

SB2131



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2131

Introduced 2/14/2008, by Sen. John J. Cullerton

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1106

from Ch. 110, par. 15-1106

Amends the Code of Civil Procedure. Provides that a complaint to foreclose on a mortgage shall not be filed prior to January 1, 2010 on residential real estate property if the property is a single family residence or a residential condominium and if the mortgagor is paying the current interest and the current required reserve or escrow payments for real estate taxes and insurance. Effective immediately.

LRB095 19294 AJO 45585 b

A BILL FOR

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 15-1106 as follows:

6 (735 ILCS 5/15-1106) (from Ch. 110, par. 15-1106)

7 Sec. 15-1106. Applicability of Article. (a) Exclusive
8 Procedure. From and after the effective date of this amendatory
9 Act of 1986, the following shall be foreclosed in a foreclosure
10 pursuant to this Article:

11 (1) any mortgage created prior to, on or after the
12 effective date of this amendatory Act of 1986;

13 (2) any real estate installment contract for residential
14 real estate entered into on or after the effective date of this
15 amendatory Act of 1986 and under which (i) the purchase price
16 is to be paid in installments over a period in excess of five
17 years and (ii) the amount unpaid under the terms of the
18 contract at the time of the filing of the foreclosure
19 complaint, including principal and due and unpaid interest, at
20 the rate prior to default, is less than 80% of the original
21 purchase price of the real estate as stated in the contract;

22 (3) any collateral assignment of beneficial interest made
23 on or after the effective date of this amendatory Act of 1986

1 (i) which is made with respect to a land trust which was
2 created contemporaneously with the collateral assignment of
3 beneficial interest, (ii) which is made pursuant to a
4 requirement of the holder of the obligation to secure the
5 payment of money or performance of other obligations and (iii)
6 as to which the security agreement or other writing creating
7 the collateral assignment permits the real estate which is the
8 subject of the land trust to be sold to satisfy the
9 obligations.

10 (b) Uniform Commercial Code. A secured party, as defined in
11 Article 9 of the Uniform Commercial Code, may at its election
12 enforce its security interest in a foreclosure under this
13 Article if its security interest was created on or after the
14 effective date of this amendatory Act of 1986 and is created by
15 (i) a collateral assignment of beneficial interest in a land
16 trust or (ii) an assignment for security of a buyer's interest
17 in a real estate installment contract. Such election shall be
18 made by filing a complaint stating that it is brought under
19 this Article, in which event the provisions of this Article
20 shall be exclusive in such foreclosure.

21 (c) Real Estate Installment Contracts. A contract seller
22 may at its election enforce in a foreclosure under this Article
23 any real estate installment contract entered into on or after
24 the effective date of this Amendatory Act of 1986 and not
25 required to be foreclosed under this Article. Such election
26 shall be made by filing a complaint stating that it is brought

1 under this Article, in which event the provisions of this
2 Article shall be exclusive in such foreclosure. A contract
3 seller must enforce its contract under this Article if the real
4 estate installment contract is one described in paragraph (2)
5 of subsection (a) of Section 15-1106.

6 (d) Effect of Election. An election made pursuant to
7 subsection (b) or (c) of Section 15-1106 shall be binding only
8 in the foreclosure and shall be void if the foreclosure is
9 terminated prior to entry of judgment.

10 (e) Supplementary General Principles of Law. General
11 principles of law and equity, such as those relating to
12 capacity to contract, principal and agent, marshalling of
13 assets, priority, subrogation, estoppel, fraud,
14 misrepresentations, duress, collusion, mistake, bankruptcy or
15 other validating or invalidating cause, supplement this
16 Article unless displaced by a particular provision of it.
17 Section 9-110 of the Code of Civil Procedure shall not be
18 applicable to any real estate installment contract which is
19 foreclosed under this Article.

20 (f) Pending Actions. A complaint to foreclose a mortgage
21 filed before July 1, 1987, and all proceedings and third party
22 actions in connection therewith, shall be adjudicated pursuant
23 to the Illinois statutes and applicable law in effect
24 immediately prior to July 1, 1987. Such statutes shall remain
25 in effect with respect to such complaint, proceedings and third
26 party actions notwithstanding the amendment or repeal of such

1 statutes on or after July 1, 1987.

2 (g) Actions before 2010. A complaint to foreclose on a
3 mortgage shall not be filed before January 1, 2010 if the
4 subject real estate is residential real estate that is a single
5 family residence or a residential condominium and if the
6 mortgagor is paying the current interest on the mortgage note
7 and the current required reserve or escrow payments for real
8 estate taxes and insurance.

9 (Source: P.A. 85-907.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.