



Sen. Michael E. Hastings

**Filed: 3/4/2020**

10100SB2539sam001

LRB101 17257 LNS 71067 a

1 AMENDMENT TO SENATE BILL 2539

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2539 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by  
5 changing Section 15-1508 as follows:

6 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)

7 Sec. 15-1508. Report of sale and confirmation of sale.

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

11 (b) Hearing. Upon motion and notice in accordance with  
12 court rules applicable to motions generally, which motion shall  
13 not be made prior to sale, the court shall conduct a hearing to  
14 confirm the sale. Unless the court finds that (i) a notice  
15 required in accordance with subsection (c) of Section 15-1507  
16 was not given, (ii) the terms of sale were unconscionable,

1 (iii) the sale was conducted fraudulently, or (iv) justice was  
2 otherwise not done, the court shall then enter an order  
3 confirming the sale. The confirmation order shall include a  
4 name, address, and telephone number of the holder of the  
5 certificate of sale or deed issued pursuant to that certificate  
6 or, if no certificate or deed was issued, the purchaser, whom a  
7 municipality or county may contact with concerns about the real  
8 estate. The confirmation order may also:

9 (1) approve the mortgagee's fees and costs (i) arising  
10 between the entry of the judgment of foreclosure and the  
11 confirmation hearing, and (ii) incurred on or after the  
12 date of execution of an affidavit under subsection (a) of  
13 Section 15-1506 and prior to the judgment but not included  
14 in the judgment, those costs and fees to be allowable to  
15 the same extent as provided in the note and mortgage and in  
16 Section 15-1504;

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

19 (3) determine the priority of the judgments of parties  
20 who deferred proving the priority pursuant to subsection  
21 (h) of Section 15-1506, but the court shall not defer  
22 confirming the sale pending the determination of such  
23 priority.

24 (b-3) Hearing to confirm sale of abandoned residential  
25 property. Upon motion and notice by first-class mail to the  
26 last known address of the mortgagor, which motion shall be made

1 prior to the sale and heard by the court at the earliest  
2 practicable time after conclusion of the sale, and upon the  
3 posting at the property address of the notice required by  
4 paragraph (2) of subsection (1) of Section 15-1505.8, the court  
5 shall enter an order confirming the sale of the abandoned  
6 residential property, unless the court finds that a reason set  
7 forth in items (i) through (iv) of subsection (b) of this  
8 Section exists for not approving the sale, or an order is  
9 entered pursuant to subsection (h) of Section 15-1505.8. The  
10 confirmation order also may address the matters identified in  
11 items (1) through (3) of subsection (b) of this Section. The  
12 notice required under subsection (b-5) of this Section shall  
13 not be required.

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

26 IF YOU ARE THE MORTGAGOR (HOMEOWNER), YOU HAVE THE RIGHT TO

1           REMAIN IN POSSESSION FOR 30 DAYS AFTER ENTRY OF AN ORDER OF  
2           POSSESSION, IN ACCORDANCE WITH SECTION 15-1701(c) OF THE  
3                           ILLINOIS MORTGAGE FORECLOSURE LAW.

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

23          (b-15) Notice of confirmation order sent to known insurers.  
24          With respect to residential real estate, the party filing the  
25          complaint shall send a copy of the confirmation order required  
26          under subsection (b) by first class mail, postage prepaid, to

1 the last known property insurer of the foreclosed property.  
2 Failure to send or receive a copy of the order shall not impair  
3 or abrogate in any way the rights of the mortgagee or purchaser  
4 or affect the status of the foreclosure proceedings.

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

20 (d) Validity of Sale. Except as provided in subsection (c)  
21 of Section 15-1508, no sale under this Article shall be held  
22 invalid or be set aside because of any defect in the notice  
23 thereof or in the publication of the same, or in the  
24 proceedings of the officer conducting the sale, except upon  
25 good cause shown in a hearing pursuant to subsection (b) of  
26 Section 15-1508. At any time after a sale has occurred, any

1 party entitled to notice under paragraph (3) of subsection (c)  
2 of Section 15-1507 may recover from the mortgagee any damages  
3 caused by the mortgagee's failure to comply with such paragraph  
4 (3). Any party who recovers damages in a judicial proceeding  
5 brought under this subsection may also recover from the  
6 mortgagee the reasonable expenses of litigation, including  
7 reasonable attorney's fees.

8 (d-5) Making Home Affordable Program. The court that  
9 entered the judgment shall set aside a sale held pursuant to  
10 Section 15-1507, upon motion of the mortgagor at any time prior  
11 to the confirmation of the sale, if the mortgagor proves by a  
12 preponderance of the evidence that (i) the mortgagor has  
13 applied for assistance under the Making Home Affordable Program  
14 established by the United States Department of the Treasury  
15 pursuant to the Emergency Economic Stabilization Act of 2008,  
16 as amended by the American Recovery and Reinvestment Act of  
17 2009, and (ii) the mortgaged real estate was sold in material  
18 violation of the program's requirements for proceeding to a  
19 judicial sale. The provisions of this subsection (d-5) are  
20 operative and, except for this sentence, shall become  
21 inoperative on January 1, 2018 for all actions filed under this  
22 Article after December 31, 2017, in which the mortgagor did not  
23 apply for assistance under the Making Home Affordable Program  
24 on or before December 31, 2016. The changes to this subsection  
25 (d-5) by this amendatory Act of the 99th General Assembly apply  
26 to all cases pending and filed on or after the effective date

1 of this amendatory Act of the 99th General Assembly.

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

17 (f) Satisfaction. Upon confirmation of the sale, the  
18 judgment stands satisfied to the extent of the sale price less  
19 expenses and costs. If the order confirming the sale includes a  
20 deficiency judgment, the judgment shall become a lien in the  
21 manner of any other judgment for the payment of money.

22 (g) The order confirming the sale shall include,  
23 notwithstanding any previous orders awarding possession during  
24 the pendency of the foreclosure, an award to the purchaser of  
25 possession of the mortgaged real estate, as of the date 30 days  
26 after the entry of the order, against the parties to the

1 foreclosure whose interests have been terminated.

2 An eviction order authorizing the removal of a person from  
3 possession of the mortgaged real estate shall be entered and  
4 enforced only against those persons personally named as  
5 individuals in the complaint or the petition under subsection  
6 (h) of Section 15-1701. No eviction order issued under this  
7 Section shall be entered against a lessee with a bona fide  
8 lease of a dwelling unit in residential real estate in  
9 foreclosure, whether or not the lessee has been made a party in  
10 the foreclosure. An order shall not be entered and enforced  
11 against any person who is only generically described as an  
12 unknown owner or nonrecord claimant or by another generic  
13 designation in the complaint.

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

26 (h) With respect to mortgaged real estate containing 5 or



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

12 (Source: P.A. 99-640, eff. 7-28-16; 100-173, eff. 1-1-18.)

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law."