

SB0255



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB0255

Introduced 2/17/2021, by Sen. Michael E. Hastings

SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1508

from Ch. 110, par. 15-1508

Amends the Mortgage Foreclosure Article of the Code of Civil Procedure. Provides that the order confirming the sale of property may approve the mortgagee's fees and costs (i) arising between the entry of the judgment of foreclosure and the confirmation hearing, and (ii) incurred on or after the date of execution of an affidavit stating the amount due and prior to the judgment but not included in the judgment, those costs and fees to be allowable to the same extent as provided in the note and mortgage. Effective immediately.

LRB102 05123 LNS 15144 b

A BILL FOR

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 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
13 shall not be made prior to sale, the court shall conduct a
14 hearing to confirm the sale. Unless the court finds that (i) a
15 notice required in accordance with subsection (c) of Section
16 15-1507 was not given, (ii) the terms of sale were
17 unconscionable, (iii) the sale was conducted fraudulently, or
18 (iv) justice was otherwise not done, the court shall then
19 enter an order confirming the sale. The confirmation order
20 shall include a name, address, and telephone number of the
21 holder of the certificate of sale or deed issued pursuant to
22 that certificate or, if no certificate or deed was issued, the
23 purchaser, whom a municipality or county may contact with

1 concerns about the real estate. The confirmation order may
2 also:

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

11 (2) provide for a personal judgment against any party
12 for a deficiency; and

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

18 (b-3) Hearing to confirm sale of abandoned residential
19 property. Upon motion and notice by first-class mail to the
20 last known address of the mortgagor, which motion shall be
21 made prior to the sale and heard by the court at the earliest
22 practicable time after conclusion of the sale, and upon the
23 posting at the property address of the notice required by
24 paragraph (2) of subsection (1) of Section 15-1505.8, the
25 court shall enter an order confirming the sale of the
26 abandoned residential property, unless the court finds that a

1 reason set forth in items (i) through (iv) of subsection (b) of
2 this Section exists for not approving the sale, or an order is
3 entered pursuant to subsection (h) of Section 15-1505.8. The
4 confirmation order also may address the matters identified in
5 items (1) through (3) of subsection (b) of this Section. The
6 notice required under subsection (b-5) of this Section shall
7 not be required.

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

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

24 (b-10) Notice of confirmation order sent to municipality
25 or county. A copy of the confirmation order required under
26 subsection (b) shall be sent to the municipality in which the

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

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

26 (c) Failure to Give Notice. If any sale is held without

1 compliance with subsection (c) of Section 15-1507 of this
2 Article, any party entitled to the notice provided for in
3 paragraph (3) of that subsection (c) who was not so notified
4 may, by motion supported by affidavit made prior to
5 confirmation of such sale, ask the court which entered the
6 judgment to set aside the sale. Any such party shall guarantee
7 or secure by bond a bid equal to the successful bid at the
8 prior sale, unless the party seeking to set aside the sale is
9 the mortgagor, the real estate sold at the sale is residential
10 real estate, and the mortgagor occupies the residential real
11 estate at the time the motion is filed. In that event, no
12 guarantee or bond shall be required of the mortgagor. Any
13 subsequent sale is subject to the same notice requirement as
14 the original sale.

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

1 the mortgagee the reasonable expenses of litigation, including
2 reasonable attorney's fees.

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

24 (e) Deficiency Judgment. In any order confirming a sale
25 pursuant to the judgment of foreclosure, the court shall also
26 enter a personal judgment for deficiency against any party (i)

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

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

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

24 An eviction order authorizing the removal of a person from
25 possession of the mortgaged real estate shall be entered and
26 enforced only against those persons personally named as

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

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

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

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

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

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