

SB2961



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB2961

Introduced 12/15/2021, by Sen. Jason A. Barickman

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-206

from Ch. 110, par. 2-206

Amends the Code of Civil Procedure. In the Section concerning service by publication, provides that it shall be the duty (rather than the non-delegable duty) of the plaintiff in a foreclosure actions to send a copy of a specified notice by mail, addressed to each defendant whose place of residence is stated.

LRB102 21207 LNS 30270 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 2-206 as follows:

6 (735 ILCS 5/2-206) (from Ch. 110, par. 2-206)

7 (Text of Section before amendment by P.A. 102-156)

8 Sec. 2-206. Service by publication; affidavit; mailing;
9 certificate.

10 (a) Whenever, in any action affecting property or status
11 within the jurisdiction of the court, including an action to
12 obtain the specific performance, reformation, or rescission of
13 a contract for the conveyance of land, except for an action
14 brought under Part 15 of Article XV of this Code that is
15 subject to subsection (a-5), the plaintiff or his or her
16 attorney shall file, at the office of the clerk of the court in
17 which the action is pending, an affidavit showing that the
18 defendant resides or has gone out of this State, or on due
19 inquiry cannot be found, or is concealed within this State, so
20 that process cannot be served upon him or her, and stating the
21 place of residence of the defendant, if known, or that upon
22 diligent inquiry his or her place of residence cannot be
23 ascertained, the clerk shall cause publication to be made in

1 some newspaper published in the county in which the action is
2 pending. If there is no newspaper published in that county,
3 then the publication shall be in a newspaper published in an
4 adjoining county in this State, having a circulation in the
5 county in which action is pending. The publication shall
6 contain notice of the pendency of the action, the title of the
7 court, the title of the case, showing the names of the first
8 named plaintiff and the first named defendant, the number of
9 the case, the names of the parties to be served by publication,
10 and the date on or after which default may be entered against
11 such party. The clerk shall also, within 10 days of the first
12 publication of the notice, send a copy thereof by mail,
13 addressed to each defendant whose place of residence is stated
14 in such affidavit. The certificate of the clerk that he or she
15 has sent the copy in pursuance of this Section is evidence that
16 he or she has done so.

17 (a-5) If, in any action brought under Part 15 of Article XV
18 of this Code, the plaintiff, or his or her attorney, shall
19 file, at the office of the clerk of the court in which the
20 action is pending, an affidavit showing that the defendant
21 resides outside of or has left this State, or on due inquiry
22 cannot be found, or is concealed within this State so that
23 process cannot be served upon him or her, and stating the place
24 of residence of the defendant, if known, or that upon diligent
25 inquiry his or her place of residence cannot be ascertained,
26 the plaintiff, or his or her representative, shall cause

1 publication to be made in some newspaper published in the
2 county in which the action is pending. If there is no newspaper
3 published in that county, then the publication shall be in a
4 newspaper published in an adjoining county in this State,
5 having a circulation in the county in which action is pending.
6 The publication shall contain notice of the pendency of the
7 action, the title of the court, the title of the case, showing
8 the names of the first named plaintiff and the first named
9 defendant, the number of the case, the names of the parties to
10 be served by publication, and the date on or after which
11 default may be entered against such party. It shall be the
12 non-delegable duty of the clerk of the court, within 10 days of
13 the first publication of the notice, to send a copy thereof by
14 mail, addressed to each defendant whose place of residence is
15 stated in such affidavit. The certificate of the clerk of the
16 court that he or she has sent the copy in pursuance of this
17 Section is evidence that he or she has done so.

18 (b) In any action brought by a unit of local government to
19 cause the demolition, repair, or enclosure of a dangerous and
20 unsafe or uncompleted or abandoned building, notice by
21 publication under this Section may be commenced during the
22 time during which attempts are made to locate the defendant
23 for personal service. In that case, the unit of local
24 government shall file with the clerk an affidavit stating that
25 the action meets the requirements of this subsection and that
26 all required attempts are being made to locate the defendant.

1 Upon the filing of the affidavit, the clerk shall cause
2 publication to be made under this Section. Upon completing the
3 attempts to locate the defendant required by this Section, the
4 municipality shall file with the clerk an affidavit meeting
5 the requirements of subsection (a). Service under this
6 subsection shall not be deemed to have been made until the
7 affidavit is filed and service by publication in the manner
8 prescribed in subsection (a) is completed.

9 (Source: P.A. 101-539, eff. 1-1-20; 102-558, eff. 8-20-21.)

10 (Text of Section after amendment by P.A. 102-156)

11 Sec. 2-206. Service by publication; affidavit; mailing;
12 certificate.

13 (a) Whenever, in any action affecting property or status
14 within the jurisdiction of the court, including an action to
15 obtain the specific performance, reformation, or rescission of
16 a contract for the conveyance of land, except for an action
17 brought under Part 15 of Article XV of this Code that is
18 subject to subsection (a-5), the plaintiff or his or her
19 attorney shall file, at the office of the clerk of the court in
20 which the action is pending, an affidavit showing that the
21 defendant resides or has gone out of this State, or on due
22 inquiry cannot be found, or is concealed within this State, so
23 that process cannot be served upon him or her, and stating the
24 place of residence of the defendant, if known, or that upon
25 diligent inquiry his or her place of residence cannot be

1 ascertained, the clerk shall cause publication to be made in
2 some newspaper published in the county in which the action is
3 pending. If there is no newspaper published in that county,
4 then the publication shall be in a newspaper published in an
5 adjoining county in this State, having a circulation in the
6 county in which action is pending. The publication shall
7 contain notice of the pendency of the action, the title of the
8 court, the title of the case, showing the names of the first
9 named plaintiff and the first named defendant, the number of
10 the case, the names of the parties to be served by publication,
11 and the date on or after which default may be entered against
12 such party. The clerk shall also, within 10 days of the first
13 publication of the notice, send a copy thereof by mail,
14 addressed to each defendant whose place of residence is stated
15 in such affidavit. The certificate of the clerk that he or she
16 has sent the copy in pursuance of this Section is evidence that
17 he or she has done so.

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19 of this Code, the plaintiff, or his or her attorney, shall
20 file, at the office of the clerk of the court in which the
21 action is pending, an affidavit showing that the defendant
22 resides outside of or has left this State, or on due inquiry
23 cannot be found, or is concealed within this State so that
24 process cannot be served upon him or her, and stating the place
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26 inquiry his or her place of residence cannot be ascertained,

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2 to be made in some newspaper published in the county in which
3 the action is pending. If there is no newspaper published in
4 that county, then the publication shall be in a newspaper
5 published in an adjoining county in this State, having a
6 circulation in the county in which action is pending. The
7 publication shall contain notice of the pendency of the
8 action, the title of the court, the title of the case, showing
9 the names of the first named plaintiff and the first named
10 defendant, the number of the case, the names of the parties to
11 be served by publication, and the date on or after which
12 default may be entered against such party. It shall be the
13 ~~non-delegable~~ duty of the plaintiff, or his or her attorney,
14 within 10 days of the first publication of the notice, to send
15 a copy thereof by mail, addressed to each defendant whose
16 place of residence is stated in such affidavit. The
17 certificate of the plaintiff, or his or her attorney, that he
18 or she has sent the copy in pursuance of this Section is
19 evidence that he or she has done so. A copy of the certificate
20 shall be filed at the office of the clerk of the court where
21 the action is pending.

22 (b) In any action brought by a unit of local government to
23 cause the demolition, repair, or enclosure of a dangerous and
24 unsafe or uncompleted or abandoned building, notice by
25 publication under this Section may be commenced during the
26 time during which attempts are made to locate the defendant

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2 government shall file with the clerk an affidavit stating that
3 the action meets the requirements of this subsection and that
4 all required attempts are being made to locate the defendant.
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8 municipality shall file with the clerk an affidavit meeting
9 the requirements of subsection (a). Service under this
10 subsection shall not be deemed to have been made until the
11 affidavit is filed and service by publication in the manner
12 prescribed in subsection (a) is completed.

13 (Source: P.A. 101-539, eff. 1-1-20; 102-156, eff. 1-1-22;
14 102-558, eff. 8-20-21.)

15 Section 95. No acceleration or delay. Where this Act makes
16 changes in a statute that is represented in this Act by text
17 that is not yet or no longer in effect (for example, a Section
18 represented by multiple versions), the use of that text does
19 not accelerate or delay the taking effect of (i) the changes
20 made by this Act or (ii) provisions derived from any other
21 Public Act.