



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2080

Introduced 2/10/2011, by Sen. Jacqueline Y. Collins

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1504
735 ILCS 5/15-1506

from Ch. 110, par. 15-1504
from Ch. 110, par. 15-1506

Amends the Code of Civil Procedure. Provides that a foreclosure complaint shall include a copy of all documents that demonstrate the capacity (instead of a statement of the capacity) in which the plaintiff brings the foreclosure (such as legal holder of the indebtedness, pledgee, agent, trustee under a trust deed, or otherwise). Provides that at a foreclosure trial, an allegation of fact that is not denied (instead of not denied or if the party has no knowledge to form a belief as to the truth of the allegation) must be proved by a verified complaint or separate affidavit. Provides that a foreclosure judgment shall include: tangible evidence of the indebtedness, who holds the indebtedness and, if the plaintiff is not the original mortgagee, specific findings of fact concerning the plaintiff's capacity to bring the foreclosure action and a determination of whether this capacity legally entitles the plaintiff to bring the action. Effective immediately.

LRB097 08493 AJO 48620 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 15-1504 and 15-1506 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) Attached as Exhibit "A" is a copy of the mortgage
16 and as Exhibit "B" is a copy of the note secured thereby.

17 (3) Information concerning mortgage:

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

21 (B) Date of mortgage:

22 (C) Name of mortgagor:

23 (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); attached as Exhibit "C" are copies of all

1 documents which demonstrate that the plaintiff is the
2 legal holder of the indebtedness, a pledgee, an agent,
3 the trustee under a trust deed, or is otherwise legally
4 entitled to bring the foreclosure:

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 (T) Name or names of defendants whose right to
2 possess the mortgaged real estate, after the
3 confirmation of a foreclosure sale, is sought to be
4 terminated and, if not elsewhere stated, the facts in
5 support thereof:

6 REQUEST FOR RELIEF

7 Plaintiff requests:

8 (i) A judgment of foreclosure and sale.

9 (ii) An order granting a shortened redemption period,
10 if sought.

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

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

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

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

17 (b) Required Information. A foreclosure complaint need
18 contain only such statements and requests called for by the
19 form set forth in subsection (a) of Section 15-1504 as may be
20 appropriate for the relief sought. Such complaint may be filed
21 as a counterclaim, may be joined with other counts or may
22 include in the same count additional matters or a request for
23 any additional relief permitted by Article II of the Code of
24 Civil Procedure.

25 (c) Allegations. The statements contained in a complaint in

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 (3) of subsection (a) of Section
4 15-1504 or elsewhere to the same effect; the omission of
5 any party indicates that plaintiff will not seek a
6 possessory order in the order confirming sale unless the
7 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 (735 ILCS 5/15-1506) (from Ch. 110, par. 15-1506)

16 Sec. 15-1506. Judgment. (a) Evidence. In the trial of a
17 foreclosure, the evidence to support the allegations of the
18 complaint shall be taken in open court, except:

19 (1) where an allegation of fact in the complaint is not
20 denied by a party's verified answer or verified counterclaim,
21 ~~or where a party pursuant to subsection (b) of Section 2-610 of~~
22 ~~the Code of Civil Procedure states, or is deemed to have~~
23 ~~stated, in its pleading that it has no knowledge of such~~
24 ~~allegation sufficient to form a belief and attaches the~~
25 ~~required affidavit,~~ a sworn verification of the complaint or a

1 separate affidavit setting forth such fact is sufficient
2 evidence thereof against such party and no further evidence of
3 such fact shall be required; and

4 (2) where all the allegations of fact in the complaint have
5 been proved by verification of the complaint or affidavit, the
6 court upon motion supported by an affidavit stating the amount
7 which is due the mortgagee, may ~~shall~~ enter a judgment of
8 foreclosure as requested in the complaint.

9 (b) Instruments. In all cases the evidence of who the legal
10 holder of the indebtedness is, the indebtedness itself, and the
11 mortgage foreclosed shall be exhibited to the court and
12 appropriately marked, and copies thereof shall be filed with
13 the court.

14 (c) Summary and Default Judgments. Nothing in this Section
15 15-1506 shall prevent a party from obtaining a summary or
16 default judgment authorized by Article II of the Code of Civil
17 Procedure.

18 (d) Notice of Entry of Default. When any judgment in a
19 foreclosure is entered by default, notice of such judgment
20 shall be given in accordance with Section 2-1302 of the Code of
21 Civil Procedure.

22 (e) Matters Required in Judgment. A judgment of foreclosure
23 shall include the last date for redemption and all rulings of
24 the court entered with respect to each request for relief set
25 forth in the complaint. If the plaintiff in the action is not
26 the original mortgagee, a judgment of foreclosure shall make

1 specific findings of fact concerning the capacity in which the
2 plaintiff brought the foreclosure action (legal holder of the
3 indebtedness, a pledge, an agent, the trustee under a trust
4 deed or otherwise) and a determination of whether this capacity
5 legally entitles the plaintiff to bring the action. The
6 omission of the date for redemption shall not extend the time
7 for redemption or impair the validity of the judgment.

8 (f) Special Matters in Judgment. Without limiting the
9 general authority and powers of the court, special matters may
10 be included in the judgment of foreclosure if sought by a party
11 in the complaint or by separate motion. Such matters may
12 include, without limitation:

13 (1) a manner of sale other than public auction;

14 (2) a sale by sealed bid;

15 (3) an official or other person who shall be the officer to
16 conduct the sale other than the one customarily designated by
17 the court;

18 (4) provisions for non-exclusive broker listings or
19 designating a duly licensed real estate broker nominated by one
20 of the parties to exclusively list the real estate for sale;

21 (5) the fees or commissions to be paid out of the sale
22 proceeds to the listing or other duly licensed broker, if any,
23 who shall have procured the accepted bid;

24 (6) the fees to be paid out of the sale proceeds to an
25 auctioneer, if any, who shall have been authorized to conduct a
26 public auction sale;

1 (7) whether and in what manner and with what content signs
2 shall be posted on the real estate;

3 (8) a particular time and place at which such bids shall be
4 received;

5 (9) a particular newspaper or newspapers in which notice of
6 sale shall be published;

7 (10) the format for the advertising of such sale, including
8 the size, content and format of such advertising, and
9 additional advertising of such sale;

10 (11) matters or exceptions to which title in the real
11 estate may be subject at the sale;

12 (12) a requirement that title insurance in a specified form
13 be provided to a purchaser at the sale, and who shall pay for
14 such insurance;

15 (13) whether and to what extent bids with mortgage or other
16 contingencies will be allowed;

17 (14) such other matters as approved by the court to ensure
18 sale of the real estate for the most commercially favorable
19 price for the type of real estate involved.

20 (g) Agreement of the Parties. If all of the parties agree
21 in writing on the minimum price and that the real estate may be
22 sold to the first person who offers in writing to purchase the
23 real estate for such price, and on such other commercially
24 reasonable terms and conditions as the parties may agree, then
25 the court shall order the real estate to be sold on such terms,
26 subject to confirmation of the sale in accordance with Section

1 15-1508.

2 (h) Postponement of Proving Priority. With the approval of
3 the court prior to the entry of the judgment of foreclosure, a
4 party claiming an interest in the proceeds of the sale of the
5 mortgaged real estate may defer proving the priority of such
6 interest until the hearing to confirm the sale.

7 (i) Effect of Judgment and Lien. (1) Upon the entry of the
8 judgment of foreclosure, all rights of a party in the
9 foreclosure against the mortgagor provided for in the judgment
10 of foreclosure or this Article shall be secured by a lien on
11 the mortgaged real estate, which lien shall have the same
12 priority as the claim to which the judgment relates and shall
13 be terminated upon confirmation of a judicial sale in
14 accordance with this Article.

15 (2) Upon the entry of the judgment of foreclosure, the
16 rights in the real estate subject to the judgment of
17 foreclosure of (i) all persons made a party in the foreclosure
18 and (ii) all nonrecord claimants given notice in accordance
19 with paragraph (2) of subsection (c) of Section 15-1502, shall
20 be solely as provided for in the judgment of foreclosure and in
21 this Article.

22 (Source: P.A. 85-907.)

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