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09600HB5055ham001

LRB096 17806 AJO 36473 a

1 AMENDMENT TO HOUSE BILL 5055

2 AMENDMENT NO. _____. Amend House Bill 5055 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Sections 15-1506 and 15-1507 as follows:

6 (735 ILCS 5/15-1506) (from Ch. 110, par. 15-1506)

7 Sec. 15-1506. Judgment. (a) Evidence. In the trial of a
8 foreclosure, the evidence to support the allegations of the
9 complaint shall be taken in open court, except:

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

1 separate affidavit setting forth such fact is sufficient
2 evidence thereof against such party and no further evidence of
3 such fact shall be required; and

4 (2) where all the allegations of fact in the complaint have
5 been proved by verification of the complaint or affidavit, the
6 court upon motion supported by an affidavit stating the amount
7 which is due the mortgagee, shall enter a judgment of
8 foreclosure as requested in the complaint.

9 (b) Instruments. In all cases the evidence of the
10 indebtedness and the mortgage foreclosed shall be exhibited to
11 the court and appropriately marked, and copies thereof shall be
12 filed with the court.

13 (c) Summary and Default Judgments. Nothing in this Section
14 15-1506 shall prevent a party from obtaining a summary or
15 default judgment authorized by Article II of the Code of Civil
16 Procedure.

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

21 (e) Matters Required in Judgment. A judgment of foreclosure
22 shall include the last date for redemption and all rulings of
23 the court entered with respect to each request for relief set
24 forth in the complaint. The omission of the date for redemption
25 shall not extend the time for redemption or impair the validity
26 of the judgment.

1 (f) Special Matters in Judgment. Without limiting the
2 general authority and powers of the court, special matters may
3 be included in the judgment of foreclosure if sought ~~by a party~~
4 in the complaint or by separate motion brought by a party. Such
5 matters may include, without limitation:

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

7 (2) a sale by sealed bid;

8 (3) an official or other person who shall be the officer to
9 conduct the sale ~~other than the one customarily designated by~~
10 ~~the court;~~

11 (4) provisions for non-exclusive broker listings or
12 designating a duly licensed real estate broker nominated by one
13 of the parties to exclusively list the real estate for sale;

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

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

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

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

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

26 (10) the format for the advertising of such sale, including

1 the size, content and format of such advertising, and
2 additional advertising of such sale;

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

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

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

10 (14) such other matters as approved by the court to ensure
11 sale of the real estate for the most commercially favorable
12 price for the type of real estate involved.

13 (g) Agreement of the Parties. If all of the parties agree
14 in writing on the minimum price and that the real estate may be
15 sold to the first person who offers in writing to purchase the
16 real estate for such price, and on such other commercially
17 reasonable terms and conditions as the parties may agree, then
18 the court shall order the real estate to be sold on such terms,
19 subject to confirmation of the sale in accordance with Section
20 15-1508.

21 (h) Postponement of Proving Priority. With the approval of
22 the court prior to the entry of the judgment of foreclosure, a
23 party claiming an interest in the proceeds of the sale of the
24 mortgaged real estate may defer proving the priority of such
25 interest until the hearing to confirm the sale.

26 (i) Effect of Judgment and Lien. (1) Upon the entry of the

1 judgment of foreclosure, all rights of a party in the
2 foreclosure against the mortgagor provided for in the judgment
3 of foreclosure or this Article shall be secured by a lien on
4 the mortgaged real estate, which lien shall have the same
5 priority as the claim to which the judgment relates and shall
6 be terminated upon confirmation of a judicial sale in
7 accordance with this Article.

8 (2) Upon the entry of the judgment of foreclosure, the
9 rights in the real estate subject to the judgment of
10 foreclosure of (i) all persons made a party in the foreclosure
11 and (ii) all nonrecord claimants given notice in accordance
12 with paragraph (2) of subsection (c) of Section 15-1502, shall
13 be solely as provided for in the judgment of foreclosure and in
14 this Article.

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

16 (735 ILCS 5/15-1507) (from Ch. 110, par. 15-1507)

17 Sec. 15-1507. Judicial Sale.

18 (a) In General. Except as provided in Sections 15-1402 and
19 15-1403, upon entry of a judgment of foreclosure, the real
20 estate which is the subject of the judgment shall be sold at a
21 judicial sale in accordance with this Section 15-1507.

22 (b) Sale Procedures. Upon expiration of the reinstatement
23 period and the redemption period in accordance with subsection
24 (b) or (c) of Section 15-1603 or upon the entry of a judgment
25 of foreclosure after the waiver of all rights of redemption,

1 except as provided in subsection (g) of Section 15-1506, the
2 real estate shall be sold at a sale as provided in this
3 Article, on such terms and conditions as shall be specified by
4 the court in the judgment of foreclosure. In the absence of an
5 appointment made pursuant to a motion under subsection (f) of
6 Section 15-1506, the person conducting the sale shall be
7 designated by the plaintiff and shall be (i) any person
8 appointed pursuant to Section 15-1506 prior to the effective
9 date of this amendatory Act of the 96th General Assembly, (ii)
10 any judge, or (iii) the sheriff of the county in which the real
11 estate is located. ~~A sale may be conducted by any judge or~~
12 ~~sheriff.~~

13 (c) Notice of Sale. The mortgagee, or such other party
14 designated by the court, in a foreclosure under this Article
15 shall give public notice of the sale as follows:

16 (1) The notice of sale shall include at least the
17 following information, but an immaterial error in the
18 information shall not invalidate the legal effect of the
19 notice:

20 (A) the name, address and telephone number of the
21 person to contact for information regarding the real
22 estate;

23 (B) the common address and other common
24 description (other than legal description), if any, of
25 the real estate;

26 (C) a legal description of the real estate

1 sufficient to identify it with reasonable certainty;

2 (D) a description of the improvements on the real
3 estate;

4 (E) the times specified in the judgment, if any,
5 when the real estate may be inspected prior to sale;

6 (F) the time and place of the sale;

7 (G) the terms of the sale;

8 (H) the case title, case number and the court in
9 which the foreclosure was filed;

10 (H-1) in the case of a condominium unit to which
11 subsection (g) of Section 9 of the Condominium Property
12 Act applies, the statement required by subdivision
13 (g) (5) of Section 9 of the Condominium Property Act;
14 and

15 (I) such other information ordered by the Court.

16 (2) The notice of sale shall be published at least 3
17 consecutive calendar weeks (Sunday through Saturday), once
18 in each week, the first such notice to be published not
19 more than 45 days prior to the sale, the last such notice
20 to be published not less than 7 days prior to the sale, by:

21 (i) (A) advertisements in a newspaper circulated to the
22 general public in the county in which the real estate is
23 located, in the section of that newspaper where legal
24 notices are commonly placed and (B) separate
25 advertisements in the section of such a newspaper, which
26 (except in counties with a population in excess of

1 3,000,000) may be the same newspaper, in which real estate
2 other than real estate being sold as part of legal
3 proceedings is commonly advertised to the general public;
4 provided, that the separate advertisements in the real
5 estate section need not include a legal description and
6 that where both advertisements could be published in the
7 same newspaper and that newspaper does not have separate
8 legal notices and real estate advertisement sections, a
9 single advertisement with the legal description shall be
10 sufficient; and (ii) such other publications as may be
11 further ordered by the court.

12 (3) The party who gives notice of public sale in
13 accordance with subsection (c) of Section 15-1507 shall
14 also give notice to all parties in the action who have
15 appeared and have not theretofore been found by the court
16 to be in default for failure to plead. Such notice shall be
17 given in the manner provided in the applicable rules of
18 court for service of papers other than process and
19 complaint, not more than 45 days nor less than 7 days prior
20 to the day of sale. After notice is given as required in
21 this Section a copy thereof shall be filed in the office of
22 the clerk of the court entering the judgment, together with
23 a certificate of counsel or other proof that notice has
24 been served in compliance with this Section.

25 (4) The party who gives notice of public sale in
26 accordance with subsection (c) of Section 15-1507 shall

1 again give notice in accordance with that Section of any
2 adjourned sale; provided, however, that if the adjourned
3 sale is to occur less than 60 days after the last scheduled
4 sale, notice of any adjourned sale need not be given
5 pursuant to this Section. In the event of adjournment, the
6 person conducting the sale shall, upon adjournment,
7 announce the date, time and place upon which the adjourned
8 sale shall be held. Notwithstanding any language to the
9 contrary, for any adjourned sale that is to be conducted
10 more than 60 days after the date on which it was to first
11 be held, the party giving notice of such sale shall again
12 give notice in accordance with this Section.

13 (5) Notice of the sale may be given prior to the
14 expiration of any reinstatement period or redemption
15 period.

16 (6) No other notice by publication or posting shall be
17 necessary unless required by order or rule of the court.

18 (7) The person named in the notice of sale to be
19 contacted for information about the real estate may, but
20 shall not be required, to provide additional information
21 other than that set forth in the notice of sale.

22 (d) Election of Property. If the real estate which is the
23 subject of a judgment of foreclosure is susceptible of
24 division, the court may order it to be sold as necessary to
25 satisfy the judgment. The court shall determine which real
26 estate shall be sold, and the court may determine the order in

1 which separate tracts may be sold.

2 (e) Receipt upon Sale. Upon and at the sale of mortgaged
3 real estate, the person conducting the sale shall give to the
4 purchaser a receipt of sale. The receipt shall describe the
5 real estate purchased and shall show the amount bid, the amount
6 paid, the total amount paid to date and the amount still to be
7 paid therefor. An additional receipt shall be given at the time
8 of each subsequent payment.

9 (f) Certificate of Sale. Upon payment in full of the amount
10 bid, the person conducting the sale shall issue, in duplicate,
11 and give to the purchaser a Certificate of Sale. The
12 Certificate of Sale shall be in a recordable form, describe the
13 real estate purchased, indicate the date and place of sale and
14 show the amount paid therefor. The Certificate of Sale shall
15 further indicate that it is subject to confirmation by the
16 court. The duplicate certificate may be recorded in accordance
17 with Section 12-121. The Certificate of Sale shall be freely
18 assignable by endorsement thereon.

19 (g) Interest after Sale. Any bid at sale shall be deemed to
20 include, without the necessity of a court order, interest at
21 the statutory judgment rate on any unpaid portion of the sale
22 price from the date of sale to the date of payment.

23 (Source: P.A. 94-1049, eff. 1-1-07.)

24 Section 99. Effective date. This Act takes effect upon
25 becoming law."