



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5759

Introduced 2/16/2012, by Rep. Luis Arroyo

SYNOPSIS AS INTRODUCED:

See Index

Amends the Mortgage Foreclosure Article of the Code of Civil Procedure and the State Finance Act. Provides that an attorney appointed by the chief judge of the judicial circuit shall be assigned as a mediator for mandatory foreclosure mediation prior to the filing of a residential real estate foreclosure action. Provides that a mortgagor who is delinquent by more than 45 days may petition for mediation. Provides that, unless a mortgagor has filed for bankruptcy, if a mortgage is delinquent by more than 60 days and the mortgagee intends to foreclose the mortgage, the mortgagee shall file a mediation notice with the circuit clerk. Provides that, upon the filing of a petition for mediation by a mortgagee or the filing of a mediation notice by a mortgagor, the mortgagee shall freeze the mortgagor's account and any obligation to pay any installment on the mortgage loan or any additional charge, fee, or penalty is stayed until a final mortgage modification plan is reached or the mediator's written report is filed with the circuit clerk. Provides that, when filing a foreclosure complaint for residential real estate, the plaintiff shall pay to the court clerk a \$100 fee for deposit into the Mandatory Foreclosure Mediation Fund, a special fund in the State treasury. Provides that specified fines shall also be deposited into the Fund. Provides that fees shall be remitted to the State Treasurer and expended for purposes related to mediation. Contains provisions regarding: mailing; qualifications and assignment of mediators; payment to mediators; mediation sessions; counselors employed by approved counseling agencies; conclusion of mediation; fines; reports; limits on mediation; final plans; compliance; liability; waiver; intent; applicability; foreclosure complaints; and other matters. Effective immediately.

LRB097 14127 AJ0 66150 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 15-1504 and by adding Sections 15-1502.7 and
6 15-1504.2 as follows:

7 (735 ILCS 5/15-1502.7 new)

8 Sec. 15-1502.7. Mandatory foreclosure mediation.

9 (a) As used in this Section:

10 "Approved counseling agency" means a housing counseling
11 agency approved by the U.S. Department of Housing and Urban
12 Development.

13 "Approved counselor" or "counselor" means a counselor
14 employed by an approved counseling agency.

15 "Court-appointed mediator" or "mediator" means an attorney
16 who is appointed by the chief judge of the circuit in which the
17 attorney will serve as a mediator pursuant to this Section.

18 "Delinquent" means past due with respect to a payment on a
19 mortgage loan which is secured by a mortgage on residential
20 real estate.

21 "Final mortgage modification plan" or "final plan"
22 includes all documents necessary to give effect to the mortgage
23 modification plan, which have been properly executed by the

1 appropriate parties, and which are in a form which, if
2 appropriate, may be recorded in the recorder's office.

3 "Mandatory foreclosure mediation" means an in-person
4 mediation conducted by a court-appointed mediator that must be
5 attended by the mortgagee, any servicer acting for the
6 mortgagee, the mortgagor, and an approved counselor.

7 "Mortgage modification plan" or "plan" means a plan
8 developed through the mandatory mediation process that
9 involves the good faith efforts of the mortgagor, the
10 mortgagee, the servicer, if any, an approved counselor, and the
11 mediator, and which when agreed to by the mortgagor and the
12 mortgagee will enable the mortgagor to stay current on his or
13 her existing or modified mortgage payments for the foreseeable
14 future when taking into account the mortgagor's income and
15 existing and foreseeable debts. A mortgage modification plan
16 may include, but is not limited to: (1) a temporary suspension
17 of payments; (2) a lengthened loan term; (3) a lowered or
18 frozen interest rate; (4) a modification of escrow payments;
19 (5) a change in the entity acting as the loan servicer; (6) a
20 modification or change in the insurance coverages applicable to
21 the mortgage loan or the residential real estate; (7) a
22 principal write down; (8) a repayment plan to pay the existing
23 loan in full; (9) deferred payments; or (10) refinancing into a
24 new affordable loan, which may include adjustable rates if
25 there are reasonable future adjustments that are suitable for
26 the mortgagor.

1 "Servicer" means any entity or organization that services a
2 mortgage loan by collecting and accounting for the mortgagor's
3 monthly mortgage payments which may include the principal and
4 interest loan payment, homeowner's insurance premium for the
5 property, principal mortgage insurance premium, real estate
6 taxes, and other escrow payments or charges.

7 (b) The chief judge of each circuit shall appoint a
8 sufficient number of licensed attorneys as court-appointed
9 mediators to meet the need for mediators for mandatory
10 foreclosure mediation in the circuit. The chief judge of each
11 circuit shall only appoint as a mediator an attorney licensed
12 in Illinois who practices or who is employed in the circuit and
13 who has experience or training as a mediator or who has
14 experience in bankruptcy law, real estate law, or banking law.
15 The chief judge of each circuit shall create, and update as
16 appropriate, the list of mediators and supply the list to the
17 circuit clerk. Each chief judge, directly or through a
18 designated judge or court administrator, shall supervise and
19 approve the hours spent by each mediator on each mediation and
20 approve the payment to each mediator according to fee and
21 charge schedules adopted by the chief judge.

22 (c) Notwithstanding any provision in this Section to the
23 contrary, a mortgagor who is delinquent by more than 45 days
24 may file with the circuit clerk for the county in which the
25 mortgagor's residential real estate is located a petition for
26 mandatory foreclosure mediation that includes substantially

1 the following information about the mortgagor's residential
2 real estate:

3 (1) Mortgagor or homeowner. Name, mailing address,
4 telephone number, fax number, and email address, if
5 applicable, of each person who is a mortgagor.

6 (2) Bank or lender. Name, mailing address, contact
7 person, telephone number, fax number, and email address, if
8 applicable, of each entity that is a mortgagee.

9 (3) Servicer, if any. Name, mailing address, contact
10 person, telephone number, fax number, and email address, if
11 applicable, of each servicer that acts on behalf of a
12 mortgagee.

13 (4) Loan or account number. The name on the mortgage
14 loan account and the account number for the mortgage loan
15 serviced by the mortgagee or the servicer.

16 (5) Property description. The street address of the
17 mortgaged residential real estate. Also include, if
18 available, the legal description of the property.

19 (6) Loan document. Attach a copy of any document that
20 the mortgagor has received from the mortgagee or the
21 servicer concerning the mortgage loan (for verification of
22 some of the information requested in items (1) through
23 (5)).

24 (7) Loan delinquency. A statement by the mortgagor that
25 the mortgage loan is delinquent by 45 days or more.

26 (8) Accurate statements. The mortgagor shall swear or

1 affirm that the information contained in the petition is
2 true and accurate to the best of the mortgagor's knowledge.

3 (9) Signature. The signature of the mortgagor (or the
4 signature of at least one mortgagor if there is more than
5 one mortgagor).

6 The clerk, upon receipt of the mortgagor's petition, shall send
7 by U.S. mail a copy of the mortgagor's petition to each
8 mortgagee or servicer identified by the mortgagor in the
9 petition.

10 (d) Except for mortgages secured by residential real estate
11 in which any mortgagor has filed for relief under the United
12 States Bankruptcy Code, if a mortgage secured by residential
13 real estate becomes delinquent by more than 60 days and the
14 mortgagee has determined that it intends to file a complaint to
15 foreclose the mortgage, the mortgagee shall file a mandatory
16 foreclosure mediation notice with the circuit clerk for the
17 county in which the residential real estate is located and the
18 mortgagee shall also send by first class mail to the mortgagor
19 a copy of the notice. The mandatory foreclosure mediation
20 notice shall be substantially in the form described in
21 subsection (e) and shall communicate that the mortgagee intends
22 to file a complaint to foreclose the mortgage, but that the
23 mortgagee is required to participate in good faith in mandatory
24 foreclosure mediation with the mortgagor. Notwithstanding
25 anything to the contrary in this Section, nothing shall
26 preclude the mortgagor and mortgagee from communicating with

1 each other during the initial 60 days of delinquency or
2 reaching agreement on a mortgage modification plan, or both.

3 (e) The notice required in subsection (d) shall include the
4 information described in items (1) through (5) of subsection
5 (c), shall state the date on which the notice was mailed, shall
6 be headed in bold 14-point type "MANDATORY FORECLOSURE
7 MEDIATION NOTICE", and shall state the following in 14-point
8 type:

9 "YOUR LOAN IS MORE THAN 60 DAYS PAST DUE. YOUR LOAN MAY BE
10 PAST DUE BECAUSE OF FINANCIAL PROBLEMS. ILLINOIS LAW PROVIDES
11 YOU WITH PROTECTION AND INFORMATION BEFORE YOU LOSE YOUR
12 RESIDENCE IN COURT THROUGH A FORECLOSURE CASE. IF A RESOLUTION
13 CANNOT BE AGREED UPON BY YOU AND US, WITH THE HELP OF THE
14 MEDIATOR AND COUNSELOR, WE INTEND TO FILE A FORECLOSURE CASE IN
15 COURT.

16 THERE WILL BE A MEDIATION MEETING INVOLVING YOU, AN
17 APPROVED HOUSING COUNSELOR, US (THE LENDER), AND A
18 COURT-APPOINTED MEDIATOR. THE MEDIATOR WILL BE THERE TO HELP
19 ALL OF US DETERMINE IF WE CAN FIND A SOLUTION TO THE PROBLEMS
20 WITH THE LOAN AND KEEP YOUR LOAN AND PROPERTY FROM BECOMING A
21 FORECLOSURE CASE IN COURT.

22 THE PURPOSE OF THE MEDIATION MEETING IS FOR ALL OF US TO
23 MAKE GOOD-FAITH EFFORTS AT RESOLVING YOUR LOAN WITHOUT A
24 FORECLOSURE. THIS MAY INCLUDE CHANGES IN THE TERMS OF YOUR LOAN
25 THAT MAKE THE LOAN MORE AFFORDABLE FOR YOU. THE LAW REQUIRES US
26 TO ATTEND AND TO COOPERATE IN THESE MEETINGS. WE REQUEST THAT

1 YOU ALSO COOPERATE. THIS PART OF THE LAW WAS CREATED TO HELP
2 HOMEOWNERS. IF YOU REFUSE TO GO TO THE MEDIATION MEETING OR
3 COOPERATE, THEN IT IS ALMOST CERTAIN THAT THERE WILL BE A
4 FORECLOSURE CASE FILED AGAINST YOU AND YOUR PROPERTY IN COURT."

5 The copy of the notice sent to the mortgagor, the mediator, and
6 the counselor, shall also list the name, telephone number, fax
7 number, mailing address, and email address of the
8 court-appointed mediator and of the court-appointed counselor.

9 No language, other than language substantially similar to the
10 language prescribed in this subsection (e), shall be included
11 in the notice.

12 (f) The mailing of the petition required by subsection (c)
13 and the mailing of the notice required under subsection (e)
14 means depositing or causing to be deposited into the United
15 States mail an envelope with first-class postage prepaid that
16 contains the document to be delivered. The envelopes, as
17 applicable, shall be addressed as follows: (i) to the mortgagor
18 at the common address of the residential real estate securing
19 the mortgage; and (ii) to the mortgagee or the servicer to the
20 address for that entity stated in the petition.

21 (g) Upon the filing of a petition for mandatory mediation
22 by a mortgagee or the filing of a mandatory foreclosure
23 mediation notice by a mortgagor, the mortgagee shall freeze the
24 mortgagor's account. From the date of the filing of a petition
25 for mandatory mediation or the filing of a mandatory
26 foreclosure mediation notice, any obligation on the mortgagor

1 to pay to the mortgagee or its agent or employee any
2 installment on the mortgage loan or to pay any type of
3 additional charge, fee, or penalty of any type is stayed,
4 without bond or further notice, until a final mortgage
5 modification plan is reached or the mediator's written report
6 is filed with the clerk and at that time the stay is lifted and
7 the balance owed by the mortgagor as of the time of the
8 freezing of the mortgagor's account shall again be due,
9 however, neither the mortgagee or the servicer may assess, post
10 to the account, or collect in any manner any charge, fee, or
11 penalty of any type for the period between the initial filing
12 and the end of the stay.

13 (h) Upon the filing of a mortgagor's petition for mandatory
14 foreclosure or a mortgagee's mandatory foreclosure mediation
15 notice, the circuit clerk shall randomly assign to the
16 mediation involving the subject residential real estate a
17 mediator from the list of court-appointed mediators received
18 from the chief judge of the circuit. So as to avoid conflicts
19 of interest, each court-appointed mediator shall, upon
20 appointment, notify the clerk of the name of any person or
21 entity that employs the attorney or that the attorney
22 represents that is a mortgagor, mortgagee, or servicer on a
23 mortgage on real property that is located in the circuit. The
24 clerk shall not assign a matter for mediation to a mediator if
25 the mediator has identified as an employer or as a client, any
26 person or entity which is a mortgagor, mortgagee, or servicer

1 in the matter to be mediated. Nothing in this subsection shall
2 limit a mediator from declining to mediate a matter for any
3 other legitimate or ethical reason as soon as practicable; if a
4 mediator declines to serve as a mediator in a mediation, the
5 mediator shall promptly notify the clerk so that another
6 mediator may be assigned to the mediation. The clerk shall
7 also, at the time of the assignment of the mediator, assign to
8 that mediation a counselor from an approved counseling agency
9 from a list submitted by the chief judge from names submitted
10 to the chief judge by approved counseling agencies that offer
11 services in that circuit. A counselor shall decline to serve in
12 the mediation if there would be a conflict of interest for the
13 counselor to do so. Nothing in this subsection shall limit a
14 counselor from declining to serve in a mediation for any
15 legitimate or ethical reason as soon as practicable; if a
16 counselor declines to serve as a counselor in a mediation, the
17 counselor shall promptly notify the clerk so that another
18 counselor may be assigned to the mediation.

19 (i) The court-appointed mediator must convene a mediation
20 session with all participants within 45 days after the date of
21 the mediator's appointment and notify the mortgagor, the
22 mortgagee, any servicer, and the counselor of the location,
23 date, and period of time established for the mediation. Upon
24 receipt of the notice of the mediation, the counselor shall
25 notify the mortgagor of the information and documents that the
26 mortgagor must supply to the counselor. The mortgagor must

1 supply all requested information and documents to the counselor
2 at least 72 hours prior to the scheduled mediation session,
3 except for good cause shown. The number of mediation meetings,
4 not to exceed 3 meetings, and the time and location of each
5 meeting shall be set by the mediator. The mediation shall
6 conclude with a final mortgage modification plan or a
7 mediator's report that concludes that there is no just reason
8 for the mortgagee not to initiate foreclosure proceedings.
9 However, if the mediation has not concluded within 90 days
10 after the date of the mediator's appointment with either a
11 final mortgage modification plan or a mediator's written report
12 concluding that there is no just reason for the mortgagee not
13 to initiate foreclosure proceedings, then the mortgagee shall
14 be assessed a fine of \$25 per day for each day that passes
15 until there is a final plan or the mediator issues a written
16 report that concludes that there is no just reason for the
17 mortgagee not to initiate foreclosure proceedings. A mortgagee
18 with any daily fine due in conjunction with the mediation shall
19 pay to the clerk the amount due for the prior month by the
20 fifth day of each month. The clerk shall remit the fine to the
21 State Treasurer as provided in this Section to be expended for
22 the purposes set forth in this Act. All fines paid by a
23 mortgagee to the clerk of the court as provided in this Section
24 shall be disbursed within 60 days after receipt by the clerk of
25 the court as follows: (i) 98% to the State Treasurer for
26 deposit into the Mandatory Foreclosure Mediation Fund, and (ii)

1 2% to the clerk of the court for administrative expenses
2 related to implementation of this Section.

3 (j) Except in the circumstance in which a mortgagor has
4 filed a petition for relief under the United States Bankruptcy
5 Code, no mortgagee shall file a complaint to foreclose a
6 mortgage secured by residential real estate without attaching
7 the required mediator's written report.

8 (k) Notwithstanding any other provision to the contrary,
9 with respect to a particular mortgage secured by residential
10 real estate, the procedures and forbearances described in this
11 Section apply only once per subject mortgage.

12 (l) No foreclosure action under Part 15 of Article XV of
13 this Code shall be instituted on a mortgage secured by
14 residential real estate before a mandatory foreclosure
15 mediation has been held and the court-appointed mediator who
16 presided over that mediation has issued a written report that:

17 (1) describes the mediation process as it involved the
18 mortgagee and the mortgagor;

19 (2) if applicable, describes a party's refusal to
20 attend any part of the mediation process or a party's
21 refusal to act in good faith in the mediation process;

22 (3) states that at least one mediation session was
23 conducted with all of the required participants (the
24 mortgagor, the mortgagee, the servicer (if applicable), a
25 counselor, and the mediator) present or the reason that
26 there was not at least one mediation session conducted;

1 (4) states each date on which a mediation session was
2 held by the mediator with all of the required participants
3 present;

4 (5) determines that, while at the mediation session,
5 the mortgagor and the mortgagee each had the authority to
6 make binding decisions in any discussions of any loan
7 modification or, if a party did not have binding
8 decision-making authority, why that party did not have that
9 authority;

10 (6) whether during the mediation process the counselor
11 with an approved counseling agency prepared an assessment
12 or report providing available loan work-out options for the
13 mortgagor and mortgagee, or, if not, why that assessment or
14 report was not prepared;

15 (7) states the mortgagor's income and expense
16 information, if available from the mortgagor;

17 (8) states the mortgagor's employment status, if
18 available from the mortgagor;

19 (9) states the mortgagor's qualifications for any
20 available governmental or private work-out program;

21 (10) if applicable, states the initial positions taken
22 by the mortgagee and the mortgagor in the mediation and
23 what changes during the mediation that each party made in
24 that party's initial position;

25 (11) explains the reasons that a final mortgage
26 modification plan was not able to be agreed to by the

1 mortgagee and the mortgagor;

2 (12) states whether, in the mediator's opinion, the
3 mortgagor and the mortgagee each participated in good faith
4 in the mediation; and

5 (13) determines, in light of all of the relevant
6 circumstances pertaining to the mortgagor, that in the
7 mediator's opinion the mortgagee acted in good faith and
8 that there is no just reason for the mortgagee not to file
9 foreclosure as to the mortgaged real estate.

10 (m) If mandatory foreclosure mediation results in an
11 agreement between the mortgagee and the mortgagor for a final
12 plan, then no legal action under Part 15 of Article XV of this
13 Code shall be instituted for as long as the final plan is
14 complied with by the mortgagor.

15 (n) After the mediation concludes, any modifications to the
16 final plan must be in writing and signed by the mortgagee and
17 the mortgagor.

18 (o) If the mortgagor fails to comply with the final plan,
19 then nothing in this Section shall be construed to impair the
20 legal rights of the mortgagee to enforce the contract.

21 (p) A counselor employed by a housing counseling agency or
22 the housing counseling agency that in good faith provides
23 counseling shall not be liable to a mortgagee or mortgagor for
24 civil damages, except for willful or wanton misconduct on the
25 part of the counselor in providing the counseling.

26 (q) There shall be no waiver of any provision of this

1 Section.

2 (r) It is the General Assembly's intent that compliance
3 with this Section shall not prejudice a mortgagee in ratings of
4 its bad debt collection or calculation standards or policies.

5 (s) This Section shall not apply, or shall cease to apply,
6 to residential real estate that is not occupied as a principal
7 residence by the mortgagor.

8 (735 ILCS 5/15-1504) (from Ch. 110, par. 15-1504)

9 Sec. 15-1504. Pleadings and service.

10 (a) Form of Complaint. A foreclosure complaint may be in
11 substantially the following form:

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

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

19 (3) Information concerning mortgage:

20 (A) Nature of instrument: (here insert whether a
21 mortgage, trust deed or other instrument in the nature
22 of a mortgage, etc.)

23 (B) Date of mortgage:

24 (C) Name of mortgagor:

25 (D) Name of mortgagee:

1 (E) Date and place of recording:

2 (F) Identification of recording: (here insert book
3 and page number or document number)

4 (G) Interest subject to the mortgage: (here insert
5 whether fee simple, estate for years, undivided
6 interest, etc.)

7 (H) Amount of original indebtedness, including
8 subsequent advances made under the mortgage:

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

12 (J) Statement as to defaults, including, but not
13 necessarily limited to, date of default, current
14 unpaid principal balance, per diem interest accruing,
15 and any further information concerning the default:

16 (K) Name of present owner of the real estate:

17 (L) Names of other persons who are joined as
18 defendants and whose interest in or lien on the
19 mortgaged real estate is sought to be terminated:

20 (M) Names of defendants claimed to be personally
21 liable for deficiency, if any:

22 (N) Capacity in which plaintiff brings this
23 foreclosure (here indicate whether plaintiff is the
24 legal holder of the indebtedness, a pledgee, an agent,
25 the trustee under a trust deed or otherwise, as
26 appropriate):

1 (O) Facts in support of redemption period shorter
2 than the longer of (i) 7 months from the date the
3 mortgagor or, if more than one, all the mortgagors (I)
4 have been served with summons or by publication or (II)
5 have otherwise submitted to the jurisdiction of the
6 court, or (ii) 3 months from the entry of the judgment
7 of foreclosure, if sought (here indicate whether based
8 upon the real estate not being residential,
9 abandonment, or real estate value less than 90% of
10 amount owed, etc.):

11 (P) Statement that the right of redemption has been
12 waived by all owners of redemption, if applicable:

13 (Q) Facts in support of request for attorneys' fees
14 and of costs and expenses, if applicable:

15 (R) Facts in support of a request for appointment
16 of mortgagee in possession or for appointment of
17 receiver, and identity of such receiver, if sought:

18 (S) Offer to mortgagor in accordance with Section
19 15-1402 to accept title to the real estate in
20 satisfaction of all indebtedness and obligations
21 secured by the mortgage without judicial sale, if
22 sought:

23 (T) Name or names of defendants whose right to
24 possess the mortgaged real estate, after the
25 confirmation of a foreclosure sale, is sought to be
26 terminated and, if not elsewhere stated, the facts in

1 support thereof:

2 (4) (Applies only to a complaint for foreclosure of
3 residential real estate.) Attached as Exhibit C is the
4 mandatory foreclosure mediation report from the
5 court-appointed mediator concerning the mandatory
6 mediation which was conducted pursuant to Section
7 15-1502.7 and which, in conjunction with the other matters
8 required by subsection (1) of Section 15-1502.7: explains
9 the reasons that a loan modification was not able to be
10 agreed to by the plaintiff and the defendant mortgagor;
11 concludes that, in the mediator's opinion, the mortgagee
12 participated in good faith in the mediation; and determines
13 that, in light of all of the relevant circumstances
14 pertaining to the mortgagor, in the mediator's opinion,
15 there is no just reason for the plaintiff not to file
16 foreclosure as to the mortgaged real estate.

17 REQUEST FOR RELIEF

18 Plaintiff requests:

19 (i) A judgment of foreclosure and sale.

20 (ii) An order granting a shortened redemption period,
21 if sought.

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

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

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

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

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

11 (c) Allegations. The statements contained in a complaint in
12 the form set forth in subsection (a) of Section 15-1504 are
13 deemed and construed to include allegations as follows:

14 (1) on the date indicated the obligor of the
15 indebtedness or other obligations secured by the mortgage
16 was justly indebted in the amount of the indicated original
17 indebtedness to the original mortgagee or payee of the
18 mortgage note;

19 (2) that the exhibits attached are true and correct
20 copies of the mortgage and note and are incorporated and
21 made a part of the complaint by express reference;

22 (3) that the mortgagor was at the date indicated an
23 owner of the interest in the real estate described in the
24 complaint and that as of that date made, executed and
25 delivered the mortgage as security for the note or other
26 obligations;

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

5 (5) that defaults occurred as indicated;

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

9 (7) that the mortgage constitutes a valid, prior and
10 paramount lien upon the indicated interest in the mortgaged
11 real estate, which lien is prior and superior to the right,
12 title, interest, claim or lien of all parties and nonrecord
13 claimants whose interests in the mortgaged real estate are
14 sought to be terminated;

15 (8) that by reason of the defaults alleged, if the
16 indebtedness has not matured by its terms, the same has
17 become due by the exercise, by the plaintiff or other
18 persons having such power, of a right or power to declare
19 immediately due and payable the whole of all indebtedness
20 secured by the mortgage;

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

24 (10) that any and all periods of grace or other period
25 of time allowed for the performance of the covenants or
26 conditions claimed to be breached or for the curing of any

1 breaches have expired;

2 (11) that the amounts indicated in the statement in the
3 complaint are correctly stated and if such statement
4 indicates any advances made or to be made by the plaintiff
5 or owner of the mortgage indebtedness, that such advances
6 were, in fact, made or will be required to be made, and
7 under and by virtue of the mortgage the same constitute
8 additional indebtedness secured by the mortgage; and

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

21 (d) Request for Fees and Costs. A statement in the
22 complaint that plaintiff seeks the inclusion of attorneys' fees
23 and of costs and expenses shall be deemed and construed to
24 include allegations that:

25 (1) plaintiff has been compelled to employ and retain
26 attorneys to prepare and file the complaint and to

1 represent and advise the plaintiff in the foreclosure of
2 the mortgage and the plaintiff will thereby become liable
3 for the usual, reasonable and customary fees of the
4 attorneys in that behalf;

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

15 (3) that under the terms of the mortgage, all such
16 advances, costs, attorneys' fees and other fees, expenses
17 and disbursements are made a lien upon the mortgaged real
18 estate and the plaintiff is entitled to recover all such
19 advances, costs, attorneys' fees, expenses and
20 disbursements, together with interest on all advances at
21 the rate provided in the mortgage, or, if no rate is
22 provided therein, at the statutory judgment rate, from the
23 date on which such advances are made;

24 (4) that in order to protect the lien of the mortgage,
25 it may become necessary for plaintiff to pay taxes and
26 assessments which have been or may be levied upon the

1 mortgaged real estate;

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

14 (6) that under the terms of the mortgage, any money so
15 paid or expended will become an additional indebtedness
16 secured by the mortgage and will bear interest from the
17 date such monies are advanced at the rate provided in the
18 mortgage, or, if no rate is provided, at the statutory
19 judgment rate.

20 (e) Request for Foreclosure. The request for foreclosure is
21 deemed and construed to mean that the plaintiff requests that:

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

24 (2) that the defendants be ordered to pay to the
25 plaintiff before expiration of any redemption period (or,
26 if no redemption period, before a short date fixed by the

1 court) whatever sums may appear to be due upon the taking
2 of such account, together with attorneys' fees and costs of
3 the proceedings (to the extent provided in the mortgage or
4 by law);

5 (3) that in default of such payment in accordance with
6 the judgment, the mortgaged real estate be sold as directed
7 by the court, to satisfy the amount due to the plaintiff as
8 set forth in the judgment, together with the interest
9 thereon at the statutory judgment rate from the date of the
10 judgment;

11 (4) that in the event the plaintiff is a purchaser of
12 the mortgaged real estate at such sale, the plaintiff may
13 offset against the purchase price of such real estate the
14 amounts due under the judgment of foreclosure and order
15 confirming the sale;

16 (5) that in the event of such sale and the failure of
17 any person entitled thereto to redeem prior to such sale
18 pursuant to this Article, the defendants made parties to
19 the foreclosure in accordance with this Article, and all
20 nonrecord claimants given notice of the foreclosure in
21 accordance with this Article, and all persons claiming by,
22 through or under them, and each and any and all of them,
23 may be forever barred and foreclosed of any right, title,
24 interest, claim, lien, or right to redeem in and to the
25 mortgaged real estate; and

26 (6) that if no redemption is made prior to such sale, a

1 deed may be issued to the purchaser thereat according to
2 law and such purchaser be let into possession of the
3 mortgaged real estate in accordance with Part 17 of this
4 Article.

5 (f) Request for Deficiency Judgment. A request for a
6 personal judgment for a deficiency in a foreclosure complaint
7 if the sale of the mortgaged real estate fails to produce a
8 sufficient amount to pay the amount found due, the plaintiff
9 may have a personal judgment against any party in the
10 foreclosure indicated as being personally liable therefor and
11 the enforcement thereof be had as provided by law.

12 (g) Request for Possession or Receiver. A request for
13 possession or appointment of a receiver has the meaning as
14 stated in subsection (b) of Section 15-1706.

15 (h) Answers by Parties. Any party may assert its interest
16 by counterclaim and such counterclaim may at the option of that
17 party stand in lieu of answer to the complaint for foreclosure
18 and all counter complaints previously or thereafter filed in
19 the foreclosure. Any such counterclaim shall be deemed to
20 constitute a statement that the counter claimant does not have
21 sufficient knowledge to form a belief as to the truth or
22 falsity of the allegations of the complaint and all other
23 counterclaims, except to the extent that the counterclaim
24 admits or specifically denies such allegations.

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

1 (735 ILCS 5/15-1504.2 new)

2 Sec. 15-1504.2. Filing fee for Mandatory Foreclosure
3 Mediation Fund.

4 (a) With respect to residential real estate, at the time of
5 the filing of a foreclosure complaint, the plaintiff shall pay
6 to the clerk of the court in which the foreclosure complaint is
7 filed a fee of \$100 for deposit into the Mandatory Foreclosure
8 Mediation Fund, a special fund created in the State treasury.
9 The clerk shall remit the fee to the State Treasurer as
10 provided in this Section. Moneys in the Fund shall be expended
11 for mandatory foreclosure mediation under Section 15-1502.7
12 and for expenses related to administration of mandatory
13 foreclosure mediation. The clerk shall report monthly to the
14 Administrative Office of the Illinois Courts, on forms
15 prescribed by the Administrative Office of the Illinois Courts,
16 the mandatory foreclosure mediation filing fees received and
17 the fines paid pursuant to subsection (i) of Section 15-1502.7.
18 All fees paid by plaintiffs to the clerk of the court as
19 provided in this Section shall be disbursed within 60 days
20 after receipt by the clerk of the court as follows: (i) 98% to
21 the State Treasurer for deposit into the Mandatory Foreclosure
22 Mediation Fund, and (ii) 2% to the clerk of the court for
23 administrative expenses related to implementation of this
24 Section and Section 15-1502.7.

25 (b) Not later than March 1 of each year, the Administrative
26 Office of the Illinois Courts shall submit to the General

1 Assembly a report of the funds collected and remitted pursuant
2 to this Section during the preceding year.

3 Section 10. The State Finance Act is amended by adding
4 Section 5.811 as follows:

5 (30 ILCS 105/5.811 new)

6 Sec. 5.811. The Mandatory Foreclosure Mediation Fund.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 735 ILCS 5/15-1502.7 new

4 735 ILCS 5/15-1504 from Ch. 110, par. 15-1504

5 735 ILCS 5/15-1504.2 new

6 30 ILCS 105/5.811 new