



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB1355

Introduced 2/8/2011, by Sen. A. J. Wilhelmi

#### 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 a copy of the notice of foreclosure of residential real estate shall be sent to the municipality or county in which the property is located by first class mail (instead of sent pursuant to 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 immediately.

LRB097 07919 AJ0 48034 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 municipality within the boundary of which the mortgaged  
14 real estate is located, or to the county within the boundary of  
15 which the mortgaged real estate is located if the mortgaged  
16 real estate is located in an unincorporated territory. A  
17 municipality or county must clearly publish on its website a  
18 single address to which such notice shall be sent. If a  
19 municipality or county does not maintain a website, then the  
20 municipality or county must publicly post in its main office a  
21 single address to which such notice shall be sent. In the event  
22 that a municipality or county has not complied with the  
23 publication requirement in this subsection (b), then such  
24 notice to the municipality or county shall be sent by first  
25 class mail to the chairperson of the county board or county  
26 clerk in the case of a county, to the mayor or city clerk in the

1 case of a city, to the president of the board of trustees or  
2 village clerk in the case of a village, or to the supervisor or  
3 town clerk in the case of a town ~~provided pursuant to Section~~  
4 ~~2-211 of the Code of Civil Procedure.~~

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

6 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

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

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

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

25 (1) approve the mortgagee's fees and costs arising

1 between the entry of the judgment of foreclosure and the  
2 confirmation hearing, those costs and fees to be allowable  
3 to the same extent as provided in the note and mortgage and  
4 in Section 15-1504;

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

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

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

24 IF YOU ARE THE MORTGAGOR (HOMEOWNER), YOU HAVE THE RIGHT TO  
25 REMAIN IN POSSESSION FOR 30 DAYS AFTER ENTRY OF AN ORDER OF  
26 POSSESSION, IN ACCORDANCE WITH SECTION 15-1701(c) OF THE

## 1 ILLINOIS MORTGAGE FORECLOSURE LAW.

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

24 (b-15) Notice of confirmation order sent to known insurers.  
25 With respect to residential real estate, a copy of the  
26 confirmation order required under subsection (b) shall be sent

1 by first class mail, postage prepaid, to the last-known  
2 property insurer of the foreclosed property. Failure to send or  
3 receive a copy of the order shall not impair or abrogate in any  
4 way the rights of the mortgagee or purchaser or affect the  
5 status of the foreclosure proceedings.

6 (c) Failure to Give Notice. If any sale is held without  
7 compliance with subsection (c) of Section 15-1507 of this  
8 Article, any party entitled to the notice provided for in  
9 paragraph (3) of that subsection (c) who was not so notified  
10 may, by motion supported by affidavit made prior to  
11 confirmation of such sale, ask the court which entered the  
12 judgment to set aside the sale. Any such party shall guarantee  
13 or secure by bond a bid equal to the successful bid at the  
14 prior sale, unless the party seeking to set aside the sale is  
15 the mortgagor, the real estate sold at the sale is residential  
16 real estate, and the mortgagor occupies the residential real  
17 estate at the time the motion is filed. In that event, no  
18 guarantee or bond shall be required of the mortgagor. Any  
19 subsequent sale is subject to the same notice requirement as  
20 the original sale.

21 (d) Validity of Sale. Except as provided in subsection (c)  
22 of Section 15-1508, no sale under this Article shall be held  
23 invalid or be set aside because of any defect in the notice  
24 thereof or in the publication of the same, or in the  
25 proceedings of the officer conducting the sale, except upon  
26 good cause shown in a hearing pursuant to subsection (b) of

1 Section 15-1508. At any time after a sale has occurred, any  
2 party entitled to notice under paragraph (3) of subsection (c)  
3 of Section 15-1507 may recover from the mortgagee any damages  
4 caused by the mortgagee's failure to comply with such paragraph  
5 (3). Any party who recovers damages in a judicial proceeding  
6 brought under this subsection may also recover from the  
7 mortgagee the reasonable expenses of litigation, including  
8 reasonable attorney's fees.

9 (d-5) Making Home Affordable Program. The court that  
10 entered the judgment shall set aside a sale held pursuant to  
11 Section 15-1507, upon motion of the mortgagor at any time prior  
12 to the confirmation of the sale, if the mortgagor proves by a  
13 preponderance of the evidence that (i) the mortgagor has  
14 applied for assistance under the Making Home Affordable Program  
15 established by the United States Department of the Treasury  
16 pursuant to the Emergency Economic Stabilization Act of 2008,  
17 as amended by the American Recovery and Reinvestment Act of  
18 2009, and (ii) the mortgaged real estate was sold in material  
19 violation of the program's requirements for proceeding to a  
20 judicial sale. The provisions of this subsection (d-5), except  
21 for this sentence, shall become inoperative on January 1, 2013  
22 for all actions filed under this Article after December 31,  
23 2012, in which the mortgagor did not apply for assistance under  
24 the Making Home Affordable Program on or before December 31,  
25 2012.

26 (e) Deficiency Judgment. In any order confirming a sale



1 pursuant to the judgment of foreclosure, the court shall also  
2 enter a personal judgment for deficiency against any party (i)  
3 if otherwise authorized and (ii) to the extent requested in the  
4 complaint and proven upon presentation of the report of sale in  
5 accordance with Section 15-1508. Except as otherwise provided  
6 in this Article, a judgment may be entered for any balance of  
7 money that may be found due to the plaintiff, over and above  
8 the proceeds of the sale or sales, and enforcement may be had  
9 for the collection of such balance, the same as when the  
10 judgment is solely for the payment of money. Such judgment may  
11 be entered, or enforcement had, only in cases where personal  
12 service has been had upon the persons personally liable for the  
13 mortgage indebtedness, unless they have entered their  
14 appearance in the foreclosure action.

15 (f) Satisfaction. Upon confirmation of the sale, the  
16 judgment stands satisfied to the extent of the sale price less  
17 expenses and costs. If the order confirming the sale includes a  
18 deficiency judgment, the judgment shall become a lien in the  
19 manner of any other judgment for the payment of money.

20 (g) The order confirming the sale shall include,  
21 notwithstanding any previous orders awarding possession during  
22 the pendency of the foreclosure, an award to the purchaser of  
23 possession of the mortgaged real estate, as of the date 30 days  
24 after the entry of the order, against the parties to the  
25 foreclosure whose interests have been terminated.

26 An order of possession authorizing the removal of a person

1 from possession of the mortgaged real estate shall be entered  
2 and enforced only against those persons personally named as  
3 individuals in the complaint or the petition under subsection  
4 (h) of Section 15-1701 and in the order of possession and shall  
5 not be entered and enforced against any person who is only  
6 generically described as an unknown owner or nonrecord claimant  
7 or by another generic designation in the complaint.

8 Notwithstanding the preceding paragraph, the failure to  
9 personally name, include, or seek an award of possession of the  
10 mortgaged real estate against a person in the confirmation  
11 order shall not abrogate any right that the purchaser may have  
12 to possession of the mortgaged real estate and to maintain a  
13 proceeding against that person for possession under Article 9  
14 of this Code or subsection (h) of Section 15-1701; and  
15 possession against a person who (1) has not been personally  
16 named as a party to the foreclosure and (2) has not been  
17 provided an opportunity to be heard in the foreclosure  
18 proceeding may be sought only by maintaining a proceeding under  
19 Article 9 of this Code or subsection (h) of Section 15-1701.

20 (Source: P.A. 95-826, eff. 8-14-08; 96-265, eff. 8-11-09;  
21 96-856, eff. 3-1-10; 96-1245, eff. 7-23-10; revised 9-16-10.)

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