



Rep. André M. Thapedi

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09600HB2005ham001

LRB096 05442 AJ0 23919 a

1 AMENDMENT TO HOUSE BILL 2005

2 AMENDMENT NO. _____. Amend House Bill 2005 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 15-1507 and 15-1508 as follows:

6 (735 ILCS 5/15-1507) (from Ch. 110, par. 15-1507)

7 Sec. 15-1507. Judicial Sale.

8 (a) In General. Except as provided in Sections 15-1402 and
9 15-1403, upon entry of a judgment of foreclosure, the real
10 estate which is the subject of the judgment shall be sold at a
11 judicial sale in accordance with this Section 15-1507.

12 (b) Sale Procedures. Upon expiration of the reinstatement
13 period and the redemption period in accordance with subsection
14 (b) or (c) of Section 15-1603 or upon the entry of a judgment
15 of foreclosure after the waiver of all rights of redemption,
16 except as provided in subsection (g) of Section 15-1506, the

1 real estate shall be sold at a sale as provided in this
2 Article, on such terms and conditions as shall be specified by
3 the court in the judgment of foreclosure. A sale may be
4 conducted by any judge or sheriff.

5 (c) Notice of Sale. The mortgagee, or such other party
6 designated by the court, in a foreclosure under this Article
7 shall give public notice of the sale as follows:

8 (1) The notice of sale shall include at least the
9 following information, but an immaterial error in the
10 information shall not invalidate the legal effect of the
11 notice:

12 (A) the name, address and telephone number of the
13 person to contact for information regarding the real
14 estate;

15 (B) the common address and other common
16 description (other than legal description), if any, of
17 the real estate;

18 (C) a legal description of the real estate
19 sufficient to identify it with reasonable certainty;

20 (D) a description of the improvements on the real
21 estate;

22 (E) the times specified in the judgment, if any,
23 when the real estate may be inspected prior to sale;

24 (F) the time and place of the sale;

25 (G) the terms of the sale;

26 (H) the case title, case number and the court in

1 which the foreclosure was filed;

2 (H-1) in the case of a condominium unit to which
3 subsection (g) of Section 9 of the Condominium Property
4 Act applies, the statement required by subdivision
5 (g) (5) of Section 9 of the Condominium Property Act;
6 and

7 (I) such other information ordered by the Court.

8 (2) The notice of sale shall be published at least 3
9 consecutive calendar weeks (Sunday through Saturday), once
10 in each week, the first such notice to be published not
11 more than 45 days prior to the sale, the last such notice
12 to be published not less than 7 days prior to the sale, by:
13 (i) (A) advertisements in a newspaper circulated to the
14 general public in the county in which the real estate is
15 located, in the section of that newspaper where legal
16 notices are commonly placed and (B) separate
17 advertisements in the section of such a newspaper, which
18 (except in counties with a population in excess of
19 3,000,000) may be the same newspaper, in which real estate
20 other than real estate being sold as part of legal
21 proceedings is commonly advertised to the general public;
22 provided, that the separate advertisements in the real
23 estate section need not include a legal description and
24 that where both advertisements could be published in the
25 same newspaper and that newspaper does not have separate
26 legal notices and real estate advertisement sections, a

1 single advertisement with the legal description shall be
2 sufficient; and (ii) such other publications as may be
3 further ordered by the court.

4 (3) The party who gives notice of public sale in
5 accordance with subsection (c) of Section 15-1507 shall
6 also give notice to all parties in the action who have
7 appeared and have not theretofore been found by the court
8 to be in default for failure to plead. Such notice shall be
9 given in the manner provided in the applicable rules of
10 court for service as set forth in Sections 2-203, 2-203.1,
11 2-204, 2-205, or 2-205.1 of the Code of Civil Procedure, as
12 is appropriate, ~~of papers other than process and complaint,~~
13 not more than 45 days nor less than 7 days prior to the day
14 of sale. After notice is given as required in this Section
15 a copy thereof shall be filed in the office of the clerk of
16 the court entering the judgment, together with a
17 certificate of counsel or other proof that notice has been
18 served in compliance with this Section.

19 (4) The party who gives notice of public sale in
20 accordance with subsection (c) of Section 15-1507 shall
21 again give notice in accordance with that Section of any
22 adjourned sale; provided, however, that if the adjourned
23 sale is to occur less than 60 days after the last scheduled
24 sale, notice of any adjourned sale need not be given
25 pursuant to this Section. In the event of adjournment, the
26 person conducting the sale shall, upon adjournment,

1 announce the date, time and place upon which the adjourned
2 sale shall be held. Notwithstanding any language to the
3 contrary, for any adjourned sale that is to be conducted
4 more than 60 days after the date on which it was to first
5 be held, the party giving notice of such sale shall again
6 give notice in accordance with this Section.

7 (5) Notice of the sale may be given prior to the
8 expiration of any reinstatement period or redemption
9 period.

10 (6) No other notice by publication or posting shall be
11 necessary unless required by order or rule of the court.

12 (7) The person named in the notice of sale to be
13 contacted for information about the real estate may, but
14 shall not be required, to provide additional information
15 other than that set forth in the notice of sale.

16 (d) Election of Property. If the real estate which is the
17 subject of a judgment of foreclosure is susceptible of
18 division, the court may order it to be sold as necessary to
19 satisfy the judgment. The court shall determine which real
20 estate shall be sold, and the court may determine the order in
21 which separate tracts may be sold.

22 (e) Receipt upon Sale. Upon and at the sale of mortgaged
23 real estate, the person conducting the sale shall give to the
24 purchaser a receipt of sale. The receipt shall describe the
25 real estate purchased and shall show the amount bid, the amount
26 paid, the total amount paid to date and the amount still to be

1 paid therefor. An additional receipt shall be given at the time
2 of each subsequent payment.

3 (f) Certificate of Sale. Upon payment in full of the amount
4 bid, the person conducting the sale shall issue, in duplicate,
5 and give to the purchaser a Certificate of Sale. The
6 Certificate of Sale shall be in a recordable form, describe the
7 real estate purchased, indicate the date and place of sale and
8 show the amount paid therefor. The Certificate of Sale shall
9 further indicate that it is subject to confirmation by the
10 court. The duplicate certificate may be recorded in accordance
11 with Section 12-121. The Certificate of Sale shall be freely
12 assignable by endorsement thereon.

13 (g) Interest after Sale. Any bid at sale shall be deemed to
14 include, without the necessity of a court order, interest at
15 the statutory judgment rate on any unpaid portion of the sale
16 price from the date of sale to the date of payment.

17 (Source: P.A. 94-1049, eff. 1-1-07.)

18 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

19 Sec. 15-1508. Report of Sale and Confirmation of Sale.

20 (a) Report. The person conducting the sale shall promptly
21 make a report to the court, which report shall include a copy
22 of all receipts and, if any, certificate of sale.

23 (b) Hearing. Upon motion and notice in accordance with
24 court rules applicable to motions generally, which motion shall
25 not be made prior to sale, the court shall conduct a hearing to

1 confirm the sale. Unless the court finds that (i) a notice
2 required in accordance with subsection (c) of Section 15-1507
3 was not given, (ii) the terms of sale were unconscionable,
4 (iii) the sale was conducted fraudulently or (iv) that justice
5 was otherwise not done, the court shall then enter an order
6 confirming the sale. The confirmation order may also:

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

12 (2) provide for a personal judgment against any party
13 for a deficiency; and

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

19 (b-5) Notice with respect to residential real estate. With
20 respect to residential real estate, the notice required under
21 subsection (b) of this Section shall be sent to the mortgagor
22 even if the mortgagor has previously been held in default. In
23 the event the mortgagor has filed an appearance, the notice
24 shall be sent to the address indicated on the appearance. In
25 all other cases, the notice shall be sent to the mortgagor at
26 the common address of the foreclosed property. The notice shall

1 be sent by first class mail. Unless the right to possession has
2 been previously terminated by the court, the notice shall
3 include the following language in 12-point boldface
4 capitalized type:

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

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

19 (d) Validity of Sale. Except as provided in subsection (c)
20 of Section 15-1508, no sale under this Article shall be held
21 invalid or be set aside because of any defect in the notice
22 thereof or in the publication of the same, or in the
23 proceedings of the officer conducting the sale, except upon
24 good cause shown in a hearing pursuant to subsection (b) of
25 Section 15-1508. At any time after a sale has occurred, any
26 party entitled to notice under paragraph (3) of subsection (c)

1 of Section 15-1507 may recover from the mortgagee any damages
2 caused by the mortgagee's failure to comply with such paragraph
3 (3). Any party who recovers damages in a judicial proceeding
4 brought under this subsection may also recover from the
5 mortgagee the reasonable expenses of litigation, including
6 reasonable attorney's fees.

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

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

1 (g) The order confirming the sale shall include,
2 notwithstanding any previous orders awarding possession during
3 the pendency of the foreclosure, an award to the purchaser of
4 possession of the mortgaged real estate, as of the date 30 days
5 after the entry of the order, against the parties to the
6 foreclosure whose interests have been terminated.

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

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

1 (Source: P.A. 95-826, eff. 8-14-08.)

2 Section 99. Effective date. This Act takes effect upon
3 becoming law.".