



Rep. André M. Thapedi

Filed: 3/17/2009

09600HB2004ham001

LRB096 05440 MJR 23776 a

1 AMENDMENT TO HOUSE BILL 2004

2 AMENDMENT NO. _____. Amend House Bill 2004 immediately
3 above the enacting clause by inserting the following:

4 "WHEREAS, this amendatory Act of the 96th General Assembly
5 may be cited as the Emergency Foreclosure Relief Act of 2009;
6 and

7 WHEREAS, The last substantive amendments to the Illinois
8 Mortgage Foreclosure Law were adopted in 1987; and, therefore,
9 it is necessary to address the mortgage foreclosure crisis with
10 effective polices, procedures, and legislation; and

11 WHEREAS, Mortgage foreclosure filings on residential
12 properties have continued to grow at alarming rates in counties
13 with 400,000 or more residents; and

14 WHEREAS, Mortgage default situations where the homeowner

1 and lender cannot reach any type of agreement on a loan
2 modification or short sale typically end up with a mortgage
3 foreclosure lawsuit being filed; and

4 WHEREAS, Mortgage foreclosures on 2, 3, 4, 5, and 6-unit
5 multifamily properties have the potential to both disrupt local
6 rental markets and displace tenants even if those tenants are
7 current on their monthly rents; and

8 WHEREAS, When property goes to a foreclosure auction, very
9 few of those properties are being purchased by third-party
10 investors; instead, the properties revert to the lender or
11 investor in the mortgage on which the foreclosure has been
12 filed; and

13 WHEREAS, Although the worst wave of foreclosures tied to
14 the highest risk mortgages such as subprime hybrid adjustable
15 rate mortgages (ARM) loans may have passed, there remain
16 significant concerns about the financial condition of
17 homeowners; the continued weakness in the local housing market,
18 combined with the declining local and national economy, has led
19 to increased default and foreclosure rates for Alternate
20 A-paper and prime mortgages; therefore"; and

21 by replacing everything after the enacting clause with the
22 following:

1 "Section 5. The Code of Civil Procedure is amended by
2 adding Section 15-1502.7 as follows:

3 (735 ILCS 5/15-1502.7 new)

4 Sec. 15-1502.7. Emergency foreclosure relief.

5 (a) As used in this Section:

6 "Approved counseling agency" means a housing counseling
7 agency approved by the U.S. Department of Housing and Urban
8 Development.

9 "Approved Housing Counseling" means in-person counseling
10 provided by a counselor employed by an approved counseling
11 agency to all borrowers, or documented telephone counseling
12 where a hardship would be imposed on one or more borrowers. A
13 hardship shall exist in instances in which the borrower is
14 confined to his or her home due to medical conditions, as
15 verified in writing by a physician or the borrower resides 50
16 miles or more from the nearest approved counseling agency. In
17 instances of telephone counseling, the borrower must supply all
18 necessary documents to the counselor at least 72 hours prior to
19 the scheduled telephone counseling session.

20 "Delinquent" means past due with respect to a payment on a
21 mortgage secured by residential real estate.

22 "Department" means the Department of Financial and
23 Professional Regulation.

24 "Loan workout plan" means a plan that the mortgagor and

1 approved counseling agency reasonably believe shall enable the
2 mortgagor to stay current on his or her mortgage payments for
3 the foreseeable future when taking into account the mortgagor's
4 income and existing and reasonably foreseeable debts. A
5 sustainable loan workout plan may include, but is not limited
6 to, (1) a temporary suspension of payments, (2) a lengthened
7 loan term, (3) a lowered or frozen interest rate, (4) a
8 principal write down, (5) a repayment plan to pay the existing
9 loan in full, (6) deferred payments, (7) refinancing into a new
10 affordable loan, or (8) a deed in lieu of foreclosure
11 consistent with Section 15-1401 of this Law.

12 "Secretary" means the Secretary of Financial and
13 Professional Regulation or other person authorized to act in
14 the Secretary's stead.

15 (b) Except in the circumstance in which a mortgagor has
16 filed a petition for relief under the United States Bankruptcy
17 Code, no mortgagee shall file a complaint to foreclose a
18 mortgage secured by residential real estate until the
19 requirements of this Section have been satisfied.

20 (c) Except for mortgages secured by residential real estate
21 in which any mortgagor has filed for relief under the United
22 States Bankruptcy Code, if a mortgage secured by residential
23 real estate becomes delinquent by more than 30 days, then the
24 mortgagee shall serve via certified mail, return receipt
25 requested, a notice advising the mortgagor that he or she
26 should seek approved housing counseling. Notwithstanding

1 anything to the contrary in this Section, nothing shall
2 preclude the mortgagor and mortgagee from communicating with
3 each other during the initial 30 days of delinquency or
4 reaching agreement on a sustainable loan workout plan, or both.

5 No foreclosure action under Part 15 of Article XV of the
6 Code of Civil Procedure shall be instituted on a mortgage
7 secured by residential real estate before serving and complying
8 with the notice described in this subsection (c).

9 The notice required in this subsection (c) shall state the
10 date on which the notice was mailed, shall be headed in bold
11 14-point type "FORECLOSURE RELIEF NOTICE", and shall state the
12 following in 14-point type: "YOUR LOAN IS MORE THAN 30 DAYS
13 PAST DUE. YOU MAY BE EXPERIENCING FINANCIAL DIFFICULTY. IT MAY
14 BE IN YOUR BEST INTEREST TO SEEK APPROVED HOUSING COUNSELING.
15 YOU HAVE A GRACE PERIOD OF 60 DAYS FROM THE DATE OF THIS NOTICE
16 TO OBTAIN APPROVED HOUSING COUNSELING. DURING THE GRACE PERIOD,
17 THE LAW PROHIBITS US FROM FILING A FORECLOSURE ACTION AGAINST
18 YOU. YOU MAY BE ENTITLED TO AN ADDITIONAL 60-DAY GRACE PERIOD
19 IF YOU OBTAIN HOUSING COUNSELING FROM AN APPROVED HOUSING
20 COUNSELING AGENCY. A LIST OF APPROVED COUNSELING AGENCIES MAY
21 BE OBTAINED FROM THE ILLINOIS DEPARTMENT OF FINANCIAL AND
22 PROFESSIONAL REGULATION."

23 The notice shall also list the Department's current
24 consumer hotline, the Department's website, and the telephone
25 number, fax number, and mailing address of the mortgagee. No
26 language, other than language substantially similar to the

1 language prescribed in this subsection (c), shall be included
2 in the notice. Notwithstanding any other provision to the
3 contrary, the grace period notice required by this subsection
4 (c) may be combined with a counseling notification required
5 under federal law.

6 Service of the notice required under this subsection (c)
7 means depositing or causing to be deposited into the United
8 States mail an envelope with first-class postage prepaid that
9 contains the document to be delivered. The envelope shall be
10 addressed to the mortgagor at the common address of the
11 residential real estate securing the mortgage.

12 (d) Until 60 days after serving the notice required under
13 subsection (c) of this Section, no legal action shall be
14 instituted under Part 15 of Article XV of the Code of Civil
15 Procedure.

16 (e) If, within the 60-day period provided under subsection
17 (d) of this Section, an approved counseling agency provides
18 written notice to the mortgagee that the mortgagor is seeking
19 approved counseling services, then no legal action under Part
20 15 of Article XV of the Code of Civil Procedure shall be
21 instituted for 60 days after the date of that notice. The date
22 that such notice is sent shall be stated in the notice, and
23 shall be sent to the address or fax number contained in the
24 Foreclosure Relief Notice required under subsection (c) of this
25 Section. During the 60-day period provided under this
26 subsection (e), the mortgagor or counselor or both may prepare

1 and proffer to the mortgagee a proposed loan workout plan. The
2 mortgagee will then determine whether to accept the proposed
3 loan workout plan within 30 days after receiving the proffered
4 loan workout plan. If the mortgagee and the mortgagor agree to
5 a loan workout plan, then no legal action under Part 15 of
6 Article XV of the Code of Civil Procedure shall be instituted
7 for as long as the loan workout plan is complied with by the
8 mortgagor.

9 The agreed loan workout plan and any modifications thereto
10 must be in writing and signed by the mortgagee and the
11 mortgagor.

12 If the mortgagee opts not to accept the proposed loan
13 workout plan, then the mortgagee shall notify the mortgagor and
14 counselor of its decision, in writing, setting forth, with
15 specificity, the reasons for rejecting the proposed loan
16 workout plan within 30 days after receiving the proffered loan
17 workout plan.

18 Upon written notice to the mortgagee, the mortgagor may
19 change approved counseling agencies, but such a change does not
20 entitle the mortgagor to any additional period of forbearance.

21 (f) If the mortgagor fails to comply with the loan workout
22 plan, then nothing in this Section shall be construed to impair
23 the legal rights of the mortgagee to institute legal action
24 under Part 15 of Article XV of the Code of Civil Procedure.

25 (g) A counselor employed by a housing counseling agency or
26 the housing counseling agency that in good faith provides

1 counseling shall not be liable to a mortgagee or mortgagor for
2 civil damages, except for willful or wanton misconduct on the
3 part of the counselor in providing the counseling.

4 (h) There shall be no waiver of any provision of this
5 Section.

6 (i) It is the General Assembly's intent that compliance
7 with this Section shall not prejudice a mortgagee in ratings of
8 its bad debt collection or calculation standards or policies.

9 (j) This Section shall not apply, or shall cease to apply,
10 to residential real estate that is not occupied as a principal
11 residence by the mortgagor."