



Sen. Jacqueline Y. Collins

Filed: 10/22/2013

09800SB1045sam001

LRB098 05334 HEP 49223 a

1 AMENDMENT TO SENATE BILL 1045

2 AMENDMENT NO. _____. Amend Senate Bill 1045 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 arising
10 between the entry of the judgment of foreclosure and the
11 confirmation hearing, those costs and fees to be allowable
12 to the same extent as provided in the note and mortgage and
13 in Section 15-1504;

14 (2) provide for a personal judgment against any party
15 for a deficiency; and

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

21 (b-3) Hearing to confirm sale of abandoned residential
22 property. Upon motion and notice by first-class mail to the
23 last known address of the mortgagor, which motion shall be made
24 prior to the sale and heard by the court at the earliest
25 practicable time after conclusion of the sale, and upon the
26 posting at the property address of the notice required by

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

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

23 IF YOU ARE THE MORTGAGOR (HOMEOWNER), YOU HAVE THE RIGHT TO
24 REMAIN IN POSSESSION FOR 30 DAYS AFTER ENTRY OF AN ORDER OF
25 POSSESSION, IN ACCORDANCE WITH SECTION 15-1701(c) OF THE
26 ILLINOIS MORTGAGE FORECLOSURE LAW.

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

20 (b-15) Notice of confirmation order sent to known insurers.
21 With respect to residential real estate, the party filing the
22 complaint shall send a copy of the confirmation order required
23 under subsection (b) by first class mail, postage prepaid, to
24 the last known property insurer of the foreclosed property.
25 Failure to send or receive a copy of the order shall not impair
26 or abrogate in any way the rights of the mortgagee or purchaser

1 or affect the status of the foreclosure proceedings.

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

17 (d) Validity of Sale. Except as provided in subsection (c)
18 of Section 15-1508, no sale under this Article shall be held
19 invalid or be set aside because of any defect in the notice
20 thereof or in the publication of the same, or in the
21 proceedings of the officer conducting the sale, except upon
22 good cause shown in a hearing pursuant to subsection (b) of
23 Section 15-1508. At any time after a sale has occurred, any
24 party entitled to notice under paragraph (3) of subsection (c)
25 of Section 15-1507 may recover from the mortgagee any damages
26 caused by the mortgagee's failure to comply with such paragraph

1 (3). Any party who recovers damages in a judicial proceeding
2 brought under this subsection may also recover from the
3 mortgagee the reasonable expenses of litigation, including
4 reasonable attorney's fees.

5 (d-5) Making Home Affordable Program. The court that
6 entered the judgment shall set aside a sale held pursuant to
7 Section 15-1507, upon motion of the mortgagor at any time prior
8 to the confirmation of the sale, if the mortgagor proves by a
9 preponderance of the evidence that (i) the mortgagor has
10 applied for assistance under the Making Home Affordable Program
11 established by the United States Department of the Treasury
12 pursuant to the Emergency Economic Stabilization Act of 2008,
13 as amended by the American Recovery and Reinvestment Act of
14 2009, and (ii) the mortgaged real estate was sold in material
15 violation of the program's requirements for proceeding to a
16 judicial sale. The provisions of this subsection (d-5), except
17 for this sentence, shall become inoperative on January 1, 2016
18 ~~2014~~ for all actions filed under this Article after December
19 31, 2015 ~~2013~~, in which the mortgagor did not apply for
20 assistance under the Making Home Affordable Program on or
21 before December 31, 2015 ~~2013~~.

22 (e) Deficiency Judgment. In any order confirming a sale
23 pursuant to the judgment of foreclosure, the court shall also
24 enter a personal judgment for deficiency against any party (i)
25 if otherwise authorized and (ii) to the extent requested in the
26 complaint and proven upon presentation of the report of sale in

1 accordance with Section 15-1508. Except as otherwise provided
2 in this Article, a judgment may be entered for any balance of
3 money that may be found due to the plaintiff, over and above
4 the proceeds of the sale or sales, and enforcement may be had
5 for the collection of such balance, the same as when the
6 judgment is solely for the payment of money. Such judgment may
7 be entered, or enforcement had, only in cases where personal
8 service has been had upon the persons personally liable for the
9 mortgage indebtedness, unless they have entered their
10 appearance in the foreclosure action.

11 (f) Satisfaction. Upon confirmation of the sale, the
12 judgment stands satisfied to the extent of the sale price less
13 expenses and costs. If the order confirming the sale includes a
14 deficiency judgment, the judgment shall become a lien in the
15 manner of any other judgment for the payment of money.

16 (g) The order confirming the sale shall include,
17 notwithstanding any previous orders awarding possession during
18 the pendency of the foreclosure, an award to the purchaser of
19 possession of the mortgaged real estate, as of the date 30 days
20 after the entry of the order, against the parties to the
21 foreclosure whose interests have been terminated.

22 An order of possession authorizing the removal of a person
23 from possession of the mortgaged real estate shall be entered
24 and enforced only against those persons personally named as
25 individuals in the complaint or the petition under subsection
26 (h) of Section 15-1701. No order of possession issued under

1 this Section shall be entered against a lessee with a bona fide
2 lease of a dwelling unit in residential real estate in
3 foreclosure, whether or not the lessee has been made a party in
4 the foreclosure. An order shall not be entered and enforced
5 against any person who is only generically described as an
6 unknown owner or nonrecord claimant or by another generic
7 designation in the complaint.

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

21 (h) With respect to mortgaged real estate containing 5 or
22 more dwelling units, the order confirming the sale shall also
23 provide that (i) the mortgagor shall transfer to the purchaser
24 the security deposits, if any, that the mortgagor received to
25 secure payment of rent or to compensate for damage to the
26 mortgaged real estate from any current occupant of a dwelling

1 unit of the mortgaged real estate, as well as any statutory
2 interest that has not been paid to the occupant, and (ii) the
3 mortgagor shall provide an accounting of the security deposits
4 that are transferred, including the name and address of each
5 occupant for whom the mortgagor holds the deposit and the
6 amount of the deposit and any statutory interest.

7 (Source: P.A. 97-333, eff. 8-12-11; 97-575, eff. 8-26-11;
8 97-1159, eff. 1-29-13; 97-1164, eff. 6-1-13; 98-514, eff.
9 11-19-13.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law."