

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Purpose; intent.

5 (a) Public Act 97-849, "AN ACT concerning business", was
6 approved July 25, 2012. Public Act 97-849 contained an
7 effective date Section providing that the Act takes effect on
8 January 1, 2013.

9 (b) The purpose of this Act is to delay the effective date
10 of the amendatory provisions contained in Sections 10, 15, and
11 25 of Public Act 97-849 until the effective date of the federal
12 regulations implementing Sections 1431, 1432, and 1433 of the
13 federal Dodd-Frank Wall Street Reform and Consumer Protection
14 Act.

15 (c) This Act is not intended to repeal, even temporarily,
16 any statute that was changed by Sections 10, 15, and 25 of
17 Public Act 97-849; rather, it is the intent of the General
18 Assembly to render the changes to those statutes by Public Act
19 97-849 inoperative until the effective date of the federal
20 regulations implementing Sections 1431, 1432, and 1433 of the
21 federal Dodd-Frank Wall Street Reform and Consumer Protection
22 Act.

23 (d) This Act also makes substantive changes to the Code of
24 Civil Procedure unrelated to Public Act 97-849, specifically by

1 amending certain provisions of Section 15-1508 concerning the
2 Making Home Affordable Program.

3 Section 5. The Code of Civil Procedure is amended by
4 changing Section 15-1508 as follows:

5 (735 ILCS 5/15-1508) (from Ch. 110, par. 15-1508)
6 Sec. 15-1508. Report of Sale and Confirmation of Sale.

7 (a) Report. The person conducting the sale shall promptly
8 make a report to the court, which report shall include a copy
9 of all receipts and, if any, certificate of sale.

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

24 (1) approve the mortgagee's fees and costs arising

1 between the entry of the judgment of foreclosure and the
2 confirmation hearing, those costs and fees to be allowable
3 to the same extent as provided in the note and mortgage and
4 in Section 15-1504;

5 (2) provide for a personal judgment against any party
6 for a deficiency; and

7 (3) determine the priority of the judgments of parties
8 who deferred proving the priority pursuant to subsection
9 (h) of Section 15-1506, but the court shall not defer
10 confirming the sale pending the determination of such
11 priority.

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

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

1 ILLINOIS MORTGAGE FORECLOSURE LAW.

2 (b-10) Notice of confirmation order sent to municipality or
3 county. A copy of the confirmation order required under
4 subsection (b) shall be sent to the municipality in which the
5 foreclosed property is located, or to the county within the
6 boundary of which the foreclosed property is located if the
7 foreclosed property is located in an unincorporated territory.
8 A municipality or county must clearly publish on its website a
9 single address to which such notice shall be sent. If a
10 municipality or county does not maintain a website, then the
11 municipality or county must publicly post in its main office a
12 single address to which such notice shall be sent. In the event
13 that a municipality or county has not complied with the
14 publication requirement in this subsection (b-10), then such
15 notice to the municipality or county shall be provided pursuant
16 to Section 2-211 of the Code of Civil Procedure.

17 (c) Failure to Give Notice. If any sale is held without
18 compliance with subsection (c) of Section 15-1507 of this
19 Article, any party entitled to the notice provided for in
20 paragraph (3) of that subsection (c) who was not so notified
21 may, by motion supported by affidavit made prior to
22 confirmation of such sale, ask the court which entered the
23 judgment to set aside the sale. Any such party shall guarantee
24 or secure by bond a bid equal to the successful bid at the
25 prior sale, unless the party seeking to set aside the sale is
26 the mortgagor, the real estate sold at the sale is residential

1 real estate, and the mortgagor occupies the residential real
2 estate at the time the motion is filed. In that event, no
3 guarantee or bond shall be required of the mortgagor. Any
4 subsequent sale is subject to the same notice requirement as
5 the original sale.

6 (d) Validity of Sale. Except as provided in subsection (c)
7 of Section 15-1508, no sale under this Article shall be held
8 invalid or be set aside because of any defect in the notice
9 thereof or in the publication of the same, or in the
10 proceedings of the officer conducting the sale, except upon
11 good cause shown in a hearing pursuant to subsection (b) of
12 Section 15-1508. At any time after a sale has occurred, any
13 party entitled to notice under paragraph (3) of subsection (c)
14 of Section 15-1507 may recover from the mortgagee any damages
15 caused by the mortgagee's failure to comply with such paragraph
16 (3). Any party who recovers damages in a judicial proceeding
17 brought under this subsection may also recover from the
18 mortgagee the reasonable expenses of litigation, including
19 reasonable attorney's fees.

20 (d-5) Making Home Affordable Program. The court that
21 entered the judgment shall set aside a sale held pursuant to
22 Section 15-1507, upon motion of the mortgagor at any time prior
23 to the confirmation of the sale, if the mortgagor proves by a
24 preponderance of the evidence that (i) the mortgagor has
25 applied for assistance under the Making Home Affordable Program
26 established by the United States Department of the Treasury

1 pursuant to the Emergency Economic Stabilization Act of 2008,
2 as amended by the American Recovery and Reinvestment Act of
3 2009, and (ii) the mortgaged real estate was sold in material
4 violation of the program's requirements for proceeding to a
5 judicial sale. The provisions of this subsection (d-5), except
6 for this sentence, shall become inoperative on January 1, 2014
7 ~~2013~~ for all actions filed under this Article after December
8 31, 2013 ~~2012~~, in which the mortgagor did not apply for
9 assistance under the Making Home Affordable Program on or
10 before December 31, 2013 ~~2012~~.

11 (e) Deficiency Judgment. In any order confirming a sale
12 pursuant to the judgment of foreclosure, the court shall also
13 enter a personal judgment for deficiency against any party (i)
14 if otherwise authorized and (ii) to the extent requested in the
15 complaint and proven upon presentation of the report of sale in
16 accordance with Section 15-1508. Except as otherwise provided
17 in this Article, a judgment may be entered for any balance of
18 money that may be found due to the plaintiff, over and above
19 the proceeds of the sale or sales, and enforcement may be had
20 for the collection of such balance, the same as when the
21 judgment is solely for the payment of money. Such judgment may
22 be entered, or enforcement had, only in cases where personal
23 service has been had upon the persons personally liable for the
24 mortgage indebtedness, unless they have entered their
25 appearance in the foreclosure action.

26 (f) Satisfaction. Upon confirmation of the sale, the

1 judgment stands satisfied to the extent of the sale price less
2 expenses and costs. If the order confirming the sale includes a
3 deficiency judgment, the judgment shall become a lien in the
4 manner of any other judgment for the payment of money.

5 (g) The order confirming the sale shall include,
6 notwithstanding any previous orders awarding possession during
7 the pendency of the foreclosure, an award to the purchaser of
8 possession of the mortgaged real estate, as of the date 30 days
9 after the entry of the order, against the parties to the
10 foreclosure whose interests have been terminated.

11 An order of possession authorizing the removal of a person
12 from possession of the mortgaged real estate shall be entered
13 and enforced only against those persons personally named as
14 individuals in the complaint or the petition under subsection
15 (h) of Section 15-1701 and in the order of possession and shall
16 not be entered and enforced against any person who is only
17 generically described as an unknown owner or nonrecord claimant
18 or by another generic designation in the complaint.

19 Notwithstanding the preceding paragraph, the failure to
20 personally name, include, or seek an award of possession of the
21 mortgaged real estate against a person in the confirmation
22 order shall not abrogate any right that the purchaser may have
23 to possession of the mortgaged real estate and to maintain a
24 proceeding against that person for possession under Article 9
25 of this Code or subsection (h) of Section 15-1701; and
26 possession against a person who (1) has not been personally

1 named as a party to the foreclosure and (2) has not been
2 provided an opportunity to be heard in the foreclosure
3 proceeding may be sought only by maintaining a proceeding under
4 Article 9 of this Code or subsection (h) of Section 15-1701.

5 (h) With respect to mortgaged real estate containing 5 or
6 more dwelling units, the order confirming the sale shall also
7 provide that (i) the mortgagor shall transfer to the purchaser
8 the security deposits, if any, that the mortgagor received to
9 secure payment of rent or to compensate for damage to the
10 mortgaged real estate from any current occupant of a dwelling
11 unit of the mortgaged real estate, as well as any statutory
12 interest that has not been paid to the occupant, and (ii) the
13 mortgagor shall provide an accounting of the security deposits
14 that are transferred, including the name and address of each
15 occupant for whom the mortgagor holds the deposit and the
16 amount of the deposit and any statutory interest.

17 (Source: P.A. 96-265, eff. 8-11-09; 96-856, eff. 3-1-10;
18 96-1245, eff. 7-23-10; 97-333, eff. 8-12-11; 97-575, eff.
19 8-26-11.)

20 Section 10. "AN ACT concerning business", approved July 25,
21 2012 (Public Act 97-849), is amended by changing Section 99 as
22 follows:

23 (P.A. 97-849, Sec. 99)

24 Sec. 99. Effective date. This Act takes effect on January

1 1, 2013, except that Sections 10, 15, and 25 take effect on the
2 effective date of the federal regulations implementing
3 Sections 1431, 1432, and 1433 of the federal Dodd-Frank Wall
4 Street Reform and Consumer Protection Act.

5 (Source: P.A. 97-849.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.