

# SB0718



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB0718

Introduced 1/30/2017, by Sen. Jacqueline Y. Collins

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1504.1

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). Effective immediately.

LRB100 05952 HEP 15980 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 Section 15-1504.1 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 Section 99. Effective date. This Act takes effect upon  
3 becoming law.