



Rep. Elaine Nekritz

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09700HB5001ham002

LRB097 17635 AJ0 67333 a

1 AMENDMENT TO HOUSE BILL 5001

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 5001 by replacing  
3 everything after the enacting clause with the following:

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

1 include (i) the names of all plaintiffs and the case number,  
2 (ii) the court in which the action was brought, (iii) the names  
3 of title holders of record, (iv) a legal description of the  
4 real estate sufficient to identify it with reasonable  
5 certainty, (v) a common address or description of the location  
6 of the real estate and (vi) identification of the mortgage  
7 sought to be foreclosed. An incorrect common address or  
8 description of the location, or an immaterial error in the  
9 identification of a plaintiff or title holder of record, shall  
10 not invalidate the lis pendens effect of the notice under this  
11 Section. A notice which complies with this Section shall be  
12 deemed to comply with Section 2-1901 of the Code of Civil  
13 Procedure and shall have the same effect as a notice filed  
14 pursuant to that Section; however, a notice which complies with  
15 Section 2-1901 shall not be constructive notice unless it also  
16 complies with the requirements of this Section.

17 (b) With respect to residential real estate, a copy of the  
18 notice of foreclosure described in subsection (a) of Section  
19 15-1503 shall be sent by first class mail, postage prepaid, to  
20 the municipality within the boundary of which the mortgaged  
21 real estate is located, or to the county within the boundary of  
22 which the mortgaged real estate is located if the mortgaged  
23 real estate is located in an unincorporated territory. A  
24 municipality or county must clearly publish on its website a  
25 single address to which such notice shall be sent. If a  
26 municipality or county does not maintain a website, then the

1 municipality or county must publicly post in its main office a  
2 single address to which such notice shall be sent. In the event  
3 that a municipality or county has not complied with the  
4 publication requirement in this subsection (b), then the copy  
5 of the ~~such~~ notice to the municipality or county shall be sent  
6 by first class mail, postage prepaid, to the chairperson of the  
7 county board or county clerk in the case of a county, to the  
8 mayor or city clerk in the case of a city, to the president of  
9 the board of trustees or village clerk in the case of a  
10 village, or to the president or town clerk in the case of a  
11 town provided pursuant to Section 2-211 of the Code of Civil  
12 Procedure. Additionally, if the real estate is located in a  
13 city with a population of more than 2,000,000, regardless of  
14 whether that city has complied with the publication requirement  
15 in this subsection (b), the party must, within 10 days after  
16 filing the complaint or counterclaim: (i) send by first class  
17 mail, postage prepaid, a copy of the notice of foreclosure to  
18 the alderman for the ward in which the real estate is located  
19 and (ii) file an affidavit with the court attesting to the fact  
20 that the notice was sent to the alderman for the ward in which  
21 the real estate is located. The failure to send a copy of the  
22 notice to the alderman or to file an affidavit as required  
23 results in the dismissal without prejudice of the complaint or  
24 counterclaim on a motion of a party or the court. If, after the  
25 complaint or counterclaim has been dismissed without  
26 prejudice, the party refiles the complaint or counterclaim,

1 then the party must again comply with the requirements that the  
2 party send by first class mail, postage prepaid, the notice to  
3 the alderman for the ward in which the real estate is located  
4 and file an affidavit attesting to the fact that the notice was  
5 sent.

6 (Source: P.A. 96-856, eff. 3-1-10.)

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  
17 or a notice to an alderman required in accordance with  
18 subsection (b) of Section 15-1503 was not given, (ii) the terms  
19 of sale were unconscionable, (iii) the sale was conducted  
20 fraudulently, or (iv) justice was otherwise not done, the court  
21 shall then enter an order confirming the sale. The confirmation  
22 order shall include a name, address, and telephone number of  
23 the holder of the certificate of sale or deed issued pursuant  
24 to that certificate or, if no certificate or deed was issued,  
25 the purchaser, whom a municipality or county may contact with

1 concerns about the real estate. The confirmation order may  
2 also:

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

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

10 (3) determine the priority of the judgments of parties  
11 who deferred proving the priority pursuant to subsection  
12 (h) of Section 15-1506, but the court shall not defer  
13 confirming the sale pending the determination of such  
14 priority.

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

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

5 (b-10) Notice of confirmation order sent to municipality or  
6 county. With respect to residential real estate, a ~~A~~ copy of  
7 the confirmation order required under subsection (b) shall be  
8 sent by first class mail, postage prepaid, to the municipality  
9 in which the foreclosed property is located, or to the county  
10 within the boundary of which the foreclosed property is located  
11 if the foreclosed property is located in an unincorporated  
12 territory. A municipality or county must clearly publish on its  
13 website a single address to which such order ~~notice~~ shall be  
14 sent. If a municipality or county does not maintain a website,  
15 then the municipality or county must publicly post in its main  
16 office a single address to which such order ~~notice~~ shall be  
17 sent. In the event that a municipality or county has not  
18 complied with the publication requirement in this subsection  
19 (b-10), then the copy of the order ~~such notice~~ to the  
20 municipality or county shall be sent by first class mail,  
21 postage prepaid, to the chairperson of the county board or  
22 county clerk in the case of a county, to the mayor or city  
23 clerk in the case of a city, to the president of the board of  
24 trustees or village clerk in the case of a village, or to the  
25 president or town clerk in the case of a town ~~provided pursuant~~  
26 ~~to Section 2-211 of the Code of Civil Procedure.~~ Additionally,

1 if the real estate is located in a city with a population of  
2 more than 2,000,000, regardless of whether that city has  
3 complied with the publication requirement in this subsection  
4 (b-10), the party filing the complaint or counterclaim must,  
5 within 10 days after the entry of the confirmation order: (i)  
6 send by first class mail, postage prepaid, a copy of the  
7 confirmation order to the alderman for the ward in which the  
8 real estate is located and (ii) file an affidavit attesting to  
9 the fact that a copy of the confirmation order was sent to the  
10 alderman for the ward in which the real estate is located.

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

19 (c) Failure to Give Notice. If any sale is held without  
20 compliance with subsection (c) of Section 15-1507 of this  
21 Article, any party entitled to the notice provided for in  
22 paragraph (3) of that subsection (c) who was not so notified  
23 may, by motion supported by affidavit made prior to  
24 confirmation of such sale, ask the court which entered the  
25 judgment to set aside the sale. Any such party shall guarantee  
26 or secure by bond a bid equal to the successful bid at the

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

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

22 (d-5) Making Home Affordable Program. The court that  
23 entered the judgment shall set aside a sale held pursuant to  
24 Section 15-1507, upon motion of the mortgagor at any time prior  
25 to the confirmation of the sale, if the mortgagor proves by a  
26 preponderance of the evidence that (i) the mortgagor has



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

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

1 appearance in the foreclosure action.

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

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

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

21 Notwithstanding the preceding paragraph, the failure to  
22 personally name, include, or seek an award of possession of the  
23 mortgaged real estate against a person in the confirmation  
24 order shall not abrogate any right that the purchaser may have  
25 to possession of the mortgaged real estate and to maintain a  
26 proceeding against that person for possession under Article 9

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

7 (h) With respect to mortgaged real estate containing 5 or  
8 more dwelling units, the order confirming the sale shall also  
9 provide that (i) the mortgagor shall transfer to the purchaser  
10 the security deposits, if any, that the mortgagor received to  
11 secure payment of rent or to compensate for damage to the  
12 mortgaged real estate from any current occupant of a dwelling  
13 unit of the mortgaged real estate, as well as any statutory  
14 interest that has not been paid to the occupant, and (ii) the  
15 mortgagor shall provide an accounting of the security deposits  
16 that are transferred, including the name and address of each  
17 occupant for whom the mortgagor holds the deposit and the  
18 amount of the deposit and any statutory interest.

19 (Source: P.A. 96-265, eff. 8-11-09; 96-856, eff. 3-1-10;  
20 96-1245, eff. 7-23-10; 97-333, eff. 8-12-11; 97-575, eff.  
21 8-26-11.)".