is commenced is either used for an agricultural purpose as defined in section 535.13 or as a one-family or two-family dwelling which is the residence of the mortgagor.
   (2) For a real estate mortgage, deed of trust, or real estate contract executed on or after July 1, 2009, an action for the foreclosure of the real estate mortgage, deed of trust, or real estate contract upon property which at the time of the execution of the mortgage, deed, or contract is either used for, or is being acquired for, an agricultural purpose as defined in section 535.13 or as a one-family or two-family dwelling which is the residence of the mortgagor.
   b. An action on a claim for rent.

Submitted Supporting Explanation

In the form in which they originally were enacted in 1933 and 1935, existing sections 615.1 and 615.3 applied “across the board” to all real estate mortgages (Ch. 178, 1933 Iowa Acts 207; Ch. 108, 1935 Iowa Acts 153). In 1994, however, their effect was limited by the addition of phrases restricting their effects to “property which at the time of the judgment is either used for an agricultural purpose as defined in section 535.13 or a one-family or two-family dwelling which is the residence of the mortgagor” (Ch. 1115, 1994 Iowa Acts 256). Although presumably intended to exclude owners of “rental properties,” the effects of these limitations have changed with shifts in the dynamics and practices of current mortgage lending.
Existing Mortgages

In the case of § 615.1, the most frequently occurring difficulty may involve situations where the mortgagor moves from the property at some point during the pendency of a foreclosure proceeding. Although such action may be an entirely responsible and mutually beneficial accommodation to the circumstances of the foreclosure, in the absence of some express adjustment it could subject the mortgagor to the effects of a twenty-year (and renewable) deficiency judgment because the requirement that the property be the mortgagor’s residence “at the time of the judgment.” While other permutations may present other difficulties (e.g., mortgagors moving from the property prior to the commencement of a foreclosure proceeding), a limited revision of existing section 615.1 would address moves occurring after the commencement of foreclosure proceedings.

* * *

The modest nature of [this change] and [its] interaction with the conduct of proceedings to enforce existing mortgages warrant[] [its] application to judgments entered in all pending or subsequently commenced foreclosure proceedings.

Future Mortgages

Going forward, the rather haphazard operation of deficiency limitations based on use of property at some point in the foreclosure process can best be addressed by [a] change[] keyed to the use of property at the time of the mortgage is made. Such provision[] will permit more accurate incorporation of any effects of such limitation[] into the terms of credit at the time of original extension when conditions of use can be both determined and memorialized more readily. Because of the relatively more substantive nature of [this change], [its] application would be limited to subsequently contracted mortgages.*

---

* Iowa Code § 615.3 currently provides as follows:

615.3 Future judgments without foreclosure.

A judgment hereafter rendered on a promissory obligation secured by a mortgage, deed of trust, or real estate contract upon property which at the time of the judgment is either used for an agricultural purpose as defined in section 535.13 or a one-family or two-family dwelling which is the residence of the mortgagor, but without foreclosure against the security, shall not be subject to renewal by action thereon, and, after the lapse of two years from the date of rendition, shall be without force and effect for any purpose whatsoever except as a setoff or counterclaim. As used in this section, "mortgagor" means a mortgagor of a mortgage or a borrower executing a deed of trust as provided in chapter 654 or the vendee of a real estate contract.

The underlying study bills (SSB 1202 / HSB 170) had included amendments of § 615.3 paralleling the enacted amendments of § 615.1, but such parallel amendments were not carried forward into the introduced committee bills (SF 364 / HF 695). Thus, in contrast to amended § 615.1, in all instances the applicability of § 615.3 continues to turn on the whether the specified circumstances (use for an agricultural purpose or as the residence of the mortgagor) exist as of the time of the judgment.

-10-
D. MODIFICATIONS OF NONJUDICIAL FORECLOSURE OF NONAGRICULTURAL MORTGAGES

1. Elimination of Availability in Situations Involving Owner-Occupied One or Two Family Dwellings

(A) [ 2006 Iowa Acts, Ch. 1132, § 14 - amendment of Iowa Code § 655A.9 ]

Sec. 14. Section 655A.9, Code 2005, is amended to read as follows:

This chapter does not apply to real estate used for an agricultural purpose as defined in section 535.13, or to a one or two family dwelling which is, at the time of the initiation of the foreclosure, occupied by an equitable titleholder.

Although not enacted, the proposed amendments and supporting explanation provide some partial indications of the nature of the effects of § 615.3’s current formulation:

Sec. 3. Section 615.3, Code 2009, is amended to read as follows:

615.3 Future Judgments Without Foreclosure.

1. a. A judgment hereafter rendered on a promissory obligation secured by a mortgage, deed of trust, or real estate contract upon property which at the time of the judgment is either used for an agricultural purpose as defined in section 535.13 or a one-family or two-family dwelling which is the residence of the mortgagor executed prior to July 1, 2009, but without foreclosure against the security, shall not be subject to renewal by action thereon, and, after the lapse of two years from the date of rendition judgment, shall be without force and effect for any purpose whatsoever except as a setoff or counterclaim, if the mortgage, deed, or contract was upon property which at the time of either the execution of the judgment or the commencement of a proceeding foreclosing a prior mortgage or a disposition in lieu of a prior mortgage, was either used for an agricultural purpose as defined in section 535.13 or as a one-family or two-family dwelling which was the residence of the mortgagor. As used in this section, “mortgagor” means a mortgagor of a mortgage or a borrower executing a deed of trust as provided in chapter 654 or the vendee of a real estate contract.

b. A judgment rendered on a promissory obligation secured by a real estate mortgage, deed of trust, or real estate contract executed on or after July 1, 2009, but without foreclosure against the security, shall not be subject to renewal by action thereon, and, after the lapse of two years from the date of judgment, shall be without force and effect except as a setoff or counterclaim, if at the time of the execution of the mortgage, deed, or contract the property encompassed by the mortgage, deed, or contract is either used for, or is being acquired for, an agricultural purpose as defined in section 535.13 or as a one-family or two-family dwelling which is the residence of the mortgagor. As used in this section, “mortgagor” means a mortgagor of a mortgage or a borrower executing a deed of trust as provided in chapter 654 or the vendee of a real estate contract.

2. As used in this section, “mortgagor” means a mortgagor of a mortgage or a borrower executing a deed of trust as provided in chapter 654 or the vendee of a real estate contract.

Submitted Supporting Explanation

... [T]roublesome difficulties may be presented by the current phrasing of § 615.3. With the proliferation of junior mortgages and the effects of falling home values, the enforcement of junior mortgages often will not occur in proceedings to foreclose a senior mortgage. Instead, debts previously secured by extinguished junior mortgage liens frequently may be sold to and enforced by purchasers of “bad debt” who will obtain judgments upon the mortgage indebtedness in proceedings commenced long after the mortgagor has lost possession of the property through the foreclosure of the senior mortgage. Limiting the burden of judgments attributable to junior mortgages that either initially were or subsequently have become partially or entirely unsecured was an objective of this section in the form of its original enactment (e.g., Hell v. Schult, 238 Iowa 511, 28 N.W.2d 1 (1947)), and achieving that purpose could be regained by adding language adjusting the scope of § 615.3 to parallel the proposed rephrasing of § 615.1.
Submitted Supporting Explanation

Currently, Chapter 655A provides an expedited means whereby a mortgage creditor can get title back and eliminate most junior liens. This procedure is most useful in cases of abandonment. ... [This section] would provide that this nonjudicial procedure could not be used for most residential property unless the property is vacant, or occupied only by nonowners, such as renters or squatters.

(B) [ 2009 Iowa Acts, Ch. 512, § 15 - amendment of Iowa Code § 655A.9 ]

Sec. 15. Section 655A.9, Code 2009, is amended to read as follows:

655A.9. Application of chapter
This chapter does not apply to real estate used for an agricultural purpose as defined in section 535.13, or to a one or two family dwelling which is, at the time of the initiation of the foreclosure, occupied by an equitable titleholder.

Submitted Supporting Explanation

In 2006, existing section 655A.9 was amended to prohibit the use of nonjudicial foreclosure in circumstances where real estate is “a one or two family dwelling which is, at the time of the initiation of the foreclosure, occupied by an equitable titleholder” (Ch. 1132, 2006 Iowa Acts 330). The essential thrust of the added language seemingly was the prevention of the use of nonjudicial foreclosure where a one or two family dwelling was “owner-occupied” (as opposed to being a rental property occupied by tenants). Thus, the term “equitable titleholder” presumably encompasses both (i) “original mortgagors” (i.e., where at the time of the foreclosure the property is occupied by the person who gave the mortgage) and (ii) “successor mortgagors” (i.e., where at the time of the foreclosure the property is occupied by a person holding either (a) both legal and equitable title (as the grantee of a deed from a person giving the original mortgage) or (b) equitable title only (as the vendee under a land contract from a person giving the original mortgage)). In contrast, the term “equitable titleholder” presumably excludes situations involving “mere tenants” where at the time of the foreclosure the owner’s interest in the property was limited to that of a landlord.

Some lawyers who do foreclosures for a number of institutional lenders, however, are continuing to use nonjudicial foreclosure in circumstances where the property is occupied by (i) original mortgagors or (ii)(a) successor mortgagors holding both legal and equitable title as the grantee of a deed based on a contention that the term “equitable titleholder” is limited to circumstances where (ii)(b) the property is occupied by someone who holds equitable title only as a vendee under a land contract. While some attenuated support for this interpretation can be supplied by a negative inference from isolated instances of the term’s use in discussions of the effects of land contracts, treating the General Assembly’s extension of protection to contract vendees as a withholding of protection from the presumably more compelling circumstances of “full owners” flies in the face of common sense.

Such a construction of the phrase “equitable titleholder” is contrary to way in which the term is understood in the field of mortgage law:
a. The “title,” “lien,” and “intermediate” theories of mortgage law. American courts have traditionally recognized one of three theories of mortgage law. Under the title theory, legal “title” to the mortgaged real estate remains in the mortgagee until the mortgage is satisfied or foreclosed; in lien theory jurisdictions, the mortgagee is regarded as owning a security interest only and both legal and equitable title remain in the mortgagor until foreclosure. Under the intermediate theory, legal and equitable title remain in the mortgagor until a default, at which time legal title passes to the mortgagee. ...

(2) The lien theory. The substantial majority of American jurisdictions follow the lien theory. Under this theory, the mortgagee acquires only a “lien” on the mortgaged real estate and the mortgagor retains both legal and equitable title and the right to possession until foreclosure or a deed in lieu of foreclosure.


It also is inconsistent with usage of the concept in at least two Iowa Supreme Court decisions. See Kleinsorge v. Clark, 232 Iowa 313, 316, 4 N.W.2d 433, 435 (1942) (“At the time the examiner in charge agreed to give appellee two years within which to redeem upon payment of $1,200, appellee was still the legal and equitable owner and the receiver of the bank as holder of the certificate of purchase was merely a lienholder.”) (emphasis added)); O’Brien v. Gerbracht, 196 Iowa 990, 993, 195 N.W. 731, 732 (1923) (“Notwithstanding that the property had been sold to the bank at sheriff’s sale, in the foreclosure proceedings, Munyon, at the time he executed the deed in question, was the owner of both the legal and equitable titles, subject to the lien of the bank.”) (emphasis added)).

Significant obstacles stand in the way of obtaining an authoritative judicial resolution of this difficulty anytime soon. A legal titleholder fortunate enough to secure adequate legal representation presumably will choose to avoid the issue through the less entailed and more certain step of filing a rejection notice under Iowa Code § 655A.6. More commonly, legal titleholders without legal representation may fail to object to an unlawful use of nonjudicial foreclosure and such uninformed acquiescence then may constitute a practical or procedural impediment to any effort to raise the issue at a later date. In view of these circumstances, a conclusive judicial determination may not materialize in time to ensure that owner-occupied residential properties in the current wave of foreclosures receive the protections Iowa law provides through the process of foreclosure by judicial proceedings.

2. Lis Pendens Effect and Reopening to Include Omitted Junior Lienholders

(A) [ 2006 Iowa Acts, Ch. 1132, § 13 - new Iowa Code § 655A.3(3) ]

Sec. 13. Section 655A.3, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. The mortgagee may file a written notice required in subsection 1 together with proof of service on the mortgagor with the recorder of the county where the mortgaged property is located. Such a filing shall have the same force and effect on third parties as an indexed
notation entered by the clerk of the district court pursuant to section 617.10 and shall commence on 
the filing of proof of service on the mortgagors and terminate on the filing of a rejection pursuant 
to section 655A.6, an affidavit of completion pursuant to section 655A.7, or the expiration of ninety 
days from completion of service on the mortgagors, whichever occurs first.

**Submitted Supporting Explanation**

Currently, Chapter 655A provides an expedited means whereby a mortgage creditor can get 
title back and eliminate most junior liens. ... [This section] corrects a defect in the current law 
dealing with “cascading liens,” i.e., where new liens are being filed against the owner during the 
pendency of the nonjudicial foreclosure. In other words, since the junior creditors have to be given 
30 days notice of the foreclosure, as long as new liens are being filed, the foreclosure would be 
delayed indefinitely as new liens attach and have to be given the notice. The section would adopt 
a procedure like in judicial foreclosures, which would provide that the new lienholders would not 
have to be served with notice if the procedure is completed within 90 days after the homeowners 
have been served.

(B) [ 2009 Iowa Acts, Ch.  51, § 14  - new Iowa Code § 655A.8(4)-(5) ]

Sec. 14. Section 655A.8, Code 2009, is amended to read as follows:

**655A.8. Effect of foreclosure --reopening**

Upon completion of the filings required under section 655A.7 and if no rejection of notice 
has been filed pursuant to section 655A.6, then without further act or deed:
1. The mortgagee acquires and succeeds to all interest of the mortgagor in the real estate.
2. All liens which are inferior to the lien of the foreclosed mortgage are extinguished.
3. The indebtedness secured by the foreclosed mortgage is extinguished.
4. If, after completion of the filings required under section 655A.7, it appears that a junior 
lienholder was not properly served with a notice pursuant to section 655A.3, the mortgagee may 
serve the lienholder with an amended notice specifying the provisions of the mortgage currently in 
default. Unless, within thirty days, the junior lienholder performs pursuant to section 655A.5, the 
mortgagee may file a supplemental affidavit indicating service and nonperformance to extinguish 
the lien.
5. A foreclosure under this chapter shall not bar a mortgagee or its successor in interest from 
action under chapter 654 to resolve matters which have not been resolved under this chapter.

**Submitted Supporting Explanation**

Experience with Chapter 655A has revealed ways in which its operation could be improved 
in situations where its use [is] permissible (i.e. non-agricultural/non-owner occupied). ... The 
amendment of § 655A.8 would increase the utility of nonjudicial foreclosure by authorizing ways 
of dealing with situations involving overlooked junior lienholders.
3. Notice and Service of Rejection of Notice

(A) [2009 Iowa Acts, Ch. 51, § 11 - new Iowa Code § 655A.3(4)]

Sec. 11. Section 655A.3, subsection 1, paragraph a, Code 2009, is amended by adding the following new subparagraph:

NEW SUBPARAGRAPH. (4) Specify a postal or electronic mail address where rejection of the notice may be served.

(B) [2009 Iowa Acts, Ch. 51, § 12 - amendment of Iowa Code § 655A.4]

Sec. 12. Section 655A.4, Code 2009, is amended to read as follows:

655A.4. Service
Notice or rejection of notice under this chapter shall be served as provided in the rules of civil procedure for service of original notice. Rejection of notice under this chapter shall be served by ordinary or electronic mail addressed as provided in the notice, or if no address is provided, to the last address of the mortgagee known to the mortgagor.

(C) [2009 Iowa Acts, Ch. 51, § 13 - amendment of Iowa Code § 655A.6]

Sec. 13. Section 655A.6, Code 2009, is amended to read as follows:

655A.6. Rejection of notice
If either the mortgagor, or successor in interest of record including a contract purchaser, within thirty days of service of the notice pursuant to section 655A.3, files with the recorder of the county where the mortgaged property is located, a rejection of the notice reasonably identifying by a document reference number the notice which is rejected together with proofs of service required under section 655A.4 that the rejection has been served on the mortgagee, the notice served upon the mortgagor pursuant to section 655A.3 is of no force or effect.

Submitted Supporting Explanation

Experience with Chapter 655A has revealed ways in which its operation could be improved in situations where its use is permissible (i.e. non-agricultural/non-owner occupied). Amendments of §§ 655A.3, 655A.4, and 655A.6 would facilitate service of rejections of notice by requiring that notices of nonjudicial foreclosure include a specification of an address where rejection can be served, by permitting service of rejections of notice by ordinary or electronic mail, and eliminating a requirement of identifying the notice by a document reference number that normally does not exist because notices usually are not filed until after the time for a rejection has passed.
E. SIMPLIFICATION OF PROCEDURES FOR
COMMENCEMENT OF FORECLOSURE PROCEEDINGS

1. Sufficiency of Demand to Establish Entitlement to Attorney Fees

[2009 Iowa Acts, Ch. 51, § 6 - new Iowa Code § 654.4B(1)]

Sec. 6. NEW SECTION.

654.4B. Acceleration of indebtedness—notice of mortgage mediation assistance

1. Prior to commencing a foreclosure on the accelerated balance of a mortgage loan and after termination of any applicable cure period, including but not limited to those provided in section 654.2A or 654.2D, a creditor shall give the borrower a fourteen-day demand for payment of the accelerated balance to qualify for an award of attorney fees under section 625.25 on the accelerated balance.

Submitted Supporting Explanation *

[Current case law, Home Savings v. Iowa City Inn, 152 N.W.2d 588 (Iowa 1967), indicates that attorneys fees on an accelerated balance cannot [be awarded based on] a mere 8 days' demand for the accelerated balance. The case provides no guidance on how much notice is enough. This provision sets a 14 day "safe harbor" for acceleration notices.

2. Notice to Judgment Creditors of Right to Intervene

(A) [2006 Iowa Acts, Ch. 1132, § 9 - new Iowa Code § 654.15B]

Sec. 9. NEW SECTION.

654.15B. Right to intervene – notice.

A lender may serve a judgment creditor in a foreclosure action with notice in substantially the following form advising the creditor that the property that is the subject of the foreclosure action shall be foreclosed and describing the creditor's interest in the action and that unless such creditor intervenes in the foreclosure action such creditor shall lose the creditor's interest in the mortgaged property. Unless the creditor intervenes within thirty days of the service of notice, the court may adjudicate the creditor's rights against the property as if the creditor had been added as a defendant and default had been entered against the defendant. If a creditor cannot be located for personal service, the plaintiff may, at any time prior to sixty days before the date of trial, amend the petition as a matter of right to add the creditor as a defendant for service by publication as provided by rule. The notice prescribed by this section is as follows:

* Derived from bracketed explanation contained in untitled submitted draft of amendments to HSB 170 (4 pp.) (undated, but circa February 2009).
NOTICE OF PENDING FORECLOSURE

To: (Name of creditor)

Date: (Enter date)

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

__________________
Name, address, and telephone number of attorney representing plaintiff.

Submitted Supporting Explanation

Under current law, a foreclosure attorney needs to name as defendants in the foreclosure all persons with an interest of record to the property. This would include, for example, the owners, other mortgage holders, and judgment and mechanics lien creditors. ... [This section] is a response to a common problem faced by foreclosure attorneys. Since judgment creditors have to be added as defendants, foreclosure attorneys often receive irate calls from distraught former spouses, who are upset because their ex-spouse never paid court ordered support, and indicating that it is unfair that “I am now being sued because my ‘ex’ isn’t paying his/her home mortgage payments either.” This section provides a negative notice, which would give such judgment creditors an opportunity to join the suit, but provide that unless they do so, their judgment liens would be foreclosed out.

(B) [ 2009 Iowa Acts, Ch. 51, § 8 - amendment of Iowa Code § 654.15B ]

Sec. 8. Section 654.15B, Code 2009, is amended to read as follows:

654.15B. Right to intervene--notice

A lender may serve a judgment creditor in a foreclosure action with notice in substantially the following form advising the creditor that the property that is the subject of the foreclosure action shall be foreclosed and describing the creditor's interest in the action and that unless such creditor intervenes in the foreclosure action such creditor shall lose the creditor's interest in the mortgaged property. Unless the creditor intervenes within thirty days of the service of notice, the court may adjudicate the creditor's rights against the property as if the creditor had been added as a defendant and default had been entered against the defendant. If a creditor cannot be located for personal service, the plaintiff may, at any time prior to sixty days before the date of trial, amend the petition as a matter of right to add the creditor as a defendant for service by publication as provided by rule. The notice prescribed by this section is as follows:
NOTICE OF PENDING FORECLOSURE

To: (Name and address of creditor)

Date: (Enter date)

Plaintiff (Name of foreclosing party) has filed a foreclosure of mortgage against the property of (titleholder) located at (street address of property) which is legally described as (legal description). This foreclosure was filed as (Plaintiff v. Defendant), Case # (..), in the Iowa District Court for (......) County and is intended to foreclose a mortgage dated (date of mortgage) and recorded on (date of recording) in the (county recorder's office). You have an apparent interest in the property because (description of creditor's interest) of an apparent judgment lien in (short caption of case, case number, court where judgment entered, and judgment date). If you desire to protect this interest, you have the right to intervene in the foreclosure action within thirty days of the service of notice by filing an intervention with the clerk of court in (......) County. Unless you intervene in the foreclosure, the foreclosure may eliminate any interest you have in the property but will not otherwise affect your rights. If you have any questions about this notice, contact your attorney. Whether or not you intervene, the foreclosure may have certain tax consequences to you about which you should consult your tax advisor.

Submitted Supporting Explanation

Existing section 654.15B presently allows a notice of a right to intervene in lieu of affirmative joinder of judgment creditors as parties defendant, and the amendment would require the mortgagee to provide additional information facilitating the judgment creditor’s assessment of circumstances relevant to a determination of the advisability of intervention.

3. Service of Process on Judgment Creditors and Persons Interested in a Decedent’s Estate
   [ 2009 Iowa Acts, Ch.  51, §  5 - new Iowa Code § 654.4A ]

Sec. 5. NEW SECTION.

654.4A. Service of process--in rem relief

In addition to any other form of service authorized by law, where in rem relief is the only relief requested in a foreclosure action against either a party or a person to be served with a notice pursuant to section 654.15B, all of the following shall apply:

1. If the person to be served is a judgment creditor, service may be made by certified mail, with proof of delivery, to the judgment creditor's registered agent or to the judgment creditor at the judgment creditor's principal place of business in the state where the business is organized, as indicated by the records in the office of the secretary of state, or to the judgment creditor at the last address indicated in the case in which the judgment was entered.

2. Upon affidavit that service cannot be made on a judgment creditor either pursuant to subsection 1 or by personal service in this state, service may be made by certified mail, with proof of delivery, on the judgment creditor's attorney of record if that attorney is a practicing attorney in
this state, along with a copy of this section, and a payment of ten dollars. The attorney shall forward
the notice by ordinary mail to the judgment creditor's last known address but the attorney shall have
no further duties under this section with respect to the notice.

3. An attorney who agrees to accept service on behalf of a judgment creditor may charge a
reasonable fee, not to exceed ten dollars, for accepting service.

4. If a person, other than a governmental taxing unit, is an interested person with respect to
a decedent's estate in probate, the person may be named generally as a person interested in the
decedent's estate and service of process shall be made by personal service or certified mail, along
with proof of delivery, on the attorney for the personal representative. If the estate is probated in this
state and a person has requested notice pursuant to section 633.42, the mortgagee shall also serve
that person or the person's attorney by ordinary mail at the address specified in the request for notice.
A person so served may intervene as a named defendant as a matter of right.

5. If a defendant, other than a governmental taxing unit, is a person whose identity is not
reasonably ascertainable, and the person has an interest in a decedent's estate not probated in this
state, such person may be named generally as a person with an interest in the decedent's estate and
service of process shall be made by publication unless the mortgagee has actual notice that the
decedent's estate is probated in another state. A person so served may intervene as a named
defendant as a matter of right.

Submitted Supporting Explanation

Iowa’s principal method of mortgage foreclosure involves a judicial proceeding designed
to produce fair and final determinations of the rights of all persons having interests in the
mortgaged property. Owners, persons in possession, and other mortgagees must be joined as
parties through procedures that are the same as those used in other types of judicial proceedings.
In two particular instances, however, such procedures are burdensome and costly in ways that often
may be disproportionate to the value of the interests in question.

Although persons obtaining judgments against the owner of real estate sometimes may
acquire subordinate liens, such judgments frequently may either not result in a lien (because of the
effects of Iowa’s homestead exemption) or (in those instances where judgments are liens) be
essentially worthless because the amount of the prior mortgage is greater than the value of the
mortgaged land. A somewhat different circumstance exists when an owner or lienholder has died
and their interests have passed to survivors who may be represented by an executor or administrator
if an estate has been opened or whose identity may not be readily determinable if one has not. New
section 654.4A would address these difficulties by affording notice to such persons through more
expedient means.
F. INCREASED STABILITY OF TITLES PRODUCED BY FORECLOSURE PROCEEDINGS

1. Release of Superior Liens by Bond

   [2006 Iowa Acts, Ch. 1132, § 7 - new Iowa Code § 654.9A]

   Sec. 7. NEW SECTION.

   **654.9A. Release of superior liens by bond.**

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

   **Submitted Supporting Explanation**

   [This section] is a response to the growth of title insurance and title guaranties. Currently, if there is a title problem due, for example, to an unreleased prior mortgage, generally, the foreclosure cannot be completed until the title problem is resolved. This section would allow the lender or its title carrier to post a bond to release liens, so that the title issues will not slow down foreclosure.

2. Limitations on Objections Based on Noncompliance with Notice of Intention to Seek Default Judgment

   [2009 Iowa Acts, Ch. 51, § 1 - new Iowa Code § 614.18A]

   Section 1. NEW SECTION.

   **614.18A. Judgment and decree affecting real property**

   In an action in which the court had jurisdiction of the aggrieved party, a motion or other legal proceeding attacking the validity of the judgment or decree based on noncompliance with the requirements of rule of civil procedure 1.972 shall not affect the interests of any purchaser or mortgagee for value of the real property involved unless the motion or proceeding is initiated within thirty days after the recording of the sheriff's deed or within ninety days after the filing of a judgment or decree not providing for the issuance of a sheriff's deed.
Submitted Supporting Explanation

In 1997, the Iowa Supreme Court added a requirement that entries of default be preceded by service of a notice of intent to apply for entry of default. See I.R.C.P. 1.972(2)-(4). In Dolezal v. Bockes, 602 N.W.2d 348 (Iowa 1999), the Iowa Supreme Court indicated that a challenge to the absence of such notice was not subject to the procedural or substantive requirements applicable to other motions to set aside default judgments (see I.R.C.P. 1.977).

The absence of any apparently applicable outer limit on a challenge to default judgments based on a lack of compliance with I.R.C.P. 1.972 injects unnecessary uncertainties into the marketability of titles obtained through foreclosure sales held pursuant to default decrees. New section 654.18A would provide desirable title stability by requiring that such challenges be made no later than thirty days after the recording of a sheriff’s deed, or ninety days after the filing of a judgment or decree not providing for the issuance of a sheriff’s deed.

3. Determination of Issues of Title Raised in Pleadings

[2009 Iowa Acts, Ch. 51, § 7 - amendment of Iowa Code § 654.5]

Sec. 7. Section 654.5, Code 2009, is amended to read as follows:

654.5. Judgment--sale and redemption

1. When a mortgage or deed of trust is foreclosed, the court shall do all of the following:
   a. Render judgment for the entire amount found to be due, and must direct
   b. Direct the mortgaged property, or so much thereof as is necessary, to be sold to satisfy the judgment, with interest and costs.
   c. Determine issues of title raised in the pleadings to establish the rights and priorities of the parties and persons served with notice pursuant to section 654.15B in the property subject to foreclosure as may be reasonably necessary to allow a purchaser at a sheriff’s sale to obtain clear title.

2. A special execution shall issue accordingly under such conditions as the decree may prescribe, and the sale under the special execution is subject to redemption as in cases of sale under general execution unless the plaintiff has elected foreclosure without redemption under section 654.20.

3. The clerk shall provide a copy of the decree by ordinary or electronic mail to all parties in the foreclosure proceeding and all persons served with notices under section 654.15B.

Submitted Supporting Explanation

The ability to return foreclosed properties to productive uses sometimes is obstructed by unresolved issues concerning the rights of persons afforded opportunities to participate in the foreclosure proceedings. The amendment of existing section 654.5 would clarify that courts are obligated to determine the rights of all persons joined as parties or receiving equivalent notices of right to intervene where issues of title have been raised by the pleadings and resolution of such issues is necessary to provide clear title to persons purchasing the land at a sheriff’s sale.
G. OTHER CHANGES

1. Judgments in Sealed Case Files

   [2006 Iowa Acts, Ch. 1132, § 4 - new Iowa Code § 624.23(7)]

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

NEW SUBSECTION. 7. If a case file has been sealed by the court, or if by law the court records in a case are not available to the general public, any judgments entered in the case shall not become a lien on real property until either the identity of the judgment creditor becomes public record, or until the judgment creditor, in a public document in the case in which judgment is entered, designates an agent and office, consistent with the requirements of section 490.501, on which process on the judgment creditor may be served. Service may be made on the agent in the same manner as service may be made on a corporate agent pursuant to section 490.504. An agent who has resigned without designating a successor agent and office and who is otherwise unavailable for service may be served in the manner provided in section 490.504, subsection 2, at the agent's office of record.

Submitted Supporting Explanation

(This section) affects "phantom creditor" judgment liens. Under current law, all judgments are generally liens against real property owned by the judgment debtor in the county where the judgment is entered. However, in some cases (for example, domestic abuse cases and juvenile cases) the identity of the judgment creditor is kept confidential by court order. Thus, the lender is put in the position of having to serve papers on a person whose identity is a secret. (This section) addresses this problem by providing that a judgment is not a lien unless the identity of the judgment creditor becomes public record, or unless the judgment creditor publicly designates an agent and a location where service of process can be made on the anonymous creditor. ... (T)his section will only be effective for judgments entered after June 30, 2007.

2. Simplification of Sheriff's Sale Procedures

   (A) [2006 Iowa Acts, § 5 - amendment of Iowa Code § 626.78]

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

626.78. Notice to defendant.

If the debtor is in actual occupation and possession of any part of the land levied on, the officer having the execution shall, at least twenty days previous to such sale, serve the debtor with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale, which notice shall be served in the manner provided by rule of civil procedure 1.305(1). However, upon the filing of an affidavit that the debtor is intentionally evading service of process or otherwise cannot be served despite repeated and diligent attempts, the notice may be served by placing the notice in a plain opaque envelope, addressed to the defendant and marked personal and
confidential, by affixing the envelope to a main entrance of the premises subject to sale, and by mailing a copy of the notice to the debtor at the debtor's last known address by ordinary mail.

Submitted Supporting Explanation

[This section] deals with a problem in current law relating to borrowers who cannot be served with the notice of sheriff sale. Under current law, the sheriff has to actually place the notice of the sheriff sale in the borrowers’ hands. This would provide an alternate means of discreetly posting the notice on the property where the sheriff has been unable to effect service.

(B) [2006 Iowa Acts, § 6 - amendment of Iowa Code § 626.80]

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

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

Submitted Supporting Explanation

[This section] provides a cheaper method, by using modern technology, of bidding at the sheriff sale for defendants in the foreclosure, primarily junior creditors with no physical presence in the county where the property is located. Currently, these out of town creditors have to hire someone to personally appear and bid, and then provide the cash directly if the bid is successful. The bill would allow most creditors to bid in writing, but would provide that their bids will be canceled if they don’t promptly pay up after being notified that they won the auction. If their bid is canceled, the next highest bidder would be certified as the winner of the auction. The bill provides an exception at the sheriff’s option where a particular bidder or a particular bidder agent has not promptly paid in previous cases.
Sec. 8. NEW SECTION.

654.15A. Notice of sale to junior creditors.

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

Submitted Supporting Explanation

[This section] provides for a new method, where requested, of notifying junior creditors of the sale and postponements of the sale. Currently, junior creditors receive no notice of a sheriff sale other than the sheriff's notice in the local newspaper. Therefore, they often will show up for a sale, only to find that it has been postponed or canceled. This section would provide that on request, they will be notified by facsimile or electronic mail of the date and times of a sale and of any postponements or cancellations. If the sale is held without giving such notice, the junior creditor will have 30 days to ask the court to void the sale.
CHAPTER 1053
CIVIL ACTIONS AFFECTING REAL ESTATE
H.F. 2370

AN ACT relating to civil actions relating to real estate, including mortgage foreclosure actions.

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

Section 1. Section 617.11, Code 2011, is amended to read as follows:

617.11 Lis pendens.

1. When so indexed said action When a petition or municipal infraction citation affecting real estate is indexed pursuant to section 617.10, either action shall be considered pending so as to charge all third persons with notice of its pendency, and while pending no interest can be acquired by third persons in the subject matter thereof as against the plaintiff’s rights.

2. If a claim of interest against the property is acquired prior to the indexing of a petition affecting real estate and filed by anyone other than a city and such claim is not indexed or filed of record prior to the indexing of the petition, it is subject to the pending action as provided in subsection 1, unless any of the following occurs:

a. The claimant intervenes in the pending action prior to entry of judgment.

b. The claimant, prior to transfer of an interest in the property to a bona fide third-party transferee, records an affidavit showing that the party seeking relief under the pending action had, prior to the indexing of the petition, actual notice of the claim of interest and of the identity of the claimant.

3. If a claim of interest against the property is acquired prior to the indexing of a petition or municipal citation affecting real estate and filed by a city and such claim is not indexed or filed of record prior to the indexing of the petition or citation, it is subject to the pending action as provided in subsection 1, unless either of the following occurs:

a. The claimant intervenes in the pending action and obtains relief from the court prior to entry of judgment.

b. Within ninety days after entry of judgment, the claimant files an application to reopen a petition or municipal infraction citation affecting real estate and filed by a city and proves at the hearing on the application that the claimant is entitled to relief because the city had actual notice of the claim of interest and of the identity of the claimant prior to the indexing of the petition or citation.

4. Subsections 2 and 3 shall not apply to a mechanic’s lien filed pursuant to chapter 572 or to a person who has taken possession of the property for value prior to the indexing of the petition or citation.

Sec. 2. Section 654.4A, unnumbered paragraph 1, Code 2011, is amended to read as follows:

In addition to any other form of service authorized by law, where in rem relief is the only relief requested in a foreclosure action or nonjudicial foreclosure under section 654.18 or chapter 655A against either a party or a person to be served with a notice pursuant to section 654.15B, all of the following shall apply:

Sec. 3. Section 654.18, subsection 1, paragraph e, Code 2011, is amended to read as follows:

e. (1) The mortgagee shall send by certified mail a notice of the election to all junior lienholders as of the date of the conveyance under paragraph “a”, stating that the junior lienholders have thirty days from the date of mailing to exercise any rights of redemption. The notice may also be given in the manner prescribed in section 656.3 in which case the junior lienholders have thirty days from the completion of publication to exercise the rights of redemption.
(2) In addition to any other form of service authorized by law, service of process in an alternative nonjudicial voluntary foreclosure procedure filed pursuant to this section where in rem relief is the only relief requested shall be served in the manner provided in section 654.4A.

Sec. 4. Section 655A.3, subsection 1, paragraph b, Code 2011, is amended to read as follows:

b. The notice shall contain the following in capital letters of the same type or print size as the rest of the notice:

WITHIN THIRTY DAYS AFTER YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER CURE THE DEFAULTS DESCRIBED IN THIS NOTICE OR FILE WITH THE RECORDER OF THE COUNTY WHERE THE MORTGAGED PROPERTY IS LOCATED A REJECTION OF THIS NOTICE AND SERVE A COPY OF YOUR REJECTION ON THE MORTGAGEE IN THE MANNER PROVIDED BY THE RULES OF CIVIL PROCEDURE FOR SERVICE OF ORIGINAL NOTICES IN SECTION 655A.4. IF YOU WISH TO REJECT THIS NOTICE, YOU SHOULD CONSULT AN ATTORNEY AS TO THE PROPER MANNER TO MAKE THE REJECTION.

IF YOU DO NOT TAKE EITHER OF THE ACTIONS DESCRIBED ABOVE WITHIN THE THIRTY-DAY PERIOD, THE FORECLOSURE WILL BE COMPLETE AND YOU WILL LOSE TITLE TO THE MORTGAGED PROPERTY. AFTER THE FORECLOSURE IS COMPLETE THE DEBT SECURED BY THE MORTGAGED PROPERTY WILL BE EXTINGUISHED.

Sec. 5. Section 655A.4, Code 2011, is amended to read as follows:

655A.4 Service.

Notice under this chapter shall be served as provided in the rules of civil procedure for service of original notice or as provided in section 654.4A. Rejection of notice under this chapter shall be served by ordinary or electronic mail addressed as provided in the notice, or if no address is provided, to the last address of the mortgagee known to the mortgagor.

Approved April 4, 2012
CHAPTER 11
CONVEYANCE OR ENCUMBRANCE OF HOMESTEAD BY A SPOUSE
S.F. 400

AN ACT relating to the conveyance or encumbrance of a homestead by a spouse.

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

Section 1. Section 561.13, Code 2011, is amended to read as follows:

561.13 Conveyance or encumbrance.
1. A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse of the owner executes the same or a like instrument, or a power of attorney for the execution of the same or a like instrument, except as provided in subsection 3. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the subject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer.

2. If a spouse who holds only homestead rights and surviving spouse’s statutory share in the homestead specifically relinquishes homestead rights in an instrument, including a power of attorney constituting the other spouse as the husband’s or wife’s attorney in fact, as provided in section 597.5, it is not necessary for the spouse to join in the granting clause of the same or a like instrument.

3. A conveyance or encumbrance or a contract to convey or encumber the homestead is not invalid under subsection 1 if any of the following apply:
   a. The nonsigning spouse’s interest is terminated by a decree of dissolution of marriage or other order of the court.
   b. The nonsigning spouse’s right of recovery is barred by section 614.15.
   c. The encumbrance is a purchase money mortgage as defined in section 654.12B.
   d. A court sitting in equity enters a decree holding that invalidating the conveyance or encumbrance or a contract to convey or encumber the homestead would, directly or indirectly, unjustly enrich the nonsigning spouse.

4. For the purposes of this section, “nonsigning spouse” means a spouse who has not executed a conveyance or encumbrance or a contract to convey or encumber the homestead, the same or a like instrument, or a power of attorney for the execution of the same or a like instrument.

Approved March 30, 2011
CHAPTER 1021
JUDGMENT LIENS ON HOMESTEADS
H.F. 2282

AN ACT relating to judgment liens on homesteads.

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

Section 1. Section 624.23, subsection 2, Code 2009, is amended to read as follows:

2. a. Judgment liens described in subsection 1 do not remain a lien upon attach to real estate of the defendant, platted occupied as a homestead pursuant to section 561.4, chapter 561, except as provided in section 561.21 or if the real estate claimed as a homestead exceeds the limitations prescribed in sections 561.1 through 561.3.

b. A claim of lien against real estate claimed as a homestead is barred unless execution is levied within thirty days of the time the defendant, or the defendant’s agent, or a person with an interest in the real estate has served written demand on the owner of the judgment. The demand shall state that the lien and all benefits derived from the lien as to the real estate platted as alleged to be or to have been a homestead shall be forfeited unless the owner of the judgment levies execution against that real estate within thirty days from the date of service of the demand. The demand shall contain an affidavit setting forth facts indicating why the judgment is not believed to be a lien against the real estate. A warranty of title by a former occupying homeowner in a conveyance for value constitutes a claim of exemption against all judgments against the current homeowner or the current homeowner’s spouse not specifically exempted in the conveyance. Written demand shall be served in any manner authorized for service of original notice under the Iowa rules of civil procedure or in a manner provided in section 654.4A, subsections 1 through 3. A copy of the written demand and proof of service of the written demand shall be recorded filed in the office of the county recorder of the county where the real estate platted as a homestead is located court file of the case in which the judgment giving rise to the alleged lien was entered.

c. A party serving a written demand under this subsection may obtain an immediate court order releasing the claimed lien by posting with the clerk of court a cash bond in an amount of at least one hundred twenty-five percent of the outstanding balance owed on the judgment. A copy of the court order shall be served along with a written demand under this subsection. Thereafter, any execution on the judgment shall be against the bond, subject to all claims and defenses which the moving party had against the execution against the real estate, including but not limited to a lack of equity in the property to support the lien in its proper priority. The bond shall be released by the clerk of court upon demand of its principal or surety if no execution is ordered on the judgment within thirty days of completion of service of the written demand under this subsection.

Approved March 2, 2010
AN ACT relating to the release and satisfaction of judgments.

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

Section 1. Section 624.23, subsection 2, paragraph c, Code 2011, is amended to read as follows:

A party serving a written demand under this subsection may obtain an immediate court order releasing the claimed lien by posting with the clerk of court a cash bond in an amount of at least one hundred twenty-five percent of the outstanding balance owed on the judgment. The court may order that in lieu of posting the bond with the clerk of court, the bond may be deposited in either the trust account of an attorney licensed to practice law in this state or in a federally insured depository institution, along with the restriction that the bond not be disbursed except as the court may direct. A copy of the court order shall be served along with a written demand under this subsection. Thereafter, any execution on the judgment shall be against the bond, subject to all claims and defenses which the moving party had against the execution against the real estate, including but not limited to a lack of equity in the property to support the lien in its proper priority. The bond shall be released by the clerk of court upon demand of its principal or surety if no execution is ordered on the judgment within thirty days of completion of service of the written demand under this subsection.

Sec. 2. Section 624.37, Code 2011, is amended to read as follows:

624.37 Satisfaction of judgment — penalty.

1. When the amount due upon judgment is paid off, or satisfied in full, the party entitled to the proceeds thereof, or those acting for that party, must acknowledge satisfaction of the judgment by the execution of an instrument referring to it, duly acknowledged or notarized in the manner prescribed in chapter 9E, and filed in the office of the clerk in every county wherein the judgment is a lien. A failure to do so acknowledge satisfaction of the judgment in such manner within thirty days after having been requested to do so in a writing containing a draft release of the judgment shall subject the delinquent party to a penalty of one four hundred dollars plus reasonable attorney fees incurred by the party aggrieved, to be recovered in an action for the satisfaction or acknowledgment by the party aggrieved.

2. Upon the filing of an affidavit to the motion that a judgment creditor cannot be located or is unresponsive to requests to accept payment within the thirty-day period described in subsection 1, and upon court order, payment upon a judgment may be made to the treasurer of state as provided in chapter 556 and the treasurer’s receipt for the funds is conclusive proof of payment on the judgment.

Sec. 3. Section 631.1, Code 2011, is amended by adding the following new subsection:

NEW SUBSECTION. 8. The district court sitting in small claims has concurrent jurisdiction of motions and orders relating to releases of judgments in whole or in part including motions and orders under section 624.23, subsection 2, paragraph “c” and section 624.37, where the amount owing on the judgment, including interests and costs, is five thousand dollars or less.

Approved March 30, 2011
CHAPTER 95
ACTIONS ON CLAIMS FOR RENT — LIMITATIONS — EXECUTION ON JUDGMENTS
H.F. 356

AN ACT relating to the statute of limitation periods in bringing suit and executing a judgment in an action on a claim for rent.

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

Section 1. Section 614.1, subsection 5, Code 2013, is amended to read as follows:
5. Written contracts — judgments of courts not of record — recovery of real property and rent.
   a. Except as provided in paragraph “b”, those founded on written contracts, or on judgments of any courts except those provided for in subsection 6, and those brought for the recovery of real property, within ten years.
   b. Those founded on claims for rent, within five years.

Sec. 2. Section 615.1, subsection 1, Code 2013, is amended to read as follows:
1. After the expiration of a period of two years from the date of entry of judgment, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action or order of court, a judgment entered in any of the following actions shall be null and void, all liens shall be extinguished, and no execution shall be issued except as a setoff or counterclaim:
   a. For a real estate mortgage, deed of trust, or real estate contract executed prior to July 1, 2009, an action for the foreclosure of the real estate mortgage, deed of trust, or real estate contract upon property which at the time the foreclosure is commenced is either used for an agricultural purpose as defined in section 535.13 or as a one-family or two-family dwelling which is the residence of the mortgagor.
   b. For a real estate mortgage, deed of trust, or real estate contract executed on or after July 1, 2009, an action for the foreclosure of the real estate mortgage, deed of trust, or real estate contract upon property which at the time of the execution of the mortgage, deed, or contract is either used for, or is being acquired for, an agricultural purpose as defined in section 535.13 or as a one-family or two-family dwelling which is the residence of the mortgagor.

Sec. 3. NEW SECTION. 615.1A Execution on judgment — claim for rent.
After the expiration of a period of five years from the date of entry of judgment in an action on a claim for rent, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action or order of court, such judgment shall be null and void, all liens shall be extinguished, and no execution shall be issued. However, in the event that the judgment or the right to collect thereon is sold or otherwise assigned for value to a third party other than a state or federally chartered bank or credit union, such judgment shall be null and void, all liens shall be extinguished, and no execution shall be issued after the expiration of two years from the date of entry of the judgment, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action or order of court.

Approved May 9, 2013
March 17, 2011

Iowa loophole voids mortgage, gives couple 'a free house'

By ADAM BELZ
abelz@dmreg.com

Talk about sticking one to the bank.

Matt and Jamie Danielson own their $278,000 Ankeny home outright, and paid almost nothing for it.

A hasty home-loan approval and a 123-year-old law that requires mortgages be signed by both spouses helped the couple fight foreclosure all the way to the Iowa Court of Appeals. They won, and though they made only one payment to lender Citimortgage, the mortgage is now void and they get to keep the home.

"It's dumb luck that we're in this house," said Matt Danielson, 33.

The banking lobby is chagrined. The Iowa Bankers Association is backing legislation that would change the law so this never happens again.

"It's not like we're rolling on easy street," Danielson said. "We still struggle just like everybody else does in this economy."

The proposal gives judges discretion in cases like the Danielsons', instead of automatically voiding mortgages not signed by both spouses. The bill passed the Senate on Monday.

The law's original intent was to protect husbands and wives from liability if one spouse made a disastrous financial decision unbeknownst to the other or against her or his wishes.

Bob Hartwig, legal counsel for the Iowa Bankers Association, said the proposal won't remove that protection, but it would allow judges to decide what's fair.

"They got a free house," he said of the Danielsons.

The Danielsons were high-fliers in the boom years before the financial crisis.

He built houses, she originated mortgages. They worked hard and spent money when they felt like it. They lived in a house along Saylorville Lake, owned several cars, and invested in a car lot in Indianola.

When they started to lose it all as the housing market slowed, they decided to downsize and move into their current home on the northwest edge of Ankeny.

Matt Danielson finalized the $320,000 mortgage - 100 percent of the value of the home plus $50,000 to remodel the basement - in May 2007. He and the broker, Jason Larson, met at a mall food court.

Danielson asked if his wife needed to be present and Larson said no, according to the Court of Appeals decision. Danielson tried to call his wife, but couldn't reach her. He and Larson went ahead with the documents, in what Danielson told the court was a "rushed" meeting.

The mortgage was approved without Jamie Danielson's signature, and the couple with their young son moved into the house.

Danielson's home-building business went under that summer, and the family made one loan payment. Anticipating foreclosure, they rented another home and moved half their belongings there.
"We had our bags packed," Jamie Danielson, 29, said. "We know if you can't pay, you can't stay."

They went to Jerry Wanek, their lawyer, to file bankruptcy. He was the first to notice that Jamie hadn't signed the mortgage and to recognize the significance of that omission.

"He found the loophole," Matt Danielson said. "You couldn't have planned that."

Mortgage companies have been criticized for sloppy handling of mortgage documents in the lead-up to the financial crisis, which was driven by reckless home lending. Several of the nation's largest lenders stopped foreclosing on homeowners in the fall after widespread reports of flawed paperwork, and 50 state attorneys general led by Iowa's Tom Miller are investigating whether lenders broke the law.

The Iowa law invoked by Wanek in the Danielson case dates to 1888, and has its roots in a law passed in 1851. It was intended to stop one spouse from ripping off the other. It invalidates sales of — or loans on — a home, unless both spouses sign. The idea is to prevent one spouse from refinancing a mortgage and taking off with the cash.

But Hartwig said current law leaves banks vulnerable to borrowers who might knowingly get a mortgage they never plan to pay. He said Iowa courts have seen a few cases like the Danielsons' in the past decade.

"We're not trying to protect lenders that just ignore the marital status," Hartwig said. "We're just trying to give the judges some discretion, to do what's fair."

Citimortgage, the plaintiff in the case and a member of Citigroup, the nation's third-largest bank, argued in court that Matt Danielson had tried to hide his marriage in the mortgage application. The Court of Appeals rejected that claim resoundingly, saying everyone involved knew Danielson was married.

Also, the court noted that Citimortgage appears to have approved the Danielsons' mortgage even before it received a signed copy of the loan application.

Wanek, the Danielsons' lawyer, doesn't believe it's right to pass a law to protect banks from their own - or their mortgage brokers' - mistakes.

"You don't close a $300,000 transaction in that manner," Wanek said. "I think the legislation is reacting to something that rarely happens, and shouldn't have happened if there was a reasonable amount of care."

Sen. Rob Hogg, D-Cedar Rapids, agreed that banks should be responsible for proper handling of mortgage paperwork. But there are cases where the lender could legitimately perceive that borrowers are single when they are not, he said. Examples would include cases where spouses are separated, or if one is out of the country.

"We're trying to see if we can come up with a solution that works and yet doesn't create unintended consequences the other direction," Hogg said.

The Danielsons see their situation as the result of an out-of-control home lending market.

"For five years, you could basically show an ID and walk into a mortgage," Matt Danielson said.

The couple are pleased with the outcome, but didn't throw a party to celebrate.

Getting the house for free was, by comparison, a small victory next to their rapid fall from wealth, business failure, bankruptcy proceedings, a protracted court case, legal fees and ongoing struggles to pay the bills.

"It was not a fun situation," Jamie Danielson said. "I wouldn't want anybody to have to go through it."
'Free house' couple's earlier foreclosures are questioned

Written by
LEE ROOD
11:43 PM, Mar. 17, 2011

The Ankeny couple who used a loophole in Iowa law to pay almost nothing for a home have a history of questionable foreclosures that have raised red flags among state authorities, The Des Moines Register has learned.

The Register reported Thursday that Matt and Jamie Danielson put almost no money down on their Ankeny house in 2007, negotiated $50,000 in cash at closing and made just one payment before they fell into foreclosure. Yet they succeeded in voiding their $320,000 mortgage and kept the home despite foreclosure proceedings because Iowa law requires both spouses to sign a mortgage, and Jamie Danielson did not.

In December, a top official at the Iowa Finance Authority lodged a complaint with Iowa's Division of Banking after Jamie Danielson applied to obtain a mortgage broker's license.

The complaint alleges that Jamie Danielson had already racked up $1.43 million in unsecured debt; that she and her husband appeared to profit handsomely from two previous house deals that wound up in foreclosure; and that Jamie Danielson was involved previously in a loan obtained by a relative who got a house for free because the relative's spouse did not sign the mortgage.

On Thursday at the Register's request, officials at the IFA's Title Guarantee Division released the formal complaint it sent late last year to the banking division. The newspaper contacted the Title Guarantee Division, which provides title insurance for lenders, because it had tried to help Citimortgage in its legal battle with the Danielsons.

Matthew White, the IFA's deputy director, alleged in the complaint that both Jamie Danielson and her mother had worked for First Horizon, a lender involved in a mortgage with a relative, Troy Hudson.
In late 2006, Hudson succeeded in having his mortgage voided and won his house in foreclosure proceedings because his wife, Jodi, had not signed the loan. The loan was prepared by Danielson, the complaint says.

White and other IFA officials said in interviews Thursday that they believed the Hudson case foreshadowed the legal path that Danielson and her husband followed in the foreclosure on their Ankeny house the next year.

"As a loan officer or originator, then or in the future, Jamie Danielson must be held to a higher standard than the normal homebuyer," White wrote in the complaint. "She had specific knowledge of what would happen if she did not sign the mortgage, and still fought to have the mortgage declared void against both of them."

In the Register's article on Thursday, the Danielsons blamed hasty oversight by their mortgage company for their luck in acquiring the house.

Reached Thursday afternoon, the Danielsons said they did not want to comment further until they could talk to their attorney, Jerry Wanek, who was on vacation. They adamantly denied Jamie Danielson had any direct involvement in Hudson's mortgage, but they said they were aware of his case.

Jamie Danielson said her mother might have been involved in the mortgage because "he was her nephew," but she wasn't sure.

White's complaint also questioned two house deals involving the Danielsons before their 2007 house purchase.

In 2003, the couple bought a property with Coldwell Banker. The house at 3605 N.W. 83rd Place in Ankeny was assessed at $371,570, but the sale price was listed as $625,000.

"We were told that the sellers gave cash back to the Danielsons, and I sincerely doubt the lender was aware of this," White's complaint said.

The Danielsons later refinanced with First Horizon, getting a first mortgage of $624,800 and a second of $117,000. After the house went into foreclosure, First Horizon was forced to sell the property for $339,500.

In 2004, Jamie Danielson bought a condominium for $100,000, financing $90,000. She refinanced the home a little over a year later with her employer, getting a first mortgage of $130,500.
In 2007, First Horizon foreclosed with the first mortgage balance at $145,292. The lender sold the townhouse a year later for $72,500.

Those house deals also prompted White to make a separate complaint in 2008 to the banking division.

The banking division ultimately denied Danielson's application to become a mortgage broker, which she is appealing, according to Rod Reed, bureau chief for the division.

Loyd Ogle, the head of the IFA's Title Guarantee Division, called "highly unusual" Jamie Danielson's ability to get financing after the previous foreclosure.

"Once you get foreclosed on, you can't get another mortgage for seven years," he said.

The Danielsons blamed the souring economy and the bankruptcy of Matt Danielson's business for their last foreclosure.

The Danielsons had told the Register they were raking in a lot of money and using a lot of credit before the collapse of his business in 2007. But Jamie Danielson's bankruptcy filing last year showed she was making only $46,878 when they bought their house in May 2007.

Court records obtained Thursday by the Register show Jamie Danielson was deep in debt by the time she filed for bankruptcy.

Among her unsecured debts: $55,000 for repossessed vehicles, $37,541 owed on four Bank of America accounts, more than $12,200 owed to five collection agencies, and more than $96,500 owed to numerous creditors for other purchases.

Related Links

* Read the Court of Appeals decision involving Jamie Danielson's cousin, Troy Hudson.

* Read the complaint made regarding the Danielsons to the Iowa Division of Banking. This link includes exhibits, including Jamie Danielson's personal bankruptcy filing.
Cousin's use of mortgage loophole not disclosed in court

Written by LEE ROOD
lrood@dmreg.com

The assistant attorney general who challenged Matt and Jamie Danielson's fight for a free house in court said Friday he was unaware a relative of the Ankeny couple had won a free house previously by using the same legal loophole.

"No one was aware of that to my knowledge," said Assistant Attorney General Grant Dugdale. "That was not disclosed during the course of discovery."

Mortgage lenders and readers were outraged this week by news that the couple salvaged their house from foreclosure in 2007 after making one payment, using a 123-year-old law that requires both spouses to sign a mortgage.

The Des Moines Register reported Friday that Troy Hudson, a cousin of Jamie D. Danielson, managed the same feat in 2006. His wife had not signed his mortgage.

In both cases, which were upheld by the Iowa Court of Appeals, the couples voided their mortgages and kept their houses.

On Friday, the Register learned other facts about the Danielsons' case that were not part of the court record before the appeals court made its decision in May 2009. Among them:

- Both the Danielsons and the Hudsons refinanced their homes through a branch of First Horizon in Ankeny.

Jamie Danielson worked at First Horizon during her refinancing, and the branch was run at the time by her mother, Rita Van Zee. Van Zee managed the branch from 2005 to 2008, when it became part of MetLife, and then continued managing the branch until it closed at the end of last year.

During the time the two women worked there, other relatives of the Danielsons...
refinanced homes through the company and later lost them through foreclosure, court records show.

Reached Friday, Troy Hudson said Jamie Danielson and her mother knew when he won his foreclosure case. However, Hudson said neither Jamie Danielson nor Van Zee was involved in his loan.

He said the case was one of the first in the state in which someone was able to void a mortgage and keep a house because a spouse did not sign it.

He said he tried to do right by Wells Fargo and make up overdue payments after he fell behind, but Wells Fargo would not accept anything but the total he owed.

"All I know is there's nothing shady as far as me and my wife are concerned," he said. "I don't know all the facts in my cousin's case."

• Matt and Jamie Danielson sold part of another property they owned to Jamie's mother before it was taken in foreclosure.

The property at 3605 N.W. 83rd Place in Ankeny was assessed at $371,570 when it was purchased in 2003. But the Danielsons got a mortgage for $624,800 a year later at the First Horizon branch run by Van Zee.

In October 2006, they sold two acres of land, valued at about $45,000, to Van Zee and her husband for $150,000. In June 2008, after the Danielsons were foreclosed upon, First Horizon sold the remaining property and house for $350,000.

Van Zee did not return a phone call seeking comment Friday.

• Jamie Danielson bought an investment property, a townhouse, in 2004. The reason Matt Danielson did not co-sign that mortgage: He was serving 13 months at the Fort Des Moines Correctional Center after multiple convictions for drunken driving.

• The Danielsons told the Register this week that Matt "built houses" and that they had both made a lot of money before the 2007 housing market collapse.

But during a tape-recorded bankruptcy proceeding in July 2010, Jamie Danielson testified her husband had never been "profitable" in the 15 years he did light interior construction.

The couple were so broke that they were unable to obtain checking accounts, she testified.

• That raises questions about how Matt
Danielson was able to declare enough income to obtain the couple's most recent mortgage, at 909 N.W. Rockcrest Road, the house they acquired after making just one mortgage payment.

His original loan application indicated he had no mortgages and said he was renting a house in Ankeny, according to documents obtained from the Iowa Division of Banking.

Matt Danielson indicated on the application that he had not owned property in the previous three years, although the couple had owned the house on 83rd Place in Ankeny since 2003. He also said he was general manager of a company called West Metro Motors, where he reported no income, and was a wholesaler for a company called Car Wholesalers at "1234 Fifth Street" making $13,000 in monthly income.

However, no such company has ever been registered with the Iowa secretary of state, and Google maps indicate there is no such business address in Ankeny.

Reached Friday, Jamie Danielson said she knew nothing about the application submitted by her husband. She said she did not want to comment and said she was receiving harassing phone calls.

- Jason Larson, the One Source Mortgage broker who finalized the 2007 mortgage, told state officials that Matt Danielson had submitted the application online. One Source tried to trace the application and could not find it, according to records kept by the Division of Banking.

Interviewed Friday, Larson said no one involved in the case tried to talk to him before it was tried.

Larson said he did not recall Danielson indicating on his application that he was a wholesaler at the time at 1234 Fifth St.

"I don't know anything about that," he said. "When you say it out loud, that doesn't even sound realistic to me."

In December, Matt White, deputy director at the Iowa Finance Authority, filed a complaint against Larson for his role in the mortgage that Jamie Danielson never signed. Among other things, he said Larson did not originally disclose to the underwriter screening the loan the fact that Matt Danielson's business received a $48,228 check at closing.

In January, Larson wrote another state official at Iowa's banking division and inquired about reactivating his license. He said he was working as a mortgage processor at Heartland Mortgage in Clive.
However, Larson withdrew the application after his credit report showed he had declared bankruptcy, according to Rod Reed, who heads the finance bureau.

Related Links

‘Free house’ couple's earlier foreclosures are questioned
Iowa loophole voids mortgage, gives couple 'a free house'
State to investigate case of couple who got free house

Written by
LEE ROOD
lrood@dmreg.com
11:26 PM, Mar. 22, 2011

Attorney General Tom Miller has assigned a mortgage investigator to review the case of an Ankeny couple who used a more than 100-year-old law to save their house from foreclosure after making a single payment, a spokesman said this week.

Until that review is complete, "it would be premature to say what, if anything, we can do," Geoff Greenwood said.

Matt and Jamie Danielson blamed a hasty home loan approval by their lender for ultimately being able to keep their house after they proved Jamie did not sign the mortgage in 2007. The Danielsons used that law while in foreclosure and had to make no further payments. The couple won an appeal of their foreclosure case in 2009 before the Iowa Court of Appeals.

After the story about the Danielsons was published last week, the Register learned that the couple had been involved in other home deals that state title guaranty officials called questionable.

Inaccurate statements were also made on Matt Danielson's signed loan application.

Among them: that he earned $13,000 monthly at a car wholesaler at 1234 Fifth St. in Ankeny - an address where state records show no such business exists.

Matt Danielson told the Register that he and his wife learned of their legal strategy to fight the foreclosure from their lawyer, Jerrold Wanek.

But court records show that a year before the couple went into foreclosure, Jamie Danielson's cousin got his mortgage voided using the same law requiring both spouses' signature.

Reached Tuesday, the Danielsons acknowledged they knew about the outcome of the foreclosure case involving Hudson and his wife.

"But we didn't think we even remotely
qualified" for the same thing, Matt Danielson said.

Danielson also said he did not give the salary and address for the car wholesaler as an employer on the loan application obtained by the Register, one of many things contained on the mortgage application that he disputes.

He also scaled back claims he made earlier to the newspaper about his success in business before the housing crash. After telling reporters that he and his wife both had been successful in the early part of the decade, he acknowledged that he did not make much money running a contracting business called C&C Home Solutions.

An Indianola car lot he purchased before his foreclosure also went out of business.

Jamie Danielson said she used her income in the mortgage business to buy two properties while her husband was incarcerated for multiple DUIs. (He has not had a drink in six years, she also said.)

Rick Belluchi, a previous owner of one of those homes, at 3605 N.W. 83rd St., backed up the Danielsons' contentions that readers got only part of the story in a complaint about one of the Danielsons' house deals raised last year by Iowa Finance Authority officials.

The Belluchis' 3-acre house and land was worth far more than a $371,570 assessment cited when it was sold to the Danielsons, Rick Belluchi said. However, he said, he did not believe the three acres were worth the $624,800 the Danielsons were able to refinance for through Jamie Danielson's employer, First Horizon.

"My understanding was they were borrowing more money to build another house for her mother," Belluchi said.

Jamie Danielson said the value of the property increased after they purchased the property from the Belluchis.

On Tuesday, the Danielsons said they did not plan what happened in their latest house deal, and they are not proud of it. They also said they never could have foreseen the economic events that led to the bankruptcy of Matt's business and her personal bankruptcy in 2010.

"Yes, we were the benefactors of this home, but we still have to rebuild our careers," Jamie Danielson said.
Mortgage loophole bill passes Iowa House, goes to Branstad

Written by
William Petroski

6:02 PM, Mar. 22, 2011|

The Iowa House today approved a bill aimed at addressing situations that arise when one spouse doesn’t sign a mortgage, creating a loophole to allow a couple to get a house nearly cost free.

Under current law, a mortgage not signed by both spouses is void except in a rare situation where actual fraud can be proven, said Rep. Chip Baltimore, R-Boone, who sponsored the House measure.

The bill provides that when fraud can’t be proven, but where the nonsigning spouse would benefit in a foreclosure, the court can look at whether the situation is fair and still enforce the terms of the mortgage.

The bill, supported by the Iowa Bankers Association and the Iowa Bar Association, had already passed the Iowa Senate and now goes to Gov. Terry Branstad for his consideration.

The Des Moines Register recently documented one such case happening with Matt and Jamie Danielson, who now own their $278,000 Ankeny home outright, and paid almost nothing for it. They made only one payment to their lender and their mortgage is now void.
Updated: Mortgage fraud indictment includes DMPD officer, couple who received a free home last year

An Ankeny couple were engaged in bank fraud when they exploited an 1888 loophole in mortgage law to obtain a free house, part of a scheme that also involved a Des Moines police officer and his wife, according to a 26-page federal indictment unsealed Friday afternoon.

The 13-count indictment alleges that Jamie Bowers-Danielson, her husband Matthew Danielson, Bobbi Jo Wojewoda, and her husband, Des Moines police Lt. Wade Wojewoda, were part of a nearly four-year conspiracy of lying to banks and falsifying documents to get loans approved.

Court papers accuse Bowers-Danielson, who worked as a loan originator for two different companies between August 2003 and March 2007, of faking income information on loans to grease the approval process both for the conspirators and for other uninvolved parties, identified in the indictment only by their initials.

Bobbi Jo Wojewoda, a real estate agent and apprentice appraiser, is accused of generating bogus appraisals to inflate home values and of forging a supervisor’s electronic signature on those appraisals. Court papers say the loans involved included deals for homes purchased both by Bowers-Danielson and by the Wojewodas. Jamie Bowers-Danielson told The Des Moines Register last year that she purchased two properties while her husband was incarcerated for multiple drunken-driving convictions.

The overarching conspiracy charge, which is leveled against Bowers-Danielson and the two Wojewodas, is punishable by up to 30 years in prison and $1 million in fines.

Des Moines police spokesman Sgt. Chris Scott said Lt. Wade Wojewoda has been moved out of his patrol supervision responsibilities until police are able to determine how to proceed.

“What they’ve done is they’ve reassigned him to a desk job within the department doing miscellaneous tasks until they get enough information to see whether there’s any actions that need to take place,” Scott said.

The Danielsons gained public attention last year when they used a century-old banking technicality to escape payments on a $278,000 home at 909 N.W. Rockcrest Road in Ankeny. The couple persuaded Iowa appellate courts to void a foreclosure proceeding based on the fact that Iowa law requires both spouses to sign a mortgage.

Friday’s indictment says the couple used fake information to obtain a $320,228 loan from CitiMortgage for the Rockcrest home. Court papers say the loan documents listed a bogus employer on a fake pay stub, had an incorrect address and listed Matthew Danielson’s “year-to-date earnings as $51,667.20, when in fact he had earned little or no income to date.”

Court papers say Nicholas Klinefeldt, U.S. attorney for the Southern District of Iowa, views the Rockcrest home as proceeds of criminal activity. Documents say federal prosecutors intend to seek seizure of the house, and potentially other property, under federal forfeiture laws.

The 13-count indictment includes one bank fraud charge aimed at both Danielsons and seven counts of bank fraud aimed at Bowers-Danielson alone.

Both Wojewodas are charged with making false statements, and three counts of bank fraud are
directed at Bobbi Jo Wojewoda alone.

Bobbi Jo Wojewoda did not respond to a message left on a cellphone number for her Friday evening.

The Danielsons likewise did not respond to a message left at their Ankeny home.

Court papers say the list of alleged fraudulent transactions includes a West Des Moines home purchased by the Wojewodas in August 2003 that involved loan documents with “a false and misleading lease agreement.” According to the indictment, the bogus lease indicated that the couple had rented their prior home in Ankeny for $3,000 per month “when in reality they were attempting to sell the residence and had no rental income from it.”

Documents say a late 2003 transaction, in which Bobbi Jo Wojewoda served as real estate agent and allegedly prepared a fraudulent appraisal, involved loan documents for the purchase of a $625,000 home on 83rd Place in Ankeny. Bowers-Danielson, the buyer, actually paid $400,000, according to the indictment, because she had “arranged to receive a kickback in excess of $100,000 from the seller following closing without the lender’s knowledge.”
FOR IMMEDIATE RELEASE

April 12, 2013

DES MOINES, IA – United States Attorney Nicholas A. Klinefeldt announced today that four individuals have plead guilty to offenses relating to mortgage fraud schemes.

On April 10, 2013, Jamie Bowers-Danielson, age 35, and Matthew Danielson, age 35, both of Ankeny, pled guilty to bank fraud, in connection with a mortgage fraud scheme to obtain a “free house” in Ankeny, Iowa.

According to the written plea agreement, Matthew Danielson provided false information, including misrepresenting his marital status as single, to the mortgage lender. The purpose of providing the false information was to obtain a mortgage despite his lack of credit worthiness and to deceive the lender into failing to obtain his wife, Jamie Bowers-Danielson’s, signature on the mortgage, which resulted in the mortgage being voided. Jamie Bowers-Danielson admitted that she submitted false documentation to the loan originator as part of the scheme.

Jamie Bowers-Danielson also pled guilty to conspiracy to commit bank fraud. Bowers-Danielson used her position as a loan originator to help herself, and others qualify for mortgage loans through fraudulent means. This included submitting false and misleading statements and documents to mortgage lenders and banks for the purpose of obtaining loans for herself and other borrowers for which they should have not qualified.

On April 12, 2013, Bobbi Jo Wojewoda, age 43, of Grimes, pled guilty to the same conspiracy to commit bank fraud count. Bobbi Jo Wojewoda used her position as an apprentice appraiser to prepare appraisals with inflated values to help herself, and others qualify for mortgage loans. Bobbi Jo Wojewoda also failed to disclose material conflicts of interest to the mortgage lender when she performed appraisals on her own home and homes where she was the real estate agent.

Wade Charles Wojewoda, age 45, of Grimes, pled guilty on April 12, 2013, to receipt of proceeds obtained under false pretenses, related to the purchase of his and his wife, Bobbi Jo Wojewoda’s, home in 2003.

All four individuals entered their pleas before Chief Judge James E. Gritzner of the United States District Court. Judge Gritzner scheduled a sentencing date of July 26, 2013, for Jamie Bowers-Danielson and Matt Danielson; and a sentencing date of July 31, 2013, for Bobbi Jo Wojewoda and Wade Charles Wojewoda. All four defendants remain released on conditions pending sentencing.

Conspiracy to commit bank fraud and bank fraud are punishable by a term of imprisonment of up to 30 years and a fine of up to $1 million. Receipt of proceeds obtained under false pretenses is punishable by a term of imprisonment of up to one year and a fine of up to $100,000.

This case was investigated by the Federal Bureau of Investigation and prosecuted by the United States Attorney’s Office for the Southern District of Iowa.
Ankeny Couple Sentenced In Connection With Mortgage Fraud

FOR IMMEDIATE RELEASE

September 13, 2013

DES MOINES, IA – United States Attorney Nicholas A. Klinefeldt announced today that an Ankeny couple has been sentenced for their involvement in a mortgage fraud scheme.

On September 13, 2013, United States District Court Chief Judge James E. Gritzner sentenced Jamie Bowers-Danielson, 35, to 41 months of imprisonment for conspiracy to commit bank fraud and bank fraud charges. Bowers-Danielson was also ordered to serve five years of supervised release following her prison term. Chief Judge Gritzner also sentenced Matthew Danielson, 36, to one year and one day of imprisonment for bank fraud. Matthew Danielson will serve five years of supervised release following the completion of his prison term.

In an earlier proceeding, Matthew Danielson admitted he provided false information, including misrepresenting his marital status as single, to a mortgage lender. The purpose of providing the false information was to obtain a mortgage on a home in Ankeny, despite his lack of creditworthiness and to deceive the lender into failing to obtain his wife, Jamie Bowers-Danielson’s, signature on the mortgage. The mortgage was subsequently voided because Bowers-Danielson failed to sign the mortgage documents. Jamie Bowers-Danielson admitted that she submitted false documentation to the loan originator as part of the scheme.

Bowers-Danielson also admitted that she used her loan originator position to enable herself and others to qualify for mortgage loans through fraudulent means. This included submitting false and misleading statements and documents to mortgage lenders and banks for the purpose of obtaining loans for herself and others borrowers for which they should not have qualified.

This case was investigated by the Federal Bureau of Investigation, and was prosecuted by the United States Attorney’s Office for the Southern District of Iowa.
Appendix A. Comparison of Recent Federal Foreclosure Prevention Initiatives

Table A-1. Comparison of Select Federal Foreclosure Prevention Programs

<table>
<thead>
<tr>
<th>Program Basics</th>
<th>Refinancing Programs</th>
<th>Modification Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Status</strong></td>
<td><strong>Hope for Homeowners (H4H)</strong></td>
<td><strong>FHA Short Refinance Program</strong></td>
</tr>
<tr>
<td></td>
<td>762 loans refinanced through the program.</td>
<td>2,293 loans had refinanced through the program as of January 2013.</td>
</tr>
</tbody>
</table>
Preserving Homeownership: Foreclosure Prevention Initiatives

<table>
<thead>
<tr>
<th>Hope for Homeowners (H4H)</th>
<th>FHA Short Refinance Program</th>
<th>Home Affordable Refinance Program (HARP)a</th>
<th>Home Affordable Modification Program (HAMP)—Original</th>
<th>HAMP—Principal Reduction Alternativeb</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Basic Premise</strong></td>
<td></td>
<td></td>
<td></td>
<td>Have financial incentives to servicers and investors to modify borrowers’ mortgages so that monthly mortgage payments are no more than 31% of gross monthly income.</td>
</tr>
<tr>
<td>Allowed certain homeowners who owed more than their homes were worth to refinance into new, FHA-insured mortgages.</td>
<td>Allows certain homeowners who are current on their mortgages, but owe more than their homes are worth, to refinance into new, FHA-insured mortgages.</td>
<td>Allows certain homeowners who are current on their mortgages, but owe over 80% of what their homes are worth, and whose mortgages are owned or guaranteed by Fannie Mae or Freddie Mac, to refinance into new, non-FHA insured mortgages.</td>
<td>Provides financial incentives to servicers and investors to modify borrowers’ mortgages so that monthly mortgage payments are no more than 31% of gross monthly income.</td>
<td>Expansion of HAMP to facilitate principal reductions on eligible mortgages.</td>
</tr>
<tr>
<td>Reduced principal balance on first mortgage; maximum loan-to-value (LTV) ratio of new loan depended on borrower’s circumstances.</td>
<td>Reduces principal balance on the first mortgage to no more than 97.75% of the home’s value. The first mortgage must be reduced by at least 10%.</td>
<td>Does not reduce principal.</td>
<td>Principal reduction is allowed at servicer’s discretion, but not required or specifically incentivized.</td>
<td></td>
</tr>
<tr>
<td>Second liens had to be extinguished.</td>
<td>Second liens are allowed to remain; they must be re-subordinated, and total mortgage debt after the refinance may not exceed 115% of the home’s value.</td>
<td>Second liens are allowed to remain; they must be re-subordinated.</td>
<td>Second liens are allowed to remain; they must be re-subordinated. The Second Lien Modification Program provides incentives for modification or extinguishment of second liens.</td>
<td>Increases incentive payments available through the HAMP Second Lien Modification Program.</td>
</tr>
</tbody>
</table>
## Program Details

<table>
<thead>
<tr>
<th>Program Details</th>
<th>Refinancing Programs</th>
<th>Modification Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hope for Homeowners (H4H)</strong></td>
<td>Borrower refinanced into FHA-insured mortgage with a lower principal mortgage amount. Original mortgage holder absorbed loss resulting from write-down in mortgage value.</td>
<td>Servicers receive incentives to reduce eligible borrowers’ mortgage payments to 38% of gross monthly income. Servicer can reduce payments through interest rate reductions, term extensions, and principal forbearance, and may reduce principal at their own discretion. Government shares half the cost of further reducing payments to 31% of monthly income.</td>
</tr>
<tr>
<td><strong>FHA Short Refinance Program</strong></td>
<td>Borrower refines into FHA-insured mortgage for no more than 97.75% of home’s value. Original mortgage holder absorbs loss resulting from write-down in mortgage value.</td>
<td>Requires servicers who are participating in HAMP to consider principal reduction for borrowers who owe at least 115% of the value of their homes.</td>
</tr>
<tr>
<td><strong>Home Affordable Refinance Program (HARP)³</strong></td>
<td>Borrower can refinance into a new, non-FHA insured loan. The refinanced loan will not reduce the principal balance owed, but it can reduce the interest rate or move the borrower from an adjustable-rate to a fixed-rate mortgage, thereby lowering monthly payments or preventing a payment increase.</td>
<td></td>
</tr>
<tr>
<td><strong>Home Affordable Modification Program (HAMP)—Original</strong></td>
<td>Servicers receive incentives to reduce eligible borrowers’ mortgage payments to 38% of gross monthly income. Servicer can reduce payments through interest rate reductions, term extensions, and principal forbearance, and may reduce principal at their own discretion. Government shares half the cost of further reducing payments to 31% of monthly income.</td>
<td></td>
</tr>
<tr>
<td><strong>HAMP—Principal Reduction Alternative²</strong></td>
<td>Requires servicers who are participating in HAMP to consider principal reduction for borrowers who owe at least 115% of the value of their homes.</td>
<td></td>
</tr>
</tbody>
</table>

### Borrower

- New mortgage amount could not exceed $550,440 (for a one-unit home). New mortgage amount may not exceed FHA maximum loan limits. New mortgage, like the original mortgage, cannot exceed Fannie Mae/Freddie Mac conforming loan limits. The outstanding principal balance on the existing mortgage cannot exceed $729,750 (for a one-unit home). New mortgage balance may be higher due to capitalization of certain allowed fees, such as escrow advances.

### Servicer

- Same as HAMP.
<table>
<thead>
<tr>
<th></th>
<th>Refinancing Programs</th>
<th>Modification Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hope for Homeowners (H4H)</strong></td>
<td>New total monthly mortgage payment (including second mortgage payments) must be no higher than approximately 31% of income. New mortgage must result in a reduction of mortgage debt of at least 10% of the amount of the original outstanding principal balance, and must not exceed 97.75% of the home's value. Total household debt may not be more than approximately 50% in most cases.</td>
<td>The new mortgage must benefit the homeowner through a lower interest rate or a more stable mortgage product (for example, a fixed-rate loan instead of an adjustable-rate loan). Borrowers without mortgage insurance (MI) on the original loan are not required to get MI on the new loan.</td>
</tr>
<tr>
<td><strong>FHA Short Refinance Program</strong></td>
<td>New mortgage had to result in a lower monthly mortgage payment than the original loan, but there was no minimum reduction in payment. Maximum loan-to-value ratios and total debt-to-income ratios depended on the borrower's delinquency status and credit score.</td>
<td>The new mortgage payment must not exceed 31% of gross monthly income. Borrowers must successfully complete a three-month trial period before the modification becomes permanent. Same as HAMP. If principal is reduced, the amount of principal reduction will initially be treated as principal forbearance, and then will be forgiven in three equal parts over three years as long as the borrower remains current.</td>
</tr>
<tr>
<td><strong>Home Affordable Refinance Program (HARP)</strong></td>
<td>Borrower paid upfront and annual FHA mortgage insurance premiums! Borrower pays “exit premium” when the home is sold.</td>
<td>If the mortgage already had MI, that MI should be transferred to the new loan.</td>
</tr>
<tr>
<td><strong>Home Affordable Modification Program (HAMP)—Original</strong></td>
<td>Borrower pays upfront and annual FHA mortgage insurance premiums.</td>
<td>Mortgages may or may not have MI.</td>
</tr>
<tr>
<td><strong>HAMP—Principal Reduction Alternative</strong></td>
<td></td>
<td>Same as HAMP.</td>
</tr>
</tbody>
</table>

a FHA eligibility criteria were not based on credit score. 

b The amount of principal reduction is at the discretion of the lender. 

c The borrower must complete a three-year trial period before the permanent modification is available. 

d The new mortgage payment must not exceed 31% of gross monthly income. 

e Borrowers who had MI on the original loan are not required to get MI on the new loan. 

f Mortgages may or may not have MI. 

g Borrowers must pay “exit premium” when the home is sold.
<table>
<thead>
<tr>
<th>Incentives for Lenders/Servicers/Investors</th>
<th>Refinancing Programs</th>
<th>Modification Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Hope for Homeowners (H4H)</strong></td>
<td>FHA Short Refinance Program</td>
<td>Home Affordable Refinance Program (HARP)(^a)</td>
</tr>
<tr>
<td>Second lien-holders had to release their liens.</td>
<td>Allows for existence of a second lien up to a total combined mortgage debt of 115% of home’s value. If the second lien is not extinguished, the second lien-holder must agree to re-subordinate the lien.</td>
<td>Second liens are not explicitly addressed.</td>
</tr>
<tr>
<td><strong>Incentives for</strong></td>
<td>HUD had authority to provide incentive payments to mortgage servicers and originators of new H4H mortgages.</td>
<td>No incentive payments related to first lien mortgage.</td>
</tr>
<tr>
<td><strong>Lenders/Servicers/Investors</strong></td>
<td></td>
<td>Incentives will be paid to second lien-holders to write down the balance of the second lien.</td>
</tr>
<tr>
<td></td>
<td>Refinancing Programs</td>
<td>Modification Programs</td>
</tr>
<tr>
<td>--------------------------</td>
<td>----------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td><strong>Hope for Homeowners (H4H)</strong></td>
<td>FHA Short Refinance Program</td>
<td>Home Affordable Refinance Program (HARP)(^a)</td>
</tr>
<tr>
<td></td>
<td>Performance of short refinances will not be included in certain FHA evaluations of lenders' performance.</td>
<td>No additional incentives.</td>
</tr>
<tr>
<td><strong>FHA Short Refinance Program</strong></td>
<td>Performance of short refinances will not be included in certain FHA evaluations of lenders' performance.</td>
<td>Additional incentives are available for investors, borrowers, lenders, and servicers for certain other modification or foreclosure prevention activities.</td>
</tr>
<tr>
<td><strong>Home Affordable Refinance Program (HARP)(^a)</strong></td>
<td></td>
<td>Additional HAMP incentives continue to apply.</td>
</tr>
</tbody>
</table>

**Eligibility Requirements**

<table>
<thead>
<tr>
<th>Borrower/Mortgage Eligibility Requirements</th>
<th>Refinancing Programs</th>
<th>Modification Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Borrower could have an FHA-insured or non-FHA-insured mortgage.(^h)</strong></td>
<td>Borrower must have a non-FHA-insured mortgage.</td>
<td>Borrower must have a mortgage that is owned or guaranteed by Fannie Mae or Freddie Mac.</td>
</tr>
<tr>
<td><strong>Borrower could be current or delinquent on his/her mortgage.</strong></td>
<td>Borrower must be current on his/her mortgage.</td>
<td>Borrower must be current on his/her mortgage.</td>
</tr>
<tr>
<td><strong>Borrower must have experienced a financial hardship.</strong></td>
<td>No hardship requirement.</td>
<td>Borrower must have experienced a financial hardship.</td>
</tr>
<tr>
<td><strong>Borrower must have a mortgage serviced by a participating servicer.</strong></td>
<td>Same as HAMP.</td>
<td>Same as HAMP.</td>
</tr>
<tr>
<td><strong>Borrower may be current (if default is reasonably foreseeable) or delinquent on his/her mortgage.</strong></td>
<td>Same as HAMP.</td>
<td>Same as HAMP.</td>
</tr>
<tr>
<td><strong>Borrower must be current on his/her mortgage.</strong></td>
<td>Same as HAMP.</td>
<td>Same as HAMP.</td>
</tr>
</tbody>
</table>
### Refinancing Programs

<table>
<thead>
<tr>
<th>Program</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hope for Homeowners (H4H)</td>
<td>Borrower’s total monthly mortgage payment must have been higher than 31% of gross monthly income. Borrower’s net worth could not be greater than $1 million.</td>
</tr>
<tr>
<td>FHA Short Refinance Program</td>
<td>No minimum monthly mortgage payment specified.</td>
</tr>
<tr>
<td>Home Affordable Refinance Program (HARP)</td>
<td>Borrower owes more than 80% of the value of the home.</td>
</tr>
</tbody>
</table>

### Modification Programs

<table>
<thead>
<tr>
<th>Program</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Affordable Modification Program (HAMP)—Original</td>
<td>Borrower’s total monthly mortgage payment must be higher than 31% of gross monthly income. Borrower must not have sufficient liquid assets to make monthly mortgage payments. The unpaid principal balance must be no higher than $729,750 (for a one-unit property). This is the Fannie Mae/Freddie Mac conforming loan limit for high-cost areas.</td>
</tr>
<tr>
<td>HAMP—Principal Reduction Alternative</td>
<td>Same as HAMP. Borrower must owe at least 115% of the value of the home before servicers are required to consider principal reductions.</td>
</tr>
</tbody>
</table>

### Property Eligibility Requirements

<table>
<thead>
<tr>
<th>Requirements</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home must have been the borrower’s primary residence.</td>
<td>Home must be the borrower’s primary residence.</td>
</tr>
<tr>
<td>Home not required to be primary residence.</td>
<td>Home must be the borrower’s primary residence or, in some cases, occupied by a tenant.</td>
</tr>
<tr>
<td>Property must have been single-family (1-4 unit) home.</td>
<td>Property must be single-family (1-4 unit) home.</td>
</tr>
<tr>
<td>Property must be single-family (1-4 unit) home.</td>
<td>Property must be single-family (1-4 unit) home.</td>
</tr>
</tbody>
</table>

---

*a* Borrower must owe at least 115% of the value of the home before servicers are required to consider principal reductions.

*b* Same as HAMP.

*c* Mortgage must have been originated on or before January 1, 2009.

*d* Mortgage must have been originated on or before January 1, 2008.

*e* No mortgage origination criteria specified.

*f* Mortgage must have a closing date on or before May 31, 2009.

*g* Same as HAMP.

*h* No minimum monthly mortgage payment specified.

*i* Borrower owes more than 80% of the value of the home.

*j* Borrower must owe at least 115% of the value of the home before servicers are required to consider principal reductions.

*k* Mortgage must have a closing date on or before May 31, 2009.

*l* Same as HAMP.

*m* Property must have been single-family (1-4 unit) home.

*n* Property must be single-family (1-4 unit) home.

**ATTACHMENT E**
### Refinancing Programs

<table>
<thead>
<tr>
<th>Program</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hope for Homeowners (H4H)</td>
<td>Mortgage holders agreed to accept proceeds of new loan as payment in full on the original loan, and FHA-approved lenders agreed to make new H4H loans, on a case-by-case basis.</td>
</tr>
<tr>
<td>FHA Short Refinance Program</td>
<td>Mortgage holders agreed to accept proceeds of new loan as payment in full on the original loan, and FHA-approved lenders agreed to make new FHA-insured loans, on a case-by-case basis.</td>
</tr>
<tr>
<td>Home Affordable Refinance Program (HARP)</td>
<td>Fannie Mae and Freddie Mac-approved lenders are authorized to participate.</td>
</tr>
</tbody>
</table>

### Modification Programs

<table>
<thead>
<tr>
<th>Program</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Affordable Modification Program (HAMP)—Original</td>
<td>Servicers who have signed HAMP participation agreements are required to participate; signing a participation agreement is voluntary.</td>
</tr>
<tr>
<td>HAMP—Principal Reduction Alternative</td>
<td>Servicers who have signed HAMP participation agreements are required to participate in the program changes.</td>
</tr>
</tbody>
</table>

### Sources
- a. Fannie Mae and Freddie Mac have each issued their own specific guidelines for HARP. While these guidelines are generally broadly similar, they differ from one another in some respects.
- b. Treasury’s detailed guidance on HAMP, including the Principal Reduction Alternative and other related programs, can be found in the Making Home Affordable handbook, available at https://www.hmpadmin.com/portal/index.jsp.
- c. While HAMP (and its associated programs) and the FHA Short Refinance Program were created as Obama Administration initiatives, the funding for the program comes from the Troubled Asset Relief Program (TARP). TARP was authorized in P.L. 110-343.
- d. An additional 38,283 active HAMP modifications with principal reductions (3,580 active trial modifications and 34,703 active permanent modifications) have been done outside of the PRA.
- e. FHA Mortgagee Letter 2009-43. The maximum allowable LTV changed after the program was first created.
- f. Using statutory authority provided in P.L. 111-22, HUD reduced the mortgage insurance premiums for H4H from their original levels.
- g. Borrowers originally had to agree to share a portion of both their equity in the home and any house price appreciation with HUD when the home was eventually sold. P.L. 111-22 provided the authority to change these requirements. The exit premium is now a payment of a portion of the initial equity in the home after the H4H refinance.
- h. FHA Mortgagee Letter 2009-43. When the program first began, only non-FHA-insured loans were eligible.
- i. FHA-insured mortgages are eligible for FHA-HAMP, an FHA loss mitigation activity that shares many of the same features as HAMP. VA or USDA mortgages might be eligible for similar programs, subject to the relevant agency’s guidance.
j. Originally, HARP allowed homeowners to refinance if they owed up to 105% of the value of their homes. On July 1, 2009, the Federal Housing Finance Agency (FHFA) announced that it would increase the maximum loan-to-value ratio to 125%. In October 2011, FHFA announced that it would remove the LTV cap entirely.

k. Originally, to be eligible for HARP, the original mortgage loan must have been delivered to Fannie Mae or Freddie Mac on or before May 31, 2009. In 2013, the requirement was changed to specify that the closing date on the original mortgage must have been on or before May 31, 2009.

l. Originally, to be eligible for HAMP, the home had to be the borrower’s primary residence. Under program changes announced in January 2012, some properties that are occupied by tenants, or that are vacant but which the borrower intends to rent, might qualify for HAMP.

m. FHA Mortgagee Letter 2009-43. When the program first began, only 1-unit properties were eligible.
## MORTGAGE SERVICING RULES: Coverage

<table>
<thead>
<tr>
<th>Regulation X (12 CFR 1024)</th>
<th>Closed-End, Principal Residence</th>
<th>Closed-End, Non-Principal Residence</th>
<th>Open-End</th>
<th>Servicers and Loan Types Exempt from Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Error Resolution and Information Requests (.35 and .36)</td>
<td>$\times$</td>
<td>$\times$</td>
<td></td>
<td>$\times$</td>
</tr>
<tr>
<td>Force-Placed Insurance (.37)</td>
<td>$\times$</td>
<td>$\times$</td>
<td></td>
<td>Small Servicer(^2) must comply with requirements of 1024.37 but, per 1024.17(k)(5)(iii), is permitted to purchase force-placed insurance if less expensive than escrow payment for borrower’s hazard insurance.</td>
</tr>
<tr>
<td>Policies, Procedures, and Requirements (.38)</td>
<td>$\times$</td>
<td>$\times$</td>
<td></td>
<td>Small Servicer, Reverse Mortgages, Qualified Lender(^3)</td>
</tr>
<tr>
<td>Early Intervention (.39)</td>
<td></td>
<td>$\times$</td>
<td></td>
<td>Small Servicer, Reverse Mortgages, Qualified Lender</td>
</tr>
<tr>
<td>Continuity of Contact (.40)</td>
<td></td>
<td>$\times$</td>
<td></td>
<td>Small Servicer, Reverse Mortgages, Qualified Lender</td>
</tr>
<tr>
<td>Loss Mitigation Procedures (.41)</td>
<td>$\times$</td>
<td></td>
<td></td>
<td>Small Servicers (except, per 1024.41(j), small servicers may not file for foreclosure if borrower is performing pursuant to a loss mitigation agreement OR is 120 or fewer days delinquent), Reverse Mortgages, Qualified Lender</td>
</tr>
<tr>
<td>Mortgage Servicing Transfers (.33)</td>
<td>$\times$</td>
<td>$\times$</td>
<td></td>
<td>Certain Transfers: between affiliates; resulting from servicer/subservicer mergers or acquisitions; OR between master servicers without changing subservicer. Servicing Disclosure Statement required for first lien only.</td>
</tr>
<tr>
<td>Escrow Accounts (.17 and .34)</td>
<td>$\times$</td>
<td>$\times$</td>
<td>$\times$</td>
<td>(.17 only) Small servicer is permitted to purchase force-placed insurance if less expensive than escrow payment for borrower’s hazard insurance, per 1024.17(k)(5)(iii).</td>
</tr>
</tbody>
</table>
# MORTGAGE SERVICING RULES: Coverage

<table>
<thead>
<tr>
<th>Regulation Z (12 CFR 1026)</th>
<th>Closed-End, Principal Residence</th>
<th>Closed-End, Non-Principal Residence</th>
<th>Open-End</th>
<th>Servicers and Loan Types Exempt from Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Periodic Statement (.41)</td>
<td>X</td>
<td>X</td>
<td></td>
<td>Small Servicer, Reverse Mortgages, and Timeshares. Fixed-Rate Loans with Coupon Books exempt from some requirements.</td>
</tr>
<tr>
<td>ARM Disclosures (.20(c) and (d))</td>
<td>X</td>
<td></td>
<td></td>
<td>ARM with term of 1 year or less</td>
</tr>
<tr>
<td>Prompt Crediting (.36)</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Payoff Statement (.36)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

---


2 Small Servicer (1026.41(e)(4)(ii)): Servicer or affiliate services 5,000 or fewer mortgage loans and the servicer or affiliate owns or originated all 5,000 loans OR the servicer is a Housing Finance Agency per 24 CFR 226.5.

3 Qualified Lender per 12 CFR 617.7000.

December 23, 2013
### Mortgage Origination Rules: Transaction Coverage and Exemptions

<table>
<thead>
<tr>
<th>Transaction Type</th>
<th>Ability-to-Repay (Reg Z)²</th>
<th>HOEPA (Reg Z)</th>
<th>Pre-loan counseling list (Reg X, per HOEPA Rule)</th>
<th>Escrows (Reg Z)</th>
<th>Appraisals (Reg Z)</th>
<th>Valuations (Reg B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchase mortgages, refinancings, home equity loans</td>
<td>Covered if secured by a dwelling [§1026.43(a)]</td>
<td>Covered if secured by principal dwelling [§1026.32(a)]</td>
<td>Covered [§1024.20(a)]</td>
<td>Covered if secured by first lien on principal dwelling and exceed certain rate thresholds [§1026.35(b)]</td>
<td>Covered if non-QM and not otherwise exempt [§1026.35(a)-(c)]</td>
<td>Covered if secured by first lien on a dwelling [§1002.14(a)]</td>
</tr>
<tr>
<td>HELOCs</td>
<td>Exempt [§1026.43(a)(1)]</td>
<td>Covered [§1026.32(a)]</td>
<td>Covered [§1024.20(b)]</td>
<td>Exempt [§1026.35(a)]</td>
<td>Exempt [§1026.35(a)]</td>
<td>Covered if secured by first lien on a dwelling [§1002.14(a)]</td>
</tr>
<tr>
<td>Manufactured housing Loans</td>
<td>Covered [§1026.43(a)]</td>
<td>Covered [§1026.32(a)]</td>
<td>Covered [§1024.20(a)]</td>
<td>Covered if secured by first lien on principal dwelling and exceed certain rate thresholds [§1026.35(b)]</td>
<td>Subject to limited exemptions [§1026.35(c)(2)(ii) and (iii)]</td>
<td>Covered if secured by first lien on a dwelling [§1002.14(a)]</td>
</tr>
<tr>
<td>Construction Loans (Initial Construction)</td>
<td>Exempt [§1026.43(a)(3)(ii)-(iii)]</td>
<td>Exempt [§1026.32(b)(2)]</td>
<td>Exempt to the extent not federally related mortgage loans [§1024.20(a)]</td>
<td>Exempt [§1026.35(b)(2)(i)(B)]</td>
<td>Exempt [§1026.35(c)(2)(iv)]</td>
<td>Covered if secured by first lien on a dwelling [§1002.14(a)]</td>
</tr>
<tr>
<td>Loans Made by Small Creditors Predominantly Serving Rural or Underserved Areas</td>
<td>QM balloon loans permitted if other criteria met [§1026.43(f)]</td>
<td>Exempt from balloon prohibition if other criteria met [§1026.32(d)(1)(i)(C)]</td>
<td>Covered [§1024.20(a)]</td>
<td>Exempt from escrow requirement if other criteria met [§1026.35(b)(2)(ii)-(v)]</td>
<td>Covered [§1026.35(a)]</td>
<td>Covered if secured by first lien on a dwelling [§1002.14(a)]</td>
</tr>
<tr>
<td>Bridge Loans (12 months or less)</td>
<td>Exempt [§1026.43(a)(3)(ii)]</td>
<td>Exempt from balloon prohibition [§1026.32(d)(1)]</td>
<td>Exempt to the extent not federally related mortgage loans [§1024.20(a)]</td>
<td>Exempt [§1026.35(b)(2)(i)(C)]</td>
<td>Exempt [§1026.35(c)(2)(v)]</td>
<td>Covered if secured by first lien on a dwelling [§1002.14(a)]</td>
</tr>
<tr>
<td>Timeshares</td>
<td>Exempt [§1026.43(a)(2)]</td>
<td>Exempt to the extent not principal dwellings [§1026.32(a)]</td>
<td>Exempt [§1024.20(c)(2)]</td>
<td>Exempt to the extent not principal dwellings [§1026.35(a)]</td>
<td>Exempt to the extent not principal dwellings [§1026.35(a)]</td>
<td>Covered if secured by first lien on a dwelling [§1002.14(a)]</td>
</tr>
<tr>
<td>Reverse Mortgages Subject to §1026.33</td>
<td>Exempt [§1026.43(a)(3)]</td>
<td>Exempt [§1026.32(a)(2)(i)]</td>
<td>Exempt [§1024.20(c)(1)]</td>
<td>Exempt [§1026.35(b)(2)(i)(D)]</td>
<td>Exempt [§1026.35(c)(2)(vi)]</td>
<td>Covered if secured by first lien on a dwelling [§1002.14(a)]</td>
</tr>
</tbody>
</table>
1 Note: This chart only contains information concerning general coverage and exemption of the above-referenced loan products for the Bureau’s 2013 Ability-to-Repay, HOEPA, Escrows, Appraisals, and Valuations Final Rules (also note that the cited sections of the regulations apply after the applicable effective dates). It does not contain information regarding the Loan Originator Compensation or Servicing Final Rules and does not discuss all exemptions and exclusions under the Title XIV Rules. This chart is intended only to act as a quick reference and not as a substitute for the rules. Always consult the regulation text and official commentary concerning coverage or exemption of the above or any other mortgage products for any of the above-referenced rules.

2 On June 12, 2013, the Bureau published a final rule amending the Ability-to-Repay Rule (78 FR 35430). Among other things, the final rule adopted §1026.43(e)(6), which provides a two-year transition period during which small creditors as defined by §1026.43(e)(5) can originate balloon-payment qualified mortgages even if they do not operate predominantly in rural or underserved areas. The final rule also created exemptions from the Ability-to-Repay requirements for extensions of credit made by community-focused creditors with certain designations and by certain nonprofits, as well as for credit extended pursuant to a program administered by a housing finance agency or pursuant to an Emergency Economic Stability Act program.
### General Comparison of Ability-to-Repay Requirements with Qualified Mortgages

<table>
<thead>
<tr>
<th>Feature</th>
<th>ATR Standard</th>
<th>General QM Definition</th>
<th>Agency/GSE QM (Temporary)</th>
<th>Small Creditor QM</th>
<th>Small Creditor Balloon QM</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Loan feature limitations</strong></td>
<td>No limitations</td>
<td>No negative amortization, interest-only, or balloon payments</td>
<td>No negative amortization, interest-only, or balloon payments</td>
<td>No negative amortization, interest-only, or balloon payments</td>
<td>No negative amortization or interest-only payments</td>
</tr>
<tr>
<td><strong>Loan term limit</strong></td>
<td>No limitations</td>
<td>30 years</td>
<td>30 years</td>
<td>30 years</td>
<td>No more than 30 years, no less than 5 years</td>
</tr>
<tr>
<td><strong>Points &amp; fees limit</strong></td>
<td>No limitations</td>
<td>3% or higher³</td>
<td>3% or higher³</td>
<td>3% or higher³</td>
<td>3% or higher³</td>
</tr>
<tr>
<td><strong>Payment Underwriting</strong></td>
<td>Greater of fully indexed or introductory rate</td>
<td>Max rate in first 5 years</td>
<td>As applicable, per GSE or agency requirements</td>
<td>Max rate in first 5 years</td>
<td>Amortization schedule no more than 30 years</td>
</tr>
<tr>
<td><strong>Mortgage-related obligations</strong></td>
<td>Consider and verify</td>
<td>Included in underwriting monthly payment¹ and DTI³</td>
<td>As applicable, per GSE or agency requirements</td>
<td>Included in underwriting monthly payment¹ and DTI³</td>
<td>Included in underwriting monthly payment¹ and DTI³</td>
</tr>
<tr>
<td><strong>Income or assets</strong></td>
<td>Consider and verify</td>
<td>Consider and verify</td>
<td>As applicable, per GSE or agency requirements</td>
<td>Consider and verify</td>
<td>Consider and verify</td>
</tr>
<tr>
<td><strong>Employment status</strong></td>
<td>Consider and verify</td>
<td>No specific requirement, but included in underwriting income and DTI³</td>
<td>As applicable, per GSE or agency requirements</td>
<td>No specific requirement, but included in underwriting income and DTI³</td>
<td>No specific requirement, but included in underwriting income and DTI³</td>
</tr>
<tr>
<td><strong>Simultaneous loans</strong></td>
<td>Consider and verify</td>
<td>Included in underwriting DTI³</td>
<td>As applicable, per GSE or agency requirements</td>
<td>Included in underwriting DTI³</td>
<td>Included in underwriting DTI³</td>
</tr>
<tr>
<td><strong>Debt, alimony, child support</strong></td>
<td>Consider and verify</td>
<td>Consider and verify</td>
<td>As applicable, per GSE or agency requirements</td>
<td>Consider and verify</td>
<td>Consider and verify</td>
</tr>
<tr>
<td><strong>DTI or Residual Income</strong></td>
<td>Consider and verify</td>
<td>DTI ≤ 43 percent</td>
<td>As applicable, per GSE or agency requirements</td>
<td>Consider and verify</td>
<td>Consider and verify</td>
</tr>
<tr>
<td><strong>Credit History</strong></td>
<td>Consider and verify</td>
<td>No specific requirement but may be included in underwriting debt and DTI³</td>
<td>As applicable, per GSE or agency requirements</td>
<td>No specific requirement but may be included in underwriting debt and DTI³</td>
<td>No specific requirement but may be included in underwriting debt and DTI³</td>
</tr>
</tbody>
</table>
**General Comparison of Ability-to-Repay Requirements with Qualified Mortgages**

1 This chart compares the general ATR requirements with the requirements for originating QM loans. Additional requirements may apply, for example the APR thresholds for safe harbor category of QMs or the portfolio retention requirements for small creditors. This chart is not a substitute for the rule. Only the rule and its Official Interpretations can provide complete and definitive information regarding its requirements. The complete rule, including the Official Interpretations and small entity compliance guide, is available at http://www.consumerfinance.gov/regulations/ability-to-repay-and-qualified-mortgage-standards-under-the-truth-in-lending-act-regulation-z/.

2 After January 10, 2016, only small creditors operating predominantly in rural or underserved areas will be able to make Small Creditor Balloon QMs.

3 Higher thresholds are permitted for loan amounts that are less than $100,000. The points and fees limit at 12 CFR 1026.43(e)(3) is tiered to increase for loan amounts below $100,000:
   - Loans ≥ $100,000 = 3%
   - Loans ≥ $60,000 but < $100,000 = $3,000
   - Loans ≥ $20,000 but < $60,000 = 5%
   - Loans $12,500 but < $20,000 = $1,000
   - Loans < $12,500 = 8%

4 "Included in underwriting monthly payment" means that the rule does not require the creditor to separately consider and verify this factor. However, a creditor must consider this factor when underwriting the consumer’s monthly payment under the rule.

5 "Included in underwriting DTI” means that the rule does not require the creditor to separately consider and verify these factors. However, a creditor considers and verifies these factors when calculating the consumer’s debt-to-income ratio.

6 "No specific requirement, but included in underwriting income and DTI” means that the rule does not require the creditor to separately consider and verify this factor. However, a creditor considers this factor when underwriting the consumer’s income and DTI under the rule.

7 "No specific requirement, but may be included in underwriting debt and DTI” means that the rule does not require the creditor to separately consider and verify this factor. However, a creditor may consider this factor when underwriting the consumer’s debt and DTI under the rule.