



Rep. André M. Thapedi

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09600HB2005ham003

LRB096 05442 AJ0 24713 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 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 such party shall guarantee or secure by
15 bond a bid equal to the successful bid at the prior sale,
16 unless the party seeking to set aside the sale is the
17 mortgagor, the real estate sold at the sale is residential real
18 estate, and the mortgagor occupies the residential real estate
19 at the time the motion is filed. In that event, no guarantee or
20 bond shall be required of the mortgagor. Any subsequent sale is
21 subject to the same notice requirement as the original sale.

22 (d) Validity of Sale. Except as provided in subsection (c)
23 of Section 15-1508, no sale under this Article shall be held
24 invalid or be set aside because of any defect in the notice
25 thereof or in the publication of the same, or in the
26 proceedings of the officer conducting the sale, except upon

1 good cause shown in a hearing pursuant to subsection (b) of
2 Section 15-1508. At any time after a sale has occurred, any
3 party entitled to notice under paragraph (3) of subsection (c)
4 of Section 15-1507 may recover from the mortgagee any damages
5 caused by the mortgagee's failure to comply with such paragraph
6 (3). Any party who recovers damages in a judicial proceeding
7 brought under this subsection may also recover from the
8 mortgagee the reasonable expenses of litigation, including
9 reasonable attorney's fees.

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

25 (f) Satisfaction. Upon confirmation of the sale, the
26 judgment stands satisfied to the extent of the sale price less

1 expenses and costs. If the order confirming the sale includes a
2 deficiency judgment, the judgment shall become a lien in the
3 manner of any other judgment for the payment of money.

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

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

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

1 provided an opportunity to be heard in the foreclosure
2 proceeding may be sought only by maintaining a proceeding under
3 Article 9 of this Code or subsection (h) of Section 15-1701.
4 (Source: P.A. 95-826, eff. 8-14-08.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.".