



Rep. Deborah L. Graham

Filed: 3/23/2010

09600HB5735ham002

LRB096 17949 AJ0 39499 a

1 AMENDMENT TO HOUSE BILL 5735

2 AMENDMENT NO. _____. Amend House Bill 5735, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Code of Civil Procedure is amended by
6 changing Section 15-1508 as follows:

7 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

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

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

12 (b) Hearing. Upon motion and notice in accordance with
13 court rules applicable to motions generally, which motion shall
14 not be made prior to sale, the court shall conduct a hearing to
15 confirm the sale. Unless the court finds that (i) a notice
16 required in accordance with subsection (c) of Section 15-1507

1 was not given, (ii) the terms of sale were unconscionable,
2 (iii) the sale was conducted fraudulently or (iv) that justice
3 was otherwise not done, the court shall then enter an order
4 confirming the sale. The confirmation order shall include a
5 name, address, and telephone number of the holder of the
6 certificate of sale or deed issued pursuant to that certificate
7 or, if no certificate or deed was issued, the purchaser, whom a
8 municipality or county may contact with concerns about the real
9 estate. The confirmation order may also:

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

15 (2) provide for a personal judgment against any party
16 for a deficiency; and

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

22 (b-5) Notice with respect to residential real estate. With
23 respect to residential real estate, the notice required under
24 subsection (b) of this Section shall be sent to the mortgagor
25 even if the mortgagor has previously been held in default. In
26 the event the mortgagor has filed an appearance, the notice

1 shall be sent to the address indicated on the appearance. In
2 all other cases, the notice shall be sent to the mortgagor at
3 the common address of the foreclosed property. The notice shall
4 be sent by first class mail. Unless the right to possession has
5 been previously terminated by the court, the notice shall
6 include the following language in 12-point boldface
7 capitalized type:

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

12 (b-10) Notice of confirmation order sent to municipality or
13 county. A copy of the confirmation order required under
14 subsection (b) shall be sent to the municipality in which the
15 foreclosed property is located, or to the county within the
16 boundary of which the foreclosed property is located if the
17 foreclosed property is located in an unincorporated territory.
18 A municipality or county must clearly publish on its website a
19 single address to which such notice shall be sent. If a
20 municipality or county does not maintain a website, then the
21 municipality or county must publicly post in its main office a
22 single address to which such notice shall be sent. In the event
23 that a municipality or county has not complied with the
24 publication requirement in this subsection (b-10), then such
25 notice to the municipality or county shall be provided pursuant
26 to Section 2-211 of the Code of Civil Procedure.

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

16 (d) Validity of Sale. Except as provided in subsection (c)
17 of Section 15-1508, no sale under this Article shall be held
18 invalid or be set aside because of any defect in the notice
19 thereof or in the publication of the same, or in the
20 proceedings of the officer conducting the sale, except upon
21 good cause shown in a hearing pursuant to subsection (b) of
22 Section 15-1508. At any time after a sale has occurred, any
23 party entitled to notice under paragraph (3) of subsection (c)
24 of Section 15-1507 may recover from the mortgagee any damages
25 caused by the mortgagee's failure to comply with such paragraph
26 (3). Any party who recovers damages in a judicial proceeding

1 brought under this subsection may also recover from the
2 mortgagee the reasonable expenses of litigation, including
3 reasonable attorney's fees.

4 (d-5) Making Home Affordable Program. The court that
5 entered the judgment shall set aside a sale held pursuant to
6 Section 15-1507, upon motion of the mortgagor at any time prior
7 to the confirmation of the sale, if the mortgagor proves by a
8 preponderance of the evidence that (i) the mortgagor has
9 applied for assistance under the Making Home Affordable Program
10 established by the United States Department of the Treasury
11 pursuant to the Emergency Economic Stabilization Act of 2008,
12 as amended by the American Recovery and Reinvestment Act of
13 2009, and (ii) the mortgaged real estate was sold in material
14 violation of the program's requirements for proceeding to a
15 judicial sale. The provisions of this subsection (d-5), except
16 for this sentence, shall become inoperative on January 1, 2013
17 for all actions filed under this Article after December 31,
18 2012, in which the mortgagor did not apply for assistance under
19 the Making Home Affordable Program on or before December 31,
20 2012.

21 (e) Deficiency Judgment. In any order confirming a sale
22 pursuant to the judgment of foreclosure, the court shall also
23 enter a personal judgment for deficiency against any party (i)
24 if otherwise authorized and (ii) to the extent requested in the
25 complaint and proven upon presentation of the report of sale in
26 accordance with Section 15-1508. Except as otherwise provided

1 in this Article, a judgment may be entered for any balance of
2 money that may be found due to the plaintiff, over and above
3 the proceeds of the sale or sales, and enforcement may be had
4 for the collection of such balance, the same as when the
5 judgment is solely for the payment of money. Such judgment may
6 be entered, or enforcement had, only in cases where personal
7 service has been had upon the persons personally liable for the
8 mortgage indebtedness, unless they have entered their
9 appearance in the foreclosure action.

10 (f) Satisfaction. Upon confirmation of the sale, the
11 judgment stands satisfied to the extent of the sale price less
12 expenses and costs. If the order confirming the sale includes a
13 deficiency judgment, the judgment shall become a lien in the
14 manner of any other judgment for the payment of money.

15 (g) The order confirming the sale shall include,
16 notwithstanding any previous orders awarding possession during
17 the pendency of the foreclosure, an award to the purchaser of
18 possession of the mortgaged real estate, as of the date 30 days
19 after the entry of the order, against the parties to the
20 foreclosure whose interests have been terminated.

21 An order of possession authorizing the removal of a person
22 from possession of the mortgaged real estate shall be entered
23 and enforced only against those persons personally named as
24 individuals in the complaint or the petition under subsection
25 (h) of Section 15-1701 and in the order of possession and shall
26 not be entered and enforced against any person who is only

1 generically described as an unknown owner or nonrecord claimant
2 or by another generic designation in the complaint.

3 Notwithstanding the preceding paragraph, the failure to
4 personally name, include, or seek an award of possession of the
5 mortgaged real estate against a person in the confirmation
6 order shall not abrogate any right that the purchaser may have
7 to possession of the mortgaged real estate and to maintain a
8 proceeding against that person for possession under Article 9
9 of this Code or subsection (h) of Section 15-1701; and
10 possession against a person who (1) has not been personally
11 named as a party to the foreclosure and (2) has not been
12 provided an opportunity to be heard in the foreclosure
13 proceeding may be sought only by maintaining a proceeding under
14 Article 9 of this Code or subsection (h) of Section 15-1701.

15 (Source: P.A. 95-826, eff. 8-14-08; 96-265, eff. 8-11-09;
16 96-856, eff. 3-1-10.)

17 Section 99. Effective date. This Act takes effect upon
18 becoming law."