



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3335

Introduced 2/24/2011, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1503
735 ILCS 5/15-1508

from Ch. 110, par. 15-1503
from Ch. 110, par. 15-1508

Amends the Code of Civil Procedure. Provides that the mortgagee, judgment creditor, or other lien holder shall furnish the confirmation order to the last-known insurer of a residential building in writing by first-class mail after the mortgagee, judgment creditor, or lien holder becomes the mortgagee-in-possession. Provides that the failure to send or receive a copy of the order does not affect the rights of the mortgagee or purchaser or affect the foreclosure proceedings. Makes other changes. Effective January 1, 2012.

LRB097 09053 AJO 50324 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 15-1503 and 15-1508 as follows:

6 (735 ILCS 5/15-1503) (from Ch. 110, par. 15-1503)

7 Sec. 15-1503. Notice of Foreclosure.

8 (a) A notice of foreclosure, whether the foreclosure is
9 initiated by complaint or counterclaim, made in accordance with
10 this Section and recorded in the county in which the mortgaged
11 real estate is located shall be constructive notice of the
12 pendency of the foreclosure to every person claiming an
13 interest in or lien on the mortgaged real estate, whose
14 interest or lien has not been recorded prior to the recording
15 of such notice of foreclosure. Such notice of foreclosure must
16 be executed by any party or any party's attorney and shall
17 include (i) the names of all plaintiffs and the case number,
18 (ii) the court in which the action was brought, (iii) the names
19 of title holders of record, (iv) a legal description of the
20 real estate sufficient to identify it with reasonable
21 certainty, (v) a common address or description of the location
22 of the real estate and (vi) identification of the mortgage
23 sought to be foreclosed. An incorrect common address or

1 description of the location, or an immaterial error in the
2 identification of a plaintiff or title holder of record, shall
3 not invalidate the lis pendens effect of the notice under this
4 Section. A notice which complies with this Section shall be
5 deemed to comply with Section 2-1901 of the Code of Civil
6 Procedure and shall have the same effect as a notice filed
7 pursuant to that Section; however, a notice which complies with
8 Section 2-1901 shall not be constructive notice unless it also
9 complies with the requirements of this Section.

10 (b) With respect to residential real estate, a copy of the
11 notice of foreclosure described in subsection (a) of Section
12 15-1503 shall be sent by first class mail, postage prepaid, to
13 the last-known property insurer of the mortgaged real estate
14 and to the municipality within the boundary of which the
15 mortgaged real estate is located, or to the county within the
16 boundary of which the mortgaged real estate is located if the
17 mortgaged real estate is located in an unincorporated
18 territory. A municipality or county must clearly publish on its
19 website a single address to which such notice shall be sent. If
20 a 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), 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 (Source: P.A. 96-856, eff. 3-1-10.)

2 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

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

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

7 (b) Hearing. Upon motion and notice in accordance with
8 court rules applicable to motions generally, which motion shall
9 not be made prior to sale, the court shall conduct a hearing to
10 confirm the sale. Unless the court finds that (i) a notice
11 required in accordance with subsection (c) of Section 15-1507
12 was not given, (ii) the terms of sale were unconscionable,
13 (iii) the sale was conducted fraudulently or (iv) that justice
14 was otherwise not done, the court shall then enter an order
15 confirming the sale. The confirmation order shall include a
16 name, address, and telephone number of the holder of the
17 certificate of sale or deed issued pursuant to that certificate
18 or, if no certificate or deed was issued, the purchaser, whom a
19 municipality or county may contact with concerns about the real
20 estate. The confirmation order may also:

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

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

3 (3) determine the priority of the judgments of parties
4 who deferred proving the priority pursuant to subsection
5 (h) of Section 15-1506, but the court shall not defer
6 confirming the sale pending the determination of such
7 priority.

8 (b-5) Notice with respect to residential real estate. With
9 respect to residential real estate, the notice required under
10 subsection (b) of this Section shall be sent to the mortgagor
11 even if the mortgagor has previously been held in default. In
12 the event the mortgagor has filed an appearance, the notice
13 shall be sent to the address indicated on the appearance. In
14 all other cases, the notice shall be sent to the mortgagor at
15 the common address of the foreclosed property. The notice shall
16 be sent by first class mail. Unless the right to possession has
17 been previously terminated by the court, the notice shall
18 include the following language in 12-point boldface
19 capitalized type:

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

24 (b-10) Notice of confirmation order sent to municipality or
25 county. A copy of the confirmation order required under
26 subsection (b) shall be sent to the municipality in which the

1 foreclosed property is located, or to the county within the
2 boundary of which the foreclosed property is located if the
3 foreclosed property is located in an unincorporated territory.
4 A municipality or county must clearly publish on its website a
5 single address to which such notice shall be sent. If a
6 municipality or county does not maintain a website, then the
7 municipality or county must publicly post in its main office a
8 single address to which such notice shall be sent. In the event
9 that a municipality or county has not complied with the
10 publication requirement in this subsection (b-10), then such
11 notice to the municipality or county shall be provided pursuant
12 to Section 2-211 of the Code of Civil Procedure.

13 (b-15) Notice of confirmation order sent to known insurers.
14 With respect to residential real estate, a copy of the
15 confirmation order required under subsection (b) shall be sent
16 by first class mail, postage prepaid, to the last-known
17 property insurer of the foreclosed property. Failure to send or
18 receive a copy of the order shall not impair or abrogate in any
19 way the rights of the mortgagee or purchaser or affect the
20 status of the foreclosure proceedings.

21 (c) Failure to Give Notice. If any sale is held without
22 compliance with subsection (c) of Section 15-1507 of this
23 Article, any party entitled to the notice provided for in
24 paragraph (3) of that subsection (c) who was not so notified
25 may, by motion supported by affidavit made prior to
26 confirmation of such sale, ask the court which entered the

1 judgment to set aside the sale. Any such party shall guarantee
2 or secure by bond a bid equal to the successful bid at the
3 prior sale, unless the party seeking to set aside the sale is
4 the mortgagor, the real estate sold at the sale is residential
5 real estate, and the mortgagor occupies the residential real
6 estate at the time the motion is filed. In that event, no
7 guarantee or bond shall be required of the mortgagor. Any
8 subsequent sale is subject to the same notice requirement as
9 the original sale.

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

24 (d-5) Making Home Affordable Program. The court that
25 entered the judgment shall set aside a sale held pursuant to
26 Section 15-1507, upon motion of the mortgagor at any time prior

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

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

1 service has been had upon the persons personally liable for the
2 mortgage indebtedness, unless they have entered their
3 appearance in the foreclosure action.

4 (f) Satisfaction. Upon confirmation of the sale, the
5 judgment stands satisfied to the extent of the sale price less
6 expenses and costs. If the order confirming the sale includes a
7 deficiency judgment, the judgment shall become a lien in the
8 manner of any other judgment for the payment of money.

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

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

23 Notwithstanding the preceding paragraph, the failure to
24 personally name, include, or seek an award of possession of the
25 mortgaged real estate against a person in the confirmation
26 order shall not abrogate any right that the purchaser may have

1 to possession of the mortgaged real estate and to maintain a
2 proceeding against that person for possession under Article 9
3 of this Code or subsection (h) of Section 15-1701; and
4 possession against a person who (1) has not been personally
5 named as a party to the foreclosure and (2) has not been
6 provided an opportunity to be heard in the foreclosure
7 proceeding may be sought only by maintaining a proceeding under
8 Article 9 of this Code or subsection (h) of Section 15-1701.

9 (Source: P.A. 95-826, eff. 8-14-08; 96-265, eff. 8-11-09;
10 96-856, eff. 3-1-10; 96-1245, eff. 7-23-10; revised 9-16-10.)

11 Section 99. Effective date. This Act takes effect January
12 1, 2012.