



Sen. John G. Mulroe

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LRB097 10111 AJO 54323 a

1 AMENDMENT TO SENATE BILL 2033

2 AMENDMENT NO. _____. Amend Senate Bill 2033 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Section 15-1504 as follows:

6 (735 ILCS 5/15-1504) (from Ch. 110, par. 15-1504)

7 Sec. 15-1504. Pleadings and service.

8 (a) Form of Complaint. A foreclosure complaint may be in
9 substantially the following form:

10 (1) Plaintiff files this complaint to foreclose the
11 mortgage (or other conveyance in the nature of a mortgage)
12 (hereinafter called "mortgage") hereinafter described and
13 joins the following person as defendants: (here insert
14 names of all defendants).

15 (2) The mortgaged real estate is: (select one)

16 abandoned

1 occupied

2 (3) ~~(2)~~ Attached as Exhibit "A" is a copy of the
3 mortgage and as Exhibit "B" is a copy of the note secured
4 thereby.

5 (4) ~~(3)~~ Information concerning mortgage:

6 (A) Nature of instrument: (here insert whether a
7 mortgage, trust deed or other instrument in the nature
8 of a mortgage, etc.)

9 (B) Date of mortgage:

10 (C) Name of mortgagor:

11 (D) Name of mortgagee:

12 (E) Date and place of recording:

13 (F) Identification of recording: (here insert book
14 and page number or document number)

15 (G) Interest subject to the mortgage: (here insert
16 whether fee simple, estate for years, undivided
17 interest, etc.)

18 (H) Amount of original indebtedness, including
19 subsequent advances made under the mortgage:

20 (I) Both the legal description of the mortgaged
21 real estate and the common address or other information
22 sufficient to identify it with reasonable certainty:

23 (J) Statement as to defaults, including, but not
24 necessarily limited to, date of default, current
25 unpaid principal balance, per diem interest accruing,
26 and any further information concerning the default:

1 (K) Name of present owner of the real estate:

2 (L) Names of other persons who are joined as
3 defendants and whose interest in or lien on the
4 mortgaged real estate is sought to be terminated:

5 (M) Names of defendants claimed to be personally
6 liable for deficiency, if any:

7 (N) Capacity in which plaintiff brings this
8 foreclosure (here indicate whether plaintiff is the
9 legal holder of the indebtedness, a pledgee, an agent,
10 the trustee under a trust deed or otherwise, as
11 appropriate):

12 (O) Facts in support of redemption period shorter
13 than the longer of (i) 7 months from the date the
14 mortgagor or, if more than one, all the mortgagors (I)
15 have been served with summons or by publication or (II)
16 have otherwise submitted to the jurisdiction of the
17 court, or (ii) 3 months from the entry of the judgment
18 of foreclosure, if sought (here indicate whether based
19 upon the real estate not being residential,
20 abandonment, or real estate value less than 90% of
21 amount owed, etc.):

22 (P) Statement that the right of redemption has been
23 waived by all owners of redemption, if applicable:

24 (Q) Facts in support of request for attorneys' fees
25 and of costs and expenses, if applicable:

26 (R) Facts in support of a request for appointment

1 of mortgagee in possession or for appointment of
2 receiver, and identity of such receiver, if sought:

3 (S) Offer to mortgagor in accordance with Section
4 15-1402 to accept title to the real estate in
5 satisfaction of all indebtedness and obligations
6 secured by the mortgage without judicial sale, if
7 sought:

8 (T) Name or names of defendants whose right to
9 possess the mortgaged real estate, after the
10 confirmation of a foreclosure sale, is sought to be
11 terminated and, if not elsewhere stated, the facts in
12 support thereof:

13 REQUEST FOR RELIEF

14 Plaintiff requests:

15 (i) A judgment of foreclosure and sale.

16 (ii) An order granting a shortened redemption period,
17 if sought.

18 (iii) A personal judgment for a deficiency, if sought.

19 (iv) An order granting possession, if sought.

20 (v) An order placing the mortgagee in possession or
21 appointing a receiver, if sought.

22 (vi) A judgment for attorneys' fees, costs and
23 expenses, if sought.

24 (b) Required Information. A foreclosure complaint need
25 contain only such statements and requests called for by the

1 form set forth in subsection (a) of Section 15-1504 as may be
2 appropriate for the relief sought. Such complaint may be filed
3 as a counterclaim, may be joined with other counts or may
4 include in the same count additional matters or a request for
5 any additional relief permitted by Article II of the Code of
6 Civil Procedure.

7 (c) Allegations. The statements contained in a complaint in
8 the form set forth in subsection (a) of Section 15-1504 are
9 deemed and construed to include allegations as follows:

10 (1) on the date indicated the obligor of the
11 indebtedness or other obligations secured by the mortgage
12 was justly indebted in the amount of the indicated original
13 indebtedness to the original mortgagee or payee of the
14 mortgage note;

15 (2) that the exhibits attached are true and correct
16 copies of the mortgage and note and are incorporated and
17 made a part of the complaint by express reference;

18 (3) that the mortgagor was at the date indicated an
19 owner of the interest in the real estate described in the
20 complaint and that as of that date made, executed and
21 delivered the mortgage as security for the note or other
22 obligations;

23 (4) that the mortgage was recorded in the county in
24 which the mortgaged real estate is located, on the date
25 indicated, in the book and page or as the document number
26 indicated;

1 (5) that defaults occurred as indicated;

2 (6) that at the time of the filing of the complaint the
3 persons named as present owners are the owners of the
4 indicated interests in and to the real estate described;

5 (7) that the mortgage constitutes a valid, prior and
6 paramount lien upon the indicated interest in the mortgaged
7 real estate, which lien is prior and superior to the right,
8 title, interest, claim or lien of all parties and nonrecord
9 claimants whose interests in the mortgaged real estate are
10 sought to be terminated;

11 (8) that by reason of the defaults alleged, if the
12 indebtedness has not matured by its terms, the same has
13 become due by the exercise, by the plaintiff or other
14 persons having such power, of a right or power to declare
15 immediately due and payable the whole of all indebtedness
16 secured by the mortgage;

17 (9) that any and all notices of default or election to
18 declare the indebtedness due and payable or other notices
19 required to be given have been duly and properly given;

20 (10) that any and all periods of grace or other period
21 of time allowed for the performance of the covenants or
22 conditions claimed to be breached or for the curing of any
23 breaches have expired;

24 (11) that the amounts indicated in the statement in the
25 complaint are correctly stated and if such statement
26 indicates any advances made or to be made by the plaintiff

1 or owner of the mortgage indebtedness, that such advances
2 were, in fact, made or will be required to be made, and
3 under and by virtue of the mortgage the same constitute
4 additional indebtedness secured by the mortgage; and

5 (12) that, upon confirmation of the sale, the holder of
6 the certificate of sale or deed issued pursuant to that
7 certificate or, if no certificate or deed was issued, the
8 purchaser at the sale will be entitled to full possession
9 of the mortgaged real estate against the parties named in
10 clause (T) of paragraph (4) ~~(3)~~ of subsection (a) of
11 Section 15-1504 or elsewhere to the same effect; the
12 omission of any party indicates that plaintiff will not
13 seek a possessory order in the order confirming sale unless
14 the request is subsequently made under subsection (h) of
15 Section 15-1701 or by separate action under Article 9 of
16 this Code.

17 (d) Request for Fees and Costs. A statement in the
18 complaint that plaintiff seeks the inclusion of attorneys' fees
19 and of costs and expenses shall be deemed and construed to
20 include allegations that:

21 (1) plaintiff has been compelled to employ and retain
22 attorneys to prepare and file the complaint and to
23 represent and advise the plaintiff in the foreclosure of
24 the mortgage and the plaintiff will thereby become liable
25 for the usual, reasonable and customary fees of the
26 attorneys in that behalf;

1 (2) that the plaintiff has been compelled to advance or
2 will be compelled to advance, various sums of money in
3 payment of costs, fees, expenses and disbursements
4 incurred in connection with the foreclosure, including,
5 without limiting the generality of the foregoing, filing
6 fees, stenographer's fees, witness fees, costs of
7 publication, costs of procuring and preparing documentary
8 evidence and costs of procuring abstracts of title, Torrens
9 certificates, foreclosure minutes and a title insurance
10 policy;

11 (3) that under the terms of the mortgage, all such
12 advances, costs, attorneys' fees and other fees, expenses
13 and disbursements are made a lien upon the mortgaged real
14 estate and the plaintiff is entitled to recover all such
15 advances, costs, attorneys' fees, expenses and
16 disbursements, together with interest on all advances at
17 the rate provided in the mortgage, or, if no rate is
18 provided therein, at the statutory judgment rate, from the
19 date on which such advances are made;

20 (4) that in order to protect the lien of the mortgage,
21 it may become necessary for plaintiff to pay taxes and
22 assessments which have been or may be levied upon the
23 mortgaged real estate;

24 (5) that in order to protect and preserve the mortgaged
25 real estate, it may also become necessary for the plaintiff
26 to pay liability (protecting mortgagor and mortgagee),

1 fire and other hazard insurance premiums on the mortgaged
2 real estate, make such repairs to the mortgaged real estate
3 as may reasonably be deemed necessary for the proper
4 preservation thereof, advance for costs to inspect the
5 mortgaged real estate or to appraise it, or both, and
6 advance for premiums for pre-existing private or
7 governmental mortgage insurance to the extent required
8 after a foreclosure is commenced in order to keep such
9 insurance in force; and

10 (6) that under the terms of the mortgage, any money so
11 paid or expended will become an additional indebtedness
12 secured by the mortgage and will bear interest from the
13 date such monies are advanced at the rate provided in the
14 mortgage, or, if no rate is provided, at the statutory
15 judgment rate.

16 (e) Request for Foreclosure. The request for foreclosure is
17 deemed and construed to mean that the plaintiff requests that:

18 (1) an accounting may be taken under the direction of
19 the court of the amounts due and owing to the plaintiff;

20 (2) that the defendants be ordered to pay to the
21 plaintiff before expiration of any redemption period (or,
22 if no redemption period, before a short date fixed by the
23 court) whatever sums may appear to be due upon the taking
24 of such account, together with attorneys' fees and costs of
25 the proceedings (to the extent provided in the mortgage or
26 by law);

1 (3) that in default of such payment in accordance with
2 the judgment, the mortgaged real estate be sold as directed
3 by the court, to satisfy the amount due to the plaintiff as
4 set forth in the judgment, together with the interest
5 thereon at the statutory judgment rate from the date of the
6 judgment;

7 (4) that in the event the plaintiff is a purchaser of
8 the mortgaged real estate at such sale, the plaintiff may
9 offset against the purchase price of such real estate the
10 amounts due under the judgment of foreclosure and order
11 confirming the sale;

12 (5) that in the event of such sale and the failure of
13 any person entitled thereto to redeem prior to such sale
14 pursuant to this Article, the defendants made parties to
15 the foreclosure in accordance with this Article, and all
16 nonrecord claimants given notice of the foreclosure in
17 accordance with this Article, and all persons claiming by,
18 through or under them, and each and any and all of them,
19 may be forever barred and foreclosed of any right, title,
20 interest, claim, lien, or right to redeem in and to the
21 mortgaged real estate; and

22 (6) that if no redemption is made prior to such sale, a
23 deed may be issued to the purchaser thereat according to
24 law and such purchaser be let into possession of the
25 mortgaged real estate in accordance with Part 17 of this
26 Article.

1 (f) Request for Deficiency Judgment. A request for a
2 personal judgment for a deficiency in a foreclosure complaint
3 if the sale of the mortgaged real estate fails to produce a
4 sufficient amount to pay the amount found due, the plaintiff
5 may have a personal judgment against any party in the
6 foreclosure indicated as being personally liable therefor and
7 the enforcement thereof be had as provided by law.

8 (g) Request for Possession or Receiver. A request for
9 possession or appointment of a receiver has the meaning as
10 stated in subsection (b) of Section 15-1706.

11 (h) Answers by Parties. Any party may assert its interest
12 by counterclaim and such counterclaim may at the option of that
13 party stand in lieu of answer to the complaint for foreclosure
14 and all counter complaints previously or thereafter filed in
15 the foreclosure. Any such counterclaim shall be deemed to
16 constitute a statement that the counter claimant does not have
17 sufficient knowledge to form a belief as to the truth or
18 falsity of the allegations of the complaint and all other
19 counterclaims, except to the extent that the counterclaim
20 admits or specifically denies such allegations.

21 (Source: P.A. 91-357, eff. 7-29-99.)

22 Section 99. Effective date. This Act takes effect upon
23 becoming law."