



Rep. Marlow H. Colvin

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LRB095 08932 AJ0 50085 a

1 AMENDMENT TO HOUSE BILL 838

2 AMENDMENT NO. _____. Amend House Bill 838, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Code of Civil Procedure is amended by
6 changing Section 15-1510 and by adding Sections 15-1504.5 and
7 15-1505.5 as follows:

8 (735 ILCS 5/15-1504.5 new)

9 Sec. 15-1504.5. Homeowner notice to be attached to summons.
10 For all residential foreclosure actions filed, the plaintiff
11 must attach a Homeowner Notice to the summons. The Homeowner
12 Notice must be in at least 12 point type and in English and
13 Spanish. The Spanish translation shall be prepared by the
14 Attorney General and posted on the Attorney General's website.
15 A notice that includes the Attorney General's Spanish
16 translation in substantially similar form shall be deemed to

1 comply with the Spanish notice requirement in this Section. The
2 Notice must be in substantially the following form:

3 **IMPORTANT INFORMATION FOR HOMEOWNERS IN FORECLOSURE**

4 **1. POSSESSION:** The lawful occupants of a home have the
5 right to live in the home until a judge enters an order for
6 possession.

7 **2. OWNERSHIP:** You continue to own your home until the
8 court rules otherwise.

9 **3. REINSTATEMENT:** As the homeowner you have the right
10 to bring the mortgage current within 90 days after you
11 receive the summons.

12 **4. REDEMPTION:** As the homeowner you have the right to
13 sell your home, refinance, or pay off the loan during the
14 redemption period.

15 **5. SURPLUS:** As the homeowner you have the right to
16 petition the court for any excess money that results from a
17 foreclosure sale of your home.

18 **6. WORKOUT OPTIONS:** The mortgage company does not want
19 to foreclose on your home if there is any way to avoid it.
20 Call your mortgage company [insert name of the homeowner's
21 current mortgage servicer in bold and 14 point type] or its
22 attorneys to find out the alternatives to foreclosure.

23 **7. PAYOFF AMOUNT:** You have the right to obtain a
24 written statement of the amount necessary to pay off your

1 loan. Your mortgage company (identified above) must
2 provide you this statement within 10 business days of
3 receiving your request, provided that your request is in
4 writing and includes your name, the address of the
5 property, and the mortgage account or loan number. Your
6 first payoff statement will be free.

7 **8. GET ADVICE:** This information is not exhaustive and
8 does not replace the advice of a professional. You may have
9 other options. Get professional advice from a lawyer or
10 certified housing counselor about your rights and options
11 to avoid foreclosure.

12 **9. LAWYER:** If you do not have a lawyer, you may be able
13 to find assistance by contacting the Illinois State Bar
14 Association or a legal aid organization that provides free
15 legal assistance.

16 **10. PROCEED WITH CAUTION:** You may be contacted by
17 people offering to help you avoid foreclosure. Before
18 entering into any transaction with persons offering to help
19 you, please contact a lawyer, government official, or
20 housing counselor for advice.

21 (735 ILCS 5/15-1505.5 new)

22 Sec. 15-1505.5. Payoff demands.

23 (a) In a foreclosure action subject to this Article, on the
24 written demand of a mortgagor or the mortgagor's authorized
25 agent (which shall include the mortgagor's name, the mortgaged

1 property's address, and the mortgage account or loan number), a
2 mortgagee or the mortgagee's authorized agent shall prepare and
3 deliver an accurate statement of the total outstanding balance
4 of the mortgagor's obligation that would be required to satisfy
5 the obligation in full as of the date of preparation ("payoff
6 demand statement") to the mortgagor or the mortgagor's
7 authorized agent who has requested it within 10 business days
8 after receipt of the demand. For purposes of this Section, a
9 payoff demand statement is accurate if prepared in good faith
10 based on the records of the mortgagee or the mortgagee's agent.

11 (b) The payoff demand statement shall include the
12 following:

13 (1) The information necessary to calculate the payoff
14 amount on a per diem basis for the lesser of a period of 30
15 days or until the date scheduled for judicial sale;

16 (2) Estimated charges (stated as such) that the
17 mortgagee reasonably believes may be incurred within 30
18 days from the date of preparation of the payoff demand
19 statement; and

20 (3) The loan number for the obligation to be paid, the
21 address of the mortgagee, the telephone number of the
22 mortgagee and, if a banking organization or corporation,
23 the name of the department, if applicable, and its
24 telephone number and facsimile phone number.

25 (c) A mortgagee or mortgagee's agent who willfully fails to
26 prepare and deliver an accurate payoff demand statement within

1 10 business days after receipt of a written demand is liable to
2 the mortgagor for actual damages sustained for failure to
3 deliver the statement. The mortgagee or mortgagee's agent is
4 liable to the mortgagor for \$500 if no actual damages are
5 sustained. For purposes of this subsection, "willfully" means a
6 failure to comply with this Section without just cause or
7 excuse or mitigating circumstances.

8 (d) The mortgagor must petition the judge within the
9 foreclosure action for the award of any damages pursuant to
10 this Section, which award shall be determined by the judge.

11 (e) Unless the payoff demand statement provides otherwise,
12 the statement is deemed to apply only to the unpaid balance of
13 the single obligation that is named in the demand and that is
14 secured by the mortgage or deed of trust identified in the
15 payoff demand statement.

16 (f) The demand for and preparation and delivery of a payoff
17 demand statement pursuant to this Section does not change any
18 date or time period that is prescribed in the note or that is
19 otherwise provided by law. Failure to comply with any provision
20 of this Section does not change any of the rights of the
21 parties as set forth in the note, mortgage, or applicable law.

22 (g) The mortgagee or mortgagee's agent shall furnish the
23 first payoff demand statement at no cost to the mortgagor.

24 (h) For the purposes of this Section, unless the context
25 otherwise requires, "deliver" or "delivery" means depositing
26 or causing to be deposited into the United States mail an

1 envelope with postage prepaid that contains a copy of the
2 documents to be delivered and that is addressed to the person
3 whose name and address are provided in the payoff demand.
4 "Delivery" may also include transmitting those documents by
5 telephone facsimile to the person or electronically if the
6 payoff demand specifically requests and authorizes that the
7 documents be transmitted in electronic form.

8 (i) The mortgagee or mortgagee's agent is not required to
9 comply with the payoff demand statement procedure set forth in
10 this Section when responding to a notice of intent to redeem
11 issued under Section 15-1603(e).

12 (735 ILCS 5/15-1510) (from Ch. 110, par. 15-1510)

13 Sec. 15-1510. Attorney's Fees and Costs ~~by Written~~
14 ~~Agreement.~~

15 (a) The court may award reasonable attorney's fees and
16 costs to the defendant who prevails in a motion, an affirmative
17 defense or counterclaim, or in the foreclosure action. A
18 defendant who exercises the defendant's right of reinstatement
19 or redemption shall not be considered a prevailing party for
20 purposes of this Section. Nothing in this subsection shall
21 abrogate contractual terms in the mortgage or other written
22 agreement between the mortgagor and the mortgagee or rights as
23 otherwise provided in this Article which allow the mortgagee to
24 recover attorney's fees and costs under subsection (b).

25 (b) Attorneys' fees and other costs incurred in connection

1 with the preparation, filing or prosecution of the foreclosure
2 suit shall be recoverable in a foreclosure only to the extent
3 specifically set forth in the mortgage or other written
4 agreement between the mortgagor and the mortgagee or as
5 otherwise provided in this Article.

6 (Source: P.A. 86-974.)

7 Section 99. Effective date. This Act takes effect January
8 1, 2009."