



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5735

Introduced 2/9/2010, by Rep. Deborah L. Graham

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1205.5 new	
735 ILCS 5/15-1504	from Ch. 110, par. 15-1504
735 ILCS 5/15-1506	from Ch. 110, par. 15-1506
735 ILCS 5/15-1508	from Ch. 110, par. 15-1508

Amends the Mortgage Foreclosure Article of the Code of Civil Procedure. Defines "loss mitigation" as a program or mechanism designed to maximize the opportunity for a mortgagor to retain ownership of the mortgaged real estate and cure delinquencies on his or her mortgage or for a mortgagor and mortgagee to mitigate losses that would result from foreclosure by using alternatives to foreclosure. Provides that a foreclosure complaint shall include a statement as to loss mitigation. Provides that a judgment of foreclosure shall include a finding by the court that the mortgagee has complied with applicable loss mitigation requirements or there are no applicable loss mitigation requirements, and provides that if the court finds that the mortgagee has not complied with applicable loss mitigation requirements, the court shall stay the matter until the court determines that the mortgagee has complied with those requirements. Adds failure by the mortgagee to fulfill applicable loss mitigation requirements as a condition under which the court shall not enter an order confirming a judicial sale.

LRB096 17949 AJ0 33317 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
5 changing Sections 15-1504, 15-1506, and 15-1508 and by adding
6 Section 15-1205.5 as follows:

7 (735 ILCS 5/15-1205.5 new)

8 Sec. 15-1205.5. Loss mitigation. "Loss mitigation" means a
9 program or mechanism designed to maximize the opportunity for a
10 mortgagor to retain ownership of the mortgaged real estate and
11 cure delinquencies on his or her mortgage or for a mortgagor
12 and mortgagee to mitigate losses that would result from
13 foreclosure by using alternatives to foreclosure. These
14 mechanisms include, but are not limited to, loan modification,
15 forbearance, partial claim, pre-foreclosure sale, and deed in
16 lieu of foreclosure.

17 (735 ILCS 5/15-1504) (from Ch. 110, par. 15-1504)

18 Sec. 15-1504. Pleadings and service.

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

21 (1) Plaintiff files this complaint to foreclose the
22 mortgage (or other conveyance in the nature of a mortgage)

1 (hereinafter called "mortgage") hereinafter described and
2 joins the following person as defendants: (here insert
3 names of all defendants).

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

6 (3) Information concerning mortgage:

7 (A) Nature of instrument: (here insert whether a
8 mortgage, trust deed or other instrument in the nature
9 of a mortgage, etc.)

10 (B) Date of mortgage:

11 (C) Name of mortgagor:

12 (D) Name of mortgagee:

13 (E) Date and place of recording:

14 (F) Identification of recording: (here insert book
15 and page number or document number)

16 (G) Interest subject to the mortgage: (here insert
17 whether fee simple, estate for years, undivided
18 interest, etc.)

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

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

24 (J) Statement as to defaults, including, but not
25 necessarily limited to, date of default, current
26 unpaid principal balance, per diem interest accruing,

1 and any further information concerning the default:

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

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

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

8 (N) Capacity in which plaintiff brings this
9 foreclosure (here indicate whether plaintiff is the
10 legal holder of the indebtedness, a pledgee, an agent,
11 the trustee under a trust deed or otherwise, as
12 appropriate):

13 (O) Statement as to loss mitigation that: (i)
14 identifies which federal, State, or local loss mitigation
15 requirements, including, but not limited to, those
16 pertaining to Federal Housing Administration-insured and
17 Veterans Administration-insured mortgage loans and those
18 pertaining to the federal Making Home Affordable program,
19 apply to the subject mortgage and sets forth specific facts
20 demonstrating mortgagee's compliance with such
21 requirements; or (ii) affirms that no loss mitigation
22 requirements apply to the subject mortgage:

23 (P) ~~(O)~~ Facts in support of redemption period
24 shorter than the longer of (i) 7 months from the date
25 the mortgagor or, if more than one, all the mortgagors

26 (I) have been served with summons or by publication or

1 (II) have otherwise submitted to the jurisdiction of
2 the court, or (ii) 3 months from the entry of the
3 judgment of foreclosure, if sought (here indicate
4 whether based upon the real estate not being
5 residential, abandonment, or real estate value less
6 than 90% of amount owed, etc.):

7 (Q) ~~(P)~~ Statement that the right of redemption has
8 been waived by all owners of redemption, if applicable:

9 (R) ~~(Q)~~ Facts in support of request for attorneys'
10 fees and of costs and expenses, if applicable:

11 (S) ~~(R)~~ Facts in support of a request for
12 appointment of mortgagee in possession or for
13 appointment of receiver, and identity of such
14 receiver, if sought:

15 (T) ~~(S)~~ Offer to mortgagor in accordance with
16 Section 15-1402 to accept title to the real estate in
17 satisfaction of all indebtedness and obligations
18 secured by the mortgage without judicial sale, if
19 sought:

20 (U) ~~(T)~~ Name or names of defendants whose right to
21 possess the mortgaged real estate, after the
22 confirmation of a foreclosure sale, is sought to be
23 terminated and, if not elsewhere stated, the facts in
24 support thereof:

25 REQUEST FOR RELIEF

1 Plaintiff requests:

2 (i) A judgment of foreclosure and sale.

3 (ii) An order granting a shortened redemption period,
4 if sought.

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

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

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

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

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

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

22 (1) on the date indicated the obligor of the
23 indebtedness or other obligations secured by the mortgage
24 was justly indebted in the amount of the indicated original
25 indebtedness to the original mortgagee or payee of the
26 mortgage note;

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

4 (3) that the mortgagor was at the date indicated an
5 owner of the interest in the real estate described in the
6 complaint and that as of that date made, executed and
7 delivered the mortgage as security for the note or other
8 obligations;

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

13 (5) that defaults occurred as indicated;

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

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

23 (8) that by reason of the defaults alleged, if the
24 indebtedness has not matured by its terms, the same has
25 become due by the exercise, by the plaintiff or other
26 persons having such power, of a right or power to declare

1 immediately due and payable the whole of all indebtedness
2 secured by the mortgage;

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

6 (10) that any and all periods of grace or other period
7 of time allowed for the performance of the covenants or
8 conditions claimed to be breached or for the curing of any
9 breaches have expired;

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

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

1 Section 15-1701 or by separate action under Article 9 of
2 this Code.

3 (d) Request for Fees and Costs. A statement in the
4 complaint that plaintiff seeks the inclusion of attorneys' fees
5 and of costs and expenses shall be deemed and construed to
6 include allegations that:

7 (1) plaintiff has been compelled to employ and retain
8 attorneys to prepare and file the complaint and to
9 represent and advise the plaintiff in the foreclosure of
10 the mortgage and the plaintiff will thereby become liable
11 for the usual, reasonable and customary fees of the
12 attorneys in that behalf;

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

23 (3) that under the terms of the mortgage, all such
24 advances, costs, attorneys' fees and other fees, expenses
25 and disbursements are made a lien upon the mortgaged real
26 estate and the plaintiff is entitled to recover all such

1 advances, costs, attorneys' fees, expenses and
2 disbursements, together with interest on all advances at
3 the rate provided in the mortgage, or, if no rate is
4 provided therein, at the statutory judgment rate, from the
5 date on which such advances are made;

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

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

22 (6) that under the terms of the mortgage, any money so
23 paid or expended will become an additional indebtedness
24 secured by the mortgage and will bear interest from the
25 date such monies are advanced at the rate provided in the
26 mortgage, or, if no rate is provided, at the statutory

1 judgment rate.

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

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

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

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

19 (4) that in the event the plaintiff is a purchaser of
20 the mortgaged real estate at such sale, the plaintiff may
21 offset against the purchase price of such real estate the
22 amounts due under the judgment of foreclosure and order
23 confirming the sale;

24 (5) that in the event of such sale and the failure of
25 any person entitled thereto to redeem prior to such sale
26 pursuant to this Article, the defendants made parties to

1 the foreclosure in accordance with this Article, and all
2 nonrecord claimants given notice of the foreclosure in
3 accordance with this Article, and all persons claiming by,
4 through or under them, and each and any and all of them,
5 may be forever barred and foreclosed of any right, title,
6 interest, claim, lien, or right to redeem in and to the
7 mortgaged real estate; and

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

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

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

23 (h) Answers by Parties. Any party may assert its interest
24 by counterclaim and such counterclaim may at the option of that
25 party stand in lieu of answer to the complaint for foreclosure
26 and all counter complaints previously or thereafter filed in

1 the foreclosure. Any such counterclaim shall be deemed to
2 constitute a statement that the counter claimant does not have
3 sufficient knowledge to form a belief as to the truth or
4 falsity of the allegations of the complaint and all other
5 counterclaims, except to the extent that the counterclaim
6 admits or specifically denies such allegations.

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

8 (735 ILCS 5/15-1506) (from Ch. 110, par. 15-1506)

9 Sec. 15-1506. Judgment. (a) Evidence. In the trial of a
10 foreclosure, the evidence to support the allegations of the
11 complaint shall be taken in open court, except:

12 (1) where an allegation of fact in the complaint is not
13 denied by a party's verified answer or verified counterclaim,
14 or where a party pursuant to subsection (b) of Section 2-610 of
15 the Code of Civil Procedure states, or is deemed to have
16 stated, in its pleading that it has no knowledge of such
17 allegation sufficient to form a belief and attaches the
18 required affidavit, a sworn verification of the complaint or a
19 separate affidavit setting forth such fact is sufficient
20 evidence thereof against such party and no further evidence of
21 such fact shall be required; and

22 (2) where all the allegations of fact in the complaint have
23 been proved by verification of the complaint or affidavit, the
24 court upon motion supported by an affidavit stating the amount
25 which is due the mortgagee, shall enter a judgment of

1 foreclosure as requested in the complaint.

2 (b) Instruments. In all cases the evidence of the
3 indebtedness and the mortgage foreclosed shall be exhibited to
4 the court and appropriately marked, and copies thereof shall be
5 filed with the court.

6 (c) Summary and Default Judgments. Nothing in this Section
7 15-1506 shall prevent a party from obtaining a summary or
8 default judgment authorized by Article II of the Code of Civil
9 Procedure.

10 (d) Notice of Entry of Default. When any judgment in a
11 foreclosure is entered by default, notice of such judgment
12 shall be given in accordance with Section 2-1302 of the Code of
13 Civil Procedure.

14 (e) Matters Required in Judgment. A judgment of foreclosure
15 shall include the last date for redemption and all rulings of
16 the court entered with respect to each request for relief set
17 forth in the complaint. The omission of the date for redemption
18 shall not extend the time for redemption or impair the validity
19 of the judgment. The judgment shall also include a finding by
20 the court that: (i) the mortgagee has complied with any
21 applicable federal, State, or local loss mitigation
22 requirements; or (ii) there are no applicable federal, State,
23 or local loss mitigation requirements. If the court determines
24 that the mortgagee has not complied with applicable loss
25 mitigation requirements, the court shall stay the matter until
26 the court determines that the mortgagee has complied with those

1 requirements.

2 (f) Special Matters in Judgment. Without limiting the
3 general authority and powers of the court, special matters may
4 be included in the judgment of foreclosure if sought by a party
5 in the complaint or by separate motion. Such matters may
6 include, without limitation:

7 (1) a manner of sale other than public auction;

8 (2) a sale by sealed bid;

9 (3) an official or other person who shall be the officer to
10 conduct the sale other than the one customarily designated by
11 the court;

12 (4) provisions for non-exclusive broker listings or
13 designating a duly licensed real estate broker nominated by one
14 of the parties to exclusively list the real estate for sale;

15 (5) the fees or commissions to be paid out of the sale
16 proceeds to the listing or other duly licensed broker, if any,
17 who shall have procured the accepted bid;

18 (6) the fees to be paid out of the sale proceeds to an
19 auctioneer, if any, who shall have been authorized to conduct a
20 public auction sale;

21 (7) whether and in what manner and with what content signs
22 shall be posted on the real estate;

23 (8) a particular time and place at which such bids shall be
24 received;

25 (9) a particular newspaper or newspapers in which notice of
26 sale shall be published;

1 (10) the format for the advertising of such sale, including
2 the size, content and format of such advertising, and
3 additional advertising of such sale;

4 (11) matters or exceptions to which title in the real
5 estate may be subject at the sale;

6 (12) a requirement that title insurance in a specified form
7 be provided to a purchaser at the sale, and who shall pay for
8 such insurance;

9 (13) whether and to what extent bids with mortgage or other
10 contingencies will be allowed;

11 (14) such other matters as approved by the court to ensure
12 sale of the real estate for the most commercially favorable
13 price for the type of real estate involved.

14 (g) Agreement of the Parties. If all of the parties agree
15 in writing on the minimum price and that the real estate may be
16 sold to the first person who offers in writing to purchase the
17 real estate for such price, and on such other commercially
18 reasonable terms and conditions as the parties may agree, then
19 the court shall order the real estate to be sold on such terms,
20 subject to confirmation of the sale in accordance with Section
21 15-1508.

22 (h) Postponement of Proving Priority. With the approval of
23 the court prior to the entry of the judgment of foreclosure, a
24 party claiming an interest in the proceeds of the sale of the
25 mortgaged real estate may defer proving the priority of such
26 interest until the hearing to confirm the sale.

1 (i) Effect of Judgment and Lien. (1) Upon the entry of the
2 judgment of foreclosure, all rights of a party in the
3 foreclosure against the mortgagor provided for in the judgment
4 of foreclosure or this Article shall be secured by a lien on
5 the mortgaged real estate, which lien shall have the same
6 priority as the claim to which the judgment relates and shall
7 be terminated upon confirmation of a judicial sale in
8 accordance with this Article.

9 (2) Upon the entry of the judgment of foreclosure, the
10 rights in the real estate subject to the judgment of
11 foreclosure of (i) all persons made a party in the foreclosure
12 and (ii) all nonrecord claimants given notice in accordance
13 with paragraph (2) of subsection (c) of Section 15-1502, shall
14 be solely as provided for in the judgment of foreclosure and in
15 this Article.

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

17 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

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

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

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

1 required in accordance with subsection (c) of Section 15-1507
2 was not given, (ii) the terms of sale were unconscionable,
3 (iii) the sale was conducted fraudulently, ~~or~~ (iv) the
4 mortgagee has not fulfilled applicable federal, State, or local
5 loss mitigation requirements, if applicable, or (v) ~~that~~
6 justice was otherwise not done, the court shall then enter an
7 order confirming the sale. The confirmation order shall include
8 a name, address, and telephone number of the holder of the
9 certificate of sale or deed issued pursuant to that certificate
10 or, if no certificate or deed was issued, the purchaser, whom a
11 municipality or county may contact with concerns about the real
12 estate. The confirmation order may also:

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

18 (2) provide for a personal judgment against any party
19 for a deficiency; and

20 (3) determine the priority of the judgments of parties
21 who deferred proving the priority pursuant to subsection
22 (h) of Section 15-1506, but the court shall not defer
23 confirming the sale pending the determination of such
24 priority.

25 (b-5) Notice with respect to residential real estate. With
26 respect to residential real estate, the notice required under

1 subsection (b) of this Section shall be sent to the mortgagor
2 even if the mortgagor has previously been held in default. In
3 the event the mortgagor has filed an appearance, the notice
4 shall be sent to the address indicated on the appearance. In
5 all other cases, the notice shall be sent to the mortgagor at
6 the common address of the foreclosed property. The notice shall
7 be sent by first class mail. Unless the right to possession has
8 been previously terminated by the court, the notice shall
9 include the following language in 12-point boldface
10 capitalized type:

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

15 (b-10) Notice of confirmation order sent to municipality or
16 county. A copy of the confirmation order required under
17 subsection (b) shall be sent to the municipality in which the
18 foreclosed property is located, or to the county within the
19 boundary of which the foreclosed property is located if the
20 foreclosed property is located in an unincorporated territory.
21 A municipality or county must clearly publish on its website a
22 single address to which such notice shall be sent. If a
23 municipality or county does not maintain a website, then the
24 municipality or county must publicly post in its main office a
25 single address to which such notice shall be sent. In the event
26 that a municipality or county has not complied with the

1 publication requirement in this subsection (b-10), then such
2 notice to the municipality or county shall be provided pursuant
3 to Section 2-211 of the Code of Civil Procedure.

4 (c) Failure to Give Notice. If any sale is held without
5 compliance with subsection (c) of Section 15-1507 of this
6 Article, any party entitled to the notice provided for in
7 paragraph (3) of that subsection (c) who was not so notified
8 may, by motion supported by affidavit made prior to
9 confirmation of such sale, ask the court which entered the
10 judgment to set aside the sale. Any such party shall guarantee
11 or secure by bond a bid equal to the successful bid at the
12 prior sale, unless the party seeking to set aside the sale is
13 the mortgagor, the real estate sold at the sale is residential
14 real estate, and the mortgagor occupies the residential real
15 estate at the time the motion is filed. In that event, no
16 guarantee or bond shall be required of the mortgagor. Any
17 subsequent sale is subject to the same notice requirement as
18 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; 96-265, eff. 8-11-09;
2 96-856, eff. 3-1-10.)