



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3962

Introduced 11/4/2010, by Sen. Rickey R. Hendon

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1110 new

Amends the Code of Civil Procedure. Provides for a moratorium stay on all pending residential real estate mortgage foreclosures filed by lending institutions, subject to a review by the Attorney General of the practices and procedures of each lending institution to determine whether the lending institution properly uses genuine, accurate, properly executed, and appropriate documents that are properly processed, include full and accurate accountings, and are in full compliance with applicable federal and State laws and regulations. Provides definitions. Creates within the Office of the Attorney General, the Office for the Monitoring of Residential Real Estate Mortgage Foreclosures headed up by the Mortgage Foreclosure Monitor, appointed by the Attorney General. Provides that the Attorney General will have the power to: administer this program; issue reports about lending institutions; make recommendations to the General Assembly; obtain necessary documents, subpoena documents, and engage in related activities. Provides that any delay caused by this process shall toll any statutory or contractual time requirements. Effective immediately.

LRB096 24065 AJO 43482 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 adding
5 Section 15-1110 as follows:

6 (735 ILCS 5/15-1110 new)

7 Sec. 15-1110. Residential real estate foreclosure
8 moratorium.

9 (a) Findings. The General Assembly finds that:

10 (1) The significant number of residential real estate
11 foreclosures in Illinois in recent years have resulted in
12 serious, deleterious effects upon the individuals and
13 families whose residences were in foreclosure, the value of
14 residential properties that are not in foreclosure, and the
15 overall Illinois economy.

16 (2) The existence and use of insufficient or false
17 documents in mortgage foreclosures is an abuse against
18 mortgagors perpetrated by lending institutions and other
19 mortgage holders to foreclose on mortgages and this abuse
20 exacerbated the harm done to individuals and families
21 through foreclosures.

22 (3) The most effective way to make certain that no
23 other residential real estate is improperly foreclosed

1 upon in Illinois is for there to be a moratorium on
2 foreclosures and to provide for a review of the practices
3 and procedures employed by lending institutions that have
4 pending mortgage foreclosure actions and that have
5 foreclosure actions that are ready to be filed, to
6 determine whether the practices and procedures employed by
7 those lending institutions properly use genuine, accurate,
8 properly executed, and appropriate documents that are
9 properly processed, include full and accurate accountings,
10 and are in full compliance with all applicable federal and
11 State laws and regulations.

12 (b) Definitions. For purposes of this Section:

13 "Documents" means all pleadings, motions, court
14 documents, mortgages, mortgage notes, lien documents,
15 calculations, accountings, appraisals, papers, or data,
16 whether maintained on paper or in an electronic format.

17 "Foreclosure" means a mortgage foreclosure action to
18 foreclose on residential real estate.

19 "Monitor" means the Mortgage Foreclosure Monitor
20 position created by this Section.

21 "Lending institution" means any bank, bank holding
22 company, credit union, trust company, savings bank, national
23 banking association, savings and loan association, building
24 and loan association, mortgage banker or other lending
25 institution which customarily provides service or otherwise
26 aids in the financing of home mortgages, or any holding company

1 for any of the foregoing. The term "lending institution"
2 includes any agent or assignee of the lending institution.

3 (c) Stay. Any action to foreclose a mortgage on residential
4 real estate filed by a lending institution that is pending on
5 the effective date of this amendatory Act of the 96th General
6 Assembly is automatically stayed and shall remain stayed until
7 the Attorney General issues a report concerning the lending
8 institution pursuant to this Section.

9 (d) Mortgage Foreclosure Monitor. There is created in the
10 Office of the Attorney General the Office for the Monitoring of
11 Residential Real Estate Mortgage Foreclosures. The Attorney
12 General shall appoint a Mortgage Foreclosure Monitor, who shall
13 be an attorney licensed to practice in Illinois. The Office for
14 the Monitoring of Residential Real Estate Mortgage
15 Foreclosures shall be comprised of the Mortgage Foreclosure
16 Monitor and such assistant attorneys general and other staff as
17 are deemed necessary by the Attorney General.

18 (e) Powers of Monitor. Through the Mortgage Foreclosure
19 Monitor, the Attorney General shall have the power:

20 (1) to establish and administer a program to review and
21 monitor pending residential real estate mortgage
22 foreclosure actions filed by lending institutions to
23 determine that the practices and procedures of the lending
24 institutions that filed the pending residential real
25 estate mortgage foreclosure actions were sufficient to:

26 (A) safeguard against premature filing of a

1 residential real estate mortgage foreclosure action;

2 (B) provide that all those mortgagors who have a
3 mortgage with that lending institution and who reside
4 in residential real estate receive all notices, forms,
5 documents, and opportunities provided by federal or
6 State law or regulation so as to avoid foreclosure and
7 to provide, after a foreclosure action is filed, to
8 those mortgagors full information about and access to
9 available legal assistance, mortgagor assistance, and
10 remedies in foreclosure;

11 (C) provide legitimate and accurate calculations
12 and accountings pertaining to fees, escrow accounts,
13 taxes, insurance, and any other monies of the lending
14 institution that are held by or owed to the lending
15 institution; and

16 (D) prevent fraud of any type that adversely
17 affects a mortgagor or the public interest.

18 (2) to issue a report about each lending institution
19 subject to this Section and its practices and procedures
20 concerning residential real estate mortgage foreclosures,
21 which shall include findings and conclusions that are based
22 on the monitor's review of that lending institution's
23 practices and procedures for residential real estate
24 mortgage foreclosures that:

25 (A) there appears no just cause to continue the
26 moratorium stay on mortgage foreclosure actions filed

1 by that lending institution or to prevent that lending
2 institution from continuing to file residential real
3 estate foreclosure actions; or

4 (B) the practices and procedures of the lending
5 institution were found to be deficient in specified
6 respects and what steps that lending institution must
7 take before a report described in subparagraph (A) can
8 be issued.

9 (3) to resolve disputes involving an adverse report
10 about a lending institution or in response to a request for
11 review initiated by the lending institution, by informally
12 resolving the dispute or by issuing a revised or subsequent
13 report; except that the Attorney General may not issue any
14 report that only concerns a specific matter in an
15 individual mortgage foreclosure action that has been
16 filed;

17 (4) to respond to informal inquiries made by the
18 public;

19 (5) to make recommendations to the General Assembly
20 concerning ways to improve the laws concerning the
21 residential real estate mortgage foreclosure process;

22 (6) to develop and make available on the Attorney
23 General's website or by other means an electronic database
24 of the reports issued about the lending institutions
25 subject to this Section;

26 (7) to promulgate rules and emergency rules to

1 implement these powers.

2 (f) Records. A lending institution must submit all
3 documents and records to the Attorney General in order for the
4 Attorney General to determine that generally the lending
5 institution:

6 (1) utilizes documents in foreclosures that are
7 genuine, accurate, properly executed, and appropriate;

8 (2) utilizes documents that are legally sufficient to
9 give rise to the rights or remedies being asserted by the
10 lending institution asserting those rights or remedies
11 pursuant to those documents; and

12 (3) utilizes calculations pertaining to escrow
13 accounts, taxes, insurance premiums, and any other monies
14 of or credits due to the mortgagor that are accurately made
15 or properly assessed by the lending institution, or its
16 agents or assigns.

17 (g) Record production. Any document or other matter
18 requested by the Attorney General, pursuant to this Section,
19 from any lending institution or any party in a foreclosure
20 action or a proposed foreclosure action shall be delivered to
21 the Attorney General within a reasonable time, but in no event
22 later than 28 days after the request is made by the Attorney
23 General.

24 (h) To accomplish the objectives and to carry out the
25 duties prescribed by this Section, the Monitor, in addition to
26 other powers conferred upon him or her by this Section, may

1 request that subpoenas be issued by the Attorney General in
2 accordance with the provisions of this Section. Service by the
3 Attorney General of any subpoena upon any person shall be made:

4 (1) personally by delivery of a duly executed copy
5 thereof to the person to be served, or in the case of a
6 public body, in the manner provided in Section 2-211; or

7 (2) by mailing by certified mail a duly executed copy
8 thereof to the person to be served at his or her last known
9 abode or, in the case of a public body, to its principal
10 place of business.

11 (i) If any person or public body fails or refuses to obey
12 any subpoena issued pursuant to this Section, the Attorney
13 General may file a complaint in the circuit court to:

14 (1) obtain compliance with the subpoena; and

15 (2) obtain such other relief as may be required.

16 (j) Effect of stay. On and after the effective date of this
17 amendatory Act of the 96th General Assembly, no action to
18 foreclose a mortgage on residential real estate may be filed by
19 a lending institution until the Attorney General has issued a
20 report that concludes that there is no just cause to continue
21 the moratorium stay as to that lending institution pursuant to
22 this Section. The submission of all documents required by the
23 Attorney General concerning any proposed action to foreclose a
24 mortgage on residential real estate by a lending institution
25 shall toll any statutory or contractual time requirement that
26 is not able to be complied with or met because of the

1 requirements of this Section or the passage of time prior to
2 the issuance of a report of the Attorney General concerning
3 that lending institution pursuant to this Section.

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