

## **SUMMARY OF 2009 IOWA FORECLOSURE BILL (Senate Bill 364)**

### **1. Notice of mortgage mediation assistance (New §654.4B)**

- Notice of availability of counseling and mediation (Iowa Mortgage Help) must be sent to borrower along with initial debtor contact, acceleration notice, or Dunning letter.
- Notice must also be served with original notice and petition of foreclosure.
- Notice must be on form prescribed by AG (see attached).
- If Notice not served and borrower wants mediation and counseling, court shall grant a delay of Sheriff sale (or recording of the sale if the sale has occurred and mortgagee or affiliate was winning bidder) up to 60 days.
- Rebuttable presumption Notice was served if so indicated in affidavit of service.
- Repealed on July 1, 2011.
- Effective May 1, 2009.<sup>1</sup>

### **2. Nonjudicial foreclosure not available for one/two family dwelling occupied by any titleholder (Amended §655A.9)**

- “Clarifies” existing 655A.9 to nullify interpretation that limits prohibition of nonjudicial foreclosure to land contracts only.

### **3. 14-day notice of demand for payment of accelerated balance for attorney fee award (New §654.4B)**

- After 30-day notice to cure and prior to filing foreclosure petition, creditor must give 14-day notice of demand for payment of balance to qualify for attorney fees.

### **4. No mortgagor consent required for rescission of foreclosure (Amended §654.17)**

- Facilitates resolutions of foreclosures when agreement of all debtors is difficult to obtain.

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<sup>1</sup> All other sections of this bill are effective July 1, 2009.

- Filing of rescission shall operate as setting aside decree and dismissal of foreclosure without prejudice.
  - Mortgagee barred from seeking deficiency judgment.
- 5. Postponement of Sheriff sale (Amended §626.81)**
- Expands grounds for postponement of sale to include request by creditor or by agreement of parties.
  - Up to two requests for postponement of not more than 60 days total.
- 6. Borrower protections in discontinuance of occupancy situations (New §654.1A)**
- Where current occupancy is required under Iowa foreclosure law for certain borrower protections/benefits, property deemed “occupied” when cessation of occupancy is due to natural disaster, inhabitality not caused by borrower, or military service.
- 7. Tolling of 2-year statute of limitations for foreclosure judgments (Amended §614.15.1(1))**
- Extends the tolling of the statute of limitations for any stay by order of the court - not just bankruptcy action.
- 8. Divestment of junior liens pursuant to loan modification (New §654.17B)**
- Parties may move the court to divest any junior liens against property in order to permit a modification agreement which would allow borrower to continue to reside on property.
  - Modification must provide for at least 10% reduction in the net present value (NPV) owing on mortgage.
  - Applies to any one/two family dwelling occupied by borrower.
  - If approved by court, junior lienholders must be served with agreement and court order.

- Junior lienholder has 45 days to buy out the mortgagee or quash the divestment by showing the value of property exceeds amount of mortgaged debt prior to modification.

**9. Resolving title issues in foreclosure actions** (Amended §654.5)

- Court now required to determine issues of title raised in pleadings of parties and persons served to allow for purchaser at Sheriff sale to get clear title.

**10. Limit to challenge of failure to provide 10-day notice of intent to apply for entry of default** (New §614.18A)

- Deadline to challenge default judgment based on failure to provide 10-day default notice is no later than 30 days after recording of Sheriff's deed or 90 days after filing of a judgment or decree not providing for issuance of deed.

**11. Service of process - in rem relief** (New §654.4A)

- Judgment creditors may be served by certified mail.
- Executor and others entitled to notice in probate may be served by certified mail.
- If non-probated estate, estate does not need to be opened. Beneficiaries may be served by publication. Beneficiaries may intervene as defendants as a matter of right.