



Rep. Elaine Nekritz

Filed: 3/1/2012

09700HB5001ham001

LRB097 17635 AJ0 66902 a

1 AMENDMENT TO HOUSE BILL 5001

2 AMENDMENT NO. _____. Amend House Bill 5001 by replacing
3 everything after the enacting clause with the following:

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

1 include (i) the names of all plaintiffs and the case number,
2 (ii) the court in which the action was brought, (iii) the names
3 of title holders of record, (iv) a legal description of the
4 real estate sufficient to identify it with reasonable
5 certainty, (v) a common address or description of the location
6 of the real estate and (vi) identification of the mortgage
7 sought to be foreclosed. An incorrect common address or
8 description of the location, or an immaterial error in the
9 identification of a plaintiff or title holder of record, shall
10 not invalidate the lis pendens effect of the notice under this
11 Section. A notice which complies with this Section shall be
12 deemed to comply with Section 2-1901 of the Code of Civil
13 Procedure and shall have the same effect as a notice filed
14 pursuant to that Section; however, a notice which complies with
15 Section 2-1901 shall not be constructive notice unless it also
16 complies with the requirements of this Section.

17 (b) With respect to residential real estate, a copy of the
18 notice of foreclosure described in subsection (a) of Section
19 15-1503 shall be sent by first class mail, postage prepaid, to
20 the municipality within the boundary of which the mortgaged
21 real estate is located, or to the county within the boundary of
22 which the mortgaged real estate is located if the mortgaged
23 real estate is located in an unincorporated territory. A
24 municipality or county must clearly publish on its website a
25 single address to which such notice shall be sent. If a
26 municipality or county does not maintain a website, then the

1 municipality or county must publicly post in its main office a
2 single address to which such notice shall be sent. In the event
3 that a municipality or county has not complied with the
4 publication requirement in this subsection (b), then the copy
5 of the ~~such~~ notice to the municipality or county shall be sent
6 by first class mail, postage prepaid, to the chairperson of the
7 county board or county clerk in the case of a county, to the
8 mayor or city clerk in the case of a city, to the president of
9 the board of trustees or village clerk in the case of a
10 village, or to the president or town clerk in the case of a
11 town provided pursuant to Section 2-211 of the Code of Civil
12 Procedure. Additionally, if the real estate is located in a
13 city with a population of more than 2,000,000, regardless of
14 whether that city has complied with the publication requirement
15 in this subsection (b), the party must, within 10 days after
16 filing the complaint or counterclaim: (i) send by first class
17 mail, postage prepaid, a copy of the notice of foreclosure to
18 the alderman for the ward in which the real estate is located
19 and (ii) file an affidavit with the court attesting to the fact
20 that the notice was sent to the alderman for the ward in which
21 the real estate is located. The failure to send a copy of the
22 notice to the alderman for the ward in which the real estate is
23 located or to file an affidavit as required results in the
24 dismissal without prejudice of the complaint or counterclaim on
25 a motion of a party or the court. If, after the complaint or
26 counterclaim has been dismissed without prejudice, the party

1 refiles the complaint or counterclaim, then the party must
2 again meet the requirements that the party send by first class
3 mail, postage prepaid, the notice to the alderman for the ward
4 in which the real estate is located and file an affidavit
5 attesting to the fact that the notice was sent.

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

7 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

8 Sec. 15-1508. Report of Sale and Confirmation of Sale.

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

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

1 concerns about the real estate. The confirmation order may
2 also:

3 (1) approve the mortgagee's fees and costs arising
4 between the entry of the judgment of foreclosure and the
5 confirmation hearing, those costs and fees to be allowable
6 to the same extent as provided in the note and mortgage and
7 in Section 15-1504;

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

10 (3) determine the priority of the judgments of parties
11 who deferred proving the priority pursuant to subsection
12 (h) of Section 15-1506, but the court shall not defer
13 confirming the sale pending the determination of such
14 priority.

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

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

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

1 if the real estate is located in a city with a population of
2 more than 2,000,000, regardless of whether that city has
3 complied with the publication requirement in this subsection
4 (b-10), the party filing the complaint or counterclaim must,
5 within 10 days after the entry of the confirmation order: (i)
6 send by first class mail, postage prepaid, a copy of the
7 confirmation order to the alderman for the ward in which the
8 real estate is located and (ii) file an affidavit attesting to
9 the fact that a copy of the confirmation order was sent to the
10 alderman for the ward in which the real estate is located.

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

19 (c) Failure to Give Notice. If any sale is held without
20 compliance with subsection (c) of Section 15-1507 of this
21 Article, any party entitled to the notice provided for in
22 paragraph (3) of that subsection (c) who was not so notified
23 may, by motion supported by affidavit made prior to
24 confirmation of such sale, ask the court which entered the
25 judgment to set aside the sale. Any such party shall guarantee
26 or secure by bond a bid equal to the successful bid at the

1 prior sale, unless the party seeking to set aside the sale is
2 the mortgagor, the real estate sold at the sale is residential
3 real estate, and the mortgagor occupies the residential real
4 estate at the time the motion is filed. In that event, no
5 guarantee or bond shall be required of the mortgagor. Any
6 subsequent sale is subject to the same notice requirement as
7 the original sale.

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

22 (d-5) Making Home Affordable Program. The court that
23 entered the judgment shall set aside a sale held pursuant to
24 Section 15-1507, upon motion of the mortgagor at any time prior
25 to the confirmation of the sale, if the mortgagor proves by a
26 preponderance of the evidence that (i) the mortgagor has

1 applied for assistance under the Making Home Affordable Program
2 established by the United States Department of the Treasury
3 pursuant to the Emergency Economic Stabilization Act of 2008,
4 as amended by the American Recovery and Reinvestment Act of
5 2009, and (ii) the mortgaged real estate was sold in material
6 violation of the program's requirements for proceeding to a
7 judicial sale. The provisions of this subsection (d-5), except
8 for this sentence, shall become inoperative on January 1, 2013
9 for all actions filed under this Article after December 31,
10 2012, in which the mortgagor did not apply for assistance under
11 the Making Home Affordable Program on or before December 31,
12 2012.

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

1 appearance in the foreclosure action.

2 (f) Satisfaction. Upon confirmation of the sale, the
3 judgment stands satisfied to the extent of the sale price less
4 expenses and costs. If the order confirming the sale includes a
5 deficiency judgment, the judgment shall become a lien in the
6 manner of any other judgment for the payment of money.

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

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

21 Notwithstanding the preceding paragraph, the failure to
22 personally name, include, or seek an award of possession of the
23 mortgaged real estate against a person in the confirmation
24 order shall not abrogate any right that the purchaser may have
25 to possession of the mortgaged real estate and to maintain a
26 proceeding against that person for possession under Article 9

1 of this Code or subsection (h) of Section 15-1701; and
2 possession against a person who (1) has not been personally
3 named as a party to the foreclosure and (2) has not been
4 provided an opportunity to be heard in the foreclosure
5 proceeding may be sought only by maintaining a proceeding under
6 Article 9 of this Code or subsection (h) of Section 15-1701.

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

19 (Source: P.A. 96-265, eff. 8-11-09; 96-856, eff. 3-1-10;
20 96-1245, eff. 7-23-10; 97-333, eff. 8-12-11; 97-575, eff.
21 8-26-11.)".