



Sen. Jacqueline Y. Collins

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1 AMENDMENT TO SENATE BILL 3067

2 AMENDMENT NO. _____. Amend Senate Bill 3067 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 adding Section 15-1502.10 and changing Sections 15-1504 and
6 15-1506 as follows:

7 (735 ILCS 5/15-1502.10 new)

8 Sec. 15-1502.10. Condition precedent to foreclosure on
9 residential real estate.

10 (a) This Section applies only to a foreclosure of property
11 that is residential real estate.

12 (b) As a condition precedent to initiating foreclosure
13 pursuant to this Section, the plaintiff shall (i) comply with
14 the requirements of any federal, State, local, or contractual
15 loss mitigation programs that apply to the subject mortgage,
16 including, but not limited to, those requirements pertaining to

1 the federal Home Affordable Modification Program of the Making
2 Home Affordable initiative of the Secretary of the Treasury,
3 authorized under the Emergency Economic Stabilization Act of
4 2008 (Public Law 110-343) (HAMP); and (ii) if no federal,
5 State, local, or contractual loss mitigation program applies to
6 the subject mortgage, or if review under applicable federal,
7 State, local, or contractual loss mitigation programs fails to
8 result in a modification of the subject mortgage, review the
9 subject mortgage for a loan modification under every other loss
10 mitigation program utilized by plaintiff.

11 (735 ILCS 5/15-1504) (from Ch. 110, par. 15-1504)
12 Sec. 15-1504. Pleadings and service.

13 (a) Foundational requirements for affidavits. Every
14 affidavit filed in a foreclosure proceeding shall include a
15 detailed description of the basis of the affiant's claimed
16 personal knowledge of the facts set forth in the affidavit,
17 including:

18 (1) a statement of which specific data systems the
19 affiant queried in preparing the affidavit, if the affiant
20 queried data systems in preparing the affidavit;

21 (2) a detailed factual statement of the basis of the
22 affiant's belief that each data system identified
23 contained accurate information; and

24 (3) if applicable, a detailed description of the basis
25 of the affiant's statement that the attached mortgage and

1 note are true and correct.

2 (b) Lost note affidavit. A copy of the mortgage and note
3 secured thereby shall be attached to the foreclosure complaint.

4 If any note required to be attached to a complaint filed
5 pursuant to this subsection (b) cannot be located for filing as
6 an exhibit, the moving party shall file an affidavit stating
7 the following:

8 (1) the reasonable efforts made by the moving party to
9 obtain the note; and

10 (2) a description of the terms of the note and any
11 riders attached thereto, including:

12 (A) date of execution;

13 (B) parties;

14 (C) amount;

15 (D) interest rate and, if applicable, the margin
16 used to calculate the interest rate and the initial
17 date of reset;

18 (E) if applicable, the existence of a prepayment
19 penalty; and

20 (F) if applicable, the existence of a balloon
21 payment.

22 Nothing in this subsection (b) shall be construed in
23 derogation of the parties' rights established under Section
24 3-309 of the Uniform Commercial Code or any similar rights
25 established under Illinois law.

26 (c) Loss mitigation affidavit. Every foreclosure complaint

1 shall include, as an attachment, an affidavit stating:

2 (1) Which federal, State, local, or contractual loss
3 mitigation programs apply to the subject mortgage.

4 (2) If applicable, that plaintiff has reviewed the
5 mortgage loan for modification under the Home Affordable
6 Modification Program of the Making Home Affordable
7 initiative of the Secretary of the Treasury, authorized
8 under the Emergency Economic Stabilization Act of 2008
9 (Public Law 110-343) (HAMP), the results of that review
10 (including all borrower-related and mortgage-related input
11 data used in any net present value analyses and any other
12 information required to be provided to the mortgagor under
13 the supplemental directives and other guidelines for
14 HAMP), a record of all HAMP-related communications with the
15 borrower, written or verbal, and, if applicable, the
16 reasons that plaintiff's review resulted in a denial of a
17 HAMP modification, including, as an attachment, a copy of
18 the written Non-Approval Notice provided to the mortgagor,
19 as required by U.S. Department of Treasury Supplemental
20 Directive 09-08.

21 (3) If applicable, that plaintiff has not reviewed the
22 mortgage loan for a HAMP modification, including the
23 reasons that plaintiff did not conduct the review.

24 (4) That plaintiff has complied with the requirements
25 of any other federal, State, local, or contractual loss
26 mitigation programs that apply to the subject mortgage and

1 the results of any analysis conducted under those programs.

2 (5) That plaintiff has complied with the requirements
3 of Section 15-1502.5, the results of those efforts, and, if
4 applicable, the reasons that plaintiff's efforts did not
5 result in an agreed sustainable loan workout plan.

6 (6) A detailed description of all additional loss
7 mitigation efforts made by plaintiff and the results
8 thereof, including efforts to avoid foreclosure through a
9 non-HAMP loan modification program, short sale, deed in
10 lieu of foreclosure, or other alternative that is intended
11 to simplify the mortgagor's relinquishment of ownership of
12 the property, and, if applicable, an explanation for the
13 denial of a loan modification or other loss mitigation.

14 (d) ~~(a)~~ Form of Complaint. A foreclosure complaint may be
15 in substantially the following form:

16 (1) Plaintiff files this complaint to foreclose the
17 mortgage (or other conveyance in the nature of a mortgage)
18 (hereinafter called "mortgage") hereinafter described and
19 joins the following person as defendants: (here insert
20 names of all defendants).

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

23 (3) Information concerning mortgage:

24 (A) Nature of instrument: (here insert whether a
25 mortgage, trust deed or other instrument in the nature
26 of a mortgage, etc.)

1 (B) Date of mortgage:

2 (C) Name of mortgagor:

3 (D) Name of current mortgagee, and, if different,
4 name of original mortgagee:

5 (E) Date and place of recording:

6 (F) Identification of recording: (here insert book
7 and page number or document number)

8 (G) Interest subject to the mortgage: (here insert
9 whether fee simple, estate for years, undivided
10 interest, etc.)

11 (H) Amount of original indebtedness, including an
12 itemization of subsequent advances, fees, or
13 additional charges, including force-placed insurance,
14 made under the mortgage stating the purpose, payee,
15 amount, and date of each:

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

19 (J) Statement as to defaults, including, but not
20 necessarily limited to, date of default, current
21 unpaid principal balance, per diem interest accruing,
22 and any further information concerning the default:

23 (K) Each and every borrower payment made in the
24 last 36 months, including amount and date, whether such
25 payment was accepted or returned to the mortgagor, and
26 how the payment was applied to the borrower's account

1 (e.g., applied to principal or interest, or placed in
2 suspense account):

3 (L) ~~(K)~~ Name of present owner of the real estate:

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

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

9 (O) ~~(N)~~ Capacity in which plaintiff brings this
10 foreclosure (here indicate whether plaintiff is the
11 legal holder of the indebtedness, a pledgee, an agent,
12 the trustee under a trust deed or otherwise, as
13 appropriate); attached as Exhibit "C" are copies of all
14 documents, including endorsements, assignments, or
15 transfers, that demonstrate that plaintiff is legally
16 entitled to bring the foreclosure:

17 (P) ~~(O)~~ Facts in support of redemption period
18 shorter than the longer of (i) 7 months from the date
19 the mortgagor or, if more than one, all the mortgagors
20 (I) have been served with summons or by publication or
21 (II) have otherwise submitted to the jurisdiction of
22 the court, or (ii) 3 months from the entry of the
23 judgment of foreclosure, if sought (here indicate
24 whether based upon the real estate not being
25 residential, abandonment, or real estate value less
26 than 90% of amount owed, etc.):

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

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

5 (S) ~~(R)~~ Facts in support of a request for
 6 appointment of mortgagee in possession or for
 7 appointment of receiver, and identity of such
 8 receiver, if sought:

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

14 (U) ~~(T)~~ Name or names of defendants whose right to
 15 possess the mortgaged real estate, after the
 16 confirmation of a foreclosure sale, is sought to be
 17 terminated and, if not elsewhere stated, the facts in
 18 support thereof:

19 (V) Attached as Exhibit "D" is the Lost Mitigation
 20 Affidavit, as required by subsection (c) of this
 21 Section.

22 REQUEST FOR RELIEF

23 Plaintiff requests:

- 24 (i) A judgment of foreclosure and sale.
- 25 (ii) An order granting a shortened redemption period,

1 if sought.

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

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

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

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

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

16 (f) ~~(e)~~ Allegations. The statements contained in a
17 complaint in the form set forth in subsection (a) of Section
18 15-1504 are deemed and construed to include allegations as
19 follows:

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

25 (2) that the exhibits attached are true and correct
26 copies of the mortgage and note and are incorporated and

1 made a part of the complaint by express reference;

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

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

11 (5) that defaults occurred as indicated;

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

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

21 (8) that by reason of the defaults alleged, if the
22 indebtedness has not matured by its terms, the same has
23 become due by the exercise, by the plaintiff or other
24 persons having such power, of a right or power to declare
25 immediately due and payable the whole of all indebtedness
26 secured by the mortgage;

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

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

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

15 (12) that, upon confirmation of the sale, the holder of
16 the certificate of sale or deed issued pursuant to that
17 certificate or, if no certificate or deed was issued, the
18 purchaser at the sale will be entitled to full possession
19 of the mortgaged real estate against the parties named in
20 clause (T) of paragraph (3) of subsection (a) of Section
21 15-1504 or elsewhere to the same effect; the omission of
22 any party indicates that plaintiff will not seek a
23 possessory order in the order confirming sale unless the
24 request is subsequently made under subsection (h) of
25 Section 15-1701 or by separate action under Article 9 of
26 this Code.

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

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

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

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

1 the rate provided in the mortgage, or, if no rate is
2 provided therein, at the statutory judgment rate, from the
3 date on which such advances are made;

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

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

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

26 (h) ~~(e)~~ Request for Foreclosure. The request for

1 foreclosure is deemed and construed to mean that the plaintiff
2 requests that:

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

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

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

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

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

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

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

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

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

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

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

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

7 (735 ILCS 5/15-1506) (from Ch. 110, par. 15-1506)

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

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

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

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

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

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

13 (e) Matters Required in Judgment. A judgment of foreclosure
14 shall include the last date for redemption and all rulings of
15 the court entered with respect to each request for relief set
16 forth in the complaint. If the plaintiff in the action is not
17 the original mortgagee, a judgment of foreclosure shall make
18 specific findings of fact concerning the capacity in which the
19 plaintiff brought the foreclosure action and a determination of
20 whether this capacity legally entitles the plaintiff to bring
21 the action. The judgment shall also include a finding by the
22 court that: (i) the plaintiff has complied with any applicable
23 federal, State, or local loss mitigation requirements; or (ii)
24 there are no applicable federal, State, or local loss
25 mitigation requirements. If the court determines that the
26 plaintiff has not complied with applicable loss mitigation

1 requirements, the court shall stay the matter until the court
2 determines that the plaintiff has complied with those
3 requirements. The omission of the date for redemption shall not
4 extend the time for redemption or impair the validity of the
5 judgment.

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

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

12 (2) a sale by sealed bid;

13 (3) an official or other person who shall be the officer to
14 conduct the sale other than the one customarily designated by
15 the court;

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

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

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

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

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

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

5 (10) the format for the advertising of such sale, including
6 the size, content and format of such advertising, and
7 additional advertising of such sale;

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

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

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

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

18 (g) Agreement of the Parties. If all of the parties agree
19 in writing on the minimum price and that the real estate may be
20 sold to the first person who offers in writing to purchase the
21 real estate for such price, and on such other commercially
22 reasonable terms and conditions as the parties may agree, then
23 the court shall order the real estate to be sold on such terms,
24 subject to confirmation of the sale in accordance with Section
25 15-1508.

26 (h) Postponement of Proving Priority. With the approval of

1 the court prior to the entry of the judgment of foreclosure, a
2 party claiming an interest in the proceeds of the sale of the
3 mortgaged real estate may defer proving the priority of such
4 interest until the hearing to confirm the sale.

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

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

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

21 Section 99. Effective date. This Act takes effect upon
22 becoming law."