

Proposal 16-05
Amends Supreme Court Rule 113
Offered by Circuit Court of Cook County Presiding Judge Moshe Jacobius

Rule 113 . Practice and Procedure in Mortgage Foreclosure Cases

(a) Applicability of the Rule. The requirements of this rule supplement, but do not replace, the requirements set forth in the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*) and are applicable only to those foreclosure actions filed on or after the effective date of May 1, 2013.

(b) Supporting Documents for Complaints. In addition to the documents listed in section 15-1504 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1504), a copy of the note, as it currently exists, including all indorsements and allonges, shall be attached to the mortgage foreclosure complaint at the time of filing.

(c) Prove-up Affidavits.

(1) Requirement of Prove-up Affidavits. All plaintiffs seeking a judgment of foreclosure, under section 15-1506 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506), by default or otherwise, shall be required to submit an affidavit in support of the amounts due and owing under the note when they file any motion requesting a judgment of default against a mortgagor or a judgment of foreclosure.

(2) Content of Prove-up Affidavits. All affidavits submitted in support of entry of a judgment of foreclosure, default or otherwise, shall contain, at a minimum, the following information:

(i) The identity of the affiant and an explanation as to whether the affiant is a custodian of records or a person familiar with the business and its mode of operation. If the affiant is a person familiar with the business and its mode of operation, the affidavit shall explain how the affiant is familiar with the business and its mode of operation.

(ii) An identification of the books, records, and/or other documents in addition to the payment history that the affiant reviewed and/or relied upon in drafting the affidavit, specifically including records transferred from any previous lender or servicer. The payment history must be attached to the affidavit in only those cases where the defendant(s) filed an appearance or responsive pleading to the complaint for foreclosure.

(iii) The identification of any computer program or computer software that the entity relies on to record and track mortgage payments. Identification of the computer program or computer software shall also include the source of the information, the method and time of preparation of the record to establish that the computer program produces an accurate payment history, and an explanation as to why the records should be considered “business records” within the meaning of the law.

(3) Additional Evidence. The affidavit shall contain any additional evidence, as may be necessary, in connection with the party’s right to enforce the instrument of indebtedness.

(4) Form of Prove-up Affidavits. The affidavit prepared in support of entry of a judgment of foreclosure, by default or otherwise, shall not have a stand-alone signature page if formatting allows the signature to begin on the last page of the affiant’s statements. The affidavit prepared shall, at a minimum, be prepared by utilizing, or substantially adopting the

appearance and content of, the form provided in the Article II Forms Appendix. If executed within the boundaries of Illinois, the affidavit may be signed pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109) rather than being notarized.

(d) Defaults.

(1) Notice Required. In all mortgage foreclosure cases where the borrower is defaulted by court order, a notice of default and entry of judgment of foreclosure shall be prepared by the attorney for plaintiff and shall be mailed by the Clerk of the Circuit Court for each judicial circuit. Within two business days after the entry of default, the attorney for plaintiff shall prepare the notice in its entirety, file it with the Clerk of the Circuit Court, and provide the Clerk with one copy for mailing to each borrower address specified in the notice. Within five business days after the entry of default, the Clerk of the Circuit Court shall mail, by United States Postal Service, a copy of the notice of default and entry of judgment of foreclosure to the address(es) provided by the attorney for the plaintiff in an envelope bearing the return address of the Clerk of the Circuit Court and file proof thereof. The notice shall be mailed to the property address or the address on any appearance or other document filed by any defendant. Any notices returned by the United States Postal Service as undeliverable shall be filed in the case file maintained by the Clerk of the Circuit Court.

(2) Form of Notice. The notice of default and entry of judgment of foreclosure shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(e) Effect on Judgment and Orders. Neither the failure to send the notice required by paragraph (d)(i) nor any errors in preparing or sending the notice shall affect the legal validity of the order of default, the judgment of foreclosure, or any other orders entered pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*) and cannot be the basis for vacating an otherwise validly entered order.

(f) Judicial Sales. In addition to the requirements for judicial sales set forth in sections 15-1506 and 15-1507 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506, 15-1507) the following will apply to mortgage foreclosure sales:

(1) Notice of Sale. Not fewer than 10 business days before the sale, the attorney for the plaintiff shall send notice by mail to all defendants, including defendants in default, of the foreclosure sale date, time, and location of the sale.

(2) Selling Officers. Any foreclosure sale held pursuant to section 15-1507 may be conducted by a private selling officer who is appointed in accordance with section 15-1506(f)(3).

(3) Surplus Funds. If a judicial foreclosure sale held pursuant to Section 15-1507 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1507) results in the existence of a surplus of funds exceeding the amount due and owing as set forth in the judgment of foreclosure, the attorney for the plaintiff shall send a special notice to the mortgagors advising them of the surplus funds and enclosing a form for presentment of the motion to the court for the funds.

(g) Special Notice of Surplus Funds. The special notice shall be mailed and shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(h) Petition for Turnover of Surplus Funds. Each judicial circuit shall make readily available a form petition for turnover of surplus funds to be included in the Special Notice of Surplus Funds required to be mailed by the attorney for plaintiffs. The petition shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(i) Deceased Mortgagors. In all mortgage foreclosure cases where the mortgagor or mortgagors is or are deceased, and no estate has been opened for the deceased mortgagor(s), the court shall, on motion of a party, appoint a special representative to stand in the place of the deceased mortgagor(s) who shall act in a manner similar to that provided by section 13-209 of the Illinois Code of Civil Procedure (735 ILCS 5/13-209). Special representatives appointed under this paragraph shall be entitled to costs and reasonable attorney fees from the party who sought the appointment as well as any successor or assign of that party as may be applicable, subject to administrative regulation by the Court.