

LEGISLATIVE ACTION UPDATE

ILLINOIS MORTGAGE FORECLOSURE: APPROVED BILLS ON WHICH FINANCIAL INSTITUTIONS AFFIRMATIVELY NEGOTIATED WITH SPONSORS

by
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Bill	Sponsor	Short Digest	Last Action
2008 Legislative Initiatives			
SB 1879	Rep. Marlow H. Colvin, et al. Sen. Jacqueline Y. Collins, et al.	Initiative of the Attorney General’s Office and Administration to provide additional rights and protections for borrowers in residential foreclosure actions. While ICUL did not support the measure of record, it worked in conjunction with other trade associations representing the financial services industry to negotiate the final terms and provisions of the bill. As passed, the measure amends the foreclosure law to: <ul style="list-style-type: none"> (1) require lenders to attach a new homeowner notice to every residential mortgage foreclosure summons; the Act provides model disclosure language as a safe harbor notice (which must be in English and Spanish; a copy of the disclosure, identified as “Important Information for Homeowners in Foreclosure,” is attached hereto); the notice essentially informs the borrower what his or her rights are in foreclosure relating to possession, ownership, reinstatement of the mortgage, redemption following a judgment, payoff information, workout options, entitlement to any surplus, etc.; (2) expand the right of the borrower to obtain a statement of the amount necessary to payoff the mortgage; the mortgagee or its agent must deliver the loan payoff demand statement within 10 business days of receiving a written request from the borrower or the borrower’s agent; willful failure to furnish the statement in a timely manner subjects the lender to actual damages or, if none, a \$500 statutory penalty upon the mortgagor’s petition to the judge (no class actions); and (3) give a defendant borrower the right to seek attorney’s fees and costs in a foreclosure action if he or she prevails in a motion, an affirmative defense or counterclaim, or in the foreclosure action. 	Passed Senate 55-00-00 (04/17/08) Passed House, as amended 111-00-01 (05/28/08) Senate concurred House Floor Amendment No. 3 56-00-00 (05/30/08) Governor Blagojevich amendatory veto (08/26/08) Senate amendatory veto override 55-00-00 (09/22/08) House amendatory veto override 98-00-00 (09/23/08) Eff. 09/23/08 as P.A. 95-0961 (generally); eff. 01/01/09 (as to subject provisions)
SB 258	Rep. Maggie Crotty, et al. Sen. Al Riley, et al.	Amends the foreclosure law to provide that in a case of foreclosure where the tenant is current on his or her rent, any order of possession must allow the tenant to retain possession of the property covered in his or her rental agreement for (i) 120 days following the notice of the hearing on the supplemental petition that has been properly served upon the tenant, or (ii) through the duration of his or her lease, whichever is shorter. Provides that the exception for continued possession by the tenant only applies if the tenant continues to pay his or her rent in full during the 120-day period.	Passed Senate 56-00-00 (03/29/07) Passed House 115-00-00 (05/22/07) Signed into law by Governor Blagojevich on 08/17/07 as P.A. 95-0262 , eff. 01/01/08

<p>SB 2721</p>	<p>Rep. Deborah L. Graham, et al.</p> <p>Sen. Maggie Crotty, et al.</p>	<p>This measure amends the foreclosure law to enhance the rights of tenants in the event of a foreclosure. Previously, Illinois law provided that where the tenant was current on his or her rent, any order of possession must allow the tenant to retain possession of property for whichever was shorter: 120 days following the notice of hearing on the petition for possession (if the tenant continues to pay rent in full during the 120-day period), or the duration of his or her lease. This measure amends that provision to give the same possessory rights whenever the tenant has made a “good faith effort” to make rental payments in order to keep current, or the tenant has not received timely written notice of to whom and where the rent is to be paid. As a result, there is no longer an absolute requirement that a tenant continue to pay rent in full during the 120-day period, only that the tenant makes a “good faith effort” to pay the rent during that period. Further, payment of rent is not required at all, if the tenant has not been given information regarding where to send the rent.</p> <p>The measure further provides that if a petition for possession is not filed during the pendency of the foreclosure, then no eviction action can be filed against the tenant until 90 days after a notice of intent to file the eviction action has been served on the tenant.</p>	<p>Passed Senate 48-07-00 (04/16/08)</p> <p>Passed House 114-00-00 (05/30/08)</p> <p>Signed into law by Governor Blagojevich on 08/26/08 as P.A. 95-0933, eff. 08/26/08</p>
<p>HB 4195</p>	<p>Rep. LaShawn K. Ford, et al.</p> <p>Sen. Mattie Hunter, et al.</p>	<p>Existing foreclosure law permits a residential mortgage borrower to remain in possession of the real estate for 30 days after entry of an order of possession issued by the court. The League, in conjunction with other trade associations representing the financial services industry, worked with the sponsor to revise the bill (which in its original form established a moratorium on foreclosures during the winter months), to simply provide a disclosure in the notice of hearing on the motion to confirm the judicial sale. The notice advises the homeowner of his or her right to remain in possession for the 30-day period after entry of an order of possession. In the event the borrower has filed an appearance in the case, the notice is sent to the address indicated on the appearance. If the mortgagor has not appeared in the case and has been held in default, the borrower is still entitled to the notice, and in that instance the notice is sent to the common address of the foreclosed property. In all cases, the notice is sent by first class mail.</p>	<p>Passed House 108-00-00 (04/03/08)</p> <p>Passed Senate 58-00-00 (05/20/08)</p> <p>Signed into law by Governor Blagojevich on 08/14/08 as P.A. 95-0826, eff. 08/14/08</p>
<p>SB 546</p>	<p>Rep. James D. Brosnahan</p> <p>Sen. John J. Cullerton, et al.</p>	<p>Amends the Illinois Notary Public Act to address mortgage fraud in Cook County.</p> <p>This measure was carried forward from the first session year of the 95th General Assembly. The League and other trade groups representing the financial services industry in late May, 2007, successfully concluded negotiations with the Cook County State’s Attorney for compromise legislation addressing mortgage fraud that creates virtually no new operational burden for credit unions and other financial institutions. The League was involved in a mortgage fraud industry working group led by Senator Cullerton that had been meeting regularly throughout that session. The group accepted draft language that the League presented that restricts a new notarization thumbprint procedure to documents of conveyance (i.e., deeds). The procedure is intended to create documentary evidence that can be used in prosecuting persons who perpetrate fraud through the execution and recordation of forged deeds. Through a survey conducted by the League, credit unions confirmed the League’s understanding that they rarely, if ever, conduct closings at the credit union where title to residential real estate is transferred. The League was pleased it was able to completely exclude documents of conveyance (i.e., mortgage instruments), from the bill. Accordingly, the procedure will not apply to second mortgages, refi’s, and home equity lines of credit closed at the offices of a credit union.</p>	<p>Both Houses accepted Amendatory Veto on 09/23/08; Governor Blagojevich certified the changes on 10/03/08 as P.A. 95-0988, eff. 06/01/09</p>

2009 Legislative Initiatives

<p>SB 2513</p>	<p>Rep. Joseph M. Lyons, et al.</p> <p>Sen. Terry Link, et al.</p>	<p>ICUL-initiated measure (together with ICUL co-plaintiffs in the regulatory fee litigation filed against the State) to implement those portions of the settlement agreement approved by the Court on May 15, 2008, which require legislative action (for example, the agreed upon reduction in the rate for credit union regulatory fees).</p> <p>In December, 2008, Rep. Joe Lyons advised the League and other co-plaintiffs that Speaker Michael Madigan had talked with him and indicated S.B. 2513 might move out of the House during the last two days of the 95th General Assembly (January 12 and 13, 2009). However, Rep. Lyons also advised that the Speaker would add an amendment to address his concerns about foreclosures, residential mortgage counseling and home equity issues.</p> <p>Coincidentally, the League and its colleagues in the financial services industry worked very closely with Sen. Jacqueline Collins during the veto session in November, 2008, to craft a reasonable pre-foreclosure counseling measure that encourages borrowers and lenders to enter into acceptable workout plans to avoid foreclosure (H.B. 2973). In so doing, the financial services industry did a complete turnaround from its prior opposition to similar initiatives in the spring session. Lenders in Illinois recognized there is a real and growing problem in the state with respect to the increasing number of homeowners struggling to meet their mortgage obligations. Their turnaround in position reflected their commitment to work in good faith with the legislature to find ways to avoid the foreclosure process, a process that benefits neither lender nor borrower.</p> <p>The final expression of the negotiated compromise achieved during the veto session was Senate Floor Amendment 7 to H.B. 2973 (“SAM #7”). Unlike a one-time moratorium, the approach taken in SAM #7 is of greater benefit to delinquent borrowers, because it affords them a pre-foreclosure forbearance period during which constructive action can take place - i.e., access to HUD-approved housing counselors and the opportunity to communicate with their lenders to develop a reasonable loan workout plan that will enable them to stay in their homes and avoid foreclosure. The measure was approved by the Senate on a vote of 52-0 on November 20, but was not acted upon in the House. However, at the urging of the League, SAM #7 was substantially used as the basis for the pre-foreclosure counseling amendment to S.B. 2513 that the Speaker had requested.</p> <p>The measure amends the foreclosure law by establishing a 30-day/30-day/30-day procedural sequence for residential real estate occupied as a principal residence by the mortgagor, as follows:</p> <ul style="list-style-type: none"> • the initial 30 days of delinquency – no foreclosure action may be filed; • the second 30-day period – the mortgagee must send a notice by first class mail to the borrower (“Grace Period Notice”), informing the borrower that he or she may obtain HUD approved housing counseling (the Act provides model language for the notice, a copy is attached hereto); • the final 30-day period – if an approved housing counseling agency provides written notice to the mortgagee that the borrower is seeking approved counseling services, then no foreclosure action may be instituted until 30 days after the date of the notice from the counselor. During the final 30-day period, the borrower or the counselor may prepare and offer to the lender a proposed sustainable loan workout plan, which the lender has the discretion to accept or reject. <p>The provisions apply only once to an outstanding mortgage and do not impair the lender’s underlying contractual rights.</p>	<p>Passed Senate 58-00-00 (04/16/08)</p> <p>Passed House, as amended 109-00-04 (05/31/08)</p> <p>Passed House, as further amended 113-00-00 (01/12/09)</p> <p>Passed Senate, as amended by House 56-00-00 (01/13/09)</p> <p>Signed into law by Governor Quinn on 04/06/09 as P.A. 95-1047, eff.04/06/09</p> <p>(Sunset: the provision is repealed 2 years after the effective date)</p>
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<p>HB 3863</p>	<p>Rep. William Burns, et al.</p> <p>Sen. Jacqueline Y. Collins, et al.</p>	<p>Through extensive negotiations between the Shriver Center on Poverty Law and the financial services industry, this measure amends the foreclosure law to address rights of known occupants of “dwelling units” of mortgaged real estate, by requiring holders of certificates of judicial sales or purchasers, as well as mortgagees-in-possession and receivers, to:</p> <ol style="list-style-type: none"> (1) make a good faith effort to ascertain the identities and addresses of all occupants no later than 21 days after the confirmation of the sale of the property; (2) notify all known occupants no later than 21 days after the confirmation of the sale of the property that the holder or purchaser has acquired the property (or that the mortgagee-in-possession has taken possession of the property or that the receiver has been appointed). The notice must: <ol style="list-style-type: none"> (a) identify the occupant being served by the occupant’s known name; (b) inform the occupant that the dwelling unit is the subject of a foreclosure and that control of the property has changed; (c) provide contact information of an individual or entity to whom the occupants may communicate concerns about the property or to request repairs; (d) include a disclosure that the notice is <u>not</u> a notice to vacate the premises and that the occupant may wish to contact a lawyer, local legal aid office or housing counseling agency to discuss any rights the occupant may have; and (e) include the foreclosure case name, number and court where the order confirming the sale was entered; (3) provide the same notice to occupants identified after the 21-day period, within 7 days of their ascertainment. The notice may be served by personal delivery or by first class mail or by leaving the notice with a person at least 13 years of age who is residing on or in possession of the premises. Failure to provide the notice precludes the holder, purchaser, mortgagee-in-possession or receiver from collecting any rent from the known occupant or terminating the known occupant’s tenancy for non-payment of rent (until the notice has been served); and (4) post a written notice with substantially the same information on the primary entrance of each dwelling unit subject to the foreclosure action, no later than 21 days after the confirmation of the sale of the property. <p>To avoid immediate evictions of occupants, any order entered pursuant to a supplemental petition for possession, where the duration of the occupant’s lease is less than 30 days from the date of the order, must allow the occupant to retain possession for 30 days from the date of the order. Receivers may not increase rent, without leave of court.</p>	<p>Passed House 90-12-00 (04/03/09)</p> <p>Passed Senate, as amended 56-00-00 (05/14/09)</p> <p>House concurred Senate Amendment No. 1 110-00-00 (05/22/09)</p> <p>Signed into law by Governor Quinn on 07/31/09 as P.A. 96-0111, eff. 10/29/09</p>
<p>HB 153</p>	<p>Rep. LaShawn K. Ford, et al.</p> <p>Sen. Iris Martinez, et al.</p>	<p>Amends the foreclosure law to provide that any deed executed pursuant to the foreclosure Article or judgment vesting title by a consent foreclosure shall state the grantee's or mortgagee's name (and the name of a contact person), street and mailing addresses, and telephone number. In a consent foreclosure, the court enters a judgment vesting title in the mortgagee free and clear of all (i) claims and subordinate liens (except liens of the federal government), and (ii) the mortgagor’s rights of reinstatement and redemption.</p>	<p>Passed House 115-00-00 (02/25/09)</p> <p>Passed Senate 59-00-00 (05/21/09)</p> <p>Signed into law by Governor Quinn on 07/31/09 as P.A. 96-0110, eff. 07/31/09</p>

HB 2005	Rep. Andre M. Thapedi, et al. Sen. Jacqueline Y. Collins	Amends the foreclosure law to provide that any party entitled to receive notice of a judicial sale who was not so notified may, by motion supported by affidavit made prior to the confirmation of the sale, ask the court which entered the judgment to set aside the sale; without filing a bond equal to the successful bid at the prior sale, if: <ol style="list-style-type: none"> (1) the party seeking to set aside the sale is the mortgagor, (2) the real estate sold at the sale is residential real estate, and (3) the mortgagor occupies the residential real estate at the time the motion is filed. 	Passed House 116-00-00 (04/01/09) Passed Senate 54-00-01 (05/14/09) Signed into law by Governor Quinn on 08/11/09 as P.A. 96-0265 , eff. 08/11/09
HB 688	Rep. Marlow H. Colvin, et al. Sen. Jacqueline Y. Collins, et al.	Amends the Condominium Property Act. Establishes procedures for addressing distressed condominium property that is a danger, blight, or nuisance to the surrounding community or the public and that is substantially unoccupied, without utilities, or in a serious negative condition. The measure provides that a municipality may file a petition in the circuit court and that if the court finds that a property is a distressed condominium property, the court may appoint a receiver to manage the property. If the court finds that the property is not viable as a condominium, the court may deem that the property is no longer a condominium but is owned in common by the unit owners and may authorize the receiver to sell the entire property without the consent of the unit owners. A lien affecting any unit is deemed attached to the undivided interest of the unit owner in the property (each unit owner is allocated an undivided interest equal to the percentage of undivided interest previously owned by the unit owner in the common elements). If the receiver sells the property pursuant to court authorization, the sale proceeds are paid to unit owners according to their respective shares, after sale expenses, taxes, and liens have been paid. The receiver may secure and insure the premises, make repairs, and otherwise manage the premises. Other parties in interest must be provided written notice and a copy of the petition or complaint either by United States certified mail, return receipt requested, within 30 days of the issuance of the summons, or by personal service of the complaint. The court may authorize a receiver to enter into a sales contract for the property upon a motion, with notice to all owners and other parties in interest and those parties having an opportunity to be heard.	Passed House 106-00-00 (03/27/09) Passed Senate 53-00-00 (05/13/09) Signed into law by Governor Quinn on 08/10/09 as P.A. 96-0174 , eff. 01/01/10

<p>SB 1894</p>	<p>Sen. William R. Haine, et al.</p> <p>Rep. Kevin A. McCarthy, et al.</p>	<p>Through intensive negotiations between the League, other members of the financial services industry and the Sponsors, this measure amends the following statutory provisions:</p> <p>(A) Municipal Code Amendments: Addresses municipal corporation lien rights in connection with the repair or renovation of abandoned residential property (defined as a dwelling unit that has been unoccupied by any lawful occupants for at least ninety days):</p> <ul style="list-style-type: none"> • Limited subordination of lender’s mortgage lien to municipal lien for cost of required repair or renovation (nuisance greenery (weeds, grass, bushes), pest extermination, infected trees, garbage, debris, graffiti); • Very strict procedure and municipality must give the lender the option of handling the repair; and • Lien is only enforceable in the foreclosure proceeding at the hearing for confirmation of sale and is limited to the proceeds of sale; <p>(B) Foreclosure Law: Amends the Foreclosure Law to require, in the case of residential real estate, that the municipality in which the property is located (or the county where the property is located if in an unincorporated area), be sent a copy of the:</p> <ul style="list-style-type: none"> • Notice of Foreclosure (i.e., lis pendens notice); and • At the conclusion of the foreclosure process the Order Confirming Judicial Sale. • The foreclosure notice (lis pendens notice) and confirmation order must be sent to an address published by the municipality or county on its website (or, if it does not maintain a website, then to an address posted at its main post office); otherwise the notice and order must be provided to the city clerk or other applicable public official identified in the service on public official provision of the Code of Civil Procedure (735 ILCS 5/2-211). <p>(C) Predatory Lending Database Program: S.B. 1894 also amends the Residential Real Property Disclosure Act to expand the Predatory Lending Database Program (which currently only applies to Cook County), to Kane Peoria and Will Counties, effective July 1, 2010.</p>	<p>Passed House 80-31-04 (October 15, 2009)</p> <p>Passed Senate 53-02-00 (October 29, 2009)</p> <p>Signed into law by Governor Quinn on December 31, 2009 as P.A. 96-0856.</p> <p>Generally effective December 31, 2009 (subject provisions of interest to financial institutions are the Municipal Code and Foreclosure Law, and those provisions are effective March 1, 2010).</p>
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2010 Legislative Initiatives			
<p>HB 5735</p>	<p>Rep. Al Riley, et al.</p> <p>Sen. Jacqueline Collins, et al.</p>	<p>Amends the foreclosure law to provide that the court shall set aside a judicial sale, prior to confirmation of the sale, if the mortgagor proves that the mortgagor applied for assistance under the federal Making Homes Affordable Program and the property was sold in material violation of the program’s judicial sale requirements. This provision becomes inoperative on January 1, 2013 for all actions filed after December 31, 2012, as to which the mortgagor did not apply for assistance under the program by December 31, 2012.</p>	<p>Passed House 79-14-00 (03/26/10)</p> <p>Passed Senate 56-0 (04/27/10)</p> <p>Signed into law by Governor Quinn on July 23, 2010 as P.A. 96-1245, eff. July 23, 2010</p>

<p>SB 3739</p>	<p>Rep. Joseph M. Lyons, et al.</p> <p>Sen. Jacqueline Y. Collins, et al.</p>	<p>Represents comprehensive response of financial services industry to several bills addressing foreclosure relief that would be burdensome and costly to lenders if adopted in the aggregate. Those measures included:</p> <ul style="list-style-type: none"> • Speaker Madigan Proposal: Creates a “mortgage foreclosure prevention fund,” pursuant to which the Illinois Equal Justice Foundation would distribute monies to “eligible entities” (civil legal service providers, HUD counselors, units of local government, etc.), for legal information, mediation and civil legal services relating to residential foreclosure. A \$1,000 fee would be collected from the proceeds of judicial sales to provide a source of funding for the proposal. The purchaser at the sale would remit the fee to the Illinois Department of Revenue. • SB 3738: Creates the “foreclosure preventing counseling fund” with moneys appropriated by the General Assembly. The Illinois Housing Development Authority (IHDA), would distribute the money as grants to HUD certified counseling agencies (75% outside Chicago; 25% in Chicago). • HB 6215: Creates the “foreclosure relief fund”. The plaintiff would pay a fee to the court clerk at time of filing the foreclosure complaint (at the rate of \$1.25/\$500 of value being foreclosed, with no cap). The Department of Commerce and Economic Opportunity would use the funds for grants to local government and not-for-profit organizations to clean up abandoned residential real estate following foreclosure. • HB 6478: Creates the “Vacant Property Maintenance Law,” which authorizes Chicago by ordinance to hold lenders responsible for maintaining and securing vacant property and to impose on lenders registration fees and fines. <p>Against the backdrop of the foregoing measures, the financial institution coalition drafted and submitted to the Speaker the following “foreclosure prevention program” and “abandoned residential property municipality relief program” counterproposal (referred to as the “Save Our Neighborhoods Act of 2010”), which was accepted by the Speaker, passed by each House and will become law 60 days after it is approved by Governor Quinn:</p> <ol style="list-style-type: none"> (1) Front end filing fee (to be paid by the lender upon filing the foreclosure complaint): \$50.00 <p>The funds will be distributed by IHDA in the form of grants to approved housing counseling agencies and approved community based organizations for counseling and foreclosure prevention outreach programs (50% to Chicago and 50% to the rest of the state). No portion of the program grants can be used to fund civil litigation services (where the debtor obtains legal representation or advice to defend against the foreclosure complaint), or court-sponsored mediation services.</p> (2) Back end judicial sale fee (to be paid ONLY BY a third party purchaser – NOT THE LENDER acquiring the property through its credit bid): At the rate of \$1.00/\$1,000 or portion thereof of the amount paid by the purchaser at the sale, not to exceed \$300.00 <p>The funds will be distributed by IHDA in the form of grants to municipalities to assist with the costs they incur in removing nuisance greenery (neglected weeds, grass, trees and bushes), pests, infected trees, garbage, debris and graffiti on abandoned residential property within their boundaries, as well as securing or enclosing such properties (25% to Chicago and 75% to municipalities other than Chicago).</p> (3) Extension of Pre-Foreclosure Grace Period Notice Procedure. The bill extends the sunset of the “30/30/30” grace period notice procedure from April 4, 2011 (per S.B. 2513 described above), to July 1, 2013. <p>The financial institution counterproposal that became the bill limits the fees paid by lenders to the modest front-end fixed fee of \$50, which is considerably less than the original proposal which contained no cap. Furthermore, the responsibility for the back-end judicial sale fee is shifted from lenders to third party purchasers. The original proposals would have assessed lenders both a front-end fee of several hundred dollars or more and a back-end fee of \$1,000.</p>	<p>Passed Senate 46-0 (03/15/10)</p> <p>Passed House 87-26-03 (05/07/10)</p> <p>Senate Concurrence 48-03 (05/27/10)</p> <p>Signed into law by Governor Quinn on August 2, 2010 as P.A. 96-1419, eff. 10/01/10</p>
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2011 Legislative Initiatives			
HB 1574	Rep. Elizabeth Hernandez, et al. Sen. Jacqueline Collins	As introduced, this bill would have held lenders liable for security deposits received by their borrowers from the borrowers' tenants, even though the lender was not a party to the lease or rental agreement and never had possession of the deposit. Through negotiations with the Shriver Poverty Law Center, the measure was amended to make liability to the tenant contingent upon the lender's actual receipt of the deposit from its borrower. This will enable lenders to avoid getting embroiled in controversies over money they never received in relation to an agreement they were never a party to.	5/31/11 - Passed both houses Signed into law by Governor Quinn on 08/26/11 as P.A. 97-0575 , eff. 08/26/11
HB 1960	Rep. Franco Coladipietro, et al. Sen. Kirk Dillard	This measure will help expedite residential foreclosures by curbing a delaying tactic sometimes used by debtor's attorneys. The tactic is to file a motion to dismiss the case for improper service as long as a year or more after the filing of the foreclosure complaint. To curb this practice, the bill establishes a deadline for the filing of motions objecting to the court's jurisdiction over the debtor. The deadline is 60 days after the earlier of the date the debtor filed an appearance or the date the debtor participated in a hearing without filing an appearance. Further, all objections to the court's jurisdiction are waived if the debtor filed a responsive pleading or motion, prior to his or her motion to dismiss or quash.	5/17/11 - Passed both houses Signed into law by Governor Quinn on 08/12/11 as P.A. 97-0329 , eff. 08/12/11
SB 1259	Sen. Ira Silverstein, et al. Rep. Barbara Flynn Currie, et al.	As introduced, this measure amended the foreclosure law to prohibit lenders from exercising their judgment in determining whether to accept a short sale offer (an offer made by a third party to the borrower to purchase the mortgaged property for less than the amount owed to the lender). It also banned deficiency judgments against borrowers upon the closing of the short sale. As amended by the financial institution coalition, the bill simply provides a timeframe in which the lender must respond to the borrower as to its acceptance of the short sale offer (within 90 days after receipt of the offer and request to approve it). The bill as passed makes explicitly clear it is the lender that will determine whether to accept the offer and a failure to accept the offer does not impair the rights of the lender in the foreclosure case. The amended bill also makes clear that the lender may pursue its foreclosure case against the borrower during the 90-day period in which to respond to the offer.	10/26/11 – Passed both houses Signed into law by Governor Quinn on 01/13/12 as P.A. 97-0666 , eff. 01/13/12

2012/2013 Legislative Initiatives			
SB 16	Rep. Joseph M. Lyons, et al. Sen. Jacqueline Y. Collins, Sen. John Mulroe, et al.	Addresses the challenging issue of abandoned residential property in foreclosure. Foreclosure has reached extraordinary proportions in Illinois and homes that have been abandoned create particularly difficult issues for the neighborhoods and communities in which they are located. S.B. 16 is a compromise measure representing the culmination of nearly two years of negotiations with lenders, housing advocates, the City of Chicago and many other interested parties. ICUL played a key role in the passage of this bill. Key elements of S.B. 16 include: <ul style="list-style-type: none"> • Establishment of an expedited "fast track" foreclosure process for abandoned residential property. With a procedure that is shortened by up to 18 months, lenders will acquire title to the property more quickly and then assume responsibility under local ordinances to secure and maintain it. The measure provides ample procedural safeguards for lawful occupants to step forward and protect their possessory rights in the property. • Funding for local government remediation of abandoned residential property and housing counseling for struggling homeowners. Additional fees paid by lenders filing foreclosure complaints will be a source of funds for the Illinois Housing Development Authority to distribute grants to communities and counseling agencies throughout the State. Counseling helps consumers identify alternatives to foreclosure, which will help reduce the number of foreclosure cases that are burdening our court system. <p>In addition to the foregoing key elements, addresses several related topics, including foreclosure notice procedural requirements, trespass safe harbor for lenders and bankruptcy relief in the form of protecting against the avoidance of mortgage liens by clarifying existing provisions in the Illinois Conveyances Act.</p>	Passed House, as amended by HA8 87-17 (12/4/2012) Passed Senate as amended by HA8 47-0 (12/5/12) Signed into law by Governor Quinn on 02/08/13 as P.A. 97-1164 eff. 06/01/13

2013 Legislative Initiatives

<p>SB 1674</p>	<p>Sen. Jacqueline Collins; Sen. John Mulroe; et al.; Rep. Andre' Thapedi, et al.</p>	<p>Amends the Code of Civil Procedure. Addresses a number of technical matters to aid in implementing the fast track abandoned property foreclosure process and the disbursement to local governments and housing counseling agencies of additional fees collected in the foreclosure process established by SB 16 from the 97th General Assembly.</p> <p>Key elements of S.B. 1674 include:</p> <ol style="list-style-type: none"> 1. For Borrowers: <ol style="list-style-type: none"> a. Establishes an additional fee overpayment recovery mechanism for borrowers reinstating their mortgage (and liability protection for lenders and their attorneys). b. Changes the time frame for the hearing on the fast track motion from 15 to 21 days to give the lender's counsel 7 days, rather than just 1 day, to properly post the required notice at the premises for the benefit of lawful occupants. 2. For the Clerks of Court: <ol style="list-style-type: none"> a. Eliminates any ambiguity concerning the right of the clerks of court to receive and retain the 2% administrative fee for collection and remittance services they provide in S.B. 16. b. Confirms that plaintiffs will file a verified statement with their foreclosure complaint identifying the proper amount of the new additional fee, unless the court establishes another process. 3. For IHDA: <ol style="list-style-type: none"> a. Authorizes deduction of its reimbursable administrative expenses in distributing grants, subject to a cap of 4% of the annual appropriated amount actually received. b. Clarifies its administration of the grant programs through which the collected funds will be distributed to communities and counseling agencies across the State. 	<p>04/10/2013: Passed Senate (55-0)</p> <p>05/29/2013: Passed House, as amended (89-26-2)</p> <p>05/31/2013: Senate concurs HA4 (49-7)</p> <p>Signed into law by Governor Quinn on 06/11/2013 as P.A. 98-0020, eff. 06/11/13</p>
<p>SB 56 (formerly SB 1602)</p>	<p>Sen. Jacqueline Collins, et al.; Rep. Kelly Cassidy, et al.</p>	<p>Amends the Code of Civil Procedure to make provisions relating to the rights of occupants in foreclosure more consistent with the federal Protecting Tenants at Foreclosure Act ("PTFA").</p> <p>The federal PTFA took effect in 2009 and was designed to protect tenants from eviction because of foreclosure on the properties they occupy. Successors-in-interest of a foreclosed one-to-four family residential property (such as a lender acquiring its collateral at the foreclosure judicial sale) must provide tenants with at least a 90 days' notice to vacate. Tenants may stay in the residence until the end of their leases entered into before the foreclosure, unless (1) the property is sold to a purchaser that will occupy the property as a primary residence; or (2) there is no lease or the lease is terminable at will under state law. However, even if these exceptions apply, the tenants must still receive 90 days' notice before they may be evicted. PTFA protections only apply to tenants under a "bona fide" lease or tenancy (i.e., the mortgagor or the child, spouse or parent of the mortgagor is not the tenant, the lease or tenancy is the result of an arms length transaction and the rent paid is a fair market rent).</p> <p>Key elements of S.B. 56 include:</p> <ol style="list-style-type: none"> (1) Defines "bona fide tenant" in a manner that is substantially consistent with the PTFA and provides that termination of the possessory rights of a bona fide tenant of a dwelling unit in residential real estate in foreclosure must be addressed in a forcible entry and detainer action after waiting 90 days (unless the lease term is longer than 90 days). Orders of possession issued in the foreclosure proceeding will continue to be entered against the mortgagor. (2) Adds a much needed provision to address the deficiency described by the Illinois Supreme Court in the <u>McGahan</u> foreclosure case (2010), as to what procedure a lender must follow in the event of a mortgagor's death. The provision eliminates the time, trouble and expense of appointing a special representative for a deceased mortgagor if there is a living person holding a 100% interest in the property by virtue of being the deceased mortgagor's surviving joint tenant or surviving tenant by the entirety (e.g., a spouse). 	<p>03/13/2013: Passed Senate (55-0)</p> <p>05/29/2013: Passed House, as amended (117-0)</p> <p>05/31/2013: Senate Concurs, HA 1 and HA2 (58-0)</p> <p>06/28/2013: Sent to Governor</p> <p>Signed into law by Governor Quinn on 08/21/2013 as P.A. 98-0514, eff. 11/19/13</p>

<p>SB 1045</p>	<p>Sen. Jacqueline Collins Rep. Zalewski, Riley, et al.</p>	<p>In 2010, H.B. 5735 was passed and signed into law. It authorized a mortgagor to set aside a judicial sale prior to confirmation of the sale, if the mortgagor proved he or she was eligible for assistance under the federal Making Homes Affordable Program (HAMP) and the property had been sold in violation of the program's judicial sale requirements (see summary, <u>supra</u>).</p> <p>H.B. 5735 contained a sunset provision and the purpose of S.B. 1045 is to extend the sunset. Accordingly, S.B. 1045 amends the Mortgage Foreclosure Article of the Code of Civil Procedure to provide that the judicial sale set aside provisions become inoperative on January 1, 2016 (instead of January 1, 2014) for all foreclosure actions filed after December 31, 2015 (instead of December 31, 2013), in which the mortgagor did not apply for assistance under the Making Home Affordable Program on or before December 31, 2015 (instead of December 31, 2013).</p>	<p>10/23/2013: Passed Senate (55-1)</p> <p>11/06/2013: Passed House (117-0)</p> <p>12/04/2013: Sent to Governor</p> <p>Signed into law by Governor Quinn on 12/26/2013 as P.A. 98-0605, eff. 12/26/13</p>
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