

SB2033



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2033

Introduced 2/10/2011, by Sen. John G. Mulroe

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1504

from Ch. 110, par. 15-1504

Amends the Code of Civil Procedure. Adds, to the provisions concerning the form of a foreclosure complaint, a requirement for a statement as to whether the mortgaged real estate is vacant or occupied. Effective immediately.

LRB097 10111 AJ0 50293 b

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 Section 15-1504 as follows:

6 (735 ILCS 5/15-1504) (from Ch. 110, par. 15-1504)
7 Sec. 15-1504. Pleadings and service.

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

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

15 (2) The mortgaged real estate is: (select one)

16 vacant

17 occupied

18 (3) ~~(2)~~ Attached as Exhibit "A" is a copy of the
19 mortgage and as Exhibit "B" is a copy of the note secured
20 thereby.

21 (4) ~~(3)~~ Information concerning mortgage:

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

1 of a mortgage, etc.)

2 (B) Date of mortgage:

3 (C) Name of mortgagor:

4 (D) Name of mortgagee:

5 (E) Date and place of recording:

6 (F) Identification of recording: (here insert book
7 and page number or document number)

8 (G) Interest subject to the mortgage: (here insert
9 whether fee simple, estate for years, undivided
10 interest, etc.)

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

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

16 (J) Statement as to defaults, including, but not
17 necessarily limited to, date of default, current
18 unpaid principal balance, per diem interest accruing,
19 and any further information concerning the default:

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

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

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

26 (N) Capacity in which plaintiff brings this

1 foreclosure (here indicate whether plaintiff is the
2 legal holder of the indebtedness, a pledgee, an agent,
3 the trustee under a trust deed or otherwise, as
4 appropriate):

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

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

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

19 (R) Facts in support of a request for appointment
20 of mortgagee in possession or for appointment of
21 receiver, and identity of such receiver, if sought:

22 (S) Offer to mortgagor in accordance with Section
23 15-1402 to accept title to the real estate in
24 satisfaction of all indebtedness and obligations
25 secured by the mortgage without judicial sale, if
26 sought:

1 the form set forth in subsection (a) of Section 15-1504 are
2 deemed and construed to include allegations as follows:

3 (1) on the date indicated the obligor of the
4 indebtedness or other obligations secured by the mortgage
5 was justly indebted in the amount of the indicated original
6 indebtedness to the original mortgagee or payee of the
7 mortgage note;

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

11 (3) that the mortgagor was at the date indicated an
12 owner of the interest in the real estate described in the
13 complaint and that as of that date made, executed and
14 delivered the mortgage as security for the note or other
15 obligations;

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

20 (5) that defaults occurred as indicated;

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

24 (7) that the mortgage constitutes a valid, prior and
25 paramount lien upon the indicated interest in the mortgaged
26 real estate, which lien is prior and superior to the right,

1 title, interest, claim or lien of all parties and nonrecord
2 claimants whose interests in the mortgaged real estate are
3 sought to be terminated;

4 (8) that by reason of the defaults alleged, if the
5 indebtedness has not matured by its terms, the same has
6 become due by the exercise, by the plaintiff or other
7 persons having such power, of a right or power to declare
8 immediately due and payable the whole of all indebtedness
9 secured by the mortgage;

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

13 (10) that any and all periods of grace or other period
14 of time allowed for the performance of the covenants or
15 conditions claimed to be breached or for the curing of any
16 breaches have expired;

17 (11) that the amounts indicated in the statement in the
18 complaint are correctly stated and if such statement
19 indicates any advances made or to be made by the plaintiff
20 or owner of the mortgage indebtedness, that such advances
21 were, in fact, made or will be required to be made, and
22 under and by virtue of the mortgage the same constitute
23 additional indebtedness secured by the mortgage; and

24 (12) that, upon confirmation of the sale, the holder of
25 the certificate of sale or deed issued pursuant to that
26 certificate or, if no certificate or deed was issued, the

1 purchaser at the sale will be entitled to full possession
2 of the mortgaged real estate against the parties named in
3 clause (T) of paragraph (4) ~~(3)~~ of subsection (a) of
4 Section 15-1504 or elsewhere to the same effect; the
5 omission of any party indicates that plaintiff will not
6 seek a possessory order in the order confirming sale unless
7 the request is subsequently made under subsection (h) of
8 Section 15-1701 or by separate action under Article 9 of
9 this Code.

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

14 (1) plaintiff has been compelled to employ and retain
15 attorneys to prepare and file the complaint and to
16 represent and advise the plaintiff in the foreclosure of
17 the mortgage and the plaintiff will thereby become liable
18 for the usual, reasonable and customary fees of the
19 attorneys in that behalf;

20 (2) that the plaintiff has been compelled to advance or
21 will be compelled to advance, various sums of money in
22 payment of costs, fees, expenses and disbursements
23 incurred in connection with the foreclosure, including,
24 without limiting the generality of the foregoing, filing
25 fees, stenographer's fees, witness fees, costs of
26 publication, costs of procuring and preparing documentary

1 evidence and costs of procuring abstracts of title, Torrens
2 certificates, foreclosure minutes and a title insurance
3 policy;

4 (3) that under the terms of the mortgage, all such
5 advances, costs, attorneys' fees and other fees, expenses
6 and disbursements are made a lien upon the mortgaged real
7 estate and the plaintiff is entitled to recover all such
8 advances, costs, attorneys' fees, expenses and
9 disbursements, together with interest on all advances at
10 the rate provided in the mortgage, or, if no rate is
11 provided therein, at the statutory judgment rate, from the
12 date on which such advances are made;

13 (4) that in order to protect the lien of the mortgage,
14 it may become necessary for plaintiff to pay taxes and
15 assessments which have been or may be levied upon the
16 mortgaged real estate;

17 (5) that in order to protect and preserve the mortgaged
18 real estate, it may also become necessary for the plaintiff
19 to pay liability (protecting mortgagor and mortgagee),
20 fire and other hazard insurance premiums on the mortgaged
21 real estate, make such repairs to the mortgaged real estate
22 as may reasonably be deemed necessary for the proper
23 preservation thereof, advance for costs to inspect the
24 mortgaged real estate or to appraise it, or both, and
25 advance for premiums for pre-existing private or
26 governmental mortgage insurance to the extent required

1 after a foreclosure is commenced in order to keep such
2 insurance in force; and

3 (6) that under the terms of the mortgage, any money so
4 paid or expended will become an additional indebtedness
5 secured by the mortgage and will bear interest from the
6 date such monies are advanced at the rate provided in the
7 mortgage, or, if no rate is provided, at the statutory
8 judgment rate.

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

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

13 (2) that the defendants be ordered to pay to the
14 plaintiff before expiration of any redemption period (or,
15 if no redemption period, before a short date fixed by the
16 court) whatever sums may appear to be due upon the taking
17 of such account, together with attorneys' fees and costs of
18 the proceedings (to the extent provided in the mortgage or
19 by law);

20 (3) that in default of such payment in accordance with
21 the judgment, the mortgaged real estate be sold as directed
22 by the court, to satisfy the amount due to the plaintiff as
23 set forth in the judgment, together with the interest
24 thereon at the statutory judgment rate from the date of the
25 judgment;

26 (4) that in the event the plaintiff is a purchaser of

1 the mortgaged real estate at such sale, the plaintiff may
2 offset against the purchase price of such real estate the
3 amounts due under the judgment of foreclosure and order
4 confirming the sale;

5 (5) that in the event of such sale and the failure of
6 any person entitled thereto to redeem prior to such sale
7 pursuant to this Article, the defendants made parties to
8 the foreclosure in accordance with this Article, and all
9 nonrecord claimants given notice of the foreclosure in
10 accordance with this Article, and all persons claiming by,
11 through or under them, and each and any and all of them,
12 may be forever barred and foreclosed of any right, title,
13 interest, claim, lien, or right to redeem in and to the
14 mortgaged real estate; and

15 (6) that if no redemption is made prior to such sale, a
16 deed may be issued to the purchaser thereat according to
17 law and such purchaser be let into possession of the
18 mortgaged real estate in accordance with Part 17 of this
19 Article.

20 (f) Request for Deficiency Judgment. A request for a
21 personal judgment for a deficiency in a foreclosure complaint
22 if the sale of the mortgaged real estate fails to produce a
23 sufficient amount to pay the amount found due, the plaintiff
24 may have a personal judgment against any party in the
25 foreclosure indicated as being personally liable therefor and
26 the enforcement thereof be had as provided by law.

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

4 (h) Answers by Parties. Any party may assert its interest
5 by counterclaim and such counterclaim may at the option of that
6 party stand in lieu of answer to the complaint for foreclosure
7 and all counter complaints previously or thereafter filed in
8 the foreclosure. Any such counterclaim shall be deemed to
9 constitute a statement that the counter claimant does not have
10 sufficient knowledge to form a belief as to the truth or
11 falsity of the allegations of the complaint and all other
12 counterclaims, except to the extent that the counterclaim
13 admits or specifically denies such allegations.

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

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