



Rep. Marlow H. Colvin

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LRB095 15221 LCT 51403 a

1 AMENDMENT TO SENATE BILL 1879

2 AMENDMENT NO. _____. Amend Senate Bill 1879 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 15-1510 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

1 Notice must be in substantially the following form:

2 **IMPORTANT INFORMATION FOR HOMEOWNERS IN FORECLOSURE**

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

6 **2. OWNERSHIP:** You continue to own your home until the
7 court rules otherwise.

8 **3. REINSTATEMENT:** As the homeowner you have the right
9 to bring the mortgage current within 90 days after you
10 receive the summons.

11 **4. REDEMPTION:** As the homeowner you have the right to
12 sell your home, refinance, or pay off the loan during the
13 redemption period.

14 **5. SURPLUS:** As the homeowner you have the right to
15 petition the court for any excess money that results from a
16 foreclosure sale of your home.

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

22 **7. PAYOFF AMOUNT:** You have the right to obtain a
23 written statement of the amount necessary to pay off your
24 loan. Your mortgage company (identified above) must

1 provide you this statement within 10 business days of
2 receiving your request, provided that your request is in
3 writing and includes your name, the address of the
4 property, and the mortgage account or loan number. Your
5 first payoff statement will be free.

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

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

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

20 (735 ILCS 5/15-1505.5 new)

21 Sec. 15-1505.5. Payoff demands.

22 (a) In a foreclosure action subject to this Article, on the
23 written demand of a mortgagor or the mortgagor's authorized
24 agent (which shall include the mortgagor's name, the mortgaged
25 property's address, and the mortgage account or loan number), a

1 mortgagee or the mortgagee's authorized agent shall prepare and
2 deliver an accurate statement of the total outstanding balance
3 of the mortgagor's obligation that would be required to satisfy
4 the obligation in full as of the date of preparation ("payoff
5 demand statement") to the mortgagor or the mortgagor's
6 authorized agent who has requested it within 10 business days
7 after receipt of the demand. For purposes of this Section, a
8 payoff demand statement is accurate if prepared in good faith
9 based on the records of the mortgagee or the mortgagee's agent.

10 (b) The payoff demand statement shall include the
11 following:

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

15 (2) estimated charges (stated as such) that the
16 mortgagee reasonably believes may be incurred within 30
17 days from the date of preparation of the payoff demand
18 statement; and

19 (3) the loan number for the obligation to be paid, the
20 address of the mortgagee, the telephone number of the
21 mortgagee and, if a banking organization or corporation,
22 the name of the department, if applicable, and its
23 telephone number and facsimile phone number.

24 (c) A mortgagee or mortgagee's agent who willfully fails to
25 prepare and deliver an accurate payoff demand statement within
26 10 business days after receipt of a written demand is liable to

1 the mortgagor for actual damages sustained for failure to
2 deliver the statement. The mortgagee or mortgagee's agent is
3 liable to the mortgagor for \$500 if no actual damages are
4 sustained. For purposes of this subsection, "willfully" means a
5 failure to comply with this Section without just cause or
6 excuse or mitigating circumstances.

7 (d) The mortgagor must petition the judge within the
8 foreclosure action for the award of any damages pursuant to
9 this Section, which award shall be determined by the judge.

10 (e) Unless the payoff demand statement provides otherwise,
11 the statement is deemed to apply only to the unpaid balance of
12 the single obligation that is named in the demand and that is
13 secured by the mortgage or deed of trust identified in the
14 payoff demand statement.

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

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

23 (h) For the purposes of this Section, unless the context
24 otherwise requires, "deliver" or "delivery" means depositing
25 or causing to be deposited into the United States mail an
26 envelope with postage prepaid that contains a copy of the

1 documents to be delivered and that is addressed to the person
2 whose name and address are provided in the payoff demand.
3 "Delivery" may also include transmitting those documents by
4 telephone facsimile to the person or electronically if the
5 payoff demand specifically requests and authorizes that the
6 documents be transmitted in electronic form.

7 (i) The mortgagee or mortgagee's agent is not required to
8 comply with the payoff demand statement procedure set forth in
9 this Section when responding to a notice of intent to redeem
10 issued under Section 15-1603(e).

11 (735 ILCS 5/15-1510) (from Ch. 110, par. 15-1510)

12 Sec. 15-1510. Attorney's Fees and Costs ~~by Written~~
13 ~~Agreement.~~

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

24 (b) Attorneys' fees and other costs incurred in connection
25 with the preparation, filing or prosecution of the foreclosure

1 suit shall be recoverable in a foreclosure only to the extent
2 specifically set forth in the mortgage or other written
3 agreement between the mortgagor and the mortgagee or as
4 otherwise provided in this Article.

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

6 Section 10. The Illinois Human Rights Act is amended by
7 changing Section 10-104 as follows:

8 (775 ILCS 5/10-104)

9 Sec. 10-104. Circuit Court Actions by the Illinois Attorney
10 General.

11 (A) Standing, venue, limitations on actions, preliminary
12 investigations, notice, and Assurance of Voluntary Compliance.

13 (1) Whenever the Illinois Attorney General has
14 reasonable cause to believe that any person or group of
15 persons is engaged in a pattern and practice of
16 discrimination prohibited by this Act, the Illinois
17 Attorney General may commence a civil action in the name of
18 the People of the State, as *parens patriae* on behalf of
19 persons within the State to enforce the provisions of this
20 Act in any appropriate circuit court. Venue for this civil
21 action shall be determined under Section 8-111(B)(6). Such
22 actions shall be commenced no later than 2 years after the
23 occurrence or the termination of an alleged civil rights
24 violation or the breach of a conciliation agreement or

1 Assurance of Voluntary Compliance entered into under this
2 Act, whichever occurs last, to obtain relief with respect
3 to the alleged civil rights violation or breach.

4 (2) Prior to initiating a civil action, the Attorney
5 General shall conduct a preliminary investigation to
6 determine whether there is reasonable cause to believe that
7 any person or group of persons is engaged in a pattern and
8 practice of discrimination declared unlawful by this Act
9 and whether the dispute can be resolved without litigation.
10 In conducting this investigation, the Attorney General
11 may:

12 (a) require the individual or entity to file a
13 statement or report in writing under oath or otherwise,
14 as to all information the Attorney General may consider
15 necessary;

16 (b) examine under oath any person alleged to have
17 participated in or with knowledge of the alleged
18 pattern and practice violation; or

19 (c) issue subpoenas or conduct hearings in aid of
20 any investigation.

21 (3) Service by the Attorney General of any notice
22 requiring a person to file a statement or report, or of a
23 subpoena upon any person, shall be made:

24 (a) personally by delivery of a duly executed copy
25 thereof to the person to be served or, if a person is
26 not a natural person, in the manner provided in the

1 Code of Civil Procedure when a complaint is filed; or

2 (b) by mailing by certified mail a duly executed
3 copy thereof to the person to be served at his or her
4 last known abode or principal place of business within
5 this State.

6 (4) In lieu of a civil action, the individual or entity
7 alleged to have engaged in a pattern or practice of
8 discrimination deemed violative of this Act may enter into
9 an Assurance of Voluntary Compliance with respect to the
10 alleged pattern or practice violation.

11 (5) The Illinois Attorney General may commence a civil
12 action under this subsection (A) whether or not a charge
13 has been filed under Sections 7A-102 or 7B-102 and without
14 regard to the status of any charge, however, if the
15 Department or local agency has obtained a conciliation or
16 settlement agreement or if the parties have entered into an
17 Assurance of Voluntary Compliance no action may be filed
18 under this subsection (A) with respect to the alleged civil
19 rights violation practice that forms the basis for the
20 complaint except for the purpose of enforcing the terms of
21 the conciliation or settlement agreement or the terms of
22 the Assurance of Voluntary Compliance.

23 (6) If any person fails or refuses to file any
24 statement or report, or obey any subpoena, issued pursuant
25 to subdivision (A) (2) of this Section, the Attorney General
26 will be deemed to have met the requirement of conducting a

1 preliminary investigation and may proceed to initiate a
2 civil action pursuant to subdivision (A)(1) of this
3 Section.

4 (B) Relief which may be granted.

5 (1) In any civil action brought pursuant to subsection
6 (A) of this Section, the Attorney General may obtain as a
7 remedy, equitable relief (including any permanent or
8 preliminary injunction, temporary restraining order, or
9 other order, including an order enjoining the defendant
10 from engaging in such civil rights violation or ordering
11 any action as may be appropriate). In addition, the
12 Attorney General may request and the Court may impose a
13 civil penalty to vindicate the public interest:

14 (a) for violations of Article 3 and Article 4 in an
15 amount not exceeding \$25,000 per violation, and in the
16 case of violations of all other Articles in an amount
17 not exceeding \$10,000 if the defendant has not been
18 adjudged to have committed any prior civil rights
19 violations under the provision of the Act that is the
20 basis of the complaint;

21 (b) for violations of Article 3 and Article 4 in an
22 amount not exceeding \$50,000 per violation, and in the
23 case of violations of all other Articles in an amount
24 not exceeding \$25,000 if the defendant has been
25 adjudged to have committed one other civil rights
26 violation under the provision of the Act within 5 years

1 of the occurrence of the civil rights violation that is
2 the basis of the complaint; and

3 (c) for violations of Article 3 and Article 4 in an
4 amount not exceeding \$75,000 per violation, and in the
5 case of violations of all other Articles in an amount
6 not exceeding \$50,000 if the defendant has been
7 adjudged to have committed 2 or more civil rights
8 violations under the provision of the Act within 5
9 years of the occurrence of the civil rights violation
10 that is the basis of the complaint.

11 (2) A civil penalty imposed under subdivision (B) (1) of
12 this Section shall be deposited into the Attorney General
13 Court Ordered and Voluntary Compliance Payment Projects
14 Fund, which is a special fund in the State Treasury. Moneys
15 in the Fund shall be used, subject to appropriation, for
16 the performance of any function pertaining to the exercise
17 of the duties of the Attorney General including but not
18 limited to enforcement of any law of this State and
19 conducting public education programs; however, any moneys
20 in the Fund that are required by the court or by an
21 agreement to be used for a particular purpose shall be used
22 for that purpose.

23 (3) Aggrieved parties seeking actual damages must
24 follow the procedure set out in Sections 7A-102 or 7B-102
25 for filing a charge.

26 (Source: P.A. 93-1017, eff. 8-24-04.)

1 Section 15. The Illinois Fairness in Lending Act is amended
2 by changing Section 3 as follows:

3 (815 ILCS 120/3) (from Ch. 17, par. 853)

4 Sec. 3. No financial institution, in connection with or in
5 contemplation of any loan to any person, may:

6 (a) Deny or vary the terms of a loan on the basis that a
7 specific parcel of real estate offered as security is located
8 in a specific geographical area.

9 (b) Deny or vary the terms of a loan without having
10 considered all of the regular and dependable income of each
11 person who would be liable for repayment of the loan.

12 (c) Deny or vary the terms of a loan on the sole basis of
13 the childbearing capacity of an applicant or an applicant's
14 spouse.

15 (c-5) Deny or vary the terms of a loan on the basis of the
16 borrower's race, gender, disability, or national origin.

17 (d) Utilize lending standards that have no economic basis
18 and which are discriminatory in effect.

19 (e) Engage in equity stripping or loan flipping.

20 (Source: P.A. 93-561, eff. 1-1-04.)

21 Section 99. Effective date. This Act takes effect upon
22 becoming law, except Section 5 takes effect January 1, 2009."