

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 15-1510 and by adding Sections 15-1504.5 and  
6 15-1505.5 as follows:

7 (735 ILCS 5/15-1504.5 new)

8 Sec. 15-1504.5. Homeowner notice to be attached to summons.

9 For all residential foreclosure actions filed, the plaintiff  
10 must attach a Homeowner Notice to the summons. The Homeowner  
11 Notice must be in at least 12 point type and in English and  
12 Spanish. The Spanish translation shall be prepared by the  
13 Attorney General and posted on the Attorney General's website.  
14 A notice that includes the Attorney General's Spanish  
15 translation in substantially similar form shall be deemed to  
16 comply with the Spanish notice requirement in this Section. The  
17 Notice must be in substantially the following form:

18 **IMPORTANT INFORMATION FOR HOMEOWNERS IN FORECLOSURE**

19 **1. POSSESSION:** The lawful occupants of a home have the  
20 right to live in the home until a judge enters an order for  
21 possession.

1           2. OWNERSHIP: You continue to own your home until the  
2           court rules otherwise.

3           3. REINSTATEMENT: As the homeowner you have the right  
4           to bring the mortgage current within 90 days after you  
5           receive the summons.

6           4. REDEMPTION: As the homeowner you have the right to  
7           sell your home, refinance, or pay off the loan during the  
8           redemption period.

9           5. SURPLUS: As the homeowner you have the right to  
10           petition the court for any excess money that results from a  
11           foreclosure sale of your home.

12           6. WORKOUT OPTIONS: The mortgage company does not want  
13           to foreclose on your home if there is any way to avoid it.  
14           Call your mortgage company [insert name of the homeowner's  
15           current mortgage servicer in bold and 14 point type] or its  
16           attorneys to find out the alternatives to foreclosure.

17           7. PAYOFF AMOUNT: You have the right to obtain a  
18           written statement of the amount necessary to pay off your  
19           loan. Your mortgage company (identified above) must  
20           provide you this statement within 10 business days of  
21           receiving your request, provided that your request is in  
22           writing and includes your name, the address of the  
23           property, and the mortgage account or loan number. Your  
24           first payoff statement will be free.

25           8. GET ADVICE: This information is not exhaustive and  
26           does not replace the advice of a professional. You may have

1 other options. Get professional advice from a lawyer or  
2 certified housing counselor about your rights and options  
3 to avoid foreclosure.

4 **9. LAWYER:** If you do not have a lawyer, you may be able  
5 to find assistance by contacting the Illinois State Bar  
6 Association or a legal aid organization that provides free  
7 legal assistance.

8 **10. PROCEED WITH CAUTION:** You may be contacted by  
9 people offering to help you avoid foreclosure. Before  
10 entering into any transaction with persons offering to help  
11 you, please contact a lawyer, government official, or  
12 housing counselor for advice.

13 (735 ILCS 5/15-1505.5 new)

14 Sec. 15-1505.5. Payoff demands.

15 (a) In a foreclosure action subject to this Article, on the  
16 written demand of a mortgagor or the mortgagor's authorized  
17 agent (which shall include the mortgagor's name, the mortgaged  
18 property's address, and the mortgage account or loan number), a  
19 mortgagee or the mortgagee's authorized agent shall prepare and  
20 deliver an accurate statement of the total outstanding balance  
21 of the mortgagor's obligation that would be required to satisfy  
22 the obligation in full as of the date of preparation ("payoff  
23 demand statement") to the mortgagor or the mortgagor's  
24 authorized agent who has requested it within 10 business days  
25 after receipt of the demand. For purposes of this Section, a

1 payoff demand statement is accurate if prepared in good faith  
2 based on the records of the mortgagee or the mortgagee's agent.

3 (b) The payoff demand statement shall include the  
4 following:

5 (1) The information necessary to calculate the payoff  
6 amount on a per diem basis for the lesser of a period of 30  
7 days or until the date scheduled for judicial sale;

8 (2) Estimated charges (stated as such) that the  
9 mortgagee reasonably believes may be incurred within 30  
10 days from the date of preparation of the payoff demand  
11 statement; and

12 (3) The loan number for the obligation to be paid, the  
13 address of the mortgagee, the telephone number of the  
14 mortgagee and, if a banking organization or corporation,  
15 the name of the department, if applicable, and its  
16 telephone number and facsimile phone number.

17 (c) A mortgagee or mortgagee's agent who willfully fails to  
18 prepare and deliver an accurate payoff demand statement within  
19 10 business days after receipt of a written demand is liable to  
20 the mortgagor for actual damages sustained for failure to  
21 deliver the statement. The mortgagee or mortgagee's agent is  
22 liable to the mortgagor for \$500 if no actual damages are  
23 sustained. For purposes of this subsection, "willfully" means a  
24 failure to comply with this Section without just cause or  
25 excuse or mitigating circumstances.

26 (d) The mortgagor must petition the judge within the

1 foreclosure action for the award of any damages pursuant to  
2 this Section, which award shall be determined by the judge.

3 (e) Unless the payoff demand statement provides otherwise,  
4 the statement is deemed to apply only to the unpaid balance of  
5 the single obligation that is named in the demand and that is  
6 secured by the mortgage or deed of trust identified in the  
7 payoff demand statement.

8 (f) The demand for and preparation and delivery of a payoff  
9 demand statement pursuant to this Section does not change any  
10 date or time period that is prescribed in the note or that is  
11 otherwise provided by law. Failure to comply with any provision  
12 of this Section does not change any of the rights of the  
13 parties as set forth in the note, mortgage, or applicable law.

14 (g) The mortgagee or mortgagee's agent shall furnish the  
15 first payoff demand statement at no cost to the mortgagor.

16 (h) For the purposes of this Section, unless the context  
17 otherwise requires, "deliver" or "delivery" means depositing  
18 or causing to be deposited into the United States mail an  
19 envelope with postage prepaid that contains a copy of the  
20 documents to be delivered and that is addressed to the person  
21 whose name and address are provided in the payoff demand.  
22 "Delivery" may also include transmitting those documents by  
23 telephone facsimile to the person or electronically if the  
24 payoff demand specifically requests and authorizes that the  
25 documents be transmitted in electronic form.

26 (i) The mortgagee or mortgagee's agent is not required to

1 comply with the payoff demand statement procedure set forth in  
2 this Section when responding to a notice of intent to redeem  
3 issued under Section 15-1603(e).

4 (735 ILCS 5/15-1510) (from Ch. 110, par. 15-1510)

5 Sec. 15-1510. Attorney's Fees and Costs ~~by Written~~  
6 ~~Agreement.~~

7 (a) The court may award reasonable attorney's fees and  
8 costs to the defendant who prevails in a motion, an affirmative  
9 defense or counterclaim, or in the foreclosure action. A  
10 defendant who exercises the defendant's right of reinstatement  
11 or redemption shall not be considered a prevailing party for  
12 purposes of this Section. Nothing in this subsection shall  
13 abrogate contractual terms in the mortgage or other written  
14 agreement between the mortgagor and the mortgagee or rights as  
15 otherwise provided in this Article which allow the mortgagee to  
16 recover attorney's fees and costs under subsection (b).

17 (b) Attorneys' fees and other costs incurred in connection  
18 with the preparation, filing or prosecution of the foreclosure  
19 suit shall be recoverable in a foreclosure only to the extent  
20 specifically set forth in the mortgage or other written  
21 agreement between the mortgagor and the mortgagee or as  
22 otherwise provided in this Article.

23 (Source: P.A. 86-974.)

24 Section 99. Effective date. This Act takes effect January  
25 1, 2009.