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Iowa's Mortgage Moratorium Statute: A Constitutional Analysis

by

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IOWA'S MORTGAGE MORATORIUM STATUTE: A CONSTITUTIONAL ANALYSIS

*Timothy D. Benton**

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I. INTRODUCTION

On February 8, 1933, the Iowa legislature, based upon a gubernatorial proclamation of a state of economic emergency, enacted a moratorium statute designed to provide relief for mortgage debtors.¹ This measure, which provided that upon application by the mortgagor the court would issue an order continuing the foreclosure proceeding until March 1, 1935, marked the first significant use in the nation during the Great Depression of a moratorium statute for the relief of mortgagors.² In 1935 and 1937, as the economic crisis in Iowa continued, the legislature extended the moratorium legislation.³ After the 1937 legislation was struck down as unconstitutional in *First Trust Joint Stock Land Bank v. Arp*,⁴ the General Assembly re-enacted in 1939 a moratorium provision which remains in effect today.⁵

The present Iowa moratorium provision provides for the continuation,

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1. Ch. 182, § 1, 1933 Iowa Acts 211.
2. *Id.* § 2; G. OSBORNE, *HANDBOOK ON THE LAW OF MORTGAGES*, 695 (2d ed. 1970).
3. Ch. 115, § 1, 1935 Iowa Acts 163; Ch. 80, § 1, 1937 Iowa Acts 96.
4. 225 Iowa 1331, 1334, 283 N.W. 441, 443 (1939).
5. IOWA CODE § 654.15 (1983).

under certain circumstances, of the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate.⁶ During the fall and winter of 1982-1983, when economic conditions worsened, particularly within the farm community, public attention was once more focused on the Iowa moratorium law as a possible source of relief for mortgage debtors.⁷ In determining the validity of this statute as a vehicle for such relief, one area of obvious concern must be the statute's constitutionality.⁸ Although the constitutionality of its statutory predecessors was scrutinized by the courts in the 1930's,⁹ the constitutional validity of the present law has never been examined.

This article will analyze the Iowa mortgage moratorium law and will specifically attempt to determine its probable constitutional validity. Before turning to that analysis, it will be necessary to discuss the operation of the statute and the scope of its coverage. It will be necessary also to examine its legislative history and the extent to which the present law differs from its predecessors whose validity was considered by the Iowa courts.

II. OPERATION OF THE STATUTE

The moratorium statute is a part of Iowa Code Chapter 654 (1983) which provides the procedure for the foreclosure of real estate mortgages and those transactions treated under the law as mortgages.¹⁰ Mortgage foreclosures are equitable proceedings brought in the county in which the property is located.¹¹ The mortgagee must elect whether to proceed on the note itself or the mortgage which secures it.¹² When a mortgage is foreclosed, the court renders judgment for the entire amount due the mortgagee and directs that the mortgaged property be sold at a sheriff's sale to satisfy the judgment.¹³ At the execution sale the property sold must be sufficient to satisfy the mortgage; if, however, the mortgaged property does not sell for a suffi-

6. *Id.*

7. Muhm, *Officials See No Farm Credit Crisis*, Des Moines Register, Mar. 4, 1983, at 75, col. 4; Wood, *State of the Farm Economy Annual Report 1982*, SUCCESSFUL FARMING, Sept. 1982, at 15.

8. Letter from Iowa Lieutenant Governor Robert Anderson to Iowa Attorney General Tom Miller (February 10, 1983) (on file with the Iowa Attorney General's office).

9. First Trust Joint Stock Land Bank v. Arp, 225 Iowa 1331, 283 N.W. 441 (1939); Mudra v. Brown, 219 Iowa 867, 259 N.W. 773 (1935); Des Moines Joint Stock Land Bank v. Nordholm, 217 Iowa 1319, 253 N.W. 701 (1934).

10. By its express terms the statute applies to the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate. IOWA CODE § 654.2 (1983) provides that deeds of trust shall be foreclosed as mortgages. Similarly, IOWA CODE §§ 654.11 and 654.12 (1983) provide that contracts for the purchase of real estate may be foreclosed as mortgages.

11. IOWA CODE § 654.1, .3 (1983).

12. *Id.* § 654.4.

13. *Id.* § 654.5.

cient amount to satisfy the execution, a general execution may be issued against the mortgagor's other property.¹⁴ The property sold at the execution sale is subject to redemption by the mortgagor.¹⁵ Redemption refers generally to payment of the debt so that title to the mortgaged property is restored to the debtor free and clear of the mortgage lien.¹⁶ The period of redemption extends for one year from the date of sale during which time the mortgagor is entitled to possession of the property.¹⁷ During the first six months the mortgagor's power to redeem the property is exclusive; after that time the property may be redeemed by other creditors including a mortgagee.¹⁸

The moratorium statute is triggered only after a foreclosure action has been commenced.¹⁹ To invoke the statute, the mortgagor-defendant must first appear and answer admitting the indebtedness and breach of the particular instrument involved.²⁰ The statute then provides several grounds upon which the mortgagor may apply to the court for a continuance of the foreclosure proceeding. Most of the conditions refer to natural elements beyond the mortgagor's control which could impair the mortgagor's ability to perform the terms of the mortgage.²¹ Specifically, the statute provides that the owner or owners may apply for a continuance of the foreclosure when the inability to pay is mainly due or brought about by drought, flood, heat, hail, storm, other climatic conditions or the infestation of pests.²² In addition to these grounds, the statute also provides that, when the governor by reason of a depression has by proclamation declared a state of emergency to exist within the state, that proclamation may be utilized by the mortgagor as a basis upon which to apply for a continuance.²³

14. *Id.* § 654.6, .10.

15. *Id.* § 654.5.

16. G. OSBORNE, *supra* note 2, at 624.

17. IOWA CODE § 628.3 (1983).

18. *Id.* § 628.3, .5.

19. *Id.* § 654.15

20. *Id.* The statute provides in pertinent part:

In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, when the owner or owners enter appearance and file answer admitting some indebtedness and breach of the terms of the above-designated instrument (which admissions cannot after a continuance is granted hereunder, be withdrawn or denied) such owner or owners may apply for a continuance of the foreclosure action

Id.

21. *Id.*

22. *Id.*

23. *Id.* The statute describes the grounds upon which a continuance may be sought in the following terms:

when and where the default or inability of such party or parties to pay or perform is mainly due or brought about by reason of drought, flood, heat, hail storm, or other climatic conditions or by reason of the infestation of pests which affect the land in controversy, or when the governor of the State of Iowa by reason of a depression shall

The application for continuance, in writing, must be filed at or before the final decree.²⁴ The court then sets a day for hearing and gives notice to the mortgagee-plaintiff.²⁵ At the hearing, if the court finds that the application is in good faith and supported by competent evidence, it may in its discretion continue the foreclosure proceeding.²⁶ The order of continuance delays the entry of judgment and execution sale.²⁷ Since the period of redemption runs from the day of sale, and the sale itself follows the entry of judgment, the statute in essence extends the mortgagor's redemption period as well.

The burden of proof at the continuance hearing rests upon the mortgagor.²⁸ The statute specifies as grounds for a continuance certain climatic conditions such as drought, hail or flood, and a governor's proclamation of economic emergency premised upon a finding of depression.²⁹ The mortgagor must in good faith prove by competent evidence that his inability to pay has been mainly due or brought about by these catastrophic natural conditions.³⁰ As to the governor's proclamation, it does not appear that the mortgagor has a similar burden to prove causation, that is, that his failure to perform has resulted from a depression; however, the mortgagor must still demonstrate good faith.³¹

If the mortgagor's default occurs on or before March 1st, the continuance shall end on the first day of March of the following year.³² Should the default occur after March 1, the statute provides that the continuance shall end on the first day of March of the second succeeding year.³³ The mortga-

have by proclamation declared a state of emergency to exist within this state

Id.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. IOWA R. APP. P. 14F(3), (5). The burden of proof on an issue, in Iowa, rests upon the party who would suffer the loss if the issue were not established. *Id.*

29. IOWA CODE § 654.15.

30. *Id.*

31. *Id.*

32. *Id.* The provision states:

If the default or breach of terms of the written instrument or instruments on which the action is based occur on or before the first day of March of any year by reason of any of the causes hereinbefore specified, causing the loss and failure of crops on the land involved in the previous year, then the continuance shall end on the first day of March of the succeeding year.

Id. § 654.15(1).

33. *Id.* § 654.15(2). The full text states as follows:

If the default or breach of terms of said written instrument occur after the first day of March, but during that crop year and that year's crop fails by reason of any of the causes hereinbefore set out, then the continuance shall end on the first day of March of the second succeeding year.

Id.

gor is entitled to only one continuance except upon extraordinary circumstances in which case the court may in its discretion extend the continuance for a period it deems just and equitable not to exceed one year.³⁴

It is further provided that the order granting the continuance shall provide for the appointment of a receiver to take charge of the mortgagor's property and to rent that property, collect the rents and income, and distribute the proceeds according to a schedule provided in the statute.³⁵ The rents and other proceeds are distributed first for payment of the costs of receivership, then the payment of taxes and insurance.³⁶ Any balance remaining shall be paid to the mortgagee holding the instrument upon which the foreclosure is based, and the mortgagor is given preference in the occupancy of the premises during the receivership.³⁷

III. LEGISLATIVE HISTORY

Adequate consideration of the constitutionality of the moratorium statute in its present form requires a review of both the legislation which preceded section 654.15 and the conditions which gave rise to the enactments. As a state decreed postponement of the fulfillment of contractual obligations, the moratorium has been in existence since antiquity.³⁸ In the United States, state legislatures have traditionally been sensitive to demands by mortgage debtors for relief during periods of economic hardship.³⁹ As a consequence, during the economic crisis of the 1930's several states, including Iowa, enacted various measures to provide relief for mortgage debtors.⁴⁰

34. IOWA CODE § 654.15(3) states: "Only one such continuance shall be granted, except upon a showing of extraordinary circumstances in which event the court may in its discretion grant a second continuance for such further period as to the court may seem just and equitable, not to exceed one year."

35. IOWA CODE § 654.15(4) states:

The order shall provide for the appointment of a receiver to take charge of the property and to rent the same and the owner or party in possession shall be given preference in the occupancy thereof and the receiver shall collect the rents and income and distribute the proceeds as follows: (a) for the payment of the costs of receivership, (b) for the payment of taxes due or becoming due during the period of receivership.

Id.

36. *Id.* § 654.15(4)(b), (c).

37. *Id.* § 654.15(4)(d).

38. Feller, *Moratory Legislation: A Comparative Study*, 46 HARV. L. REV. 1061, 1062 (1933).

39. Poteat, *State Legislative Relief for the Mortgage Debtor During the Depression*, 5 LAW & CONTEMP. PROBS. 517 (1938).

40. *Id.* at 520. Twenty-eight states adopted moratorium provisions. Typically, the statutes for mortgage debtors' relief fell into three general classifications: (1) the moratorium by which the courts were authorized to delay foreclosure proceedings for a definite period of time expressed in the statute; (2) the extension of existing redemption periods; (3) the prevention of abnormally large deficiency judgments following foreclosure sales, either by sanctioning the fixation of an upset price below which the property may not be sold, or by requiring the determination of a fair market value by the court which must be credited against the judgment

In Iowa, the great impetus for a legislative response to the economic emergency existing during the early 1930's came from the farm community. Iowa farmers were plagued by a combination of low commodity prices (by August, 1932, corn had reached 22¢ per bushel) and by declining land values.⁴¹ Moreover, by 1930, Iowa land was mortgaged to the extent of \$1,098,610,000.00, almost twelve percent of the entire farm mortgage debt in the United States.⁴² These circumstances led to an epidemic of foreclosure sales. Between 1926 and 1931, one Iowa farmer in seven lost his land through foreclosure.⁴³ These foreclosures affected 33,000 farms and more than five million acres.⁴⁴ The reaction to these sales in the farm community included sporadic violence and, on March 13, 1933, 3,000 farmers invaded the Iowa statehouse, disrupting the legislature and demanding legislative relief for agriculture.⁴⁵

By the enactment of the first moratorium provision, the Iowa legislature clearly perceived a need to provide relief for mortgage debtors, particularly in the farm community. The initial moratorium legislature in Iowa noted that the governor had already declared a state of emergency and that the General Assembly itself had also determined that an emergency existed which endangered the future welfare of the state.⁴⁶ The Bill provided that, upon application by the mortgagor, the court could issue an order continuing the foreclosure proceeding until March 1, 1935, unless upon hearing, good cause was shown to the contrary.⁴⁷ The Bill also stated that the order for continuance should provide for the possession of the real estate, determine fair rental terms, and provide for the distribution of rents, income, and profits.⁴⁸ The legislature also enacted a companion bill which extended, upon application in real estate foreclosure proceedings after the decree had been entered but before the expiration of the redemption period, the period in which a mortgagor could redeem the property involved until March 1, 1935.⁴⁹ Both statutes were retroactive, that is, they were applicable to all foreclosure actions then pending and thus applied to mortgage instruments

rather than the sale price. *Id.*

41. Mischler, *After the Mortgage Moratorium - What?*, 19 IOWA L. REV. 560, 561 n.1 (1934); Mills, *Years of Shame, Days of Madness*, Des Moines Sunday Register, Feb. 8, 1979, (Picture Magazine), at 4 col. 1. By the early 1940's, most legislation of this nature was either allowed to lapse by the states or was struck down as unconstitutional upon the premise that the economic emergency had passed. Skilton, *Government and the Mortgage Debtor, 1940-1946*, 95 U. PA. L. REV. 119, 120 (1946).

42. Mischler, *supra* note 41, at 561 n.1 (citing H. R. Doc. No. 9, 73rd Cong. 1st Sess. 6 (1933)).

43. Mills, *supra* note 41, at 4.

44. *Id.*

45. *Id.* at 6.

46. Ch. 182, § 1, 1933 Iowa Acts 211.

47. *Id.* § 2.

48. *Id.*

49. Ch. 179, § 1, 1933 Iowa Acts 208.

entered prior to the bill's passage.⁵⁰

In 1935, the legislature met and continued the moratorium noting that the conditions which had required their passage of mortgage relief legislation in 1933 still existed within the state.⁵¹ Specifically, the legislature declared that the emergency which existed at the time that the 1933 Continuance Bill was enacted still existed and that this emergency endangered the state's welfare.⁵² The preamble to the 1935 bill noted also that the governor had, in his inaugural address to the 46th General Assembly, stated in substance that an emergency continued to exist and that there was a further need to continue protection against mortgage foreclosure actions.⁵³ Accordingly, the Bill continued mortgage foreclosure proceedings until March 1, 1937 along terms virtually identical to those of the prior legislation.⁵⁴ This continuance Bill was made applicable to foreclosure actions then pending in which decrees had not been entered.⁵⁵ The Bill stated that the act was not applicable to mortgages executed subsequent to January 1, 1934.⁵⁶ The legislature also extended, in those cases where a decree had been entered but the redemption period had not expired, the redemption period for mortgage debtors until March 1, 1937.⁵⁷ Like the Continuance Bill, this legislation noted the continuing emergency conditions which required that the redemption period be extended.⁵⁸

Again in 1937, the General Assembly determined that mortgage foreclosure proceedings be continued due to the same emergency conditions which had prompted passage of the earlier bills and to new conditions which also created an emergency.⁵⁹ In this measure, the Legislature noted that since the enactment of the previous chapters the same emergency existed, aggravated by new and distressing conditions.⁶⁰ The General Assembly specifically noted that the state had suffered a severe drought.⁶¹ The legislature

50. *Id.* § 2; Ch. 182, § 1, 1933 Iowa Acts 211.

51. Ch. 115, § 1, 1935 Iowa Acts 163.

52. *Id.*

53. *Id.*

54. *Id.* § 2. The 1935 Act retained the requirement of showing good cause to the contrary before a mortgagee could prevent a continuance. *Id.*

55. *Id.*

56. *Id.* § 4.

57. Ch. 110, 1935 Iowa Acts 155.

58. *Id.* § 1.

59. Ch. 80, § 1, 1937 Iowa Acts 95.

60. *Id.*

61. *Id.* The general assembly noted that:

Iowa has been afflicted with a severe drouth, visited by destructive insect pests, and stricken by other devastating circumstances which greatly imperil the present and future welfare of the state as a whole, so that the Forty-seventh General Assembly has now determined that a new and additional emergency had arisen, and the governor by proclamation has so declared

Id.

continued pending mortgage foreclosure proceedings until March 1, 1939, unless good cause was shown to the contrary.⁶² The Act further stated that it should not apply to mortgages executed after January 1, 1936, unless continuances had already been granted.⁶³ Based upon the same findings of a continuing economic emergency worsened by the drought and other new conditions, the Legislature in a companion bill also extended the redemption period in those actions where that period had not expired for mortgagors until March 1, 1939.⁶⁴

On April 26, 1939, the General Assembly enacted what is the present section 654.15 of the Iowa Code.⁶⁵ The Bill stated that the safety and future welfare of the people would be endangered whenever a real estate mortgage is foreclosed due to the mortgagor's inability to pay brought about by drought, flood or other climatic conditions.⁶⁶ The Legislature therefore listed those conditions upon which the mortgagor could apply for a continuance, including a proclamation by the governor of a state of emergency.⁶⁷ The Legislature removed the language making the continuance automatic unless good cause to the contrary was shown, and instead left the granting of the continuance to the court's discretion.⁶⁸

The 1939 legislation differed significantly from its predecessors. First, it altered the burden of proof, shifting that burden from the mortgagee to the mortgagor. Under the earlier moratorium legislation, the continuance was automatic unless "good cause was shown to the contrary."⁶⁹ The burden at that point was upon the mortgagee to demonstrate that the debtor should not qualify for the continuance.⁷⁰ The General Assembly in 1939 deleted this language, creating the inference that the mortgagor thereafter had to prove that the inability to pay resulted from a statutory cause.

Secondly, the statutory predecessors to section 654.15 were limited in scope to foreclosure proceedings then pending and the 1935 and 1937 legislation specifically provided that the Acts were not to apply to mortgages entered into after certain dates unless continuances had been granted.⁷¹ By implication, these statutes applied to transactions entered before their enactment only, and were therefore retroactive. Unlike its predecessors, the present statute applies to "all" actions for foreclosures, that is, those pending and those which would arise thereafter.⁷² The 1939 Act was intended

62. *Id.* § 2.

63. *Id.* § 5.

64. Ch. 78, § 2, 1937 Iowa Acts 92.

65. Ch. 245, 1939 Iowa Acts 353.

66. *Id.* preamble.

67. *Id.* § 1.

68. *Id.*

69. *See, e.g.*, ch. 182, § 2, 1933 Iowa Acts 211.

70. *Mudra v. Brown*, 219 Iowa 867, 868, 259 N.W. 773, 774 (1935).

71. *See, e.g.*, ch. 80, § 5, 1937 Iowa Acts 97; ch. 115, § 4, 1935 Iowa Acts 164.

72. IOWA CODE § 654.15 (1983).

apparently to reach mortgages entered both before and after its enactment. Ordinarily, a statute will be given a prospective application only, unless a contrary legislative intent appears.⁷³ When a statute relates solely to remedy or procedure however, it will be applied both prospectively and retrospectively.⁷⁴ The statute, as a part of the procedure for the foreclosure of mortgages, should apply to mortgages entered prior to its enactment in 1939, as well as transactions entered after its passage and foreclosure proceedings initiated subsequent to that time.⁷⁵

IV. CONSTITUTIONALITY

A. *Impairment of Contracts*

As noted earlier, moratoria legislation, such as the Iowa statutes, arose as protection for mortgage debtors during the economic crisis precipitated by the Great Depression. The present moratorium statute, like its predecessors, is a regulation of private contractual relationships, whether real estate mortgages, deeds of trust or contracts for the purchase of real estate. Therefore, the first inquiry must be to determine whether the statute offends any constitutional provisions which restrain governmental interference with such contractual relationships. Both the Federal and Iowa Constitutions contain provisions which are implicated by the moratorium statute.⁷⁶ In determining whether the moratorium provision unconstitutionally impairs the obligation of contracts, the construction of the two clauses will be the same given their similarity in language and scope.⁷⁷ The seminal case in the application of the contracts clause to the moratoria legislation of the 1930's is *Home Bldg. & Loan Association v. Blaisdell*.⁷⁸ In *Blaisdell*, the Court considered the constitutional validity under the contracts clause of the Minnesota Mortgage Moratorium statute. The Minnesota statute declared that an economic emergency existed within the state, and that accordingly mortgage debtors could apply for an extension of their redemption period upon such terms as

73. *State ex rel Leas In Interest of O'Neal*, 303 N.W.2d 414, 419 (Iowa 1981). *See also*, *Women Aware v. Reagen*, 331 N.W.2d 88 (Iowa 1983).

74. *State ex rel Leas In Interest of O'Neal*, 303 N.W.2d at 419.

75. *See United States v. Sec. Indus. Bank*, 103 S.Ct. 407, 414 (1982) (holding that certain provisions of the bankruptcy laws should not be construed retroactively so as to impair established property rights).

76. U.S. CONST. art. I, § 10, cl. 1 (prohibits any state law, "impairing the obligation of contracts . . ."); IOWA CONST., art. I, § 21 (expressly states that "[n]o bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.").

77. *Des Moines Joint Stock Land Bank v. Nordholm*, 217 Iowa 1319, 1335, 253 N.W. 701, 704 (1934). But *see Bierkamp v. Rogers*, 293 N.W.2d 577, 579 (Iowa 1980) where the Iowa Supreme Court noted that the result reached by the United States Supreme Court in construing the federal constitution is persuasive but not binding upon it in the construction of analogous provisions in Iowa's Constitution.

78. 290 U.S. 398 (1934).

the district court found just and equitable.⁷⁹ During the period of the extended redemption, the mortgagor was to pay all or a reasonable part of the property's income or rental value towards taxes, insurance and the mortgage indebtedness.⁸⁰

In considering whether the Minnesota law was repugnant to the contracts clause, the Court first noted that despite the absolute language of the clause, contracts are subject to the state's police power, even if the exercise of that power impacts upon private contractual relations.⁸¹ The issue, according to the Court, in determining whether an economic regulation unconstitutionally impairs the obligation of contract, was not whether the statute directly or indirectly affects contracts, "but whether the legislation is addressed to a legitimate end and whether the measures taken are reasonable and appropriate to that end."⁸² The Court then applied this test, noting that an economic emergency existed within Minnesota as declared by the legislature, so that the statute was addressed to a legitimate end.⁸³ Moreover, the Court found that the measure adopted, the extension of the mortgage redemption period, was reasonable in that the integrity of the mortgage indebtedness was not impaired and the mortgagee was not left without compensation during the extension.⁸⁴ Accordingly, the Court in *Blaisdell* held that the Minnesota moratorium statute did not violate the Contracts Clause.⁸⁵

The Iowa Supreme Court in *Des Moines Joint Stock Land Bank v. Nordholm* followed *Blaisdell* in upholding Iowa's legislation which had extended the period of redemption against a challenge under the contracts clause.⁸⁶ The Iowa court essentially employed the same test in construing both the Federal and Iowa Constitutional provisions, noting first that all contracts are subject to the state's police power and that the test to be invoked is whether the legislation impacting upon the contract is addressed to a legitimate end and the measures taken are reasonable in relation to that end.⁸⁷ Applying this legitimate ends-reasonable measures test, the court in *Nordholm* sustained the legislation under the Iowa Contracts Clause, as well as the federal provision.⁸⁸ Similarly, in *Craig v. Waggoner*, the Iowa court followed *Nordholm* in upholding the constitutionality of the legislation which had continued mortgage foreclosure sales.⁸⁹

79. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. at 416.

80. *Id.* at 417.

81. *Id.* at 437.

82. *Id.* at 438.

83. *Id.* at 444.

84. *Id.* at 445.

85. *Id.* at 447.

86. 217 Iowa 1319, 1331, 253 N.W. 701, 705 (1934).

87. *Des Moines Joint Stock Bank v. Nordholm*, 217 Iowa at 1339, 253 N.W. at 711.

88. *Id.* at 1342, 253 N.W. at 713.

89. 218 Iowa 876, 877, 256 N.W. 285, 286 (1934).

Both *Blaisdell* and *Nordholm* premised their view that the moratorium legislation involved was a proper exercise of the state's police power upon a finding of emergency, perhaps as a component of the legitimate ends test.⁹⁰ In Iowa, when the Iowa Supreme Court found that the facts would no longer sustain a finding of emergency, it struck down the continuance legislation as violative of both the Federal and Iowa Contracts Clause.⁹¹ In *Arp* there was no discussion of the impact of that particular legislation upon private contracts, nor whether the statute was itself reasonable. Absent an emergency, there was no justification for the exercise of the state's police power and, therefore, any impact upon mortgage contracts was invalid.⁹²

Since *Blaisdell*, the United States Supreme Court has considered challenges to state legislation under the Contracts Clause in a variety of contexts. These cases have in turn led to a variety of tests being employed by the Court to determine the validity of those statutes.⁹³ The cases which construed the Clause since *Blaisdell* have left uncertain the appropriate standard to be employed.⁹⁴

In January 1983, the Supreme Court decided *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, involving a Contracts Clause challenge to a Kansas statute which established a maximum price on the sale of intra-state gas, effectively contravening price escalation clauses within private contracts.⁹⁵ The Court's analysis distilled several approaches to contracts clause cases and delineated an analysis applicable to Iowa's statute. According to the Court, the threshold inquiry is to determine whether the state law has in fact resulted in a substantial impairment of a contractual relationship.⁹⁶ The severity of the impairment will increase the level of scrutiny to which the legislation will be subjected.⁹⁷ In determining the extent of the impairment, the courts will consider whether the agreements arise in an in-

90. *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. at 437-41; *Des Moines Joint Stock Land Bank v. Nordholm*, 217 Iowa at 1333, 253 N.W. at 708-09.

91. *First Trust Joint Stock Land Bank of Chicago v. Arp*, 225 Iowa 1331, 283 N.W. 441 (1939).

92. *Id.* at 1334, 283 N.W. at 443.

93. See *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978); *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977); *City of El Paso v. Simmons*, 379 U.S. 497 (1965), *reh. denied*, 380 U.S. 526 (1965). In *United States Trust Co.*, the Court considered a case in which the state, itself, was a party to the contract affected by the repeal of a statute. The Court invoked a test of necessity and reasonableness which will apparently be applicable where the state is one of the contracting parties. *United States Trust Co. v. New Jersey*, 431 U.S. at 29. Accordingly, the *United States Trust Co.* criteria would not be apposite to Iowa Code § 654.15 unless the State of Iowa was one of the contracting parties.

94. See Note, *A Process-Oriented Approach to the Contract Clause*, 89 *YALE L.J.* 1623 (1980).

95. 103 S.Ct. 697 (1983).

96. *Id.* at 704.

97. *Id.*

dustry which is traditionally subject to state regulation.⁹⁸

If the court finds that the statute results in a substantial impairment, the state must have a significant and legitimate public purpose supporting the measure causing the impairment, such as the remedying of a broad and general social or economic problem.⁹⁹ Having identified the state's public purpose, which is required to ensure that the state is acting pursuant to its police power rather than for the benefit of private interests, the final test is to determine whether the statute is reasonable and appropriately tailored to the accomplishment of the public purpose.¹⁰⁰

In determining whether section 654.15 is violative of the Contracts Clause, the statute must be analyzed under the three-tiered approach employed by the Court in *Kansas Power*. Given that the statute should be applied both prospectively and retrospectively, the statute's impact should be examined upon mortgage agreements entered both before and after its enactment.

As to those contracts entered into after the enactment of the section, the statute itself does not impair existing obligation, but instead limits the remedies for future contracts. First, contracting parties are assumed to be aware of the applicable law when such agreements are reached. In fact, state law in effect at the time the contract is entered into is subsumed into and becomes a part of the agreement itself.¹⁰¹ Accordingly, the terms of the Iowa moratorium statute are a part of all mortgage instruments entered into after the law's passage. Secondly, mortgage transactions and their foreclosure are obviously subject to state regulation.¹⁰² Those who have entered into mortgage agreements after 1939 have done so with the understanding that their respective rights and duties are subject to that regulation. A continuance of the stay granted under section 654.15 would not impair the mortgagee's reasonable expectations, nor impose a new and unexpected liability.¹⁰³ The impact upon mortgages entered into after 1939 seems to be confined to the delay which the stay would impose upon the mortgagee's opportunity to obtain title and to the amount of proceeds received by reason of the sheriff's

98. *Id.*

99. The Court in *Kansas Power*, said that "[f]urthermore, since *Blaisdell*, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation." *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 103 S.Ct. at 705. Although the Iowa Supreme Court struck down the 1937 moratorium on the grounds that an emergency justifying the statute no longer existed, *see supra* note 91 and accompanying text, it does not appear after *Kansas Power* that an emergency remains an essential element of the public purpose requirement under the contracts clause analysis. Of course, a state of emergency is an essential basis for the governor's issuance of a proclamation under Iowa Code § 654.15.

100. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 103 S.Ct. at 705.

101. *See United States Trust Co. v. New Jersey*, 431 U.S. at 19 n.17; *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. at 429-30.

102. IOWA CODE § 654.15(4)(d) (1983).

103. *See generally* IOWA CODE §§ 628, 654 (1983).

sale. During the period of this continuance the property's value may decline, thereby decreasing the mortgagee's proceeds from such a sale. Yet given that this delay is not an unexpected burden, but a part of the law which is a component of each mortgage contract, the statute does not work an onerous impairment of mortgage instruments entered into after 1939.

The impact upon contracts entered into before 1939 likewise does not seem substantial. As noted in the discussion of the statute's legislative history, mortgage foreclosures have, since 1933, been subject to regulation in Iowa.¹⁰⁴ Consequently, it cannot be said that the possibility of a stay under the present moratorium statute is a totally unexpected liability. The mortgagee whose contract pre-dates the statute's passage will be protected by the appointment of a receiver if a stay is granted, and the mortgagee is entitled to receive a portion of the income or rents which the mortgaged property may generate.¹⁰⁵ In contrast, to permit a mortgagee to foreclose after receiving payments for over forty years when the inability to pay has resulted from a catastrophe such as drought, flood or economic emergency would grant the mortgagee a windfall. The Iowa moratorium statute does not cause a substantial impairment upon mortgage instruments entered before 1939.

Even to the extent that the statute impacts upon the contractual relationship involved, the legislation is supported by a significant state interest. The State of Iowa, through this law, has exercised its police power to shelter mortgage debtors from foreclosure when their inability to pay results from a cause outside their control, such as economic depression, drought or other climatic emergency. The protection of mortgage debtors in such circumstances serves a broad, societal purpose. For example, as to farm foreclosures, there is a clear public purpose in continuing foreclosures to grant the farmer-mortgagor an opportunity to remain on his land. Encouraging farm owners to remain on their property would maintain diversity in agriculture and encourage competition by preventing the acquisition of land by larger farm interests. Moreover, keeping farm owners on their property could restrain their movement to the cities where problems of unemployment could be aggravated.

This societal purpose extends as well to the foreclosures of non-farm property. There is a legitimate public interest served in promoting stability in property ownership; those who retain ownership of their property are more likely to stay in the state rather than leave for more hospitable economic conditions. Finally, there is a societal interest in preventing the windfall to a mortgagee which would result if, after years of payment, default is caused by circumstances outside the debtor's control.¹⁰⁶ Consequently, there is a legitimate public purpose behind the statute.

Finally, it seems that the means adopted to achieve this purpose are

104. See *supra* notes 46-72 and accompanying text.

105. *Id.*; IOWA CODE § 654.15 (1983).

106. *Id.*

reasonable and adequately tailored. The continuance is granted by the court if it finds in its discretion that a reason exists as specified in the statute.¹⁰⁷ The mortgagee may appear at the hearing and resist the application, and the burden of proof rests upon the mortgagor.¹⁰⁸ Since the action is brought in equity, the court's findings are subject to *de novo* review.¹⁰⁹ The provision does not automatically alter the contractual rights of the mortgagee, but merely modifies the procedure through which the foreclosure is enforced.¹¹⁰ As to the gubernatorial proclamation of emergency, the legislature obviously concluded that the state's chief executive was best suited to make the determination that such a broad economic crisis existed. This function appears reasonably tailored to the statute's purpose. Thus, an analysis of section 654.15 under this three-tiered approach compels the conclusion that the statute violates neither the federal nor state contracts clause.

B. Equal Protection

By placing the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate within its ambit, section 654.15 classifies these transactions and their parties differently than other contractual relationships. Legislative classifications are subject to constitutional scrutiny under both the Federal and Iowa Constitutions.¹¹¹ The Iowa constitutional provision places essentially the same limitation upon state legislation as does the equal protection clause of the fourteenth amendment, although the Iowa Supreme Court is not bound by the United States Supreme Court's construction of an analogous federal constitutional provision.¹¹² It must be determined in this context whether the classifications within section 654.15 are violative of equal protection.

The classifications drawn within the moratorium statute are not suspect, nor does the statute, by providing a continuance in foreclosure proceedings, infringe upon any fundamental rights of the mortgagee.¹¹³ Accordingly, the statute should be examined under the traditional equal protection standard.¹¹⁴ This test generally requires that the classification bear a ra-

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. U.S. CONST. amend. XIV provides in pertinent part that no state shall "deny to any person within its jurisdiction the equal protection of the laws." IOWA CONST. art. I, § 6 states that "[a]ll laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon the same terms shall not belong equally to all citizens."

112. *Bierkamp v. Rogers*, 293 N.W.2d 577, 579 (Iowa 1980); *City of Waterloo v. Selden*, 251 N.W.2d 506, 509 (Iowa 1977).

113. *See State v. Kramer*, 235 N.W.2d 114, 116 (Iowa 1975); *Lunday v. Vogelmann*, 213 N.W.2d 904, 907 (Iowa 1973).

114. *Bierkamp v. Rogers*, 293 N.W.2d at 579.

tional relationship to a legitimate governmental purpose to be sustained.¹¹⁵ Under this test, equal protection is affected only if the classification rests upon grounds wholly irrelevant to the achievement of the state's objective and the statute will not be set aside if any set of facts may be reasonably conceived to support it.¹¹⁶ Under Iowa's equivalent constitutional provision, the legal classification must be reasonable, based on some substantial distinction, and there must be a reasonable relationship between the purpose of the legislation and the basis of the classification.¹¹⁷

The state's purpose in enacting section 654.15 was to protect mortgage debtors when their inability to make payments had resulted from a cause outside their control. As discussed in the previous section, this rationale is supported by a broader public interest.¹¹⁸ The need to preserve stability in property ownership, and diversity and competitiveness in the agricultural community are served by the moratorium statute. The statute's classifications, moreover, seem rationally related to the legislature's purpose in protecting the mortgagor when his inability to pay is occasioned by one of the grounds specified in the act. The grounds are events beyond the control of the mortgage debtor and are events likely to affect a significant number of debtors. As such, the classifications appear reasonable and are clearly related to the statute's purpose. A court would, in all likelihood, sustain section 654.15 if challenged under the equal protection clause.

C. *Due Process*

The requirements of due process dovetail with those of equal protection when considering state legislation which regulates private economic conduct.¹¹⁹ The Iowa Supreme Court has stated that due process does not limit the state's police power unless the legislation is arbitrary, unreasonable or improper.¹²⁰ The test under due process is, therefore, like the rational basis test under equal protection, whether the statute has a reasonable relationship to legitimate state goals.¹²¹ Having concluded that section 654.15 advances a legitimate public purpose and that the statute's terms are rationally related to the accomplishment of that purpose, it must follow that the moratorium law, properly applied, does not violate the due process clause.

Closely related to the requirements of due process are the constitutional provisions providing that private property may not be taken for public use

115. *Hawkins v. Preisser*, 264 N.W.2d 726, 729 (Iowa 1978).

116. *Rudolph v. Iowa Methodist Medical Center*, 293 N.W.2d 550, 557 (Iowa 1980).

117. *Bierkamp v. Rogers*, 273 N.W.2d at 580.

118. *See supra* text pp. 315-16.

119. *See Chicago Title Ins. Co. v. Huff*, 256 N.W.2d 17, 27 (Iowa 1977).

120. IOWA CONST. art. I, § 9 provides that no person shall be deprived of property in the state without due process of law. *See also* *John R. Grubb, Inc. v. Iowa Housing Finance*, 255 N.W.2d 89, 97 (Iowa 1977).

121. *Chicago Title Ins. Co. v. Huff*, 256 N.W.2d at 27.

without just compensation.¹²² The United States Supreme Court has held that valid contracts are property and are therefore protected by constitutional restriction forbidding their taking without compensation.¹²³ These constitutional provisions require a consideration of whether the regulation of private mortgage contracts provided in section 654.15 amounts to an appropriation for which compensation must be paid.

In its broadest terms the issue is whether the moratorium law imposes a burden upon the contracting parties so onerous as to amount to a taking or whether the statute is a regulation of economic activity under the state's police power. However, even the exercise of a governmental unit's police power may amount to a taking if it deprives a property owner of the substantial use and enjoyment of his property.¹²⁴

The test to be used in determining whether a police power regulation is so oppressive as to amount to a taking is generally a balancing process measuring the public benefit against the nature of the restraint imposed upon private property.¹²⁵ Factors to be considered in this balancing process include the economic impact of the regulation upon those affected, the extent to which the regulation interferes with distinct investment backed expectations, and the character of the governmental action.¹²⁶ The latter refers presumably to the nature of public interest supporting the regulation.

The broad public purpose supporting Iowa's moratorium statute has been previously discussed. Under the test applied by the Iowa Supreme Court in *Woodbury County Soil Conservation Dist. v. Ortner*, this purpose must be balanced against the law's impact upon the mortgaging parties to determine whether the stay provision amounts to a taking of these contracts.¹²⁷ The economic impact upon the mortgagee seems largely confined to the delay which will ensue if the stay is granted. During the period of the continuance, the value of the mortgaged property may decline, decreasing the amount which the mortgagee would receive upon the sheriff's sale. However, as to mortgage contracts entered both before and after 1939, the mortgagee is protected by the statute which provides for the appointment of a receiver and the application of certain proceeds towards payment of the debt.¹²⁸ There is, moreover, no disruption of contractual expectations. Those who have entered mortgage agreements after 1939 have done so with knowledge of the statute's existence and the possibility of a stay resulting from its

122. See U.S. CONST. amend. V; IOWA CONST. art. I, § 18.

123. *Lynch v. United States*, 292 U.S. 571, 579 (1933).

124. *Phelps v. Bd. of Supervisors*, 211 N.W.2d 274, 276 (Iowa 1973). See also *United States v. Sec. Indus. Bank*, 103 S. Ct. 407, 410 (1982) (the federal bankruptcy power is subject to the fifth amendment's prohibition against taking private property without compensation).

125. *Phelps v. Bd. of Supervisors*, 211 N.W.2d at 278.

126. *Woodbury County Soil Conservation Dist. v. Ortner*, 279 N.W.2d 276, 278 (Iowa 1979).

127. *Id.* at 278.

128. IOWA CODE § 654.15(4) (1983).

invocation. As to those contracts entered before the enactment of the provision, they also were subject to regulation since passage of the first moratorium in 1933. On balance, the broad public purposes behind the moratorium law outweigh the restraints imposed upon the contracting parties. Therefore, section 654.15 does not amount to taking of property without just compensation.

D. Delegation

The continuance law provides, as one ground upon which a mortgagor may seek a continuance, that "when the governor of the State of Iowa by reason of a depression shall have by proclamation declared a state of emergency to exist within this state."¹²⁹ This language raises an issue as to whether the legislature has improperly delegated a legislative function to the executive branch.¹³⁰ In scrutinizing whether the statute offends the delegation provision, the first determination must be whether its language pertaining to the proclamation of an emergency involves the delegation of a legislative function, and if so, whether that delegation has been accompanied by sufficient standards. Delegations of such authority are not *per se* violative of the constitution.¹³¹ The appropriate test, as recently described in *Polk County v. Iowa State Appeal Board*, is whether the delegation of authority is accompanied by adequate procedural safeguards.¹³² The determination of whether procedural safeguards are adequate turns on the function that the delegated body will serve on behalf of the legislature.¹³³ The safeguards must both advance that purpose and preclude arbitrary, capricious or illegal conduct on the part of the delegated body.¹³⁴

The function delegated to the governor in this statute is essentially one of a triggering mechanism. The statute does not provide that the governor's proclamation in and of itself will operate to continue foreclosure proceedings. Rather, the gubernatorial proclamation may serve as a basis upon which a mortgagor in default may seek the statutory continuance. This authority is analogous to the soil conservation complaint procedure, which is triggered by the complaint of an adjoining landowner.¹³⁵ This delegated authority is accompanied by procedural safeguards to assure that the procla-

129. *Id.* § 654.15 (1983).

130. IOWA CONST. art. III, § 1 provides for the distribution of Iowa's governmental functions in the following terms: "The powers of the government of Iowa shall be divided into three separate departments — the Legislative, the Executive, and the Judicial: and no person . . . properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted."

131. *Warren County v. Judges of Fifth Judicial Dist.*, 243 N.W.2d 894, 898 (Iowa 1976).

132. 330 N.W.2d 267, 273-74 (Iowa 1983).

133. *Id.* at 274.

134. *Id.*

135. IOWA CODE § 467A.47 (1983). See also *Woodbury County Soil Conservation Dist. v. Ortner*, 279 N.W.2d at 277.

mation advances the legislature's purpose. First, the governor's proclamation alone does not effectively stay foreclosure proceedings. The mortgagor under the statute must apply in good faith to the district court for the continuance, and the granting of the stay rests in the court's discretion. This would prevent a blanket issuance of stays to include mortgagors whose default has resulted from their own mismanagement. The legislature could reasonably conclude that a determination of economic emergency should not be made on a case-by-case basis, but should instead be decided on a statewide basis. The governor would seem best suited to make that determination. Thus, the legislative purpose in restraining the foreclosure of mortgagors whose default results from economic calamity has been served.

Secondly, there are adequate procedural safeguards to insure that the governor's proclamation is not arbitrary or otherwise based on insufficient grounds. This safeguard stems from the court's authority to review the basis of the proclamation as well as its applicability to a specific mortgagor. The Iowa Supreme Court struck down Chapter 80 of the 1937 Iowa Acts after finding that no emergency existed which in the court's view justified the continuance statute. The court stated that:

While declaration of the executive and pronouncement of the legislature are entitled to great weight and should be carefully considered, yet, the fact question still exists, and this can be determined by record facts, history of current events, and common knowledge and information. In other words, a court, in determining the existence of an emergency may and should take judicial notice of conditions existing at the time the emergency or its continued existence is questioned.¹³⁶

The court thus reviewed both the legislative and gubernatorial finding that an emergency existed. A governor's proclamation under the present statute premised upon a finding of depression would consequently be subject to judicial scrutiny. In passing on the statute, a court could review whether a depression in fact exists and whether that depression impacted upon the mortgagor's ability to pay. Statutes are to be construed as constitutional.¹³⁷ It can therefore be assumed that the governor's power to declare an emergency is limited to those emergencies which would constitutionally justify the continuance provided by the statute. Although the legislature has not defined the term "emergency" within the provision, by so construing the statute to confine the governor's proclamation to emergencies which are constitutionally justified, the court would have guidance in reviewing the proclamation. It would be undoubtedly helpful for the proclamation to include a statement of reasons as the basis for the governor's finding of emergency.¹³⁸

136. *First Trust Joint Stock Land Bank v. Arp*, 225 Iowa at 1334-35, 283 N.W. at 443.

137. *Chicago Title Ins. Co. v. Huff*, 256 N.W.2d 17, 25 (Iowa 1977); *City of Waterloo v. Selden*, 251 N.W.2d 506, 508 (Iowa 1977).

138. See 1980 Op. Iowa Att'y Gen. 194, 195.

With the procedural safeguards present in the statute, the triggering authority granted to the governor does not involve an unconstitutional delegation of legislative authority.

IV. APPLICABILITY TO FEDERAL LOANS

An analysis of Iowa's moratorium statute would not be complete without a discussion of its relationship to the various programs under which the federal government either insures or makes loans directly to private borrowers.¹³⁹ The involvement of the federal government as a mortgagee raises an issue as to the extent to which Iowa's moratorium provision could be applied in the foreclosure of federal loans.

The Iowa statute explicitly states that it applies to "all actions for the foreclosure of real estate mortgages."¹⁴⁰ When the federal government as mortgagee seeks to foreclose upon one of its loans, an issue could arise as to whether, under the appropriate circumstances, the mortgagor could invoke Iowa's moratorium statute.

As to loans insured under the National Housing Act,¹⁴¹ the federal courts uniformly have found that federal law governs the interests of the United States in foreclosure proceedings, to the exclusion of state statutes governing such actions.¹⁴² Under this line of authority state redemption statutes, such as Minnesota's, have been held inapplicable to the foreclosure of federally held loans.¹⁴³ It is likely, therefore, that despite the broad language of Iowa's moratorium statute, the courts would find that it cannot control the rights of the United States in loans it insures through the Federal Housing Administration (FHA).¹⁴⁴

139. See e.g., 12 U.S.C. § 1701 (1982) (Federal Housing Administration); 15 *Id.* § 631 (1982) (Small Business Administration); 42 *Id.* § 1471 (1976 & Supp. V 1981) (Farmers Home Administration).

140. IOWA CODE § 654.15 (1983).

141. 12 U.S.C. § 1701 (1982).

142. *United States v. Victory Highway Village, Inc.*, 662 F.2d 488, 497 (8th Cir. 1981); *United States v. Thompson*, 438 F.2d 254, 257 (8th Cir. 1971); *United States v. Stadium Apartments, Inc.*, 425 F.2d 358, 367 (9th Cir. 1970), *cert. denied sub nom.*, *Lynch v. United States*, 400 U.S. 926 (1970); *United States v. View Crest Garden Apartments, Inc.*, 268 F.2d 380, 383-84 (9th Cir. 1959), *cert. denied*, 361 U.S. 884 (1959); *John Hancock Mut. Life Ins. Co. v. Bruening, Etc.*, 537 F.Supp. 936, 938 (N.D. Iowa 1982).

143. *United States v. Victory Highway Village*, 662 F.2d at 497.

144. It should be noted that a different result has been reached in loans made through the Small Business Administration. For example, in *United States v. Yazell*, 382 U.S. 341, 357 (1966), the Supreme Court found that state law should govern when the SBA sought to obtain a judgment on a defaulted disaster loan. The Court specifically found that there was no need for uniformity in the SBA program, and that SBA transactions specifically and in detail adopted state law. *Id.* at 357. In *United States v. MacKenzie*, 510 F.2d 39, 40 (9th Cir. 1975), the Ninth Circuit applied a Nevada deficiency statute to the foreclosure of an SBA loan, finding that the measure for debts protection did not threaten the governmental interest in having the loan repaid. So far, however, the *Yazell* analysis has been confined to the context of SBA loans. See

The Secretary of Agriculture, through the Farmers Home Administration, is empowered to make and insure loans for a variety of purposes.¹⁴⁵ In executing these loans the Secretary may take mortgages as security for the obligation, and "[s]uch security instruments . . . constitute liens running to the United States notwithstanding the fact that notes may be held by lenders other than the United States."¹⁴⁶ There are also available at the federal level statutes which allow a delay in the repayment of loans to the federal government.¹⁴⁷ These federal provisions in effect provide for a moratorium when "due to circumstances beyond the borrower's control, the borrower is unable to continue making scheduled payments."¹⁴⁸ Moreover, as to the enforcement of Farmers Home Administration loans, the federal regulations provide specifically that federal law is to apply and that as to mortgages held by the Farmers Home Administration, they are to be "enforced in accordance with applicable Federal law."¹⁴⁹ A mortgagor may not "assert any local immunity, privilege or exemption to defeat the obligation" incurred in obtaining assistance through Farmers Home Administration.¹⁵⁰ Given these regulations, and the moratoria available under Farmers Home Administration lending programs, the Iowa moratorium statute appears inapplicable to Farmers Home Administration loans.

With the exception of those cases construing SBA loan foreclosures,¹⁵¹ the weight of authority suggests that the courts will find that federal and not state law governs the responsibilities of the United States as a mortgagee to the exclusion of remedial provisions such as the Iowa moratorium. In the context of Farmers Home Administration loans, the pervasiveness of the federal regulations governing these programs, and in particular the moratorium provisions which are available to the mortgagor, lead to the conclusion that the federal government has occupied the field. As to FHA loans, the courts have often uncritically found that the federal interest in collection outweighs the state's interest in protection of its debtors,¹⁵² and they would in all likelihood follow the weight of authority and find that the Iowa moratorium could not bind the United States. Mortgagors in federal lending programs who seek to avail themselves of the Iowa moratorium may argue that the state's interests in protecting its debtors outweigh the interests of the

United States v. Haddan Haciendas Co., 541 F.2d 777, 783 (9th Cir. 1976).

145. 7 U.S.C. § 1923(a) (1982); 42 *Id.* § 1471 (1976 & Supp. V 1981).

146. 7 *Id.* § 1927(c) (1982).

147. 7 *Id.* § 1981(a) (1982); 42 *Id.* § 1475 (1976 & Supp. V 1981).

148. 7 C.F.R. § 1951.313 (1982). These federal moratoria regulations could raise an issue as to whether the Iowa moratorium had been preempted by federal law. See *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 522 (1981).

149. 7 C.F.R. § 1900.102 (1983).

150. *Id.*

151. See *supra* note 143.

152. See *supra* note 141 and accompanying text.

federal government,¹⁵³ yet the conclusion seems inevitable that Iowa's moratorium is of extremely limited usefulness in the context of federal loans.

V. CONCLUSION

The Iowa moratorium statute survives today as a remnant of the debtor relief legislation of the 1930's. Although the viability of the statute today as an instrument for debtor protection may be questioned, the statute at least on its face appears to pass constitutional muster. It does not result in an unconstitutional impairment of the contractual relationship between mortgagee and mortgagor. The actual impact upon the affected contracts seems minimal in that there is no imposition of a new onerous obligation upon the mortgagee in contravention of the parties' reasonable expectations. The societal interest which the legislature sought to serve in providing that foreclosures be continued upon a showing that the default has resulted from a cause outside the debtor's control is a legitimate concern of the legislature and the statute itself is reasonably drafted to serve that interest. On its face, the statute offends neither equal protection nor due process. There is, within its terms, no unconstitutional delegation of the legislature's authority in the language which concerns the governor's declaration of an emergency premised upon a finding of depression. This conclusion is buttressed by the fact that courts may review that proclamation to determine if such an emergency exists. As a caveat to the invocation of the statute, however, it should be noted that as to federal lending programs the courts have almost uniformly ignored state laws for the protection of debtors, and have applied federal law in the foreclosure of federal loans.

153. Note, *The Role of State Deficiency Judgment Law in FHA Insured Mortgage Transactions*, 56 MINN. L. REV. 463, 480 (1972).