



Rep. Elaine Nekritz

Filed: 5/3/2011

09700SB1355ham001

LRB097 07919 AJ0 54844 a

1 AMENDMENT TO SENATE BILL 1355

2 AMENDMENT NO. _____. Amend Senate Bill 1355 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 to the chairperson of the county board or
7 county clerk in the case of a county, to the mayor or city
8 clerk in the case of a city and in the case of a city with a
9 population of more than 2,000,000 also to the alderman for the
10 ward in which the property is located, to the president of the
11 board of trustees or village clerk in the case of a village, or
12 to the president or town clerk in the case of a town ~~provided~~
13 ~~pursuant to Section 2-211 of the Code of Civil Procedure.~~
14 Failure to send or receive a copy of the notice shall not
15 impair or abrogate in any way the rights of the mortgagee or
16 affect the status of the foreclosure proceedings.

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

18 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

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

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

23 (b) Hearing. Upon motion and notice in accordance with
24 court rules applicable to motions generally, which motion shall
25 not be made prior to sale, the court shall conduct a hearing to

1 confirm the sale. Unless the court finds that (i) a notice
2 required in accordance with subsection (c) of Section 15-1507
3 was not given, (ii) the terms of sale were unconscionable,
4 (iii) the sale was conducted fraudulently, or (iv) ~~that~~ justice
5 was otherwise not done, the court shall then enter an order
6 confirming the sale. The confirmation order shall include a
7 name, address, and telephone number of the holder of the
8 certificate of sale or deed issued pursuant to that certificate
9 or, if no certificate or deed was issued, the purchaser, whom a
10 municipality or county may contact with concerns about the real
11 estate. The confirmation order may also:

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

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

19 (3) determine the priority of the judgments of parties
20 who deferred proving the priority pursuant to subsection
21 (h) of Section 15-1506, but the court shall not defer
22 confirming the sale pending the determination of such
23 priority.

24 (b-5) Notice with respect to residential real estate. With
25 respect to residential real estate, the notice required under
26 subsection (b) of this Section shall be sent to the mortgagor

1 even if the mortgagor has previously been held in default. In
2 the event the mortgagor has filed an appearance, the notice
3 shall be sent to the address indicated on the appearance. In
4 all other cases, the notice shall be sent to the mortgagor at
5 the common address of the foreclosed property. The notice shall
6 be sent by first class mail. Unless the right to possession has
7 been previously terminated by the court, the notice shall
8 include the following language in 12-point boldface
9 capitalized type:

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

14 (b-10) Notice of confirmation order sent to municipality or
15 county. With respect to residential real estate, a ~~A~~ copy of
16 the confirmation order required under subsection (b) shall be
17 sent by first class mail, postage prepaid, to the municipality
18 in which the foreclosed property is located, or to the county
19 within the boundary of which the foreclosed property is located
20 if the foreclosed property is located in an unincorporated
21 territory. A municipality or county must clearly publish on its
22 website a single address to which such order ~~notice~~ shall be
23 sent. If a municipality or county does not maintain a website,
24 then the municipality or county must publicly post in its main
25 office a single address to which such order ~~notice~~ shall be
26 sent. In the event that a municipality or county has not

1 complied with the publication requirement in this subsection
2 (b-10), then the copy of the order ~~such notice~~ to the
3 municipality or county shall be sent by first class mail to the
4 chairperson of the county board or county clerk in the case of
5 a county, to the mayor or city clerk in the case of a city and
6 in the case of a city with a population of more than 2,000,000
7 also to the alderman for the ward in which the property is
8 located, to the president of the board of trustees or village
9 clerk in the case of a village, or to the president or town
10 clerk in the case of a town ~~provided pursuant to Section 2-211~~
11 ~~of the Code of Civil Procedure.~~ Failure to send or receive a
12 copy of the order shall not impair or abrogate in any way the
13 rights of the mortgagee or purchaser or affect the status of
14 the foreclosure proceedings.

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

23 (c) Failure to Give Notice. If any sale is held without
24 compliance with subsection (c) of Section 15-1507 of this
25 Article, any party entitled to the notice provided for in
26 paragraph (3) of that subsection (c) who was not so notified

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

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

26 (d-5) Making Home Affordable Program. The court that

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

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

1 judgment is solely for the payment of money. Such judgment may
2 be entered, or enforcement had, only in cases where personal
3 service has been had upon the persons personally liable for the
4 mortgage indebtedness, unless they have entered their
5 appearance in the foreclosure action.

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

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

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

25 Notwithstanding the preceding paragraph, the failure to
26 personally name, include, or seek an award of possession of the

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

11 (Source: P.A. 95-826, eff. 8-14-08; 96-265, eff. 8-11-09;
12 96-856, eff. 3-1-10; 96-1245, eff. 7-23-10; revised
13 9-16-10.)".

14 Section 99. Effective date. This Act takes effect upon
15 becoming law.".