

SB2539



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB2539

Introduced 1/28/2020, by Sen. Michael E. Hastings

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1508

from Ch. 110, par. 15-1508

Amends the Mortgage Foreclosure Article of the Code of Civil Procedure. Provides that the order confirming the sale of property may approve the mortgagee's fees and costs incurred prior to the judgment, but not included in the judgment, of foreclosure. Effective January 1, 2021.

LRB101 17257 LNS 66661 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 15-1508 as follows:

6 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

7 Sec. 15-1508. Report of sale and confirmation of sale.

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

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

1 estate. The confirmation order may also:

2 (1) approve the mortgagee's fees and costs arising
3 between the entry of the judgment of foreclosure and the
4 confirmation hearing, or incurred prior to the judgment but
5 not included in the judgment, those costs and fees to be
6 allowable to the same extent as provided in the note and
7 mortgage and in Section 15-1504;

8 (2) provide for a personal judgment against any party
9 for a deficiency; and

10 (3) determine the priority of the judgments of parties
11 who deferred proving the priority pursuant to subsection
12 (h) of Section 15-1506, but the court shall not defer
13 confirming the sale pending the determination of such
14 priority.

15 (b-3) Hearing to confirm sale of abandoned residential
16 property. Upon motion and notice by first-class mail to the
17 last known address of the mortgagor, which motion shall be made
18 prior to the sale and heard by the court at the earliest
19 practicable time after conclusion of the sale, and upon the
20 posting at the property address of the notice required by
21 paragraph (2) of subsection (1) of Section 15-1505.8, the court
22 shall enter an order confirming the sale of the abandoned
23 residential property, unless the court finds that a reason set
24 forth in items (i) through (iv) of subsection (b) of this
25 Section exists for not approving the sale, or an order is
26 entered pursuant to subsection (h) of Section 15-1505.8. The

1 confirmation order also may address the matters identified in
2 items (1) through (3) of subsection (b) of this Section. The
3 notice required under subsection (b-5) of this Section shall
4 not be required.

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

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

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

1 A municipality or county must clearly publish on its website a
2 single address to which a copy of the order shall be sent. If a
3 municipality or county does not maintain a website, then the
4 municipality or county must publicly post in its main office a
5 single address to which a copy of the order shall be sent. In
6 the event that a municipality or county has not complied with
7 the publication requirement in this subsection (b-10), then a
8 copy of the order shall be sent by first class mail, postage
9 prepaid, to the chairperson of the county board or county clerk
10 in the case of a county, to the mayor or city clerk in the case
11 of a city, to the president of the board of trustees or village
12 clerk in the case of a village, or to the president or town
13 clerk in the case of a town.

14 (b-15) Notice of confirmation order sent to known insurers.
15 With respect to residential real estate, the party filing the
16 complaint shall send a copy of the confirmation order required
17 under subsection (b) by first class mail, postage prepaid, to
18 the last known property insurer of the foreclosed property.
19 Failure to send or receive a copy of the order shall not impair
20 or abrogate in any way the rights of the mortgagee or purchaser
21 or affect the status of the foreclosure proceedings.

22 (c) Failure to Give Notice. If any sale is held without
23 compliance with subsection (c) of Section 15-1507 of this
24 Article, any party entitled to the notice provided for in
25 paragraph (3) of that subsection (c) who was not so notified
26 may, by motion supported by affidavit made prior to

1 confirmation of such sale, ask the court which entered the
2 judgment to set aside the sale. Any such party shall guarantee
3 or secure by bond a bid equal to the successful bid at the
4 prior sale, unless the party seeking to set aside the sale is
5 the mortgagor, the real estate sold at the sale is residential
6 real estate, and the mortgagor occupies the residential real
7 estate at the time the motion is filed. In that event, no
8 guarantee or bond shall be required of the mortgagor. Any
9 subsequent sale is subject to the same notice requirement as
10 the original sale.

11 (d) Validity of Sale. Except as provided in subsection (c)
12 of Section 15-1508, no sale under this Article shall be held
13 invalid or be set aside because of any defect in the notice
14 thereof or in the publication of the same, or in the
15 proceedings of the officer conducting the sale, except upon
16 good cause shown in a hearing pursuant to subsection (b) of
17 Section 15-1508. At any time after a sale has occurred, any
18 party entitled to notice under paragraph (3) of subsection (c)
19 of Section 15-1507 may recover from the mortgagee any damages
20 caused by the mortgagee's failure to comply with such paragraph
21 (3). Any party who recovers damages in a judicial proceeding
22 brought under this subsection may also recover from the
23 mortgagee the reasonable expenses of litigation, including
24 reasonable attorney's fees.

25 (d-5) Making Home Affordable Program. The court that
26 entered the judgment shall set aside a sale held pursuant to

1 Section 15-1507, upon motion of the mortgagor at any time prior
2 to the confirmation of the sale, if the mortgagor proves by a
3 preponderance of the evidence that (i) the mortgagor has
4 applied for assistance under the Making Home Affordable Program
5 established by the United States Department of the Treasury
6 pursuant to the Emergency Economic Stabilization Act of 2008,
7 as amended by the American Recovery and Reinvestment Act of
8 2009, and (ii) the mortgaged real estate was sold in material
9 violation of the program's requirements for proceeding to a
10 judicial sale. The provisions of this subsection (d-5) are
11 operative and, except for this sentence, shall become
12 inoperative on January 1, 2018 for all actions filed under this
13 Article after December 31, 2017, in which the mortgagor did not
14 apply for assistance under the Making Home Affordable Program
15 on or before December 31, 2016. The changes to this subsection
16 (d-5) by this amendatory Act of the 99th General Assembly apply
17 to all cases pending and filed on or after the effective date
18 of this amendatory Act of the 99th General Assembly.

19 (e) Deficiency Judgment. In any order confirming a sale
20 pursuant to the judgment of foreclosure, the court shall also
21 enter a personal judgment for deficiency against any party (i)
22 if otherwise authorized and (ii) to the extent requested in the
23 complaint and proven upon presentation of the report of sale in
24 accordance with Section 15-1508. Except as otherwise provided
25 in this Article, a judgment may be entered for any balance of
26 money that may be found due to the plaintiff, over and above

1 the proceeds of the sale or sales, and enforcement may be had
2 for the collection of such balance, the same as when the
3 judgment is solely for the payment of money. Such judgment may
4 be entered, or enforcement had, only in cases where personal
5 service has been had upon the persons personally liable for the
6 mortgage indebtedness, unless they have entered their
7 appearance in the foreclosure action.

8 (f) Satisfaction. Upon confirmation of the sale, the
9 judgment stands satisfied to the extent of the sale price less
10 expenses and costs. If the order confirming the sale includes a
11 deficiency judgment, the judgment shall become a lien in the
12 manner of any other judgment for the payment of money.

13 (g) The order confirming the sale shall include,
14 notwithstanding any previous orders awarding possession during
15 the pendency of the foreclosure, an award to the purchaser of
16 possession of the mortgaged real estate, as of the date 30 days
17 after the entry of the order, against the parties to the
18 foreclosure whose interests have been terminated.

19 An eviction order authorizing the removal of a person from
20 possession of the mortgaged real estate shall be entered and
21 enforced only against those persons personally named as
22 individuals in the complaint or the petition under subsection
23 (h) of Section 15-1701. No eviction order issued under this
24 Section shall be entered against a lessee with a bona fide
25 lease of a dwelling unit in residential real estate in
26 foreclosure, whether or not the lessee has been made a party in

1 the foreclosure. An order shall not be entered and enforced
2 against any person who is only generically described as an
3 unknown owner or nonrecord claimant or by another generic
4 designation in the complaint.

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

17 (h) With respect to mortgaged real estate containing 5 or
18 more dwelling units, the order confirming the sale shall also
19 provide that (i) the mortgagor shall transfer to the purchaser
20 the security deposits, if any, that the mortgagor received to
21 secure payment of rent or to compensate for damage to the
22 mortgaged real estate from any current occupant of a dwelling
23 unit of the mortgaged real estate, as well as any statutory
24 interest that has not been paid to the occupant, and (ii) the
25 mortgagor shall provide an accounting of the security deposits
26 that are transferred, including the name and address of each

1 occupant for whom the mortgagor holds the deposit and the
2 amount of the deposit and any statutory interest.

3 (Source: P.A. 99-640, eff. 7-28-16; 100-173, eff. 1-1-18.)

4 Section 99. Effective date. This Act takes effect January
5 1, 2021.