



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB2432

Introduced 1/30/2018, by Sen. John G. Mulroe

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-201
765 ILCS 940/50

from Ch. 110, par. 2-201

Amends the Code of Civil Procedure. Provides that a summons that otherwise complies with Supreme Court Rules and is properly served is not invalidated and the court's jurisdiction is not affected by an error in format. Provides that a summons is not defective if the named defendant is listed on a document attached to the summons. Provides that the changes to the Code of Civil Procedure are declarative of existing law set forth by the Illinois Supreme Court in *Fleshner v. Copeland*, 13 Ill.2d 72 (1958). Amends the Mortgage Rescue Fraud Act. Provides that it is a violation for a distressed property consultant to, among other things, enter into, enforce, or act upon any agreement with a foreclosure defendant, whether the foreclosure is completed or otherwise, if the agreement provides for a division of proceeds between the foreclosure defendant and the distressed property consultant derived from litigation related to the foreclosure. Effective immediately.

LRB100 15862 HEP 30973 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 2-201 as follows:

6 (735 ILCS 5/2-201) (from Ch. 110, par. 2-201)

7 Sec. 2-201. Commencement of actions - Forms of process.

8 (a) Every action, unless otherwise expressly provided by
9 statute, shall be commenced by the filing of a complaint. The
10 clerk shall issue summons upon request of the plaintiff. The
11 form and substance of the summons, and of all other process,
12 and the issuance of alias process, and the service of copies of
13 pleadings shall be according to rules.

14 (b) One or more duplicate original summonses may be issued,
15 marked "First Duplicate," "Second Duplicate," etc., as the case
16 may be, whenever it will facilitate the service of summons in
17 any one or more counties, including the county of venue.

18 (c) A summons that otherwise complies with Supreme Court
19 Rules and is properly served is not invalidated and the court's
20 jurisdiction is not affected by an error in format. A summons
21 is not defective if the named defendant is listed on a document
22 attached to the summons. This subsection is declarative of
23 existing law set forth by the Illinois Supreme Court in

1 Fleshner v. Copeland, 13 Ill.2d 72 (1958).

2 (Source: P.A. 82-280.)

3 Section 10. The Mortgage Rescue Fraud Act is amended by
4 changing Section 50 as follows:

5 (765 ILCS 940/50)

6 Sec. 50. Violations.

7 (a) It is a violation for a distressed property consultant
8 to:

9 (1) claim, demand, charge, collect, or receive any
10 compensation until after the distressed property
11 consultant has fully performed each service the distressed
12 property consultant contracted to perform or represented
13 he or she would perform;

14 (2) claim, demand, charge, collect, or receive any fee,
15 interest, or any other compensation that does not comport
16 with Section 70;

17 (3) take a wage assignment, a lien of any type on real
18 or personal property, or other security to secure the
19 payment of compensation. Any such security is void and
20 unenforceable;

21 (4) receive any consideration from any third party in
22 connection with services rendered to an owner unless the
23 consideration is first fully disclosed to the owner;

24 (5) acquire any interest, directly or indirectly, or by

1 means of a subsidiary or affiliate in a distressed property
2 from an owner with whom the distressed property consultant
3 has contracted;

4 (6) take any power of attorney from an owner for any
5 purpose, except to inspect documents as provided by law; ~~or~~

6 (7) induce or attempt to induce an owner to enter a
7 contract that does not comply in all respects with Sections
8 10 and 15 of this Act; or-

9 (8) enter into, enforce, or act upon any agreement with
10 a foreclosure defendant, whether the foreclosure is
11 completed or otherwise, if the agreement provides for a
12 division of proceeds between the foreclosure defendant and
13 the distressed property consultant derived from litigation
14 related to the foreclosure.

15 (b) A distressed property purchaser, in the course of a
16 distressed property conveyance, shall not:

17 (1) enter into, or attempt to enter into, a distressed
18 property conveyance unless the distressed property
19 purchaser verifies and can demonstrate that the owner of
20 the distressed property has a reasonable ability to pay for
21 the subsequent conveyance of an interest back to the owner
22 of the distressed property and to make monthly or any other
23 required payments due prior to that time;

24 (2) fail to make a payment to the owner of the
25 distressed property at the time the title is conveyed so
26 that the owner of the distressed property has received

1 consideration in an amount of at least 82% of the
2 property's fair market value, or, in the alternative, fail
3 to pay the owner of the distressed property no more than
4 the costs necessary to extinguish all of the existing
5 obligations on the distressed property, as set forth in
6 subdivision (b)(10) of Section 45, provided that the
7 owner's costs to repurchase the distressed property
8 pursuant to the terms of the distressed property conveyance
9 contract do not exceed 125% of the distressed property
10 purchaser's costs to purchase the property. If an owner is
11 unable to repurchase the property pursuant to the terms of
12 the distressed property conveyance contract, the
13 distressed property purchaser shall not fail to make a
14 payment to the owner of the distressed property so that the
15 owner of the distressed property has received
16 consideration in an amount of at least 82% of the
17 property's fair market value at the time of conveyance or
18 at the expiration of the owner's option to repurchase.

19 (3) enter into repurchase or lease terms as part of the
20 subsequent conveyance that are unfair or commercially
21 unreasonable, or engage in any other unfair conduct;

22 (4) represent, directly or indirectly, that the
23 distressed property purchaser is acting as an advisor or a
24 consultant, or in any other manner represent that the
25 distressed property purchaser is acting on behalf of the
26 homeowner, or the distressed property purchaser is

1 assisting the owner of the distressed property to "save the
2 house", "buy time", or do anything couched in substantially
3 similar language;

4 (5) misrepresent the distressed property purchaser's
5 status as to licensure or certification;

6 (6) do any of the following until after the time during
7 which the owner of a distressed property may cancel the
8 transaction:

9 (A) accept from the owner of the distressed
10 property an execution of any instrument of conveyance
11 of any interest in the distressed property;

12 (B) induce the owner of the distressed property to
13 execute an instrument of conveyance of any interest in
14 the distressed property; or

15 (C) record with the county recorder of deeds any
16 document signed by the owner of the distressed
17 property, including but not limited to any instrument
18 of conveyance;

19 (7) fail to reconvey title to the distressed property
20 when the terms of the conveyance contract have been
21 fulfilled;

22 (8) induce the owner of the distressed property to
23 execute a quit claim deed when entering into a distressed
24 property conveyance;

25 (9) enter into a distressed property conveyance where
26 any party to the transaction is represented by power of

1 attorney;

2 (10) fail to extinguish all liens encumbering the
3 distressed property, immediately following the conveyance
4 of the distressed property, or fail to assume all liability
5 with respect to the lien in foreclosure and prior liens
6 that will not be extinguished by such foreclosure, which
7 assumption shall be accomplished without violations of the
8 terms and conditions of the lien being assumed. Nothing
9 herein shall preclude a lender from enforcing any provision
10 in a contract that is not otherwise prohibited by law;

11 (11) fail to complete a distressed property conveyance
12 before a notary in the offices of a title company licensed
13 by the Department of Financial and Professional
14 Regulation, before an agent of such a title company, a
15 notary in the office of a bank, or a licensed attorney
16 where the notary is employed; or

17 (12) cause the property to be conveyed or encumbered
18 without the knowledge or permission of the distressed
19 property owner, or in any way frustrate the ability of the
20 distressed property owner to complete the conveyance back
21 to the distressed property owner.

22 (c) There is a rebuttable presumption that an appraisal by
23 a person licensed or certified by an agency of this State or
24 the federal government is an accurate determination of the fair
25 market value of the property.

26 (d) "Consideration" in item (2) of subsection (b) means any

1 payment or thing of value provided to the owner of the
2 distressed property, including reasonable costs paid to
3 independent third parties necessary to complete the distressed
4 property conveyance or payment of money to satisfy a debt or
5 legal obligation of the owner of the distressed property.

6 "Consideration" shall not include amounts imputed as a
7 downpayment or fee to the distressed property purchaser, or a
8 person acting in participation with the distressed property
9 purchaser.

10 (e) An evaluation of "reasonable ability to pay" under
11 subsection (b)(1) of this Section 50 shall include debt to
12 income ratio, fair market value of the distressed property, and
13 the distressed property owner's payment history. There is a
14 rebuttable presumption that the distressed property purchaser
15 has not verified reasonable payment ability if the distressed
16 property purchaser has not obtained documents of assets,
17 liabilities, and income, other than a statement by the owner of
18 the distressed property.

19 (Source: P.A. 94-822, eff. 1-1-07; 95-1047, eff. 4-6-09.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.