

CHANGES IN FORECLOSURE PUBLICATION REQUIREMENTS

The General Assembly has amended Section 2-206(a-5) relating to foreclosure publication requirements.

Section 2-206(a-5) (735 ILCS 5/2-206(a-5)) provides as follows. Section (a-5) deals specifically with foreclosures. It does not impact notices in other litigation.

(a-5) If, in any action brought under Part 15 of Article XV of this Code, the plaintiff, or his or her attorney, shall file, at the office of the clerk of the court in which the action is pending, an affidavit showing that the defendant resides outside of or has left this State, or on due inquiry cannot be found, or is concealed within this State so that process cannot be served upon him or her, and stating the place of residence of the defendant, if known, or that upon diligent inquiry his or her place of residence cannot be ascertained, **the plaintiff, or his or her representative, shall cause publication** to be made in some newspaper published in the county in which the action is pending. If there is no newspaper published in that county, then the publication shall be in a newspaper published in an adjoining county in this State, having a circulation in the county in which action is pending. The publication shall contain notice of the pendency of the action, the title of the court, the title of the case, showing the names of the first named plaintiff and the first named defendant, the number of the case, the names of the parties to be served by publication, and the date on or after which default may be entered against such party. **It shall be the non-delegable duty of the clerk of the court, within 10 days of the first publication of the notice, to send a copy thereof by mail, addressed to each defendant whose place of residence is stated in such affidavit.** The certificate of the clerk of the court that he or she has sent the copy in pursuance of this Section is evidence that he or she has done so.

There are two main changes in this statute:

A. The publication of the notice is the responsibility of the Plaintiff or its representative. Previously, publication of the notice had been the responsibility of the Circuit Clerk, but the General Assembly now puts the burden of placing the publication on the Plaintiff (usually the financial institution in a foreclosure action) or its law firm.

B. Section (a-5) does impose on the office of the Clerk the non-delegable duty of mailing a copy of the published notice to each defendant at the addresses in the affidavit. A non-delegable duty is one the Circuit Clerk can not assign to, or contract with an outside party to accomplish. The mailing must be accomplished by the personnel in the Circuit Clerk's office. The plaintiff's law firm should provide a copy of the first weekly publication to the Clerk.

If you have any questions about this matter, I can be reached by phone or email as set out above.