



Executive Committee

**Filed: 3/12/2008**

09500HB4195ham001

LRB095 15086 AJ0 48257 a

1 AMENDMENT TO HOUSE BILL 4195

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4195 by replacing  
3 everything after the enacting clause with the following:

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,

1 (iii) the sale was conducted fraudulently or (iv) that justice  
2 was otherwise not done, the court shall then enter an order  
3 confirming the sale. The confirmation order may also:

4 (1) approve the mortgagee's fees and costs arising  
5 between the entry of the judgment of foreclosure and the  
6 confirmation hearing, those costs and fees to be allowable  
7 to the same extent as provided in the note and mortgage and  
8 in Section 15-1504;

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

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

16 (b-5) Notice with respect to residential real estate. With  
17 respect to residential real estate, the notice required under  
18 subsection (b) of this Section shall be sent to the mortgagor  
19 even if the mortgagor has previously been held in default. In  
20 the event the mortgagor has filed an appearance, the notice  
21 shall be sent to the address indicated on the appearance. In  
22 all other cases, the notice shall be sent to the mortgagor at  
23 the common address of the foreclosed property. The notice shall  
24 be sent by first class mail. Unless the right to possession has  
25 been previously terminated by the court, the notice shall  
26 include the following language in 12-point boldface

1 capitalized type:

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

6 (c) Failure to Give Notice. If any sale is held without  
7 compliance with subsection (c) of Section 15-1507 of this  
8 Article, any party entitled to the notice provided for in  
9 paragraph (3) of that subsection (c) who was not so notified  
10 may, by motion supported by affidavit made prior to  
11 confirmation of such sale, ask the court which entered the  
12 judgment to set aside the sale, provided that such party shall  
13 guarantee or secure by bond a bid equal to the successful bid  
14 at the prior sale. Any subsequent sale is subject to the same  
15 notice requirement as the original sale.

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

1 brought under this subsection may also recover from the  
2 mortgagee the reasonable expenses of litigation, including  
3 reasonable attorney's fees.

4 (e) Deficiency Judgment. In any order confirming a sale  
5 pursuant to the judgment of foreclosure, the court shall also  
6 enter a personal judgment for deficiency against any party (i)  
7 if otherwise authorized and (ii) to the extent requested in the  
8 complaint and proven upon presentation of the report of sale in  
9 accordance with Section 15-1508. Except as otherwise provided  
10 in this Article, a judgment may be entered for any balance of  
11 money that may be found due to the plaintiff, over and above  
12 the proceeds of the sale or sales, and enforcement may be had  
13 for the collection of such balance, the same as when the  
14 judgment is solely for the payment of money. Such judgment may  
15 be entered, or enforcement had, only in cases where personal  
16 service has been had upon the persons personally liable for the  
17 mortgage indebtedness, unless they have entered their  
18 appearance in the foreclosure action.

19 (f) Satisfaction. Upon confirmation of the sale, the  
20 judgment stands satisfied to the extent of the sale price less  
21 expenses and costs. If the order confirming the sale includes a  
22 deficiency judgment, the judgment shall become a lien in the  
23 manner of any other judgment for the payment of money.

24 (g) The order confirming the sale shall include,  
25 notwithstanding any previous orders awarding possession during  
26 the pendency of the foreclosure, an award to the purchaser of

1 possession of the mortgaged real estate, as of the date 30 days  
2 after the entry of the order, against the parties to the  
3 foreclosure whose interests have been terminated.

4 An order of possession authorizing the removal of a person  
5 from possession of the mortgaged real estate shall be entered  
6 and enforced only against those persons personally named as  
7 individuals in the complaint or the petition under subsection  
8 (h) of Section 15-1701 and in the order of possession and shall  
9 not be entered and enforced against any person who is only  
10 generically described as an unknown owner or nonrecord claimant  
11 or by another generic designation in the complaint.

12 Notwithstanding the preceding paragraph, the failure to  
13 personally name, include, or seek an award of possession of the  
14 mortgaged real estate against a person in the confirmation  
15 order shall not abrogate any right that the purchaser may have  
16 to possession of the mortgaged real estate and to maintain a  
17 proceeding against that person for possession under Article 9  
18 of this Code or subsection (h) of Section 15-1701; and  
19 possession against a person who (1) has not been personally  
20 named as a party to the foreclosure and (2) has not been  
21 provided an opportunity to be heard in the foreclosure  
22 proceeding may be sought only by maintaining a proceeding under  
23 Article 9 of this Code or subsection (h) of Section 15-1701.

24 (Source: P.A. 88-265; 89-203, eff. 7-21-95.)

25 Section 99. Effective date. This Act takes effect upon

1 becoming law.".