



Rep. Marlow H. Colvin

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09500HB0838ham002

LRB095 08932 AJ0 49634 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 Notice must be in substantially the following
14 form:

15 **IMPORTANT INFORMATION FOR HOMEOWNERS IN FORECLOSURE**

1 1. POSSESSION: The lawful occupants of a home have the
2 right to live in the home until a judge enters an order for
3 possession.

4 2. OWNERSHIP: You continue to own your home until the
5 court rules otherwise.

6 3. REINSTATEMENT: As the homeowner you have the right
7 to bring the mortgage current within 90 days after you
8 receive the summons.

9 4. REDEMPTION: As the homeowner you have the right to
10 sell your home, refinance, or pay off the loan during the
11 redemption period.

12 5. SURPLUS: As the homeowner you have the right to
13 petition the court for any excess money that results from a
14 foreclosure sale of your home.

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

20 7. GET ADVICE: This information is not exhaustive and
21 does not replace the advice of a professional. You may have
22 other options. Get professional advice from a lawyer or
23 certified housing counselor about your rights and options
24 to avoid foreclosure.

25 8. LAWYER: If you do not have a lawyer, you may be able

1 to find assistance by contacting the Illinois State Bar
2 Association or a legal aid organization that provides free
3 legal assistance.

4 **9. PROCEED WITH CAUTION:** You may be contacted by people
5 offering to help you avoid foreclosure. Before entering
6 into any transaction with persons offering to help you,
7 please contact a lawyer, government official, or housing
8 counselor for advice.

9 (735 ILCS 5/15-1505.5 new)

10 Sec. 15-1505.5. Payoff demands.

11 (a) In a foreclosure action subject to this Article, on the
12 written demand of a mortgagor or the mortgagor's authorized
13 agent, a mortgagee or the mortgagee's authorized agent shall
14 prepare and deliver an accurate statement of the total
15 outstanding balance of the mortgagor's obligation that would be
16 required to satisfy the obligation in full as of the date of
17 preparation ("payoff demand statement") to the mortgagor or the
18 mortgagor's authorized agent who has requested it within 10
19 business days after receipt of the demand. For purposes of this
20 Section, a payoff demand statement is accurate if prepared in
21 good faith based on the records of the mortgagee or the
22 mortgagee's agent.

23 (b) The payoff demand statement shall include the
24 following:

25 (1) The information necessary to calculate the payoff

1 amount on a per diem basis for a period of 30 days;

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

6 (3) The loan number for the obligation to be paid, the
7 address of the mortgagee, the telephone number of the
8 mortgagee and, if a banking organization or corporation,
9 the name of the department, if applicable, and its
10 telephone number and facsimile phone number.

11 (c) A mortgagee or mortgagee's agent who willfully fails to
12 prepare and deliver an accurate payoff demand statement within
13 10 business days after receipt of a written demand is liable to
14 the mortgagor for actual damages sustained for failure to
15 deliver the statement. The mortgagee or mortgagee's agent is
16 liable to the mortgagor for \$500 if no actual damages are
17 sustained. For purposes of this subsection, "willfully" means a
18 failure to comply with this Section without just cause or
19 excuse or mitigating circumstances.

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

23 (e) Unless the payoff demand statement provides otherwise,
24 the statement is deemed to apply only to the unpaid balance of
25 the single obligation that is named in the demand and that is
26 secured by the mortgage or deed of trust identified in the

1 payoff demand statement.

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

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

10 (h) For the purposes of this Section, unless the context
11 otherwise requires, "deliver" or "delivery" means depositing
12 or causing to be deposited into the United States mail an
13 envelope with postage prepaid that contains a copy of the
14 documents to be delivered and that is addressed to the person
15 whose name and address are provided in the payoff demand.
16 "Delivery" may also include transmitting those documents by
17 telephone facsimile to the person or electronically if the
18 payoff demand specifically requests and authorizes that the
19 documents be transmitted in electronic form.

20 (735 ILCS 5/15-1510) (from Ch. 110, par. 15-1510)

21 Sec. 15-1510. Attorney's Fees and Costs ~~by Written~~
22 ~~Agreement.~~

23 (a) The court may award reasonable attorney's fees and
24 costs to the defendant who prevails in a motion, including an
25 affirmative defense or counterclaim, or in the foreclosure

1 action. Nothing in this subsection shall abrogate contractual
2 terms in the mortgage which allow the mortgagee to recover
3 attorney's fees and costs under subsection (b).

4 (b) Attorneys' fees and other costs incurred in connection
5 with the preparation, filing or prosecution of the foreclosure
6 suit shall be recoverable in a foreclosure only to the extent
7 specifically set forth in the mortgage or other written
8 agreement between the mortgagor and the mortgagee or as
9 otherwise provided in this Article.

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

11 Section 99. Effective date. This Act takes effect January
12 1, 2009."