

Rule 113. Practice and Procedure in Mortgage Foreclosure Cases
(c) Prove-up Affidavits.

Form 1

IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT
FOR _____ COUNTY, ILLINOIS

_____))
Plaintiff(s)))
v.) Case No. _____)
_____))
Defendant(s)))

AFFIDAVIT OF AMOUNTS DUE AND OWING

I, _____, am a _____ of _____ . I have authority to make this statement on its behalf because _____ (identify whether you are a custodian of records or a person familiar with the business and its mode of operation; if you are a person familiar with the business and its mode of operation, explain how you are familiar with the business and its mode of operation). If called to testify at the trial of this matter, I could competently testify as to the facts contained in this affidavit.

[If the loan was previously serviced by another entity, the affidavit should provide as follows for the most recent transfer of servicing rights: _____ (name of the bank) acquired the servicing rights for the Defendant's loan on _____ (date) from _____ (name of the prior institution). At the time of this transfer, the Defendant's loan was _____ (current, or state the amount by which the loan was in default at the time of the transfer).]

The amount due is based on my review of the following records: _____ . A true and accurate copy of the payment history and any other document I reviewed when making this calculation is attached to this affidavit (this sentence would only be included if applicable).

_____ (name of the bank) uses _____ (name of the computer program/software) to automatically record and track mortgage payments. This type of tracking and accounting program is recognized as standard in the industry. When a mortgage payment is received, the following procedure is used to process and apply the payment, and to create the records I reviewed: _____ (include the source of the information, method and time of preparation of the record to establish that the computer program produces an accurate record). The record is made in the regular course of _____'s (name of bank) business. In the case at bar, the entries reflecting the Defendant's payments were made in accordance with the procedure detailed above, and these entries were made at or near the time that the payment was received. _____ (name of the computer program/software) accurately records mortgage payments

when properly operated. In the case at bar, _____(name of the computer program/software) was properly operated to accurately record the Defendant's mortgage payments.

Based on the foregoing, _____ failed to pay amounts due under the Note, and the amount due and owing as of _____ is:

Principal \$ _____

Interest \$ _____

Pro Rata MIP/PMI \$ _____

Escrow Advance \$ _____

Late Charges \$ _____

NSF Charges \$ _____

Property Maintenance \$ _____

Property Inspections \$ _____

BPO \$ _____

GROSS AMOUNT DUE \$ _____

Less/Plus balance in reserve accounts

\$ _____

NET AMOUNT DUE

\$ _____

AFFIANT STATES NOTHING MORE.

BY: _____

Affiant

Subscribed and sworn to before me this

____ day of _____, _____

By _____

Notary Public

State of [_____]

My Commission expires: _____, _____

Personally Known _____ OR Produced Identification _____.

Type of identification produced: _____.

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.

Form 2

IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT
FOR _____ COUNTY, ILLINOIS

_____)	
Plaintiff(s))	
v.)	Case No. _____
_____)	
Defendant(s))	

NOTICE OF ENTRY OF DEFAULT AND JUDGMENT OF FORECLOSURE

To: _____

This notice is to advise you of recent activity in the mortgage foreclosure lawsuit now pending in the Circuit Court. **DO NOT IGNORE THIS NOTICE. YOU SHOULD ACT IMMEDIATELY.**

The Circuit Court has entered an Order of Default and a Judgment of Foreclosure and Sale against you in your case concerning the property located at [insert address].

You may be entitled to file a Motion to Vacate this order. Any such motion should be filed as soon as possible.

E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit <http://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit <http://www.illinoiscourts.gov/FAQ/gethelp.asp>, or talk with your local circuit clerk's office.

[If applicable] You may redeem the property from foreclosure by paying \$_____, which is the total amount due plus fees and costs, by [insert day].

[If applicable] If you need legal advice, you may contact _____ for free legal advice.

[NAME OF CLERK]
Clerk of the Circuit Court of _____ County
[Contact information]

(g) Special Notice of Surplus Funds.

Form 3

IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT
FOR _____ COUNTY, ILLINOIS

_____)	
Plaintiff(s))	
v.)	Case. No. _____
_____)	
Defendant(s))	

SPECIAL NOTICE OF SURPLUS FUNDS

To: _____

There is \$_____ remaining after the sale of your property at [insert address of property sold]. You may be entitled to this money.

If you want to obtain this money, you need to:

(1) Complete the enclosed form.

(2) Take the completed form to the Clerk of the Circuit Court [insert the information for the Clerk of the Circuit Court in which the case is pending]. E-filing is now mandatory for documents in civil cases with limited exemptions. To e-file, you must first create an account with an e-filing service provider. Visit <http://efile.illinoiscourts.gov/service-providers.htm> to learn more and to select a service provider. If you need additional help or have trouble e-filing, visit <http://www.illinoiscourts.gov/FAQ/gethelp.asp>, or talk with your local circuit clerk's office.

(3) Schedule a date to present the paperwork to the judge.

(4) Mail a copy of the completed form, at least five business days before the date with the judge, to: [insert service list].

(h) Petition for Turnover of Surplus Funds.

Form 4

IN THE CIRCUIT COURT OF THE ____ JUDICIAL CIRCUIT
FOR _____ COUNTY, ILLINOIS

_____)	
Plaintiff(s))	
v.)	Case. No. _____
_____)	
Defendant(s))	

NOTICE OF MOTION AND PETITION FOR TURNOVER OF SURPLUS FUNDS

TO: _____

On _____, _____, at _____ a.m./p.m. or as soon thereafter as counsel may be heard, I shall appear before the Honorable _____ or any Judge sitting in that Judge's stead, in the courtroom usually occupied by him/her, located at _____, Illinois, and present:

PETITION FOR TURNOVER OF SURPLUS FUNDS
(with Appearance)

Now come(s) _____, and move(s) this Court for entry of an order turning over the surplus proceeds from the foreclosure sale. In support of this Petition, Petitioner(s) state(s) as follows:

- (1) All parties to this proceeding have been given notice of this Petition.
- (2) The subject property was sold at a foreclosure sale for more than the amount owed the mortgage company and the sale was approved by the Court on ___/___/___.
- (3) There is a surplus remaining after all sums are paid in the amount of \$_____.
- (4) Petitioner(s) is/are a party/parties to the foreclosure case and has/have filed an appearance in the case.
- (5) Petitioner's/Petitioners' interest in the property is (select one, and attach any supporting documents): Owner(s)/Mortgagor(s); Judgment Creditor; Lien Holder; Other (please specify):_____.

(6) If Petitioner(s) is/are not the Mortgagor(s), judgment for the Petitioner(s) has been proved up in the amount of \$_____.

(7) Pick one:

Petitioner(s) has/have a bankruptcy case pending in Bankruptcy Court and has/have ATTACHED a copy of the order from the Bankruptcy Court allowing receipt of the surplus funds (“Order Authorizing Distribution of Surplus Funds”).

Petitioner(s) DOES NOT/DO NOT have a bankruptcy case pending in Bankruptcy Court.

Wherefore, the Petitioner(s), _____, move this Court to turn over to him/her/them the surplus from the foreclosure sale.

I/We, _____, enter my/our appearance(s), *pro se*:

Signature _____

Signature _____

VERIFICATION AND PROOF OF SERVICE

I/We certify under penalty of perjury as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, that I/we have read the foregoing Verified Petition for Turnover of Surplus Funds and the statements set forth therein are true and correct and that I sent a copy of this Appearance and Answer by United States mail to the Plaintiff’s attorney and any other parties who have appeared and have not heretofore been found by the Court to be in default, on _____, 20__.

Signature _____

Signature _____