

1 AN ACT concerning civil procedure.

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 2-616 as follows:

6 (735 ILCS 5/2-616) (from Ch. 110, par. 2-616)

7 Sec. 2-616. Amendments. (a) At any time before final
8 judgment amendments may be allowed on just and reasonable
9 terms, introducing any party who ought to have been joined as
10 plaintiff or defendant, dismissing any party, changing the
11 cause of action or defense or adding new causes of action or
12 defenses, and in any matter, either of form or substance, in
13 any process, pleading, bill of particulars or proceedings,
14 which may enable the plaintiff to sustain the claim for which
15 it was intended to be brought or the defendant to make a
16 defense or assert a cross claim.

17 (b) The cause of action, cross claim or defense set up
18 in any amended pleading shall not be barred by lapse of time
19 under any statute or contract prescribing or limiting the
20 time within which an action may be brought or right asserted,
21 if the time prescribed or limited had not expired when the
22 original pleading was filed, and if it shall appear from the
23 original and amended pleadings that the cause of action
24 asserted, or the defense or cross claim interposed in the
25 amended pleading grew out of the same transaction or
26 occurrence set up in the original pleading, even though the
27 original pleading was defective in that it failed to allege
28 the performance of some act or the existence of some fact or
29 some other matter which is a necessary condition precedent to
30 the right of recovery or defense asserted, if the condition
31 precedent has in fact been performed, and for the purpose of

1 preserving the cause of action, cross claim or defense set up
 2 in the amended pleading, and for that purpose only, an
 3 amendment to any pleading shall be held to relate back to the
 4 date of the filing of the original pleading so amended.

5 (c) A pleading may be amended at any time, before or
 6 after judgment, to conform the pleadings to the proofs, upon
 7 terms as to costs and continuance that may be just.

8 (d) A cause of action against a person not originally
 9 named a defendant is not barred by lapse of time under any
 10 statute or contract prescribing or limiting the time within
 11 which an action may be brought or right asserted, if all the
 12 following terms and conditions are met: (1) the time
 13 prescribed or limited had not expired when the original
 14 action was commenced; ~~(2) failure to join the person as a~~
 15 ~~defendant was inadvertent;~~ ~~(3) service of summons was in fact~~
 16 ~~had upon the person, his or her agent or partner, as the~~
 17 ~~nature of the defendant made appropriate, even though he or~~
 18 ~~she was served in the wrong capacity or as agent of another,~~
 19 ~~or upon a trustee who has title to but no power of management~~
 20 ~~or control over real property constituting a trust of which~~
 21 ~~the person is a beneficiary;~~ (2)(4) the person, within the
 22 time when the action might have been brought or the right
 23 asserted against him or her plus the time for service
 24 permitted under Supreme Court Rule 103(b), received such
 25 notice of the commencement of the action that the person will
 26 not be prejudiced in maintaining a defense on the merits and
 27 knew or should have known that, but for a mistake concerning
 28 the identity of the proper party, the action would have been
 29 brought against him or her, ~~knew that the action was pending~~
 30 ~~and that it grew out of a transaction or occurrence involving~~
 31 ~~or concerning him or her received the notice of the~~
 32 ~~commencement of the action that the person will not be~~
 33 ~~prejudiced in maintaining a defense on the merits and knew or~~
 34 ~~should have known that, but for a mistake concerning the~~

1 ~~identity--of--the--proper--party,--the-action-would-have-been~~
2 ~~brought-against-him-or-her;~~ and (3)(5) it appears from the
3 original and amended pleadings that the cause of action
4 asserted in the amended pleading grew out of the same
5 transaction or occurrence set up in the original pleading,
6 even though the original pleading was defective in that it
7 failed to allege the performance of some act or the existence
8 of some fact or other matter which is a necessary condition
9 precedent to the right of recovery when the condition
10 precedent has in fact been performed, and even though the
11 person was not named originally was a defendant. For the
12 purpose of preserving the cause of action under those
13 conditions, an amendment adding the person as a defendant
14 relates back to the date of the filing of the original
15 pleading so amended. The changes made by this amendatory Act
16 of the 92nd General Assembly apply to all actions filed on or
17 after the effective date of this amendatory Act of the 92nd
18 General Assembly, and to actions filed before the effective
19 date of this amendatory Act of the 92nd General Assembly if
20 the limitation period has not ended before that effective
21 date.

22 (e) A cause of action against a beneficiary of a land
23 trust not originally named a defendant is not barred by lapse
24 of time under any statute or contract prescribing or limiting
25 the time within which an action may be brought or right
26 asserted, if all the following terms and conditions are met:
27 (1) the cause of action arises from the ownership, use or
28 possession of real estate, record title where to is held by a
29 land trustee; (2) the time prescribed or limited had not
30 expired when the original action was commenced; (3) the land
31 trustee of record is named as a defendant; and (4) the
32 plaintiff proceeds with reasonable diligence subsequent to
33 the commencement of the action to serve process upon the land
34 trustee, to determine the identity of the beneficiary, and to

1 amend the complaint to name the beneficiary as a defendant.

2 (f) The changes made by this amendatory Act of the 92nd
3 General Assembly apply to all actions filed on or after the
4 effective date of this amendatory Act, and to actions filed
5 before the effective date of this amendatory Act if the
6 limitation period has not ended before the effective date.

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