



Rep. Elizabeth Hernandez

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LRB097 07664 AJ0 54166 a

1 AMENDMENT TO HOUSE BILL 1574

2 AMENDMENT NO. _____. Amend House Bill 1574 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Sections 15-1202.5 and 15-1508 as follows:

6 (735 ILCS 5/15-1202.5)

7 Sec. 15-1202.5. Dwelling unit. For the purposes of Sections
8 15-1508, 15-1508.5, 15-1703, and 15-1704 only, "dwelling unit"
9 means a room or suite of rooms providing complete, independent
10 living facilities for at least one person, including permanent
11 provisions for sanitation, cooking, eating, sleeping, and
12 other activities routinely associated with daily life.

13 (Source: P.A. 96-111, eff. 10-29-09.)

14 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

15 Sec. 15-1508. Report of Sale and Confirmation of Sale.

1 (a) Report. The person conducting the sale shall promptly
2 make a report to the court, which report shall include a copy
3 of all receipts and, if any, certificate of sale.

4 (b) Hearing. Upon motion and notice in accordance with
5 court rules applicable to motions generally, which motion shall
6 not be made prior to sale, the court shall conduct a hearing to
7 confirm the sale. Unless the court finds that (i) a notice
8 required in accordance with subsection (c) of Section 15-1507
9 was not given, (ii) the terms of sale were unconscionable,
10 (iii) the sale was conducted fraudulently, or (iv) ~~that~~ justice
11 was otherwise not done, the court shall then enter an order
12 confirming the sale. The confirmation order shall include a
13 name, address, and telephone number of the holder of the
14 certificate of sale or deed issued pursuant to that certificate
15 or, if no certificate or deed was issued, the purchaser, whom a
16 municipality or county may contact with concerns about the real
17 estate. The confirmation order may also:

18 (1) approve the mortgagee's fees and costs arising
19 between the entry of the judgment of foreclosure and the
20 confirmation hearing, those costs and fees to be allowable
21 to the same extent as provided in the note and mortgage and
22 in Section 15-1504;

23 (2) provide for a personal judgment against any party
24 for a deficiency; and

25 (3) determine the priority of the judgments of parties
26 who deferred proving the priority pursuant to subsection

1 (h) of Section 15-1506, but the court shall not defer
2 confirming the sale pending the determination of such
3 priority.

4 (b-5) Notice with respect to residential real estate. With
5 respect to residential real estate, the notice required under
6 subsection (b) of this Section shall be sent to the mortgagor
7 even if the mortgagor has previously been held in default. In
8 the event the mortgagor has filed an appearance, the notice
9 shall be sent to the address indicated on the appearance. In
10 all other cases, the notice shall be sent to the mortgagor at
11 the common address of the foreclosed property. The notice shall
12 be sent by first class mail. Unless the right to possession has
13 been previously terminated by the court, the notice shall
14 include the following language in 12-point boldface
15 capitalized type:

16 IF YOU ARE THE MORTGAGOR (HOMEOWNER), YOU HAVE THE RIGHT TO
17 REMAIN IN POSSESSION FOR 30 DAYS AFTER ENTRY OF AN ORDER OF
18 POSSESSION, IN ACCORDANCE WITH SECTION 15-1701(c) OF THE
19 ILLINOIS MORTGAGE FORECLOSURE LAW.

20 (b-10) Notice of confirmation order sent to municipality or
21 county. A copy of the confirmation order required under
22 subsection (b) shall be sent to the municipality in which the
23 foreclosed property is located, or to the county within the
24 boundary of which the foreclosed property is located if the
25 foreclosed property is located in an unincorporated territory.
26 A municipality or county must clearly publish on its website a

1 single address to which such notice shall be sent. If a
2 municipality or county does not maintain a website, then the
3 municipality or county must publicly post in its main office a
4 single address to which such notice shall be sent. In the event
5 that a municipality or county has not complied with the
6 publication requirement in this subsection (b-10), then such
7 notice to the municipality or county shall be provided pursuant
8 to Section 2-211 of the Code of Civil Procedure.

9 (c) Failure to Give Notice. If any sale is held without
10 compliance with subsection (c) of Section 15-1507 of this
11 Article, any party entitled to the notice provided for in
12 paragraph (3) of that subsection (c) who was not so notified
13 may, by motion supported by affidavit made prior to
14 confirmation of such sale, ask the court which entered the
15 judgment to set aside the sale. Any such party shall guarantee
16 or secure by bond a bid equal to the successful bid at the
17 prior sale, unless the party seeking to set aside the sale is
18 the mortgagor, the real estate sold at the sale is residential
19 real estate, and the mortgagor occupies the residential real
20 estate at the time the motion is filed. In that event, no
21 guarantee or bond shall be required of the mortgagor. Any
22 subsequent sale is subject to the same notice requirement as
23 the original sale.

24 (d) Validity of Sale. Except as provided in subsection (c)
25 of Section 15-1508, no sale under this Article shall be held
26 invalid or be set aside because of any defect in the notice

1 thereof or in the publication of the same, or in the
2 proceedings of the officer conducting the sale, except upon
3 good cause shown in a hearing pursuant to subsection (b) of
4 Section 15-1508. At any time after a sale has occurred, any
5 party entitled to notice under paragraph (3) of subsection (c)
6 of Section 15-1507 may recover from the mortgagee any damages
7 caused by the mortgagee's failure to comply with such paragraph
8 (3). Any party who recovers damages in a judicial proceeding
9 brought under this subsection may also recover from the
10 mortgagee the reasonable expenses of litigation, including
11 reasonable attorney's fees.

12 (d-5) Making Home Affordable Program. The court that
13 entered the judgment shall set aside a sale held pursuant to
14 Section 15-1507, upon motion of the mortgagor at any time prior
15 to the confirmation of the sale, if the mortgagor proves by a
16 preponderance of the evidence that (i) the mortgagor has
17 applied for assistance under the Making Home Affordable Program
18 established by the United States Department of the Treasury
19 pursuant to the Emergency Economic Stabilization Act of 2008,
20 as amended by the American Recovery and Reinvestment Act of
21 2009, and (ii) the mortgaged real estate was sold in material
22 violation of the program's requirements for proceeding to a
23 judicial sale. The provisions of this subsection (d-5), except
24 for this sentence, shall become inoperative on January 1, 2013
25 for all actions filed under this Article after December 31,
26 2012, in which the mortgagor did not apply for assistance under

1 the Making Home Affordable Program on or before December 31,
2 2012.

3 (e) Deficiency Judgment. In any order confirming a sale
4 pursuant to the judgment of foreclosure, the court shall also
5 enter a personal judgment for deficiency against any party (i)
6 if otherwise authorized and (ii) to the extent requested in the
7 complaint and proven upon presentation of the report of sale in
8 accordance with Section 15-1508. Except as otherwise provided
9 in this Article, a judgment may be entered for any balance of
10 money that may be found due to the plaintiff, over and above
11 the proceeds of the sale or sales, and enforcement may be had
12 for the collection of such balance, the same as when the
13 judgment is solely for the payment of money. Such judgment may
14 be entered, or enforcement had, only in cases where personal
15 service has been had upon the persons personally liable for the
16 mortgage indebtedness, unless they have entered their
17 appearance in the foreclosure action.

18 (f) Satisfaction. Upon confirmation of the sale, the
19 judgment stands satisfied to the extent of the sale price less
20 expenses and costs. If the order confirming the sale includes a
21 deficiency judgment, the judgment shall become a lien in the
22 manner of any other judgment for the payment of money.

23 (g) The order confirming the sale shall include,
24 notwithstanding any previous orders awarding possession during
25 the pendency of the foreclosure, an award to the purchaser of
26 possession of the mortgaged real estate, as of the date 30 days

1 after the entry of the order, against the parties to the
2 foreclosure whose interests have been terminated.

3 An order of possession authorizing the removal of a person
4 from possession of the mortgaged real estate shall be entered
5 and enforced only against those persons personally named as
6 individuals in the complaint or the petition under subsection
7 (h) of Section 15-1701 and in the order of possession and shall
8 not be entered and enforced against any person who is only
9 generically described as an unknown owner or nonrecord claimant
10 or by another generic designation in the complaint.

11 Notwithstanding the preceding paragraph, the failure to
12 personally name, include, or seek an award of possession of the
13 mortgaged real estate against a person in the confirmation
14 order shall not abrogate any right that the purchaser may have
15 to possession of the mortgaged real estate and to maintain a
16 proceeding against that person for possession under Article 9
17 of this Code or subsection (h) of Section 15-1701; and
18 possession against a person who (1) has not been personally
19 named as a party to the foreclosure and (2) has not been
20 provided an opportunity to be heard in the foreclosure
21 proceeding may be sought only by maintaining a proceeding under
22 Article 9 of this Code or subsection (h) of Section 15-1701.

23 (h) With respect to mortgaged real estate containing 5 or
24 more dwelling units, the order confirming the sale shall also
25 provide that (i) the mortgagor transfer to the purchaser the
26 security deposits, if any, that the mortgagor received to

1 secure payment of rent or to compensate for damage to the
2 mortgaged real estate from any current occupant of a dwelling
3 unit of the mortgaged real estate, as well as any statutory
4 interest that has not been paid to the occupant, and (ii) the
5 mortgagor provide an accounting of the security deposits that
6 are transferred, including the name and address of each
7 occupant for whom the mortgagor holds the deposit and the
8 amount of that deposit and any statutory interest.

9 (Source: P.A. 95-826, eff. 8-14-08; 96-265, eff. 8-11-09;
10 96-856, eff. 3-1-10; 96-1245, eff. 7-23-10; revised 9-16-10.)

11 Section 10. The Security Deposit Return Act is amended by
12 adding Section 1.2 as follows:

13 (765 ILCS 710/1.2 new)

14 Sec. 1.2. Security deposit transfer. Notwithstanding
15 Section 1.1, when a lessor transfers actual possession of a
16 security deposit received from a lessee, including any
17 statutory interest that has not been paid to a lessee, to a
18 holder of the certificate of sale or deed issued pursuant to
19 that certificate or, if no certificate or deed was issued, the
20 purchaser of a foreclosed property under Article 15 of the Code
21 of Civil Procedure, the holder or purchaser shall be liable to
22 a lessee for the security deposit that the lessee paid to the
23 lessor, including any statutory interest that has not been paid
24 to the lessee, as provided in this Act. Within 21 days after

1 the transfer of the security deposits, the holder or purchaser
2 shall post a written notice that the holder or purchaser has
3 acquired the security deposit on the primary entrance of each
4 dwelling unit at the property with respect to which the holder
5 or purchaser has acquired actual possession of a security
6 deposit.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.".