Recent Iowa Mortgage Foreclosure Legislation

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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**

   [ 2009 Iowa Acts, Ch. 51, § 3 - amendment of Iowa Code § 626.81 ]

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) [ 2006 Iowa Acts, Ch. 1132, § 10 (2006) - new Iowa Code § 654.17 ]

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. Recission 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 shall be assessed for 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.

After January 1, 1934, no 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 upon property which at the time of judgment 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 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.
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. Schultz, 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 a legal or 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.
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 *

   *(C)urrent 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.

Name, address, and telephone number of attorney representing plaintiff (name of foreclosing party).

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.