



Sen. Jacqueline Y. Collins

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09700HB1574sam001

LRB097 07664 AJ0 55077 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 shall transfer to the purchaser  
26 the 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 shall provide an accounting of the security deposits  
6 that are transferred, including the name and address of each  
7 occupant for whom the mortgagor holds the deposit and the  
8 amount of the 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 transferred security deposit, including any  
23 statutory interest that has not been paid to the lessee, as  
24 provided in this Act. Within 21 days after the transfer of the



1 security deposits and receipt of the name and address of any  
2 lessee who paid a deposit, the holder or purchaser shall post a  
3 written notice on the primary entrance of each dwelling unit at  
4 the property with respect to which the holder or purchaser has  
5 acquired actual possession of a security deposit. The written  
6 notice shall state that the holder or purchaser has acquired  
7 the security deposit paid by the lessee in connection with the  
8 lessee's rental of that dwelling unit.

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law.".