



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB0138

Introduced 1/29/2019, by Sen. Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1401.1

Amends the Mortgage Foreclosure Article of the Code of Civil Procedure in relation to short sales of property. Provides that, if an offer to purchase either a mortgage or residential property is made by an entity with a tax-exempt filing status under Section 501(c)(3) of the Internal Revenue Code for the purpose of reselling that mortgage or residential property to the mortgagor, and financing for the repurchase will be provided by a certified community development financial institution, an affidavit, statement, agreement, or addendum limiting ownership or occupancy of the residential property by the mortgagor shall not provide a basis to avoid a sale or transfer, nor is it enforceable against the acquiring entity or any real estate broker, mortgagor, or settlement agent named in the affidavit, statement, agreement, or addendum. Provides that, at the time of an offer, specified disclosures shall be made to the mortgagee in connection with any purchase of a sale. Provides that, upon request by the mortgagee, a certified community development financial institution shall provide documentation evidencing its current certification status. Effective immediately.

LRB101 05495 LNS 50509 b

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 15-1401.1 as follows:

6 (735 ILCS 5/15-1401.1)

7 Sec. 15-1401.1. Short sale in foreclosure.

8 (a) As used in ~~For purposes of~~ this Section:⁷

9 "Certified community development financial institution"
10 means a community development financial institution that is
11 certified by the Community Development Financial Institutions
12 Fund in the U.S. Department of Treasury under 12 U.S.C. 4701 et
13 seq.

14 "Short ~~short~~ sale" means the sale of real estate that is
15 subject to a mortgage for an amount that is less than the
16 amount owed to the mortgagee on the outstanding mortgage note.

17 "Residential property" means real property on which there
18 is a dwelling unit with accommodations for 4 or fewer separate
19 households and occupied, or to be occupied, in whole or in
20 part, by the mortgagor; however:

21 (i) "residential property" is limited to the principal
22 residence of a person;

23 (ii) "residential property" does not include an

1 investment property or residence other than a primary
2 residence; and

3 (iii) "residential property" does not include
4 residential property taken in whole or in part as
5 collateral for a commercial loan.

6 (b) In a foreclosure of residential real estate, if (i) the
7 mortgagor presents to the mortgagee a bona fide written offer
8 from a third party to purchase the property that is the subject
9 of the foreclosure proceeding, (ii) the written offer to
10 purchase is for an amount which constitutes a short sale of the
11 property, and (iii) the mortgagor makes a written request to
12 the mortgagee to approve the sale on the terms of the offer to
13 purchase, the mortgagee must respond to the mortgagor within 90
14 days after receipt of the written offer and written request.

15 (c) The mortgagee shall determine whether to accept the
16 mortgagor's short sale offer. Failure to accept the offer shall
17 not impair or abrogate in any way the rights of the mortgagee
18 or affect the status of the foreclosure proceedings. The 90-day
19 period shall not operate as a stay of the proceedings.

20 (d) If an offer to purchase either a mortgage or
21 residential property is made by an entity with a tax-exempt
22 filing status under Section 501(c)(3) of the Internal Revenue
23 Code for the purpose of reselling that mortgage or residential
24 property to the mortgagor, and financing for the repurchase
25 will be provided by a certified community development financial
26 institution, an affidavit, statement, agreement, or addendum

1 limiting ownership or occupancy of the residential property by
2 the mortgagor shall not provide a basis to avoid a sale or
3 transfer, nor is it enforceable against the acquiring entity or
4 any real estate broker, mortgagor, or settlement agent named in
5 the affidavit, statement, agreement, or addendum. At the time
6 of the offer, the following disclosures shall be made to the
7 mortgagee in connection with any purchase or sale under this
8 subsection: (i) the entity seeking to purchase shall disclose
9 its tax-exempt status; (ii) the entity that will finance the
10 sale following the purchase shall disclose its status as a
11 certified community development financial institution; and
12 (iii) the disclosure shall state whether the residential
13 property is to be sold back to the mortgagor. Upon request by
14 the mortgagee, a certified community development financial
15 institution shall provide documentation evidencing its current
16 certification status.

17 (Source: P.A. 97-666, eff. 1-13-12.)

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.