



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5896

by Rep. Ed Sullivan, Jr.

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1502.5 new
735 ILCS 5/15-1504

from Ch. 110, par. 15-1504

Amends the Code of Civil Procedure. Provides that, prior to commencing a mortgage foreclosure action, the plaintiff must contact the mortgagor advising the mortgagor of foreclosure in the near future and notifying the mortgagor that an in-person meeting to review refinancing the mortgage loan is available. Provides the notice must also contain a list of HUD-certified credit counselors. Provides that the plaintiff must wait at least 30 days after the date of the in-person meeting, or 30 days after the notice was served if no meeting was requested by the mortgagor, before the action to foreclose may be commenced. Provides that the plaintiff in any foreclosure action must attach to the complaint a sworn affidavit stating that these requirements have been complied with.

LRB095 17980 AJO 44063 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 adding
5 Section 15-1502.5 and by changing Section 15-1504 as follows:

6 (735 ILCS 5/15-1502.5 new)

7 Sec. 15-1502.5. Pre-foreclosure counseling.

8 (a) Prior to commencing a foreclosure action, the plaintiff
9 must exercise due diligence to make contact with the mortgagor
10 by written notice sent by certified mail, return receipt
11 requested. The notice must state that the mortgage is scheduled
12 to be foreclosed in the near future, that an in-person meeting
13 is available to the mortgagor and the manner in which the
14 meeting may be scheduled, and that at the meeting the mortgagor
15 will be advised of any available options for restructuring or
16 refinancing the mortgage loan. The notice shall also contain a
17 list of credit counselors certified by the federal Department
18 of Housing and Urban development who are available to assist
19 the mortgagor. The foreclosure action may not be commenced
20 until at least 30 days after the date of the in-person meeting
21 or 30 days after the notice was served if no meeting was
22 requested by the mortgagor.

1 (735 ILCS 5/15-1504) (from Ch. 110, par. 15-1504)

2 Sec. 15-1504. Pleadings and service.

3 (a) Form of Complaint. A foreclosure complaint may be in
4 substantially the following form:

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

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

12 (3) Information concerning mortgage:

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

16 (B) Date of mortgage:

17 (C) Name of mortgagor:

18 (D) Name of mortgagee:

19 (E) Date and place of recording:

20 (F) Identification of recording: (here insert book
21 and page number or document number)

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

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

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

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

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

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

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

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

19 (O) Facts in support of redemption period shorter
20 than the longer of (i) 7 months from the date the
21 mortgagor or, if more than one, all the mortgagors (I)
22 have been served with summons or by publication or (II)
23 have otherwise submitted to the jurisdiction of the
24 court, or (ii) 3 months from the entry of the judgment
25 of foreclosure, if sought (here indicate whether based
26 upon the real estate not being residential,

1 abandonment, or real estate value less than 90% of
2 amount owed, etc.):

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

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

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

10 (S) Offer to mortgagor in accordance with Section
11 15-1402 to accept title to the real estate in
12 satisfaction of all indebtedness and obligations
13 secured by the mortgage without judicial sale, if
14 sought:

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

20 REQUEST FOR RELIEF

21 Plaintiff requests:

22 (i) A judgment of foreclosure and sale.

23 (ii) An order granting a shortened redemption period,
24 if sought.

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

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

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

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

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

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

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

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

25 (3) that the mortgagor was at the date indicated an
26 owner of the interest in the real estate described in the

1 complaint and that as of that date made, executed and
2 delivered the mortgage as security for the note or other
3 obligations;

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

8 (5) that defaults occurred as indicated;

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

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

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

24 (9) that any and all notices of default or election to
25 declare the indebtedness due and payable or other notices
26 required to be given have been duly and properly given;

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

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

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

24 (d) Request for Fees and Costs. A statement in the
25 complaint that plaintiff seeks the inclusion of attorneys' fees
26 and of costs and expenses shall be deemed and construed to

1 include allegations that:

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

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

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

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

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

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

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

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

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

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

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

19 (5) that in the event of such sale and the failure of
20 any person entitled thereto to redeem prior to such sale
21 pursuant to this Article, the defendants made parties to
22 the foreclosure in accordance with this Article, and all
23 nonrecord claimants given notice of the foreclosure in
24 accordance with this Article, and all persons claiming by,
25 through or under them, and each and any and all of them,
26 may be forever barred and foreclosed of any right, title,

1 interest, claim, lien, or right to redeem in and to the
2 mortgaged real estate; and

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

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

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

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

1 admits or specifically denies such allegations.

2 (i) Pre-foreclosure meeting. Every foreclosure complaint
3 must be accompanied by a sworn affidavit of the plaintiff
4 stating that the plaintiff has complied with all the
5 requirements of Section 15-1502.5. Any complaint filed without
6 this affidavit is insufficient as a matter of law.

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