



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB0192

Introduced 1/18/2017, by Sen. Pamela J. Althoff

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1506

from Ch. 110, par. 15-1506

Amends the Mortgage Foreclosure Article of the Code of Civil Procedure. Provides that in the trial of a foreclosure, the mortgagee establishes a prima facie case for foreclosure once the following evidence has been offered and admitted: (1) the mortgage at issue in the case; and (2) the note at issue in the case. Provides that the mortgagee is not required to present further evidence in order to establish a prima facie case of foreclosure, and once a prima facie case of foreclosure has been established by the mortgagee, the burden of proof and of presenting evidence shifts to the mortgagor to prove the amount owed on the note, payment, and any affirmative defense the mortgagor claims. Provides that failure of the mortgagor to present evidence of the amount owed on the note shall constitute a waiver of that issue, regardless of any contrary pleadings, and the mortgagee shall thereafter have the burden of presenting evidence of the amount due on the note. Provides that if the burden of presenting evidence regarding the amount owed on the note shifts back to the mortgagee because of the mortgagor's failure to present such evidence, the amount owed on the note shall be proven by affidavit. Provides that if the mortgagor presents evidence of the amount owed on the note, the mortgagee may present evidence in rebuttal, and this rebuttal evidence must be taken in open court.

LRB100 05408 HEP 15419 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 Section 15-1506 as follows:

6 (735 ILCS 5/15-1506) (from Ch. 110, par. 15-1506)  
7 Sec. 15-1506. Judgment.

8 (a) Evidence. In the trial of a foreclosure, the evidence  
9 to support the allegations of the complaint shall be taken in  
10 open court, except:

11 (1) where an allegation of fact in the complaint is not  
12 denied by a party's verified answer or verified  
13 counterclaim, or where a party pursuant to subsection (b)  
14 of Section 2-610 of the Code of Civil Procedure states, or  
15 is deemed to have stated, in its pleading that it has no  
16 knowledge of such allegation sufficient to form a belief  
17 and attaches the required affidavit, a sworn verification  
18 of the complaint or a separate affidavit setting forth such  
19 fact is sufficient evidence thereof against such party and  
20 no further evidence of such fact shall be required; and

21 (2) where all the allegations of fact in the complaint  
22 have been proved by verification of the complaint or  
23 affidavit, the court upon motion supported by an affidavit

1           stating the amount which is due the mortgagee, shall enter  
2           a judgment of foreclosure as requested in the complaint.

3           (a-5) Burden of Proof at Trial. In the trial of a  
4           foreclosure, the mortgagee establishes a prima facie case for  
5           foreclosure once the following evidence has been offered and  
6           admitted:

7                     (1) the mortgage at issue in the case; and

8                     (2) the note at issue in the case.

9           The mortgagee is not required to present further evidence  
10          in order to establish a prima facie case of foreclosure. Once a  
11          prima facie case of foreclosure has been established by the  
12          mortgagee, the burden of proof and of presenting evidence  
13          shifts to the mortgagor to prove the amount owed on the note,  
14          payment, and any affirmative defense the mortgagor claims. This  
15          subsection (a-5) is declarative of existing law.

16          (a-7) Proof of Amount Owed. Failure of the mortgagor to  
17          present evidence of the amount owed on the note shall  
18          constitute a waiver of that issue, regardless of any contrary  
19          pleadings, and the mortgagee shall thereafter have the burden  
20          of presenting evidence of the amount due on the note.  
21          Notwithstanding the requirements of subsection (a) of this  
22          Section, if the burden of presenting evidence regarding the  
23          amount owed on the note shifts back to the mortgagee because of  
24          the mortgagor's failure to present such evidence, the amount  
25          owed on the note shall be proven by affidavit. If the mortgagor  
26          presents evidence of the amount owed on the note, the mortgagee

1 may present evidence in rebuttal, and this rebuttal evidence  
2 must be taken in open court.

3 (b) Instruments. In all cases the evidence of the  
4 indebtedness and the mortgage foreclosed shall be exhibited to  
5 the court and appropriately marked, and copies thereof shall be  
6 filed with the court.

7 (c) Summary and Default Judgments. Nothing in this Section  
8 15-1506 shall prevent a party from obtaining a summary or  
9 default judgment authorized by Article II of the Code of Civil  
10 Procedure.

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

15 (e) Matters Required in Judgment. A judgment of foreclosure  
16 shall include the last date for redemption and all rulings of  
17 the court entered with respect to each request for relief set  
18 forth in the complaint. The omission of the date for redemption  
19 shall not extend the time for redemption or impair the validity  
20 of the judgment.

21 (f) Special Matters in Judgment. Without limiting the  
22 general authority and powers of the court, special matters may  
23 be included in the judgment of foreclosure if sought by a party  
24 in the complaint or by separate motion. Such matters may  
25 include, without limitation:

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

1 (2) a sale by sealed bid;

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

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

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

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

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

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

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

21 (10) the format for the advertising of such sale,  
22 including the size, content and format of such advertising,  
23 and additional advertising of such sale;

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

26 (12) a requirement that title insurance in a specified

1 form be provided to a purchaser at the sale, and who shall  
2 pay for such insurance;

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

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

8 (g) Agreement of the Parties. If all of the parties agree  
9 in writing on the minimum price and that the real estate may be  
10 sold to the first person who offers in writing to purchase the  
11 real estate for such price, and on such other commercially  
12 reasonable terms and conditions as the parties may agree, then  
13 the court shall order the real estate to be sold on such terms,  
14 subject to confirmation of the sale in accordance with Section  
15 15-1508.

16 (h) Postponement of Proving Priority. With the approval of  
17 the court prior to the entry of the judgment of foreclosure, a  
18 party claiming an interest in the proceeds of the sale of the  
19 mortgaged real estate may defer proving the priority of such  
20 interest until the hearing to confirm the sale.

21 (i) Effect of Judgment and Lien.

22 (1) Upon the entry of the judgment of foreclosure, all  
23 rights of a party in the foreclosure against the mortgagor  
24 provided for in the judgment of foreclosure or this Article  
25 shall be secured by a lien on the mortgaged real estate,  
26 which lien shall have the same priority as the claim to

1           which the judgment relates and shall be terminated upon  
2           confirmation of a judicial sale in accordance with this  
3           Article.

4           (2) Upon the entry of the judgment of foreclosure, the  
5           rights in the real estate subject to the judgment of  
6           foreclosure of (i) all persons made a party in the  
7           foreclosure and (ii) all nonrecord claimants given notice  
8           in accordance with paragraph (2) of subsection (c) of  
9           Section 15-1502, shall be solely as provided for in the  
10          judgment of foreclosure and in this Article.

11          (3) Entry of a judgment of foreclosure does not  
12          terminate or otherwise affect a bona fide lease of a  
13          dwelling unit in residential real estate in foreclosure,  
14          whether or not the lessee has been made a party in the  
15          foreclosure.

16          (Source: P.A. 98-514, eff. 11-19-13.)