

**97TH GENERAL ASSEMBLY****State of Illinois****2011 and 2012****HB0174**

Introduced 1/18/2011, by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1401	from Ch. 110, par. 15-1401
735 ILCS 5/15-1402	from Ch. 110, par. 15-1402
735 ILCS 5/15-1506	from Ch. 110, par. 15-1506

Amends the Code of Civil Procedure. In provisions concerning deeds in lieu of foreclosure, provides that a mortgagee must file an action to confirm the deed in lieu of foreclosure, prove by clear and convincing documentary evidence, other than by oral testimony or affidavit, that the party seeking a judgment to confirm the deed in lieu of foreclosure is the actual, legal mortgagee entitled to bring the action, and obtain a judgment confirming the deed that finds that the mortgagee is entitled to bring the action. In provisions concerning foreclosure by consent and provisions concerning the trial of a foreclosure, provides that a mortgagee must prove by clear and convincing documentary evidence, other than by oral testimony or affidavit, that the party seeking a judgment of foreclosure is the actual, legal mortgagee and is entitled to bring the foreclosure action. In provisions concerning the trial of a foreclosure, provides that where an allegation of fact in the complaint is not denied by a party's verified answer or verified counterclaim or where a party states or is deemed to have stated that it has no knowledge of the allegation sufficient to form a belief and attaches the required affidavit, a sworn verification of the complaint or a separate affidavit setting forth such fact is not sufficient evidence thereof against such party and further evidence of such fact shall be required (rather than that a sworn verification of the complaint or a separate affidavit setting forth such fact is sufficient evidence thereof against such party and further evidence of such fact shall not be required).

LRB097 00256 AJO 40274 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 Sections 15-1401, 15-1402, and 15-1506 as follows:

6 (735 ILCS 5/15-1401) (from Ch. 110, par. 15-1401)

7 Sec. 15-1401. Deed in Lieu of Foreclosure. The mortgagor
8 and mortgagee may agree on a termination of the mortgagor's
9 interest in the mortgaged real estate after a default by a
10 mortgagor provided that the mortgagee must file an action to
11 confirm the deed in lieu of foreclosure, prove by clear and
12 convincing documentary evidence, other than by oral testimony
13 or affidavit, in that action that the party seeking a judgment
14 to confirm the deed in lieu of foreclosure is the actual, legal
15 mortgagee entitled to bring the action, and obtain a judgment
16 confirming the deed that finds that the mortgagee is entitled
17 to bring the action. Any mortgagee or mortgagee's nominee may
18 accept a deed from the mortgagor in lieu of foreclosure subject
19 to any other claims or liens affecting the real estate.
20 Acceptance of a deed in lieu of foreclosure shall relieve from
21 personal liability all persons who may owe payment or the
22 performance of other obligations secured by the mortgage,
23 including guarantors of such indebtedness or obligations,

1 except to the extent a person agrees not to be relieved in an
2 instrument executed contemporaneously. A deed in lieu of
3 foreclosure, whether to the mortgagee or mortgagee's nominee,
4 shall not effect a merger of the mortgagee's interest as
5 mortgagee and the mortgagee's interest derived from the deed in
6 lieu of foreclosure. The mere tender of an executed deed by the
7 mortgagor or the recording of a deed by the mortgagor to the
8 mortgagee shall not constitute acceptance by the mortgagee of a
9 deed in lieu of foreclosure.

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

11 (735 ILCS 5/15-1402) (from Ch. 110, par. 15-1402)

12 Sec. 15-1402. Consent Foreclosure.

13 (a) No Objection. In a foreclosure, the court shall enter a
14 judgment satisfying the mortgage indebtedness by vesting
15 absolute title to the mortgaged real estate in the mortgagee
16 free and clear of all claims, liens (except liens of the United
17 States of America which cannot be foreclosed without judicial
18 sale) and interest of the mortgagor, including all rights of
19 reinstatement and redemption, and of all rights of all other
20 persons made parties in the foreclosure whose interests are
21 subordinate to that of the mortgagee and all nonrecord
22 claimants given notice in accordance with paragraph (2) of
23 subsection (c) of Section 15-1502 provided that the party
24 seeking the judgment must prove by clear and convincing
25 documentary evidence, other than by oral testimony or

1 affidavit, that it is the actual, legal mortgagee and is
2 entitled to bring the foreclosure action, if at any time before
3 sale:

4 (1) the mortgagee offers, in connection with such a
5 judgment, to waive any and all rights to a personal
6 judgment for deficiency against the mortgagor and against
7 all other persons liable for the indebtedness or other
8 obligations secured by the mortgage;

9 (2) such offer is made either in the foreclosure
10 complaint or by motion upon notice to all parties not in
11 default;

12 (3) all mortgagors who then have an interest in the
13 mortgaged real estate, by answer to the complaint, response
14 to the motion or stipulation filed with the court expressly
15 consent to the entry of such judgment;

16 (4) no other party, by answer or by response to the
17 motion or stipulation, within the time allowed for such
18 answer or response, objects to the entry of such judgment;
19 and

20 (5) upon notice to all parties who have not previously
21 been found in default for failure to appear, answer or
22 otherwise plead.

23 (b) Objection. If any party other than a mortgagor who then
24 has an interest in the mortgaged real estate objects to the
25 entry of such judgment by consent, the court, after hearing,
26 shall enter an order providing either:

1 (1) that for good cause shown, the judgment by consent
2 shall not be allowed; or

3 (2) that, good cause not having been shown by the
4 objecting party and the objecting party not having agreed
5 to pay the amount required to redeem in accordance with
6 subsection (d) of Section 15-1603, title to the mortgaged
7 real estate be vested in the mortgagee as requested by the
8 mortgagee and consented to by the mortgagor; or

9 (3) determining the amount required to redeem in
10 accordance with subsection (d) of Section 15-1603, finding
11 that the objecting party (or, if more than one party so
12 objects, the objecting party who has the least priority)
13 has agreed to pay such amount and additional interest under
14 the mortgage accrued to the date of payment within 30 days
15 after entry of the order, and declaring that upon payment
16 of such amount within 30 days title to the mortgaged real
17 estate shall be vested in such objecting party. Title so
18 vested shall be free and clear of all claims, liens (except
19 liens of the United States of America which cannot be
20 foreclosed without judicial sale) and interest of the
21 mortgagor and of all rights of other persons made parties
22 in the foreclosure whose interests are subordinate to the
23 interest of the mortgagee and all nonrecord claimants given
24 notice in accordance with paragraph (2) of subsection (c)
25 of Section 15-1502. If any objecting party subject to such
26 an order has not paid the amount required to redeem in

1 accordance with that order within the 30-day period, the
2 court (i) shall order that such title to the mortgaged real
3 estate shall vest in the objecting party next higher in
4 priority (and successively with respect to each other
5 objecting party in increasing order of such party's
6 priority), if any, upon that party's agreeing to pay within
7 30 days after the entry of such further order, such amount
8 as specified in the original order plus additional interest
9 under the terms of the mortgage accrued to the date of
10 payment, provided that such party pays such amount within
11 the 30-day period, and (ii) may order that the non-paying
12 objecting party pay costs, interest accrued between the
13 start of the preceding 30-day period and the later of the
14 date another objecting party makes the payment, if
15 applicable, or the date such period expired, and the
16 reasonable attorneys' fees incurred by all other parties on
17 account of that party's objection.

18 (c) Judgment. Any judgment entered pursuant to Section
19 15-1402 shall recite the mortgagee's waiver of rights to a
20 personal judgment for deficiency and shall bar the mortgagee
21 from obtaining such a deficiency judgment against the mortgagor
22 or any other person liable for the indebtedness or other
23 obligations secured by the mortgage.

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

25 (735 ILCS 5/15-1506) (from Ch. 110, par. 15-1506)

1 Sec. 15-1506. Judgment. (a) Evidence. In the trial of a
2 foreclosure, the evidence to support the allegations of the
3 complaint shall be taken in open court, and notwithstanding any
4 provision of this Article, the mortgagee must prove by clear
5 and convincing documentary evidence, other than by oral
6 testimony or affidavit, that the party seeking a judgment of
7 foreclosure is the actual, legal mortqagee and is entitled to
8 bring the foreclosure action, except:

9 (1) where an allegation of fact in the complaint is not
10 denied by a party's verified answer or verified counterclaim,
11 or where a party pursuant to subsection (b) of Section 2-610 of
12 the Code of Civil Procedure states, or is deemed to have
13 stated, in its pleading that it has no knowledge of such
14 allegation sufficient to form a belief and attaches the
15 required affidavit, a sworn verification of the complaint or a
16 separate affidavit setting forth such fact is not sufficient
17 evidence thereof against such party and ~~no~~ further evidence of
18 such fact shall be required; and

19 (2) where all the allegations of fact in the complaint have
20 been proved by verification of the complaint or affidavit, the
21 court upon motion supported by an affidavit stating the amount
22 which is due the mortgagee, shall enter a judgment of
23 foreclosure as requested in the complaint.

24 (b) Instruments. In all cases the evidence of the
25 indebtedness and the mortgage foreclosed shall be exhibited to
26 the court and appropriately marked, and copies thereof shall be

1 filed with the court.

2 (c) Summary and Default Judgments. Nothing in this Section
3 15-1506 shall prevent a party from obtaining a summary or
4 default judgment authorized by Article II of the Code of Civil
5 Procedure.

6 (d) Notice of Entry of Default. When any judgment in a
7 foreclosure is entered by default, notice of such judgment
8 shall be given in accordance with Section 2-1302 of the Code of
9 Civil Procedure.

10 (e) Matters Required in Judgment. A judgment of foreclosure
11 shall include the last date for redemption and all rulings of
12 the court entered with respect to each request for relief set
13 forth in the complaint. The omission of the date for redemption
14 shall not extend the time for redemption or impair the validity
15 of the judgment.

16 (f) Special Matters in Judgment. Without limiting the
17 general authority and powers of the court, special matters may
18 be included in the judgment of foreclosure if sought by a party
19 in the complaint or by separate motion. Such matters may
20 include, without limitation:

21 (1) a manner of sale other than public auction;

22 (2) a sale by sealed bid;

23 (3) an official or other person who shall be the officer to
24 conduct the sale other than the one customarily designated by
25 the court;

26 (4) provisions for non-exclusive broker listings or

1 designating a duly licensed real estate broker nominated by one
2 of the parties to exclusively list the real estate for sale;

3 (5) the fees or commissions to be paid out of the sale
4 proceeds to the listing or other duly licensed broker, if any,
5 who shall have procured the accepted bid;

6 (6) the fees to be paid out of the sale proceeds to an
7 auctioneer, if any, who shall have been authorized to conduct a
8 public auction sale;

9 (7) whether and in what manner and with what content signs
10 shall be posted on the real estate;

11 (8) a particular time and place at which such bids shall be
12 received;

13 (9) a particular newspaper or newspapers in which notice of
14 sale shall be published;

15 (10) the format for the advertising of such sale, including
16 the size, content and format of such advertising, and
17 additional advertising of such sale;

18 (11) matters or exceptions to which title in the real
19 estate may be subject at the sale;

20 (12) a requirement that title insurance in a specified form
21 be provided to a purchaser at the sale, and who shall pay for
22 such insurance;

23 (13) whether and to what extent bids with mortgage or other
24 contingencies will be allowed;

25 (14) such other matters as approved by the court to ensure
26 sale of the real estate for the most commercially favorable

1 price for the type of real estate involved.

2 (g) Agreement of the Parties. If all of the parties agree
3 in writing on the minimum price and that the real estate may be
4 sold to the first person who offers in writing to purchase the
5 real estate for such price, and on such other commercially
6 reasonable terms and conditions as the parties may agree, then
7 the court shall order the real estate to be sold on such terms,
8 subject to confirmation of the sale in accordance with Section
9 15-1508.

10 (h) Postponement of Proving Priority. With the approval of
11 the court prior to the entry of the judgment of foreclosure, a
12 party claiming an interest in the proceeds of the sale of the
13 mortgaged real estate may defer proving the priority of such
14 interest until the hearing to confirm the sale.

15 (i) Effect of Judgment and Lien. (1) Upon the entry of the
16 judgment of foreclosure, all rights of a party in the
17 foreclosure against the mortgagor provided for in the judgment
18 of foreclosure or this Article shall be secured by a lien on
19 the mortgaged real estate, which lien shall have the same
20 priority as the claim to which the judgment relates and shall
21 be terminated upon confirmation of a judicial sale in
22 accordance with this Article.

23 (2) Upon the entry of the judgment of foreclosure, the
24 rights in the real estate subject to the judgment of
25 foreclosure of (i) all persons made a party in the foreclosure
26 and (ii) all nonrecord claimants given notice in accordance

1 with paragraph (2) of subsection (c) of Section 15-1502, shall
2 be solely as provided for in the judgment of foreclosure and in
3 this Article.

4 (Source: P.A. 85-907.)