

SB0647



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB0647

Introduced 1/25/2017, by Sen. Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1504.1

735 ILCS 5/15-1507.1

Amends the Mortgage Foreclosure Article of the Code of Civil Procedure. Provides that provisions concerning an additional fee paid by residential foreclosure plaintiffs is operative until January 1, 2020 (instead of January 1, 2018). Provides that provisions concerning an additional fee paid by purchasers at a judicial sale are operative and become inoperative on January 1, 2020 (instead of January 1, 2017). Repeals the Section on March 2, 2020 (instead of March 2, 2017). Provides that specified actions taken before the effective date of the amendatory Act are ratified, validated, and confirmed. Effective immediately.

LRB100 07145 HEP 17204 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by
5 changing Sections 15-1504.1 and 15-1507.1 as follows:

6 (735 ILCS 5/15-1504.1)

7 Sec. 15-1504.1. Filing fee for Foreclosure Prevention
8 Program Fund, Foreclosure Prevention Program Graduated Fund,
9 and Abandoned Residential Property Municipality Relief Fund.

10 (a) Fee paid by all plaintiffs with respect to residential
11 real estate. With respect to residential real estate, at the
12 time of the filing of a foreclosure complaint, the plaintiff
13 shall pay to the clerk of the court in which the foreclosure
14 complaint is filed a fee of \$50 for deposit into the
15 Foreclosure Prevention Program Fund, a special fund created in
16 the State treasury. The clerk shall remit the fee collected
17 pursuant to this subsection (a) to the State Treasurer to be
18 expended for the purposes set forth in Section 7.30 of the
19 Illinois Housing Development Act. All fees paid by plaintiffs
20 to the clerk of the court as provided in this subsection (a)
21 shall be disbursed within 60 days after receipt by the clerk of
22 the court as follows: (i) 98% to the State Treasurer for
23 deposit into the Foreclosure Prevention Program Fund, and (ii)

1 2% to the clerk of the court to be retained by the clerk for
2 deposit into the Circuit Court Clerk Operation and
3 Administrative Fund to defray administrative expenses related
4 to implementation of this subsection (a). Notwithstanding any
5 other law to the contrary, the Foreclosure Prevention Program
6 Fund is not subject to sweeps, administrative charge-backs, or
7 any other fiscal maneuver that would in any way transfer any
8 amounts from the Foreclosure Prevention Program Fund into any
9 other fund of the State.

10 (a-5) Additional fee paid by plaintiffs with respect to
11 residential real estate.

12 (1) Until January 1, 2020 ~~2018~~, with respect to
13 residential real estate, at the time of the filing of a
14 foreclosure complaint and in addition to the fee set forth
15 in subsection (a) of this Section, the plaintiff shall pay
16 to the clerk of the court in which the foreclosure
17 complaint is filed a fee for the Foreclosure Prevention
18 Program Graduated Fund and the Abandoned Residential
19 Property Municipality Relief Fund as follows:

20 (A) The fee shall be \$500 if:

21 (i) the plaintiff, together with its
22 affiliates, has filed a sufficient number of
23 foreclosure complaints so as to be included in the
24 first tier foreclosure filing category and is
25 filing the complaint on its own behalf as the
26 holder of the indebtedness; or

1 (ii) the plaintiff, together with its
2 affiliates, has filed a sufficient number of
3 foreclosure complaints so as to be included in the
4 first tier foreclosure filing category and is
5 filing the complaint on behalf of a mortgagee that,
6 together with its affiliates, has filed a
7 sufficient number of foreclosure complaints so as
8 to be included in the first tier foreclosure filing
9 category; or

10 (iii) the plaintiff is not a depository
11 institution and is filing the complaint on behalf
12 of a mortgagee that, together with its affiliates,
13 has filed a sufficient number of foreclosure
14 complaints so as to be included in the first tier
15 foreclosure filing category.

16 (B) The fee shall be \$250 if:

17 (i) the plaintiff, together with its
18 affiliates, has filed a sufficient number of
19 foreclosure complaints so as to be included in the
20 second tier foreclosure filing category and is
21 filing the complaint on its own behalf as the
22 holder of the indebtedness; or

23 (ii) the plaintiff, together with its
24 affiliates, has filed a sufficient number of
25 foreclosure complaints so as to be included in the
26 first or second tier foreclosure filing category

1 and is filing the complaint on behalf of a
2 mortgagee that, together with its affiliates, has
3 filed a sufficient number of foreclosure
4 complaints so as to be included in the second tier
5 foreclosure filing category; or

6 (iii) the plaintiff, together with its
7 affiliates, has filed a sufficient number of
8 foreclosure complaints so as to be included in the
9 second tier foreclosure filing category and is
10 filing the complaint on behalf of a mortgagee that,
11 together with its affiliates, has filed a
12 sufficient number of foreclosure complaints so as
13 to be included in the first tier foreclosure filing
14 category; or

15 (iv) the plaintiff is not a depository
16 institution and is filing the complaint on behalf
17 of a mortgagee that, together with its affiliates,
18 has filed a sufficient number of foreclosure
19 complaints so as to be included in the second tier
20 foreclosure filing category.

21 (C) The fee shall be \$50 if:

22 (i) the plaintiff, together with its
23 affiliates, has filed a sufficient number of
24 foreclosure complaints so as to be included in the
25 third tier foreclosure filing category and is
26 filing the complaint on its own behalf as the

1 holder of the indebtedness; or

2 (ii) the plaintiff, together with its
3 affiliates, has filed a sufficient number of
4 foreclosure complaints so as to be included in the
5 first, second, or third tier foreclosure filing
6 category and is filing the complaint on behalf of a
7 mortgagee that, together with its affiliates, has
8 filed a sufficient number of foreclosure
9 complaints so as to be included in the third tier
10 foreclosure filing category; or

11 (iii) the plaintiff, together with its
12 affiliates, has filed a sufficient number of
13 foreclosure complaints so as to be included in the
14 third tier foreclosure filing category and is
15 filing the complaint on behalf of a mortgagee that,
16 together with its affiliates, has filed a
17 sufficient number of foreclosure complaints so as
18 to be included in the first tier foreclosure filing
19 category; or

20 (iv) the plaintiff, together with its
21 affiliates, has filed a sufficient number of
22 foreclosure complaints so as to be included in the
23 third tier foreclosure filing category and is
24 filing the complaint on behalf of a mortgagee that,
25 together with its affiliates, has filed a
26 sufficient number of foreclosure complaints so as

1 to be included in the second tier foreclosure
2 filing category; or

3 (v) the plaintiff is not a depository
4 institution and is filing the complaint on behalf
5 of a mortgagee that, together with its affiliates,
6 has filed a sufficient number of foreclosure
7 complaints so as to be included in the third tier
8 foreclosure filing category.

9 (2) The clerk shall remit the fee collected pursuant to
10 paragraph (1) of this subsection (a-5) to the State
11 Treasurer to be expended for the purposes set forth in
12 Sections 7.30 and 7.31 of the Illinois Housing Development
13 Act and for administrative expenses. All fees paid by
14 plaintiffs to the clerk of the court as provided in
15 paragraph (1) shall be disbursed within 60 days after
16 receipt by the clerk of the court as follows:

17 (A) 28% to the State Treasurer for deposit into the
18 Foreclosure Prevention Program Graduated Fund;

19 (B) 70% to the State Treasurer for deposit into the
20 Abandoned Residential Property Municipality Relief
21 Fund; and

22 (C) 2% to the clerk of the court to be retained by
23 the clerk for deposit into the Circuit Court Clerk
24 Operation and Administrative Fund to defray
25 administrative expenses related to implementation of
26 this subsection (a-5).

1 (3) Until January 1, 2020 ~~2018~~, with respect to
2 residential real estate, at the time of the filing of a
3 foreclosure complaint, the plaintiff or plaintiff's
4 representative shall file a verified statement that states
5 which additional fee is due under paragraph (1) of this
6 subsection (a-5), unless the court has established another
7 process for a plaintiff or plaintiff's representative to
8 certify which additional fee is due under paragraph (1) of
9 this subsection (a-5).

10 (4) If a plaintiff fails to provide the clerk of the
11 court with a true and correct statement of the additional
12 fee due under paragraph (1) of this subsection (a-5), and
13 the mortgagor reimburses the plaintiff for any erroneous
14 additional fee that was paid by the plaintiff to the clerk
15 of the court, the mortgagor may seek a refund of any
16 overpayment of the fee in an amount that shall not exceed
17 the difference between the higher additional fee paid under
18 paragraph (1) of this subsection (a-5) and the actual fee
19 due thereunder. The mortgagor must petition the judge
20 within the foreclosure action for the award of any fee
21 overpayment pursuant to this paragraph (4) of this
22 subsection (a-5), and the award shall be determined by the
23 judge and paid by the clerk of the court out of the fund
24 account into which the clerk of the court deposits fees to
25 be remitted to the State Treasurer under paragraph (2) of
26 this subsection (a-5), the timing of which refund payment

1 shall be determined by the clerk of the court based upon
2 the availability of funds in the subject fund account. This
3 refund shall be the mortgagor's sole remedy and a mortgagor
4 shall have no private right of action against the plaintiff
5 or plaintiff's representatives if the additional fee paid
6 by the plaintiff was erroneous.

7 (5) This subsection (a-5) is inoperative on and after
8 January 1, 2020 ~~2018~~.

9 (b) Not later than March 1 of each year, the clerk of the
10 court shall submit to the Illinois Housing Development
11 Authority a report of the funds collected and remitted pursuant
12 to this Section during the preceding year.

13 (c) As used in this Section:

14 "Affiliate" means any company that controls, is controlled
15 by, or is under common control with another company.

16 "Approved counseling agency" and "approved housing
17 counseling" have the meanings ascribed to those terms in
18 Section 7.30 of the Illinois Housing Development Act.

19 "Depository institution" means a bank, savings bank,
20 savings and loan association, or credit union chartered,
21 organized, or holding a certificate of authority to do business
22 under the laws of this State, another state, or the United
23 States.

24 "First tier foreclosure filing category" is a
25 classification that only applies to a plaintiff that has filed
26 175 or more foreclosure complaints on residential real estate

1 located in Illinois during the calendar year immediately
2 preceding the date of the filing of the subject foreclosure
3 complaint.

4 "Second tier foreclosure filing category" is a
5 classification that only applies to a plaintiff that has filed
6 at least 50, but no more than 174, foreclosure complaints on
7 residential real estate located in Illinois during the calendar
8 year immediately preceding the date of the filing of the
9 subject foreclosure complaint.

10 "Third tier foreclosure filing category" is a
11 classification that only applies to a plaintiff that has filed
12 no more than 49 foreclosure complaints on residential real
13 estate located in Illinois during the calendar year immediately
14 preceding the date of the filing of the subject foreclosure
15 complaint.

16 (d) In no instance shall the fee set forth in subsection
17 (a-5) be assessed for any foreclosure complaint filed before
18 the effective date of this amendatory Act of the 97th General
19 Assembly.

20 (e) Notwithstanding any other law to the contrary, the
21 Abandoned Residential Property Municipality Relief Fund is not
22 subject to sweeps, administrative charge-backs, or any other
23 fiscal maneuver that would in any way transfer any amounts from
24 the Abandoned Residential Property Municipality Relief Fund
25 into any other fund of the State.

26 (Source: P.A. 97-333, eff. 8-12-11; 97-1164, eff. 6-1-13;

1 98-20, eff. 6-11-13.)

2 (735 ILCS 5/15-1507.1)

3 (Section scheduled to be repealed on March 2, 2017)

4 Sec. 15-1507.1. Judicial sale fee for Abandoned
5 Residential Property Municipality Relief Fund.

6 (a) Upon and at the sale of residential real estate under
7 Section 15-1507, the purchaser shall pay to the person
8 conducting the sale pursuant to Section 15-1507 a fee for
9 deposit into the Abandoned Residential Property Municipality
10 Relief Fund, a special fund created in the State treasury. The
11 fee shall be calculated at the rate of \$1 for each \$1,000 or
12 fraction thereof of the amount paid by the purchaser to the
13 person conducting the sale, as reflected in the receipt of sale
14 issued to the purchaser, provided that in no event shall the
15 fee exceed \$300. No fee shall be paid by the mortgagee
16 acquiring the residential real estate pursuant to its credit
17 bid at the sale or by any mortgagee, judgment creditor, or
18 other lienor acquiring the residential real estate whose rights
19 in and to the residential real estate arose prior to the sale.
20 Upon confirmation of the sale under Section 15-1508, the person
21 conducting the sale shall remit the fee to the clerk of the
22 court in which the foreclosure case is pending. The clerk shall
23 remit the fee to the State Treasurer as provided in this
24 Section, to be expended for the purposes set forth in Section
25 7.31 of the Illinois Housing Development Act.

1 (b) All fees paid by purchasers as provided in this Section
2 shall be disbursed within 60 days after receipt by the clerk of
3 the court as follows: (i) 98% to the State Treasurer for
4 deposit into the Abandoned Residential Property Municipality
5 Relief Fund, and (ii) 2% to the clerk of the court to be
6 retained by the clerk for deposit into the Circuit Court Clerk
7 Operation and Administrative Fund to defray administrative
8 expenses related to implementation of this Section.

9 (c) Not later than March 1 of each year, the clerk of the
10 court shall submit to the Illinois Housing Development
11 Authority a report of the funds collected and remitted during
12 the preceding year pursuant to this Section.

13 (d) Subsections (a) and (b) of this Section are operative
14 and shall become inoperative on January 1, 2020 ~~2017~~. This
15 Section is repealed on March 2, 2020 ~~2017~~.

16 (e) All actions taken in the collection and remittance of
17 fees under this Section before the effective date of this
18 amendatory Act of the 100th General Assembly are ratified,
19 validated, and confirmed.

20 (Source: P.A. 98-20, eff. 6-11-13; 99-493, eff. 12-17-15.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law.