



November 16, 2010

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**ATTORNEY GENERAL MADIGAN FILES LEGISLATION IN SPRINGFIELD TO ENSURE INTEGRITY OF FORECLOSURE PROCESS, PROTECT HOMEOWNERS**

Chicago — Attorney General Lisa Madigan today filed legislation designed to reform the foreclosure process to protect homeowners. Madigan's legislation is the first of its kind in the country to address revelations that major banks and mortgage giants recklessly "robo-signed" foreclosure filings across the country. The bill would significantly tighten the requirements for affidavits filed in foreclosure proceedings to ensure their accuracy.

Sponsors of the bill during the General Assembly's fall veto session are state Sen. Jacqueline Collins, and state Reps. Marlow H. Colvin and Mary Flowers, all of whom have worked closely with Madigan's office in recent years to increase the protections for Illinois families facing foreclosure.

"Too often, Illinois families are struggling to pay their mortgages because banks put them into risky loans that they did not understand and could never afford. Now, we must make sure that banks are not violating the law as they try to take these families' homes away," Attorney General Madigan said. "This legislation is designed to ensure that banks and loan servicers cannot cut corners or ignore homeowners' rights in the foreclosure process."

The legislation was prompted after major loan servicers across the country, namely GMAC/Ally, Bank of America and JP Morgan Chase, admitted their employees signed inaccurate foreclosure documents in court. These employees may have approved thousands of foreclosures without personal knowledge of the facts involved and without verifying underlying loan information.

"As Illinoisans lose their homes, we have to continue to fight to put the law on their side so they don't once again become the victims of fiscal gluttony," said Sen. Collins.

The bill would ensure the integrity of foreclosure documents filed and that lenders are complying with the requirements of federal loan modification programs. It would also make sure each homeowner knows the amount they owe, who owns their loan, the terms of their original loan and whom they can contact. Specifically, the proposed legislation would:

- Ensure affidavits filed as part of the foreclosure process contain a detailed description of how the person who signed the affidavit has personal knowledge of the facts, including what he or she did to verify that the amount owed is accurate.
- Require that banks verify in writing all efforts they have undertaken to keep the homeowner in the home, including loan modification efforts.
- Require that banks provide a detailed summary of the borrowers' payments to ensure the borrowers know why the foreclosure is happening and can contest the foreclosure if the banks' payment history is inaccurate.
- Require that a bank prove that it holds the loan and has the right to foreclose.

"This legislation continues our aggressive work to implement laws that provide homeowners with assistance while holding lenders accountable," said Rep. Colvin.

"If banks and mortgage companies cannot produce the proper paperwork to verify a foreclosure needs to take place, they shouldn't be kicking Illinois homeowners out of their homes in the first place," said Rep. Flowers. "It is up to the state, with this legislation, to step in to protect these vulnerable residents."

The legislation is part of the Attorney General's response to the recent foreclosure document scandal. Madigan also has asked Washington lawmakers to support the re-introduction of legislation drafted by U.S. Sen. Richard Durbin, D-Ill., to permit bankruptcy court judges to reduce principal amounts on mortgages and thereby save homes.

Immediately following reports questioning the integrity of foreclosures filed nationwide, the Attorney General issued letters to GMAC/Ally, Bank of America and JP Morgan Chase along with 23 other major loan servicers who work in Illinois demanding a halt to all pending foreclosures in Illinois, including post-foreclosure sales and evictions, unless they were able to demonstrate the filings were accurate.

Madigan, along with the 49 other state attorneys general and 37 state bank and mortgage regulators, is also continuing a multi-state probe into the servicers and foreclosures filed in courts across the country. In Illinois, the filing of false court documents could be a violation of the state's Consumer Fraud Act and other laws.

Attorney General Madigan has been at the forefront of protecting Illinois homeowners during the mortgage foreclosure crisis and holding Wall Street banks accountable. In 2008, she led a nationwide \$8.7 billion settlement with Countrywide over its predatory lending practices. The Attorney General has also filed suit against both Wells Fargo and Countrywide alleging widespread discrimination against African American and Latino borrowers, causing them to pay disproportionately more for their mortgages than other borrowers.

In Springfield, Madigan played a principal role in working to pass the High Risk Home Loan Act of 2003 and drafted the Mortgage Rescue Fraud Act of 2006, which was designed to deter scam artists from preying on vulnerable homeowners on the verge of foreclosure. The Attorney General also initiated and drafted the Illinois Homeownership Protection Act, a law that took effect in 2008 to tighten controls on brokers and lenders to prevent consumers from being unwittingly locked into questionable loan terms. In 2008, Madigan also initiated the Illinois Homeowners' Rights Act.

Madigan urged homeowners to visit her website, [www.IllinoisAttorneyGeneral.gov](http://www.IllinoisAttorneyGeneral.gov), for resources available to assist homeowners in crisis. Included on the site is her Illinois Mortgage Lending Guide, a resource manual containing step-by-step instructions for those struggling to make their loan payments and a list of HUD-certified counseling agencies that offer default counseling services. Homeowners who do not have easy access to the Internet should call the Attorney General's Homeowner Helpline at 1-866-544-7151 to receive the guide by mail.

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## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB6951

by Rep. Marlow H. Colvin

#### SYNOPSIS AS INTRODUCED:

735 ILCS 5/15-1502.10 new

735 ILCS 5/15-1504

735 ILCS 5/15-1506

from Ch. 110, par. 15-1504

from Ch. 110, par. 15-1506

Amends the Code of Civil Procedure. Provides that as a condition precedent to initiating foreclosure on residential real estate, a plaintiff shall comply with the requirements of any applicable federal, State, local, or contractual loss mitigation program, and if no program results in a modification of the mortgage, the plaintiff shall review the mortgage under the other programs utilized by the plaintiff. Provides that each affidavit filed in a foreclosure proceeding must include a detailed description of the affiant's claimed personal knowledge. Provides that if a note that is required to be attached to the foreclosure complaint is missing, the moving party must file a detailed affidavit about the efforts to locate the note and the note's terms and riders. Provides that each foreclosure complaint shall include a loss mitigation affidavit describing what steps, in any, were taken by the plaintiff to assess the mortgage loan's eligibility for modification under designated federal programs. Provides that a foreclosure judgment shall include a finding by the court that the plaintiff complied with applicable federal, State, or local loss mitigation requirements, or that there are no such applicable requirements. Provides that if the plaintiff has not complied with such a program that the proceedings shall be stayed until the court determines that the plaintiff has complied. Effective immediately.

LRB096 24381 AJ0 44009 b

1 AN ACT concerning civil law.

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

4 Section 5. The Code of Civil Procedure is amended by adding  
5 Section 15-1502.10 and changing Sections 15-1504 and 15-1506 as  
6 follows:

7 (735 ILCS 5/15-1502.10 new)

8 Sec. 15-1502.10. Condition precedent to foreclosure on  
9 residential real estate.

10 (a) This Section applies only to a foreclosure of property  
11 that is residential real estate.

12 (b) As a condition precedent to initiating foreclosure  
13 pursuant to this Section, the plaintiff shall (i) comply with  
14 the requirements of any federal, State, local, or contractual  
15 loss mitigation programs that apply to the subject mortgage,  
16 including, but not limited to, those requirements pertaining to  
17 the federal Home Affordable Modification Program of the Making  
18 Home Affordable initiative of the Secretary of the Treasury,  
19 authorized under the Emergency Economic Stabilization Act of  
20 2008 (Public Law 110-343) (HAMP); and (ii) if no federal,  
21 State, local, or contractual loss mitigation program applies to  
22 the subject mortgage, or if review under applicable federal,  
23 State, local, or contractual loss mitigation programs fails to

1 result in a modification of the subject mortgage, review the  
2 subject mortgage for a loan modification under every other loss  
3 mitigation program utilized by plaintiff.

4 (735 ILCS 5/15-1504) (from Ch. 110, par. 15-1504)

5 Sec. 15-1504. Pleadings and service.

6 (a) Foundational requirements for affidavits. Every  
7 affidavit filed in a foreclosure proceeding shall include a  
8 detailed description of the basis of the affiant's claimed  
9 personal knowledge of the facts set forth in the affidavit,  
10 including:

11 (1) a statement of which specific data systems the  
12 affiant queried in preparing the affidavit, if the affiant  
13 queried data systems in preparing the affidavit;

14 (2) a detailed factual statement of the basis of the  
15 affiant's belief that each data system identified  
16 contained accurate information; and

17 (3) if applicable, a detailed description of the basis  
18 of the affiant's statement that the attached mortgage and  
19 note are true and correct.

20 (b) Lost note affidavit. A copy of the mortgage and note  
21 secured thereby shall be attached to the foreclosure complaint.  
22 If any note required to be attached to a complaint filed  
23 pursuant to this subsection (b) cannot be located for filing as  
24 an exhibit, the moving party shall file an affidavit stating  
25 the following:

1           (1) the reasonable efforts made by the moving party to  
2           obtain the note; and

3           (2) a description of the terms of the note and any  
4           riders attached thereto, including:

5                   (A) date of execution;

6                   (B) parties;

7                   (C) amount;

8                   (D) interest rate and, if applicable, the margin  
9                   used to calculate the interest rate and the initial  
10                  date of reset;

11                  (E) if applicable, the existence of a prepayment  
12                  penalty; and

13                  (F) if applicable, the existence of a balloon  
14                  payment.

15           Nothing in this subsection (b) shall be construed in  
16           derogation of the parties' rights established under Section  
17           3-309 of the Uniform Commercial Code or any similar rights  
18           established under Illinois law.

19           (c) Loss mitigation affidavit. Every foreclosure complaint  
20           shall include, as an attachment, an affidavit stating:

21                   (1) Which federal, State, local, or contractual loss  
22                   mitigation programs apply to the subject mortgage.

23                   (2) If applicable, that plaintiff has reviewed the  
24                   mortgage loan for modification under the Home Affordable  
25                   Modification Program of the Making Home Affordable  
26                   initiative of the Secretary of the Treasury, authorized

1       under the Emergency Economic Stabilization Act of 2008  
2       (Public Law 110-343) (HAMP), the results of that review  
3       (including all borrower-related and mortgage-related input  
4       data used in any net present value analyses and any other  
5       information required to be provided to the mortgagor under  
6       the supplemental directives and other guidelines for  
7       HAMP), a record of all HAMP-related communications with the  
8       borrower, written or verbal, and, if applicable, the  
9       reasons that plaintiff's review resulted in a denial of a  
10       HAMP modification, including, as an attachment, a copy of  
11       the written Non-Approval Notice provided to the mortgagor,  
12       as required by U.S. Department of Treasury Supplemental  
13       Directive 09-08.

14       (3) If applicable, that plaintiff has not reviewed the  
15       mortgage loan for a HAMP modification, including the  
16       reasons that plaintiff did not conduct the review.

17       (4) That plaintiff has complied with the requirements  
18       of any other federal, State, local, or contractual loss  
19       mitigation programs that apply to the subject mortgage and  
20       the results of any analysis conducted under those programs.

21       (5) That plaintiff has complied with the requirements  
22       of Section 15-1502.5, the results of those efforts, and, if  
23       applicable, the reasons that plaintiff's efforts did not  
24       result in an agreed sustainable loan workout plan.

25       (6) A detailed description of all additional loss  
26       mitigation efforts made by plaintiff and the results

1       thereof, including efforts to avoid foreclosure through a  
2       non-HAMP loan modification program, short sale, deed in  
3       lieu of foreclosure, or other alternative that is intended  
4       to simplify the mortgagor's relinquishment of ownership of  
5       the property, and, if applicable, an explanation for the  
6       denial of a loan modification or other loss mitigation.

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

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

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

16           (3) Information concerning mortgage:

17           (A) Nature of instrument: (here insert whether a  
18 mortgage, trust deed or other instrument in the nature  
19 of a mortgage, etc.)

20           (B) Date of mortgage:

21           (C) Name of mortgagor:

22           (D) Name of current mortgagee, and, if different,  
23 name of original mortgagee:

24           (E) Date and place of recording:

25           (F) Identification of recording: (here insert book  
26 and page number or document number)



1 (G) Interest subject to the mortgage: (here insert  
2 whether fee simple, estate for years, undivided  
3 interest, etc.)

4 (H) Amount of original indebtedness, including an  
5 itemization of subsequent advances, fees, or  
6 additional charges, including force-placed insurance,  
7 made under the mortgage stating the purpose, payee,  
8 amount, and date of each:

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

12 (J) Statement as to defaults, including, but not  
13 necessarily limited to, date of default, current  
14 unpaid principal balance, per diem interest accruing,  
15 and any further information concerning the default:

16 (K) Each and every borrower payment made in the  
17 last 36 months, including amount and date, whether such  
18 payment was accepted or returned to the mortgagor, and  
19 how the payment was applied to the borrower's account  
20 (e.g., applied to principal or interest, or placed in  
21 suspense account):

22 (L) ~~(K)~~ Name of present owner of the real estate:

23 (M) ~~(L)~~ Names of other persons who are joined as  
24 defendants and whose interest in or lien on the  
25 mortgaged real estate is sought to be terminated:

26 (N) ~~(M)~~ Names of defendants claimed to be

1 personally liable for deficiency, if any:

2 (O) ~~(N)~~ Capacity in which plaintiff brings this  
3 foreclosure (here indicate whether plaintiff is the  
4 legal holder of the indebtedness, a pledgee, an agent,  
5 the trustee under a trust deed or otherwise, as  
6 appropriate); attached as Exhibit "C" are copies of all  
7 documents, including endorsements, assignments, or  
8 transfers, that demonstrate that plaintiff is legally  
9 entitled to bring the foreclosure:

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

20 (Q) ~~(P)~~ Statement that the right of redemption has  
21 been waived by all owners of redemption, if applicable:

22 (R) ~~(Q)~~ Facts in support of request for attorneys'  
23 fees and of costs and expenses, if applicable:

24 (S) ~~(R)~~ Facts in support of a request for  
25 appointment of mortgagee in possession or for  
26 appointment of receiver, and identity of such

1 receiver, if sought:

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

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

12 (V) Attached as Exhibit "D" is the Lost Mitigation  
13 Affidavit, as required by subsection (c) of this  
14 Section.

15 REQUEST FOR RELIEF

16 Plaintiff requests:

17 (i) A judgment of foreclosure and sale.

18 (ii) An order granting a shortened redemption period,  
19 if sought.

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

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

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

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

1       (e) ~~(b)~~ Required Information. A foreclosure complaint need  
2 contain only such statements and requests called for by the  
3 form set forth in subsection (a) of Section 15-1504 as may be  
4 appropriate for the relief sought. Such complaint may be filed  
5 as a counterclaim, may be joined with other counts or may  
6 include in the same count additional matters or a request for  
7 any additional relief permitted by Article II of the Code of  
8 Civil Procedure.

9       (f) ~~(e)~~ Allegations. The statements contained in a  
10 complaint in the form set forth in subsection (a) of Section  
11 15-1504 are deemed and construed to include allegations as  
12 follows:

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

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

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

26           (4) that the mortgage was recorded in the county in

1           which the mortgaged real estate is located, on the date  
2           indicated, in the book and page or as the document number  
3           indicated;

4           (5) that defaults occurred as indicated;

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

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

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

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

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

1           (11) that the amounts indicated in the statement in the  
2           complaint are correctly stated and if such statement  
3           indicates any advances made or to be made by the plaintiff  
4           or owner of the mortgage indebtedness, that such advances  
5           were, in fact, made or will be required to be made, and  
6           under and by virtue of the mortgage the same constitute  
7           additional indebtedness secured by the mortgage; and

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

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

24                 (1) plaintiff has been compelled to employ and retain  
25                 attorneys to prepare and file the complaint and to  
26                 represent and advise the plaintiff in the foreclosure of

1 the mortgage and the plaintiff will thereby become liable  
2 for the usual, reasonable and customary fees of the  
3 attorneys in that behalf;

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

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

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

1           (5) that in order to protect and preserve the mortgaged  
2           real estate, it may also become necessary for the plaintiff  
3           to pay liability (protecting mortgagor and mortgagee),  
4           fire and other hazard insurance premiums on the mortgaged  
5           real estate, make such repairs to the mortgaged real estate  
6           as may reasonably be deemed necessary for the proper  
7           preservation thereof, advance for costs to inspect the  
8           mortgaged real estate or to appraise it, or both, and  
9           advance for premiums for pre-existing private or  
10          governmental mortgage insurance to the extent required  
11          after a foreclosure is commenced in order to keep such  
12          insurance in force; and

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

19          (h) ~~(e)~~ Request for Foreclosure. The request for  
20          foreclosure is deemed and construed to mean that the plaintiff  
21          requests that:

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

24                (2) that the defendants be ordered to pay to the  
25                plaintiff before expiration of any redemption period (or,  
26                if no redemption period, before a short date fixed by the



1 court) whatever sums may appear to be due upon the taking  
2 of such account, together with attorneys' fees and costs of  
3 the proceedings (to the extent provided in the mortgage or  
4 by law);

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

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

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

26 (6) that if no redemption is made prior to such sale, a

1 deed may be issued to the purchaser thereat according to  
2 law and such purchaser be let into possession of the  
3 mortgaged real estate in accordance with Part 17 of this  
4 Article.

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

12 (j) ~~(g)~~ Request for Possession or Receiver. A request for  
13 possession or appointment of a receiver has the meaning as  
14 stated in subsection (b) of Section 15-1706.

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

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

1 (735 ILCS 5/15-1506) (from Ch. 110, par. 15-1506)

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

5 (1) where an allegation of fact in the complaint is not  
6 denied by a party's verified answer or verified counterclaim,  
7 or where a party pursuant to subsection (b) of Section 2-610 of  
8 the Code of Civil Procedure states, or is deemed to have  
9 stated, in its pleading that it has no knowledge of such  
10 allegation sufficient to form a belief and attaches the  
11 required affidavit, a sworn verification of the complaint or a  
12 separate affidavit setting forth such fact is sufficient  
13 evidence thereof against such party and no further evidence of  
14 such fact shall be required; and

15 (2) where all the allegations of fact in the complaint have  
16 been proved by verification of the complaint or affidavit, the  
17 court upon motion supported by an affidavit stating the amount  
18 which is due the mortgagee, may ~~shall~~ enter a judgment of  
19 foreclosure as requested in the complaint.

20 (b) Instruments. In all cases the evidence of the  
21 indebtedness and the mortgage foreclosed shall be exhibited to  
22 the court and appropriately marked, and copies thereof shall be  
23 filed with the court.

24 (c) Summary and Default Judgments. Nothing in this Section  
25 15-1506 shall prevent a party from obtaining a summary or  
26 default judgment authorized by Article II of the Code of Civil

1 Procedure.

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

6 (e) Matters Required in Judgment. A judgment of foreclosure  
7 shall include the last date for redemption and all rulings of  
8 the court entered with respect to each request for relief set  
9 forth in the complaint. If the plaintiff in the action is not  
10 the original mortgagee, a judgment of foreclosure shall make  
11 specific findings of fact concerning the capacity in which the  
12 plaintiff brought the foreclosure action and a determination of  
13 whether this capacity legally entitles the plaintiff to bring  
14 the action. The judgment shall also include a finding by the  
15 court that: (i) the plaintiff has complied with any applicable  
16 federal, State, or local loss mitigation requirements; or (ii)  
17 there are no applicable federal, State, or local loss  
18 mitigation requirements. If the court determines that the  
19 plaintiff has not complied with applicable loss mitigation  
20 requirements, the court shall stay the matter until the court  
21 determines that the plaintiff has complied with those  
22 requirements. The omission of the date for redemption shall not  
23 extend the time for redemption or impair the validity of the  
24 judgment.

25 (f) Special Matters in Judgment. Without limiting the  
26 general authority and powers of the court, special matters may

1 be included in the judgment of foreclosure if sought by a party  
2 in the complaint or by separate motion. Such matters may  
3 include, without limitation:

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

5 (2) a sale by sealed bid;

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

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

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

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

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

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

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

24 (10) the format for the advertising of such sale, including  
25 the size, content and format of such advertising, and  
26 additional advertising of such sale;

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

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

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

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

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

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

24           (i) Effect of Judgment and Lien. (1) Upon the entry of the  
25 judgment of foreclosure, all rights of a party in the  
26 foreclosure against the mortgagor provided for in the judgment

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

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

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

14 Section 99. Effective date. This Act takes effect upon  
15 becoming law.