



Illinois Supreme Court Strikes Down Mortgage Foreclosure Filing Fees

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It has been more than a decade since credit default swaps, collateralized mortgage obligations and fraudulent or fictitious mortgages were among the germs that caused the mortgage foreclosure plague that, in turn, fueled a national recession. But one of the consequences of the foreclosure crisis is back in the news in the form of a June 17, 2021, Illinois Supreme Court decision that declared Illinois' mortgage foreclosure filing fees to be unconstitutional.

In the aftermath of the foreclosure crisis, new State and federal restrictions and requirements were enacted for the purposes of reducing the number of future foreclosures and providing assistance to mortgagors who might have been in jeopardy of losing their homes. One such State of Illinois response was the General Assembly's enactment of Section 15-1504.1 of the Code of Civil Procedure, which required that a foreclosure filing fee be paid to the Clerk of the Circuit Court at the time that a foreclosure complaint was filed by a mortgagee. The Clerk's office was entitled to receive 2% of the filing fee to offset administrative expenses, and the balance was remitted to the State Treasurer for deposit into two special funds created by the new law. One of the special funds financed housing and foreclosure counseling for mortgagors, with the goal of achieving mortgage modifications that would allow the mortgagors to remain in their homes. The second special fund financed the securing and rehabilitation of abandoned property for the purpose of minimizing the perils (vagrancy, noxious weeds, etc.) that could drive down neighborhood property values.

The foreclosure filing fees in the legislation were negotiated among the bill's sponsor and Illinois' financial institution trade associations, with CBAI taking the position that credit default swaps, collateralized mortgage obligations and fraudulent mortgages were the playthings of the megabanks and that community banks, being the least responsible for the crisis, should bear the smallest burden of the remedy. However, no agreement could be reached to impose filing fees based on categories of asset size of mortgagee banks; the acceptable alternative, which became the statute's delineation between community banks and megabanks, was to scale the filing fee based on the number of foreclosures filed by the mortgagee in the previous calendar year: a \$500 filing fee for mortgagees that filed more than 175 foreclosures in the preceding year; \$250 for mortgagees that filed between 50 and 175 foreclosures in the preceding year; and \$50 for mortgagees that filed less than 50 foreclosures in the preceding year.

The new Section 15-1504.1 was to sunset on January 1, 2023, but the Illinois Supreme Court expedited its demise in the recent case of [Walker v. Chasteen](#). The plaintiff in the case was not a financial institution or mortgage company; he was a private citizen who had sold residential property and subsequently discovered that he did not have the opportunity to foreclose on the mortgagor without first paying a fee to the Circuit Court Clerk.

Even though this particular plaintiff's filing fee fell into the minimum \$50 fee category, the Supreme Court ruled that the Illinois Constitution granted citizens "free access" to the judicial system to litigate their grievances, and that the only permissible filing fees were those related to the administration of the courts or to the costs of particular litigation. In this case, the Supreme Court concluded that the mortgage foreclosure filing fee was contrary to "free access" to the courts and, rather than being related to the administrative costs of the courts, it was designed to fund general welfare projects for the benefit of mortgagors.

With the Illinois Supreme Court having declared Section 15-1504.1 of the Code of Civil Procedure to be unconstitutional, there is no longer a mortgage foreclosure filing fee requirement in Illinois courts.

Feel free to contact General Counsel [Jerry Cavanaugh](#) or CBAI Paralegal [Levette Shade](#) if you want any additional information.

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