



**Filed: 3/12/2008**

09500HB0838ham001

LRB095 08932 AJ0 47975 a

1 AMENDMENT TO HOUSE BILL 838

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 838 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by  
5 changing Sections 15-1504 and 15-1510 and by adding Sections  
6 15-1504.5 and 15-1505.5 as follows:

7 (735 ILCS 5/15-1504) (from Ch. 110, par. 15-1504)

8 Sec. 15-1504. Pleadings and service.

9 (a) Form of Complaint. A copy of the mortgage and note  
10 secured thereby must be attached to the foreclosure complaint.  
11 If any note required to be attached to a complaint filed  
12 pursuant to this subsection (a) of Section 15-1504 of this Code  
13 cannot be located for filing as an exhibit after due diligence  
14 by the moving party of such a complaint, the moving party must  
15 file an affidavit stating the following:

16 (i) All the holders of the note;

1           (ii) The time each note holder held the note identified  
2           by the day, month, and year; and

3           (iii) The reasonable efforts made by the moving party  
4           to obtain the note.

5           A foreclosure complaint may be in substantially the  
6           following form:

7           (1) Plaintiff files this complaint to foreclose the  
8           mortgage (or other conveyance in the nature of a mortgage)  
9           (hereinafter called "mortgage") hereinafter described and  
10          joins the following person as defendants: (here insert  
11          names of all defendants).

12          (2) Attached as Exhibit "A" is a copy of the mortgage  
13          and as Exhibit "B" is a copy of the note secured thereby.

14          (3) Information concerning mortgage:

15                (A) Nature of instrument: (here insert whether a  
16                mortgage, trust deed or other instrument in the nature  
17                of a mortgage, etc.)

18                (B) Date of mortgage:

19                (C) Name of mortgagor:

20                (D) Name of mortgagee:

21                (E) Date and place of recording:

22                (F) Identification of recording: (here insert book  
23                and page number or document number)

24                (G) Interest subject to the mortgage: (here insert  
25                whether fee simple, estate for years, undivided  
26                interest, etc.)

1 (H) Amount of original indebtedness, including  
2 subsequent advances made under the mortgage:

3 (I) Both the legal description of the mortgaged  
4 real estate and the common address or other information  
5 sufficient to identify it with reasonable certainty:

6 (J) Statement as to defaults, including, but not  
7 necessarily limited to, date of default, current  
8 unpaid principal balance, per diem interest accruing,  
9 and any further information concerning the default:

10 (K) Name of present owner of the real estate:

11 (L) Names of other persons who are joined as  
12 defendants and whose interest in or lien on the  
13 mortgaged real estate is sought to be terminated:

14 (M) Names of defendants claimed to be personally  
15 liable for deficiency, if any:

16 (N) The real party in interest which ~~Capacity in~~  
17 ~~which plaintiff~~ brings this foreclosure (here indicate  
18 whether plaintiff is the legal holder of the  
19 indebtedness, a pledgee, an agent, the trustee under a  
20 trust deed or otherwise, as appropriate):

21 (O) Facts in support of redemption period shorter  
22 than the longer of (i) 7 months from the date the  
23 mortgagor or, if more than one, all the mortgagors (I)  
24 have been served with summons or by publication or (II)  
25 have otherwise submitted to the jurisdiction of the  
26 court, or (ii) 3 months from the entry of the judgment

1 of foreclosure, if sought (here indicate whether based  
2 upon the real estate not being residential,  
3 abandonment, or real estate value less than 90% of  
4 amount owed, etc.):

5 (P) Statement that the right of redemption has been  
6 waived by all owners of redemption, if applicable:

7 (Q) Facts in support of request for attorneys' fees  
8 and of costs and expenses, if applicable:

9 (R) Facts in support of a request for appointment  
10 of mortgagee in possession or for appointment of  
11 receiver, and identity of such receiver, if sought:

12 (S) Offer to mortgagor in accordance with Section  
13 15-1402 to accept title to the real estate in  
14 satisfaction of all indebtedness and obligations  
15 secured by the mortgage without judicial sale, if  
16 sought:

17 (T) Name or names of defendants whose right to  
18 possess the mortgaged real estate, after the  
19 confirmation of a foreclosure sale, is sought to be  
20 terminated and, if not elsewhere stated, the facts in  
21 support thereof:

22 REQUEST FOR RELIEF

23 Plaintiff requests:

24 (i) A judgment of foreclosure and sale.

25 (ii) An order granting a shortened redemption period,

1 if sought.

2 (iii) A personal judgment for a deficiency, if sought.

3 (iv) An order granting possession, if sought.

4 (v) An order placing the mortgagee in possession or  
5 appointing a receiver, if sought.

6 (vi) A judgment for attorneys' fees, costs and  
7 expenses, if sought.

8 (b) Required Information. A foreclosure complaint need  
9 contain only such statements and requests called for by the  
10 form set forth in subsection (a) of Section 15-1504 as may be  
11 appropriate for the relief sought. Such complaint may be filed  
12 as a counterclaim, may be joined with other counts or may  
13 include in the same count additional matters or a request for  
14 any additional relief permitted by Article II of the Code of  
15 Civil Procedure.

16 (c) Allegations. The statements contained in a complaint in  
17 the form set forth in subsection (a) of Section 15-1504 are  
18 deemed and construed to include allegations as follows:

19 (1) on the date indicated the obligor of the  
20 indebtedness or other obligations secured by the mortgage  
21 was justly indebted in the amount of the indicated original  
22 indebtedness to the original mortgagee or payee of the  
23 mortgage note;

24 (2) that the exhibits attached are true and correct  
25 copies of the mortgage and note and are incorporated and  
26 made a part of the complaint by express reference;

1           (3) that the mortgagor was at the date indicated an  
2 owner of the interest in the real estate described in the  
3 complaint and that as of that date made, executed and  
4 delivered the mortgage as security for the note or other  
5 obligations;

6           (4) that the mortgage was recorded in the county in  
7 which the mortgaged real estate is located, on the date  
8 indicated, in the book and page or as the document number  
9 indicated;

10           (5) that defaults occurred as indicated;

11           (6) that at the time of the filing of the complaint the  
12 persons named as present owners are the owners of the  
13 indicated interests in and to the real estate described;

14           (7) that the mortgage constitutes a valid, prior and  
15 paramount lien upon the indicated interest in the mortgaged  
16 real estate, which lien is prior and superior to the right,  
17 title, interest, claim or lien of all parties and nonrecord  
18 claimants whose interests in the mortgaged real estate are  
19 sought to be terminated;

20           (8) that by reason of the defaults alleged, if the  
21 indebtedness has not matured by its terms, the same has  
22 become due by the exercise, by the plaintiff or other  
23 persons having such power, of a right or power to declare  
24 immediately due and payable the whole of all indebtedness  
25 secured by the mortgage;

26           (9) that any and all notices of default or election to

1 declare the indebtedness due and payable or other notices  
2 required to be given have been duly and properly given;

3 (10) that any and all periods of grace or other period  
4 of time allowed for the performance of the covenants or  
5 conditions claimed to be breached or for the curing of any  
6 breaches have expired;

7 (11) that the amounts indicated in the statement in the  
8 complaint are correctly stated and if such statement  
9 indicates any advances made or to be made by the plaintiff  
10 or owner of the mortgage indebtedness, that such advances  
11 were, in fact, made or will be required to be made, and  
12 under and by virtue of the mortgage the same constitute  
13 additional indebtedness secured by the mortgage; and

14 (12) that, upon confirmation of the sale, the holder of  
15 the certificate of sale or deed issued pursuant to that  
16 certificate or, if no certificate or deed was issued, the  
17 purchaser at the sale will be entitled to full possession  
18 of the mortgaged real estate against the parties named in  
19 clause (T) of paragraph (3) of subsection (a) of Section  
20 15-1504 or elsewhere to the same effect; the omission of  
21 any party indicates that plaintiff will not seek a  
22 possessory order in the order confirming sale unless the  
23 request is subsequently made under subsection (h) of  
24 Section 15-1701 or by separate action under Article 9 of  
25 this Code.

26 (d) Request for Fees and Costs. A statement in the

1 complaint that plaintiff seeks the inclusion of attorneys' fees  
2 and of costs and expenses shall be deemed and construed to  
3 include allegations that:

4 (1) plaintiff has been compelled to employ and retain  
5 attorneys to prepare and file the complaint and to  
6 represent and advise the plaintiff in the foreclosure of  
7 the mortgage and the plaintiff will thereby become liable  
8 for the usual, reasonable and customary fees of the  
9 attorneys in that behalf;

10 (2) that the plaintiff has been compelled to advance or  
11 will be compelled to advance, various sums of money in  
12 payment of costs, fees, expenses and disbursements  
13 incurred in connection with the foreclosure, including,  
14 without limiting the generality of the foregoing, filing  
15 fees, stenographer's fees, witness fees, costs of  
16 publication, costs of procuring and preparing documentary  
17 evidence and costs of procuring abstracts of title, Torrens  
18 certificates, foreclosure minutes and a title insurance  
19 policy;

20 (3) that under the terms of the mortgage, all such  
21 advances, costs, attorneys' fees and other fees, expenses  
22 and disbursements are made a lien upon the mortgaged real  
23 estate and the plaintiff is entitled to recover all such  
24 advances, costs, attorneys' fees, expenses and  
25 disbursements, together with interest on all advances at  
26 the rate provided in the mortgage, or, if no rate is



1 provided therein, at the statutory judgment rate, from the  
2 date on which such advances are made;

3 (4) that in order to protect the lien of the mortgage,  
4 it may become necessary for plaintiff to pay taxes and  
5 assessments which have been or may be levied upon the  
6 mortgaged real estate;

7 (5) that in order to protect and preserve the mortgaged  
8 real estate, it may also become necessary for the plaintiff  
9 to pay liability (protecting mortgagor and mortgagee),  
10 fire and other hazard insurance premiums on the mortgaged  
11 real estate, make such repairs to the mortgaged real estate  
12 as may reasonably be deemed necessary for the proper  
13 preservation thereof, advance for costs to inspect the  
14 mortgaged real estate or to appraise it, or both, and  
15 advance for premiums for pre-existing private or  
16 governmental mortgage insurance to the extent required  
17 after a foreclosure is commenced in order to keep such  
18 insurance in force; and

19 (6) that under the terms of the mortgage, any money so  
20 paid or expended will become an additional indebtedness  
21 secured by the mortgage and will bear interest from the  
22 date such monies are advanced at the rate provided in the  
23 mortgage, or, if no rate is provided, at the statutory  
24 judgment rate.

25 (e) Request for Foreclosure. The request for foreclosure is  
26 deemed and construed to mean that the plaintiff requests that:

1           (1) an accounting may be taken under the direction of  
2 the court of the amounts due and owing to the plaintiff;

3           (2) that the defendants be ordered to pay to the  
4 plaintiff before expiration of any redemption period (or,  
5 if no redemption period, before a short date fixed by the  
6 court) whatever sums may appear to be due upon the taking  
7 of such account, together with attorneys' fees and costs of  
8 the proceedings (to the extent provided in the mortgage or  
9 by law);

10          (3) that in default of such payment in accordance with  
11 the judgment, the mortgaged real estate be sold as directed  
12 by the court, to satisfy the amount due to the plaintiff as  
13 set forth in the judgment, together with the interest  
14 thereon at the statutory judgment rate from the date of the  
15 judgment;

16          (4) that in the event the plaintiff is a purchaser of  
17 the mortgaged real estate at such sale, the plaintiff may  
18 offset against the purchase price of such real estate the  
19 amounts due under the judgment of foreclosure and order  
20 confirming the sale;

21          (5) that in the event of such sale and the failure of  
22 any person entitled thereto to redeem prior to such sale  
23 pursuant to this Article, the defendants made parties to  
24 the foreclosure in accordance with this Article, and all  
25 nonrecord claimants given notice of the foreclosure in  
26 accordance with this Article, and all persons claiming by,

1 through or under them, and each and any and all of them,  
2 may be forever barred and foreclosed of any right, title,  
3 interest, claim, lien, or right to redeem in and to the  
4 mortgaged real estate; and

5 (6) that if no redemption is made prior to such sale, a  
6 deed may be issued to the purchaser thereat according to  
7 law and such purchaser be let into possession of the  
8 mortgaged real estate in accordance with Part 17 of this  
9 Article.

10 (f) Request for Deficiency Judgment. A request for a  
11 personal judgment for a deficiency in a foreclosure complaint  
12 if the sale of the mortgaged real estate fails to produce a  
13 sufficient amount to pay the amount found due, the plaintiff  
14 may have a personal judgment against any party in the  
15 foreclosure indicated as being personally liable therefor and  
16 the enforcement thereof be had as provided by law.

17 (g) Request for Possession or Receiver. A request for  
18 possession or appointment of a receiver has the meaning as  
19 stated in subsection (b) of Section 15-1706.

20 (h) Answers by Parties. Any party may assert its interest  
21 by counterclaim and such counterclaim may at the option of that  
22 party stand in lieu of answer to the complaint for foreclosure  
23 and all counter complaints previously or thereafter filed in  
24 the foreclosure. Any such counterclaim shall be deemed to  
25 constitute a statement that the counter claimant does not have  
26 sufficient knowledge to form a belief as to the truth or

1 falsity of the allegations of the complaint and all other  
2 counterclaims, except to the extent that the counterclaim  
3 admits or specifically denies such allegations.

4 (Source: P.A. 91-357, eff. 7-29-99.)

5 (735 ILCS 5/15-1504.5 new)

6 Sec. 15-1504.5. Notice with complaint. For all residential  
7 foreclosure actions filed, the plaintiff must attach a notice  
8 to the summons and complaint that specifies to the defendant  
9 mortgagor his or her statutory right to maintain homeownership  
10 during the pendency of the foreclosure action. The notice must  
11 be in substantially the following form:

12 a. As a homeowner, you have the following rights during the  
13 foreclosure proceedings:

14 1. POSSESSION: The lawful occupants may be able to live  
15 in the house until a judge enters an order of eviction.

16 2. OWNERSHIP: You may have the right to sell the house  
17 or refinance the mortgage during the redemption period.

18 3. REINSTATEMENT: You may have the right to bring the  
19 mortgage current within 90 days after you receive this  
20 Summons.

21 4. REDEMPTION: You may have the right to pay off the  
22 loan during the redemption period.

23 5. SURPLUS: You have the right to petition for any  
24 excess money that results from a foreclosure sale of the  
25 house.

1           6. WORKOUT OPTIONS: The mortgage company does not want  
2           to foreclosure the mortgage if there is any way to avoid  
3           it. Call the mortgage company or its attorneys to find out  
4           the alternatives to foreclosure.

5           7. GET ADVICE: This information is not exhaustive and  
6           does not replace the advice of a professional. You may have  
7           other options. Get professional advice from a lawyer or  
8           certified housing counselor about your rights and options  
9           to avoid foreclosure.

10           8. A LAWYER: If you do not have a lawyer, and are  
11           unable to afford one, you may be able to find assistance by  
12           contacting Illinois Legal Aid or the Illinois State Bar  
13           Association.

14           9. PROCEED WITH CAUTION: You may be contacted by people  
15           offering to help you to avoid foreclosure. The Illinois  
16           Mortgage Rescue Act provides you some protections in these  
17           situations. Please follow these precautions:

18                   a. Get legal advice before entering into any deal  
19                   involving your house.

20                   b. Get legal advice before you pay money to any  
21                   person offering to help you avoid foreclosure.

22                   c. Do not sign any papers you do not understand.

23           (735 ILCS 5/15-1505.5 new)

24           Sec. 15-1505.5. Payoff demands.

25           (a) On the written demand of a mortgagor or the mortgagor's

1 authorized agent, a mortgagee or the mortgagee's authorized  
2 agent shall prepare and deliver a payoff demand statement to  
3 the mortgagor or the mortgagor's authorized agent who has  
4 requested it within 5 business days after receipt of the  
5 demand.

6 (b) The payoff demand statement shall provide the amounts  
7 required as of the date of preparation and shall include the  
8 information reasonably necessary to calculate the payoff  
9 amount on a per diem basis for the time that the per diem  
10 amount remains unchanged as provided in the note but not to  
11 exceed 30 days. The payoff demand statement shall also include  
12 the loan number for the obligation to be paid, the address of  
13 the mortgagee, the telephone number of the mortgagee and, if a  
14 banking organization or corporation, the name of the  
15 department, and its telephone number and facsimile phone  
16 number.

17 (c) The mortgagor or the mortgagor's authorized agent may  
18 rely on a payoff demand statement for the purpose of  
19 establishing the amount necessary to pay the obligation in full  
20 and obtain a release of the mortgage or deed of trust that  
21 secures the obligation through and including the time set forth  
22 in the payoff demand statement.

23 (d) Any sums that were due the mortgagee or the mortgagee's  
24 authorized agent that were not included in the payoff demand  
25 statement or in any amended statement constitute an unsecured  
26 obligation of the mortgagor pursuant to the terms of the note

1 and are recoverable by the mortgagee or mortgagee's agent  
2 pursuant to the terms of the note and as otherwise provided by  
3 law.

4 (e) A mortgagee or mortgagee's agent who willfully fails to  
5 prepare and deliver a payoff demand statement within 5 business  
6 days after receipt of a written demand is liable to the  
7 mortgagor for actual damages sustained for failure to deliver  
8 the statement. The mortgagee or mortgagee's agent is liable to  
9 the mortgagor for \$500 if no actual damages are sustained. Each  
10 failure of the mortgagee to prepare and deliver the payoff  
11 demand statement when required to do so pursuant to this  
12 Section constitutes a separate cause of action. For purposes of  
13 this subsection, "willfully" means a failure to comply with  
14 this Section without just cause or excuse.

15 (f) Unless the payoff demand statement provides otherwise,  
16 the statement is deemed to apply only to the unpaid balance of  
17 the single obligation that is named in the demand and that is  
18 secured by the mortgage or deed of trust identified in the  
19 payoff demand statement.

20 (g) The demand for and preparation and delivery of a payoff  
21 demand statement pursuant to this Section does not change any  
22 date or time period that is prescribed in the note or that is  
23 otherwise provided by law.

24 (h) The mortgagee or mortgagee's agent may assess a fee of  
25 no more than \$10 for furnishing each payoff demand statement.  
26 This is conclusively presumed to be reasonable.

1        (i) For the purposes of this Section, unless the context  
2 otherwise requires:

3            (1) "Deliver" or "delivery" means depositing or  
4 causing to be deposited into the United States mail an  
5 envelope with postage prepaid that contains a copy of the  
6 documents to be delivered and that is addressed to the  
7 person whose name and address are provided in the payoff  
8 demand. Delivery may also include transmitting those  
9 documents by telephone facsimile to the person or  
10 electronically if the payoff demand specifically requests  
11 and authorizes that the documents be transmitted in  
12 electronic form.

13            (2) "Payoff demand" means a written demand for a payoff  
14 demand statement made by the mortgagor or the mortgagor's  
15 authorized agent.

16            (3) "Payoff demand statement" means a written  
17 statement that is prepared in response to a written demand  
18 made by a mortgagee or the mortgagee's authorized agent  
19 that sets forth the amounts required by the beneficiary to  
20 fully satisfy all of the obligations secured by the loan  
21 that is the subject of the demand.

22        (735 ILCS 5/15-1510) (from Ch. 110, par. 15-1510)

23        Sec. 15-1510. Attorney's Fees and Costs by Written  
24 Agreement. The court may award reasonable attorney's fees and  
25 costs to the prevailing party in the foreclosure action.



1 Attorneys' fees and other costs incurred in connection with the  
2 preparation, filing or prosecution of the foreclosure suit  
3 shall be recoverable in a foreclosure only to the extent  
4 specifically set forth in the mortgage or other written  
5 agreement between the mortgagor and the mortgagee or as  
6 otherwise provided in this Article.

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

8 Section 99. Effective date. This Act takes effect January  
9 1, 2009."