



Sen. John G. Mulroe

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LRB100 15862 HEP 38563 a

1 AMENDMENT TO SENATE BILL 2432

2 AMENDMENT NO. _____. Amend Senate Bill 2432 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 2-201, 2-1401, 13-107, and 13-109 and by
6 adding Sections 13-107.1 and 13-109.1 as follows:

7 (735 ILCS 5/2-201) (from Ch. 110, par. 2-201)

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

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

15 (b) One or more duplicate original summonses may be issued,
16 marked "First Duplicate," "Second Duplicate," etc., as the case

1 may be, whenever it will facilitate the service of summons in
2 any one or more counties, including the county of venue.

3 (c) A court's jurisdiction is not affected by a technical
4 error in format of a summons if the summons has been issued by
5 a clerk of the court, the person or entity to be served is
6 identified as a defendant on the summons, and the summons is
7 properly served. This subsection is declarative of existing
8 law.

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

10 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

11 Sec. 2-1401. Relief from judgments.

12 (a) Relief from final orders and judgments, after 30 days
13 from the entry thereof, may be had upon petition as provided in
14 this Section. Writs of error coram nobis and coram vobis, bills
15 of review and bills in the nature of bills of review are
16 abolished. All relief heretofore obtainable and the grounds for
17 such relief heretofore available, whether by any of the
18 foregoing remedies or otherwise, shall be available in every
19 case, by proceedings hereunder, regardless of the nature of the
20 order or judgment from which relief is sought or of the
21 proceedings in which it was entered. Except as provided in the
22 Illinois Parentage Act of 2015, there shall be no distinction
23 between actions and other proceedings, statutory or otherwise,
24 as to availability of relief, grounds for relief or the relief
25 obtainable.

1 (b) The petition must be filed in the same proceeding in
2 which the order or judgment was entered but is not a
3 continuation thereof. The petition must be supported by
4 affidavit or other appropriate showing as to matters not of
5 record. A petition to reopen a foreclosure proceeding must
6 include as parties to the petition, but is not limited to, all
7 parties in the original action in addition to the current
8 record title holders of the property, current occupants, and
9 any individual or entity that had a recorded interest in the
10 property before the filing of the petition. All parties to the
11 petition shall be notified as provided by rule.

12 (b-5) A movant may present a meritorious claim under this
13 Section if the allegations in the petition establish each of
14 the following by a preponderance of the evidence:

15 (1) the movant was convicted of a forcible felony;

16 (2) the movant's participation in the offense was
17 related to him or her previously having been a victim of
18 domestic violence as perpetrated by an intimate partner;

19 (3) no evidence of domestic violence against the movant
20 was presented at the movant's sentencing hearing;

21 (4) the movant was unaware of the mitigating nature of
22 the evidence of the domestic violence at the time of
23 sentencing and could not have learned of its significance
24 sooner through diligence; and

25 (5) the new evidence of domestic violence against the
26 movant is material and noncumulative to other evidence

1 offered at the sentencing hearing, and is of such a
2 conclusive character that it would likely change the
3 sentence imposed by the original trial court.

4 Nothing in this subsection (b-5) shall prevent a movant
5 from applying for any other relief under this Section or any
6 other law otherwise available to him or her.

7 As used in this subsection (b-5):

8 "Domestic violence" means abuse as defined in Section
9 103 of the Illinois Domestic Violence Act of 1986.

10 "Forcible felony" has the meaning ascribed to the term
11 in Section 2-8 of the Criminal Code of 2012.

12 "Intimate partner" means a spouse or former spouse,
13 persons who have or allegedly have had a child in common,
14 or persons who have or have had a dating or engagement
15 relationship.

16 (c) Except as provided in Section 20b of the Adoption Act
17 and Section 2-32 of the Juvenile Court Act of 1987 or in a
18 petition based upon Section 116-3 of the Code of Criminal
19 Procedure of 1963, the petition must be filed not later than 2
20 years after the entry of the order or judgment. Time during
21 which the person seeking relief is under legal disability or
22 duress or the ground for relief is fraudulently concealed shall
23 be excluded in computing the period of 2 years.

24 (d) The filing of a petition under this Section does not
25 affect the order or judgment, or suspend its operation.

26 (e) Unless lack of jurisdiction affirmatively appears from

1 the record proper, the vacation or modification of an order or
2 judgment pursuant to the provisions of this Section does not
3 affect the right, title or interest in or to any real or
4 personal property of any person, not a party to the original
5 action, acquired for value after the entry of the order or
6 judgment but before the filing of the petition, nor affect any
7 right of any person not a party to the original action under
8 any certificate of sale issued before the filing of the
9 petition, pursuant to a sale based on the order or judgment.
10 When a petition is filed pursuant to this Section to reopen a
11 foreclosure proceeding, notwithstanding the provisions of
12 Section 15-1701 of this Code, the purchaser or successor
13 purchaser of real property subject to a foreclosure sale who
14 was not a party to the mortgage foreclosure proceedings is
15 entitled to remain in possession of the property until the
16 foreclosure action is defeated or the previously foreclosed
17 defendant redeems from the foreclosure sale if the purchaser
18 has been in possession of the property for more than 6 months.

19 (f) Nothing contained in this Section affects any existing
20 right to relief from a void order or judgment, or to employ any
21 existing method to procure that relief.

22 (Source: P.A. 99-85, eff. 1-1-16; 99-384, eff. 1-1-16; 99-642,
23 eff. 7-28-16.)

24 (735 ILCS 5/13-107) (from Ch. 110, par. 13-107)

25 Sec. 13-107. Seven years with possession and record title.

1 Except as provided in Section 13-107.1, actions ~~Actions~~ brought
2 for the recovery of any lands, tenements or hereditaments of
3 which any person may be possessed by actual residence thereon
4 for 7 successive years, having a connected title, deductible of
5 record, from this State or the United States, or from any
6 public officer or other person authorized by the laws of this
7 State to sell such land for the non-payment of taxes, or from
8 any sheriff, marshal, or other person authorized to sell such
9 land for the enforcement of a judgment or under any order or
10 judgment of any court shall be brought within 7 years next
11 after possession is taken, but when the possessor acquires such
12 title after taking such possession, the limitation shall begin
13 to run from the time of acquiring title.

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

15 (735 ILCS 5/13-107.1 new)

16 Sec. 13-107.1. Two years with possession and record title
17 derived from a judicial foreclosure sale.

18 (a) Actions brought for the recovery of any lands,
19 tenements, or hereditaments of which any person may be
20 possessed for 2 successive years, having a connected title,
21 deductible of record, as a purchaser at a judicial foreclosure
22 sale, other than a mortgagee, who takes possession pursuant to
23 a court order under the Illinois Mortgage Foreclosure Law, or a
24 purchaser who acquires title from a mortgagee or a purchaser at
25 a judicial foreclosure sale who received title and took

1 possession pursuant to a court order, shall be brought within 2
2 years after possession is taken. When the purchaser acquires
3 title and has taken possession, the limitation shall begin to
4 run from the date a mortgagee or a purchaser at a judicial
5 foreclosure sale takes possession pursuant to a court order
6 under the Illinois Mortgage Foreclosure Law or Article IX of
7 this Code. The vacation or modification, pursuant to the
8 provisions of Section 2-1401, of an order or judgment entered
9 in the judicial foreclosure does not affect the limitation in
10 this Section.

11 (b) This Section applies to actions filed on or after 180
12 days after the effective date of this amendatory Act of the
13 100th General Assembly.

14 (735 ILCS 5/13-109) (from Ch. 110, par. 13-109)

15 Sec. 13-109. Payment of taxes with color of title. Except
16 as provided in Section 13-109.1, every ~~Every~~ person in the
17 actual possession of lands or tenements, under claim and color
18 of title, made in good faith, and who for 7 successive years
19 continues in such possession, and also, during such time, pays
20 all taxes legally assessed on such lands or tenements, shall be
21 held and adjudged to be the legal owner of such lands or
22 tenements, to the extent and according to the purport of his or
23 her paper title. All persons holding under such possession, by
24 purchase, legacy or descent, before such 7 years have expired,
25 and who continue such possession, and continue to pay the taxes

1 as above set forth so as to complete the possession and payment
2 of taxes for the term above set forth, are entitled to the
3 benefit of this Section.

4 (Source: P.A. 88-45.)

5 (735 ILCS 5/13-109.1 new)

6 Sec. 13-109.1. Payment of taxes with color of title derived
7 from judicial foreclosure. Every person in the actual
8 possession of lands or tenements, under claim and color of
9 title, as a purchaser at a judicial foreclosure sale, other
10 than a mortgagee, who takes possession pursuant to a court
11 order under the Illinois Mortgage Foreclosure Law, or a
12 purchaser who acquires title from a mortgagee or a purchaser at
13 a judicial foreclosure sale who received title and took
14 possession pursuant to such a court order, and who for 2
15 successive years continues in possession, and also, during such
16 time, pays all taxes legally assessed on the lands or
17 tenements, shall be held and adjudged to be the legal owner of
18 the lands or tenements, to the extent and according to the
19 purport of his or her paper title. All persons holding under
20 such possession, by purchase, legacy, or descent, before such 2
21 years have expired, and who continue possession, and continue
22 to pay the taxes as above set forth so as to complete the
23 possession and payment of taxes for the term above set forth,
24 are entitled to the benefit of this Section. The vacation or
25 modification, pursuant to the provisions of Section 2-1401, of

1 an order or judgment entered in the judicial foreclosure does
2 not affect the limitation in this Section.

3 This Section applies to actions filed on or after 180 days
4 after the effective date of this amendatory Act of the 100th
5 General Assembly.

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

8 (765 ILCS 940/50)

9 Sec. 50. Violations.

10 (a) It is a violation for a distressed property consultant
11 to:

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

17 (2) claim, demand, charge, collect, or receive any fee,
18 interest, or any other compensation that does not comport
19 with Section 70;

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

24 (4) receive any consideration from any third party in

1 connection with services rendered to an owner unless the
2 consideration is first fully disclosed to the owner;

3 (5) acquire any interest, directly or indirectly, or by
4 means of a subsidiary or affiliate in a distressed property
5 from an owner with whom the distressed property consultant
6 has contracted;

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

9 (7) induce or attempt to induce an owner to enter a
10 contract that does not comply in all respects with Sections
11 10 and 15 of this Act; ~~or-~~

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

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

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

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

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

25 (4) represent, directly or indirectly, that the
26 distressed property purchaser is acting as an advisor or a

1 consultant, or in any other manner represent that the
2 distressed property purchaser is acting on behalf of the
3 homeowner, or the distressed property purchaser is
4 assisting the owner of the distressed property to "save the
5 house", "buy time", or do anything couched in substantially
6 similar language;

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

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

12 (A) accept from the owner of the distressed
13 property an execution of any instrument of conveyance
14 of any interest in the distressed property;

15 (B) induce the owner of the distressed property to
16 execute an instrument of conveyance of any interest in
17 the distressed property; or

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

22 (7) fail to reconvey title to the distressed property
23 when the terms of the conveyance contract have been
24 fulfilled;

25 (8) induce the owner of the distressed property to
26 execute a quit claim deed when entering into a distressed

1 property conveyance;

2 (9) enter into a distressed property conveyance where
3 any party to the transaction is represented by power of
4 attorney;

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

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

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

25 (c) There is a rebuttable presumption that an appraisal by
26 a person licensed or certified by an agency of this State or

1 the federal government is an accurate determination of the fair
2 market value of the property.

3 (d) "Consideration" in item (2) of subsection (b) means any
4 payment or thing of value provided to the owner of the
5 distressed property, including reasonable costs paid to
6 independent third parties necessary to complete the distressed
7 property conveyance or payment of money to satisfy a debt or
8 legal obligation of the owner of the distressed property.

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

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

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

23 Section 97. Severability. The provisions of this Act are
24 severable under Section 1.31 of the Statute on Statutes.

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".