



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5001

Introduced 2/7/2012, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1503
735 ILCS 5/15-1508

from Ch. 110, par. 15-1503
from Ch. 110, par. 15-1508

Amends provisions of the Code of Civil Procedure requiring a copy of a notice of foreclosure of residential real estate or a copy of a confirmation order after a confirmation of sale of residential real estate following a foreclosure to be sent by a party seeking foreclosure to the municipality or county where the mortgaged real estate is located and to the known insurers. Provides that if the municipality or county has not posted an address to which the notice of foreclosure or copy of a confirmation order must be sent, the notice of foreclosure or copy of a confirmation order must be sent to the chairperson of the county board or county clerk, mayor or city clerk, president of the board of trustees or village clerk, or president or town clerk (rather than sent in accordance with specified provisions of the Code). If the real estate is located in a city with a population of more than 2,000,000, also requires a notice of foreclosure or copy of a confirmation order to be sent to the city clerk, requires an affidavit attesting that the notice of foreclosure or copy of a confirmation order was sent, requires the city clerk to send a copy of a notice of foreclosure to the alderman for the ward in which the real estate is located, provides for dismissal of a complaint or counterclaim without prejudice if the requirements regarding a notice of foreclosure are not met, and adds notice requirements when a party refiles the complaint or counterclaim after a dismissal. Makes other changes.

LRB097 17635 AJ0 65243 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 15-1503 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
17 include (i) the names of all plaintiffs and the case number,
18 (ii) the court in which the action was brought, (iii) the names
19 of title holders of record, (iv) a legal description of the
20 real estate sufficient to identify it with reasonable
21 certainty, (v) a common address or description of the location
22 of the real estate and (vi) identification of the mortgage
23 sought to be foreclosed. An incorrect common address or

1 description of the location, or an immaterial error in the
2 identification of a plaintiff or title holder of record, shall
3 not invalidate the lis pendens effect of the notice under this
4 Section. A notice which complies with this Section shall be
5 deemed to comply with Section 2-1901 of the Code of Civil
6 Procedure and shall have the same effect as a notice filed
7 pursuant to that Section; however, a notice which complies with
8 Section 2-1901 shall not be constructive notice unless it also
9 complies with the requirements of this Section.

10 (b) With respect to residential real estate, a copy of the
11 notice of foreclosure described in subsection (a) of Section
12 15-1503 shall be sent by first class mail, postage prepaid, to
13 the municipality within the boundary of which the mortgaged
14 real estate is located, or to the county within the boundary of
15 which the mortgaged real estate is located if the mortgaged
16 real estate is located in an unincorporated territory. A
17 municipality or county must clearly publish on its website a
18 single address to which such notice shall be sent. If a
19 municipality or county does not maintain a website, then the
20 municipality or county must publicly post in its main office a
21 single address to which such notice shall be sent. In the event
22 that a municipality or county has not complied with the
23 publication requirement in this subsection (b), then the copy
24 of the ~~such~~ notice to the municipality or county shall be sent
25 by first class mail to the chairperson of the county board or
26 county clerk in the case of a county, to the mayor or city

1 clerk in the case of a city, to the president of the board of
2 trustees or village clerk in the case of a village, or to the
3 president or town clerk in the case of a town provided pursuant
4 to Section 2-211 of the Code of Civil Procedure. Additionally,
5 if the real estate is located in a city with a population of
6 more than 2,000,000, regardless of whether that city has
7 complied with the publication requirement in this subsection
8 (b), the party must, within 3 days after filing the complaint
9 or counterclaim: (i) send a copy of the notice of foreclosure
10 to the city clerk and (ii) file an affidavit with the court
11 attesting to the fact that the notice was sent to the city
12 clerk. Within 5 days after receipt of a notice of foreclosure,
13 the city clerk shall send a copy of the notice to the alderman
14 for the ward in which the real estate is located. The failure
15 to send a copy of the notice to the city clerk or to file an
16 affidavit within 3 days as required results in the dismissal
17 without prejudice of the complaint or counterclaim on a motion
18 of a party or the court. If, after the complaint or
19 counterclaim has been dismissed without prejudice, the party
20 refiles the complaint or counterclaim, then the party must
21 again meet the requirements that the party send the notice to
22 the city clerk within 3 days and file an affidavit within 3
23 days attesting to the fact that the notice was sent as
24 required. In that instance, the city clerk shall send a copy of
25 the notice to the appropriate alderman within 5 days.

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

1 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)
2 Sec. 15-1508. Report of Sale and Confirmation of Sale.

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

6 (b) Hearing. Upon motion and notice in accordance with
7 court rules applicable to motions generally, which motion shall
8 not be made prior to sale, the court shall conduct a hearing to
9 confirm the sale. Unless the court finds that (i) a notice
10 required in accordance with subsection (c) of Section 15-1507
11 or a notice to the city clerk required in accordance with
12 subsection (b) of Section 15-1503 was not given, (ii) the terms
13 of sale were unconscionable, (iii) the sale was conducted
14 fraudulently, or (iv) justice was otherwise not done, the court
15 shall then enter an order confirming the sale. The confirmation
16 order shall include a name, address, and telephone number of
17 the holder of the certificate of sale or deed issued pursuant
18 to that certificate or, if no certificate or deed was issued,
19 the purchaser, whom a municipality or county may contact with
20 concerns about the real estate. The confirmation order may
21 also:

22 (1) approve the mortgagee's fees and costs arising
23 between the entry of the judgment of foreclosure and the
24 confirmation hearing, those costs and fees to be allowable
25 to the same extent as provided in the note and mortgage and

1 in Section 15-1504;

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

4 (3) determine the priority of the judgments of parties
5 who deferred proving the priority pursuant to subsection
6 (h) of Section 15-1506, but the court shall not defer
7 confirming the sale pending the determination of such
8 priority.

9 (b-5) Notice with respect to residential real estate. With
10 respect to residential real estate, the notice required under
11 subsection (b) of this Section shall be sent to the mortgagor
12 even if the mortgagor has previously been held in default. In
13 the event the mortgagor has filed an appearance, the notice
14 shall be sent to the address indicated on the appearance. In
15 all other cases, the notice shall be sent to the mortgagor at
16 the common address of the foreclosed property. The notice shall
17 be sent by first class mail. Unless the right to possession has
18 been previously terminated by the court, the notice shall
19 include the following language in 12-point boldface
20 capitalized type:

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

25 (b-10) Notice of confirmation order sent to municipality or
26 county. With respect to residential real estate, a ~~A~~ copy of

1 the confirmation order required under subsection (b) shall be
2 sent by first class mail, postage prepaid, to the municipality
3 in which the foreclosed property is located, or to the county
4 within the boundary of which the foreclosed property is located
5 if the foreclosed property is located in an unincorporated
6 territory. A municipality or county must clearly publish on its
7 website a single address to which such order ~~notice~~ shall be
8 sent. If a municipality or county does not maintain a website,
9 then the municipality or county must publicly post in its main
10 office a single address to which such order ~~notice~~ shall be
11 sent. In the event that a municipality or county has not
12 complied with the publication requirement in this subsection
13 (b-10), then the copy of the order ~~such notice~~ to the
14 municipality or county shall be sent by first class mail to the
15 chairperson of the county board or county clerk in the case of
16 a county, to the mayor or city clerk in the case of a city, to
17 the president of the board of trustees or village clerk in the
18 case of a village, or to the president or town clerk in the
19 case of a town ~~provided pursuant to Section 2-211 of the Code~~
20 ~~of Civil Procedure.~~ Additionally, if the real estate is located
21 in a city with a population of more than 2,000,000, regardless
22 of whether that city has complied with the publication
23 requirement in this subsection (b-10), the party filing the
24 complaint or counterclaim must, within 3 days after the entry
25 of the confirmation order: (i) send a copy of the confirmation
26 order to the city clerk and (ii) file an affidavit attesting to

1 the fact that a copy of the confirmation order was sent to the
2 city clerk. Within 5 days after receipt of a confirmation
3 order, the city clerk shall send a copy of the confirmation
4 order to the alderman for the ward in which the real estate is
5 located.

6 (b-15) Notice of confirmation order sent to known insurers.
7 With respect to residential real estate, the party filing the
8 complaint shall send a copy of the confirmation order required
9 under subsection (b) by first class mail, postage prepaid, to
10 the last-known property insurer of the foreclosed property.
11 Failure to send or receive a copy of the order shall not impair
12 or abrogate in any way the rights of the mortgagee or purchaser
13 or affect the status of the foreclosure proceedings.

14 (c) Failure to Give Notice. If any sale is held without
15 compliance with subsection (c) of Section 15-1507 of this
16 Article, any party entitled to the notice provided for in
17 paragraph (3) of that subsection (c) who was not so notified
18 may, by motion supported by affidavit made prior to
19 confirmation of such sale, ask the court which entered the
20 judgment to set aside the sale. Any such party shall guarantee
21 or secure by bond a bid equal to the successful bid at the
22 prior sale, unless the party seeking to set aside the sale is
23 the mortgagor, the real estate sold at the sale is residential
24 real estate, and the mortgagor occupies the residential real
25 estate at the time the motion is filed. In that event, no
26 guarantee or bond shall be required of the mortgagor. Any

1 subsequent sale is subject to the same notice requirement as
2 the original sale.

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

17 (d-5) Making Home Affordable Program. The court that
18 entered the judgment shall set aside a sale held pursuant to
19 Section 15-1507, upon motion of the mortgagor at any time prior
20 to the confirmation of the sale, if the mortgagor proves by a
21 preponderance of the evidence that (i) the mortgagor has
22 applied for assistance under the Making Home Affordable Program
23 established by the United States Department of the Treasury
24 pursuant to the Emergency Economic Stabilization Act of 2008,
25 as amended by the American Recovery and Reinvestment Act of
26 2009, and (ii) the mortgaged real estate was sold in material

1 violation of the program's requirements for proceeding to a
2 judicial sale. The provisions of this subsection (d-5), except
3 for this sentence, shall become inoperative on January 1, 2013
4 for all actions filed under this Article after December 31,
5 2012, in which the mortgagor did not apply for assistance under
6 the Making Home Affordable Program on or before December 31,
7 2012.

8 (e) Deficiency Judgment. In any order confirming a sale
9 pursuant to the judgment of foreclosure, the court shall also
10 enter a personal judgment for deficiency against any party (i)
11 if otherwise authorized and (ii) to the extent requested in the
12 complaint and proven upon presentation of the report of sale in
13 accordance with Section 15-1508. Except as otherwise provided
14 in this Article, a judgment may be entered for any balance of
15 money that may be found due to the plaintiff, over and above
16 the proceeds of the sale or sales, and enforcement may be had
17 for the collection of such balance, the same as when the
18 judgment is solely for the payment of money. Such judgment may
19 be entered, or enforcement had, only in cases where personal
20 service has been had upon the persons personally liable for the
21 mortgage indebtedness, unless they have entered their
22 appearance in the foreclosure action.

23 (f) Satisfaction. Upon confirmation of the sale, the
24 judgment stands satisfied to the extent of the sale price less
25 expenses and costs. If the order confirming the sale includes a
26 deficiency judgment, the judgment shall become a lien in the

1 manner of any other judgment for the payment of money.

2 (g) The order confirming the sale shall include,
3 notwithstanding any previous orders awarding possession during
4 the pendency of the foreclosure, an award to the purchaser of
5 possession of the mortgaged real estate, as of the date 30 days
6 after the entry of the order, against the parties to the
7 foreclosure whose interests have been terminated.

8 An order of possession authorizing the removal of a person
9 from possession of the mortgaged real estate shall be entered
10 and enforced only against those persons personally named as
11 individuals in the complaint or the petition under subsection
12 (h) of Section 15-1701 and in the order of possession and shall
13 not be entered and enforced against any person who is only
14 generically described as an unknown owner or nonrecord claimant
15 or by another generic designation in the complaint.

16 Notwithstanding the preceding paragraph, the failure to
17 personally name, include, or seek an award of possession of the
18 mortgaged real estate against a person in the confirmation
19 order shall not abrogate any right that the purchaser may have
20 to possession of the mortgaged real estate and to maintain a
21 proceeding against that person for possession under Article 9
22 of this Code or subsection (h) of Section 15-1701; and
23 possession against a person who (1) has not been personally
24 named as a party to the foreclosure and (2) has not been
25 provided an opportunity to be heard in the foreclosure
26 proceeding may be sought only by maintaining a proceeding under

1 Article 9 of this Code or subsection (h) of Section 15-1701.

2 (h) With respect to mortgaged real estate containing 5 or
3 more dwelling units, the order confirming the sale shall also
4 provide that (i) the mortgagor shall transfer to the purchaser
5 the security deposits, if any, that the mortgagor received to
6 secure payment of rent or to compensate for damage to the
7 mortgaged real estate from any current occupant of a dwelling
8 unit of the mortgaged real estate, as well as any statutory
9 interest that has not been paid to the occupant, and (ii) the
10 mortgagor shall provide an accounting of the security deposits
11 that are transferred, including the name and address of each
12 occupant for whom the mortgagor holds the deposit and the
13 amount of the deposit and any statutory interest.

14 (Source: P.A. 96-265, eff. 8-11-09; 96-856, eff. 3-1-10;
15 96-1245, eff. 7-23-10; 97-333, eff. 8-12-11; 97-575, eff.
16 8-26-11.)