

Public Act 095-0961

Public Act 095-0961

SB1879 Enrolled

LRB095 15221 MJR 41202 b

AN ACT concerning regulation.

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

Section 5. The Code of Civil Procedure is amended by changing Section 15-1510 and by adding Sections 15-1504.5 and 15-1505.5 as follows:

(735 ILCS 5/15-1504.5 new)

Sec. 15-1504.5. Homeowner notice to be attached to summons. For all residential foreclosure actions filed, the plaintiff must attach a Homeowner Notice to the summons. The Homeowner Notice must be in at least 12 point type and in English and Spanish. The Spanish translation shall be prepared by the Attorney General and posted on the Attorney General's website. A notice that includes the Attorney General's Spanish translation in substantially similar form shall be deemed to comply with the Spanish notice requirement in this Section. The Notice must be in substantially the following form:

IMPORTANT INFORMATION FOR HOMEOWNERS IN FORECLOSURE

1. POSSESSION: The lawful occupants of a home have the right to live in the home until a judge enters an order for possession.

2. OWNERSHIP: You continue to own your home until the court rules otherwise.

3. REINSTATEMENT: As the homeowner you have the right to bring the mortgage current within 90 days after you receive the summons.

4. REDEMPTION: As the homeowner you have the right to sell your home, refinance, or pay off the loan during the redemption period.

5. SURPLUS: As the homeowner you have the right to petition the court for any excess money that results from a foreclosure sale of your home.

6. WORKOUT OPTIONS: The mortgage company does not want to foreclose on your home if there is any way to avoid it. Call your mortgage company [insert name of the homeowner's current mortgage servicer in bold and 14 point type] or its attorneys to find out the alternatives to foreclosure.

7. PAYOFF AMOUNT: You have the right to obtain a

written statement of the amount necessary to pay off your loan. Your mortgage company (identified above) must provide you this statement within 10 business days of receiving your request, provided that your request is in writing and includes your name, the address of the property, and the mortgage account or loan number. Your first payoff statement will be free.

8. GET ADVICE: This information is not exhaustive and does not replace the advice of a professional. You may have other options. Get professional advice from a lawyer or certified housing counselor about your rights and options to avoid foreclosure.

9. LAWYER: If you do not have a lawyer, you may be able to find assistance by contacting the Illinois State Bar Association or a legal aid organization that provides free legal assistance.

10. PROCEED WITH CAUTION: You may be contacted by people offering to help you avoid foreclosure. Before entering into any transaction with persons offering to help you, please contact a lawyer, government official, or housing counselor for advice.

(735 ILCS 5/15-1505.5 new)

Sec. 15-1505.5. Payoff demands.

(a) In a foreclosure action subject to this Article, on the written demand of a mortgagor or the mortgagor's authorized agent (which shall include the mortgagor's name, the mortgaged property's address, and the mortgage account or loan number), a mortgagee or the mortgagee's authorized agent shall prepare and deliver an accurate statement of the total outstanding balance of the mortgagor's obligation that would be required to satisfy the obligation in full as of the date of preparation ("payoff demand statement") to the mortgagor or the mortgagor's authorized agent who has requested it within 10 business days after receipt of the demand. For purposes of this Section, a payoff demand statement is accurate if prepared in good faith based on the records of the mortgagee or the mortgagee's agent.

(b) The payoff demand statement shall include the following:

(1) the information necessary to calculate the payoff amount on a per diem basis for the lesser of a period of 30 days or until the date scheduled for judicial sale;

(2) estimated charges (stated as such) that the mortgagee reasonably believes may be incurred within 30 days from the date of preparation of the payoff demand statement; and

(3) the loan number for the obligation to be paid, the address of the mortgagee, the telephone number of the mortgagee and, if a banking organization or corporation, the name of the department, if applicable, and its telephone number and facsimile phone number.

(c) A mortgagee or mortgagee's agent who willfully fails to prepare and deliver an accurate payoff demand statement within 10 business days after receipt of a written demand is liable to the mortgagor for actual damages sustained for failure to deliver the statement. The mortgagee or mortgagee's agent is liable to the mortgagor for \$500 if no actual damages are sustained. For purposes of this subsection, "willfully" means a failure to comply with this Section without just cause or

excuse or mitigating circumstances.

(d) The mortgagor must petition the judge within the foreclosure action for the award of any damages pursuant to this Section, which award shall be determined by the judge.

(e) Unless the payoff demand statement provides otherwise, the statement is deemed to apply only to the unpaid balance of the single obligation that is named in the demand and that is secured by the mortgage or deed of trust identified in the payoff demand statement.

(f) The demand for and preparation and delivery of a payoff demand statement pursuant to this Section does not change any date or time period that is prescribed in the note or that is otherwise provided by law. Failure to comply with any provision of this Section does not change any of the rights of the parties as set forth in the note, mortgage, or applicable law.

(g) The mortgagee or mortgagee's agent shall furnish the first payoff demand statement at no cost to the mortgagor.

(h) For the purposes of this Section, unless the context otherwise requires, "deliver" or "delivery" means depositing or causing to be deposited into the United States mail an envelope with postage prepaid that contains a copy of the documents to be delivered and that is addressed to the person whose name and address are provided in the payoff demand. "Delivery" may also include transmitting those documents by telephone facsimile to the person or electronically if the payoff demand specifically requests and authorizes that the documents be transmitted in electronic form.

(i) The mortgagee or mortgagee's agent is not required to comply with the payoff demand statement procedure set forth in this Section when responding to a notice of intent to redeem issued under Section 15-1603(e).

(735 ILCS 5/15-1510) (from Ch. 110, par. 15-1510)

Sec. 15-1510. Attorney's Fees and Costs ~~by Written Agreement.~~

(a) The court may award reasonable attorney's fees and costs to the defendant who prevails in a motion, an affirmative defense or counterclaim, or in the foreclosure action. A defendant who exercises the defendant's right of reinstatement or redemption shall not be considered a prevailing party for purposes of this Section. Nothing in this subsection shall abrogate contractual terms in the mortgage or other written agreement between the mortgagor and the mortgagee or rights as otherwise provided in this Article which allow the mortgagee to recover attorney's fees and costs under subsection (b).

(b) Attorneys' fees and other costs incurred in connection with the preparation, filing or prosecution of the foreclosure suit shall be recoverable in a foreclosure only to the extent specifically set forth in the mortgage or other written agreement between the mortgagor and the mortgagee or as otherwise provided in this Article.

(Source: P.A. 86-974.)

Section 10. The Illinois Human Rights Act is amended by changing Section 10-104 as follows:

(775 ILCS 5/10-104)

Sec. 10-104. Circuit Court Actions by the Illinois Attorney General.

(A) Standing, venue, limitations on actions, preliminary investigations, notice, and Assurance of Voluntary Compliance.

(1) Whenever the Illinois Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern and practice of discrimination prohibited by this Act, the Illinois Attorney General may commence a civil action in the name of the People of the State, as *parens patriae* on behalf of persons within the State to enforce the provisions of this Act in any appropriate circuit court. Venue for this civil action shall be determined under Section 8-111(B)(6). Such actions shall be commenced no later than 2 years after the occurrence or the termination of an alleged civil rights violation or the breach of a conciliation agreement or Assurance of Voluntary Compliance entered into under this Act, whichever occurs last, to obtain relief with respect to the alleged civil rights violation or breach.

(2) Prior to initiating a civil action, the Attorney General shall conduct a preliminary investigation to determine whether there is reasonable cause to believe that any person or group of persons is engaged in a pattern and practice of discrimination declared unlawful by this Act and whether the dispute can be resolved without litigation. In conducting this investigation, the Attorney General may:

(a) require the individual or entity to file a statement or report in writing under oath or otherwise, as to all information the Attorney General may consider necessary;

(b) examine under oath any person alleged to have participated in or with knowledge of the alleged pattern and practice violation; or

(c) issue subpoenas or conduct hearings in aid of any investigation.

(3) Service by the Attorney General of any notice requiring a person to file a statement or report, or of a subpoena upon any person, shall be made:

(a) personally by delivery of a duly executed copy thereof to the person to be served or, if a person is not a natural person, in the manner provided in the Code of Civil Procedure when a complaint is filed; or

(b) by mailing by certified mail a duly executed copy thereof to the person to be served at his or her last known abode or principal place of business within this State.

(4) In lieu of a civil action, the individual or entity alleged to have engaged in a pattern or practice of discrimination deemed violative of this Act may enter into an Assurance of Voluntary Compliance with respect to the alleged pattern or practice violation.

(5) The Illinois Attorney General may commence a civil action under this subsection (A) whether or not a charge has been filed under Sections 7A-102 or 7B-102 and without regard to the status of any charge, however, if the Department or local agency has obtained a conciliation or settlement agreement or if the parties have entered into an Assurance of Voluntary Compliance no action may be filed under this subsection (A) with respect to the alleged civil rights violation practice that forms the basis for the

complaint except for the purpose of enforcing the terms of the conciliation or settlement agreement or the terms of the Assurance of Voluntary Compliance.

(6) If any person fails or refuses to file any statement or report, or obey any subpoena, issued pursuant to subdivision (A)(2) of this Section, the Attorney General will be deemed to have met the requirement of conducting a preliminary investigation and may proceed to initiate a civil action pursuant to subdivision (A)(1) of this Section.

(B) Relief which may be granted.

(1) In any civil action brought pursuant to subsection (A) of this Section, the Attorney General may obtain as a remedy, equitable relief (including any permanent or preliminary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in such civil rights violation or ordering any action as may be appropriate). In addition, the Attorney General may request and the Court may impose a civil penalty to vindicate the public interest:

(a) for violations of Article 3 and Article 4 in an amount not exceeding \$25,000 per violation, and in the case of violations of all other Articles in an amount not exceeding \$10,000 if the defendant has not been adjudged to have committed any prior civil rights violations under the provision of the Act that is the basis of the complaint;

(b) for violations of Article 3 and Article 4 in an amount not exceeding \$50,000 per violation, and in the case of violations of all other Articles in an amount not exceeding \$25,000 if the defendant has been adjudged to have committed one other civil rights violation under the provision of the Act within 5 years of the occurrence of the civil rights violation that is the basis of the complaint; and

(c) for violations of Article 3 and Article 4 in an amount not exceeding \$75,000 per violation, and in the case of violations of all other Articles in an amount not exceeding \$50,000 if the defendant has been adjudged to have committed 2 or more civil rights violations under the provision of the Act within 5 years of the occurrence of the civil rights violation that is the basis of the complaint.

(2) A civil penalty imposed under subdivision (B)(1) of this Section shall be deposited into the Attorney General Court Ordered and Voluntary Compliance Payment Projects Fund, which is a special fund in the State Treasury. Moneys in the Fund shall be used, subject to appropriation, for the performance of any function pertaining to the exercise of the duties of the Attorney General including but not limited to enforcement of any law of this State and conducting public education programs; however, any moneys in the Fund that are required by the court or by an agreement to be used for a particular purpose shall be used for that purpose.

(3) Aggrieved parties seeking actual damages must follow the procedure set out in Sections 7A-102 or 7B-102 for filing a charge.

(Source: P.A. 93-1017, eff. 8-24-04.)

Section 15. The Illinois Fairness in Lending Act is amended by changing Section 3 as follows:

(815 ILCS 120/3) (from Ch. 17, par. 853)

Sec. 3. No financial institution, in connection with or in contemplation of any loan to any person, may:

(a) Deny or vary the terms of a loan on the basis that a specific parcel of real estate offered as security is located in a specific geographical area.

(b) Deny or vary the terms of a loan without having considered all of the regular and dependable income of each person who would be liable for repayment of the loan.

(c) Deny or vary the terms of a loan on the sole basis of the childbearing capacity of an applicant or an applicant's spouse.

(c-5) Deny or vary the terms of a loan on the basis of the borrower's race, gender, disability, or national origin.

(d) Utilize lending standards that have no economic basis and which are discriminatory in effect.

(e) Engage in equity stripping or loan flipping.

(Source: P.A. 93-561, eff. 1-1-04.)

Section 99. Effective date. This Act takes effect upon becoming law, except Section 5 takes effect January 1, 2009.

Effective Date: 9/23/2008