All for a Fortnight: Calculating Redemption in Default Residential Foreclosures

*Alex S. Moe**

The Illinois Mortgage Foreclosure Law (IMFL) is a comprehensive statute laying out a single procedure for the entire foreclosure process. Residential foreclosures are dominated by statutory redemption, a seven-month period during which the borrower can pay off the entire loan balance and retain their property. Few borrowers do so, but the redemption period is independently important, for until it expires, a sale of the property—cornerstone of the foreclosure process—cannot occur.

The statutory redemption period starts to run when the borrower has been served. Normally, service occurs at a point certain in time. If service occurs by publication, however, the publication runs for three consecutive weeks. In that scenario, redemption should be calculated based on the third date of publication. This conclusion comports with the plain language of the statute, its lengthy history, and all available records of legislative intent.

New evidence suggests that more than four hundred residential foreclosures per year in Cook County alone have redemption periods miscalculated from the first date of publication. This is especially problematic because these are almost always cases where borrowers have not participated in the judicial process, and are unaware that their statutory rights have been infringed.

Fortunately, this issue permits a straightforward resolution. Plaintiff's firms can adjust their calculations to use the third date of publication. The judiciary can enforce compliance on a case-by-case basis, or systemically through an appropriate general order. Uniformly calculating redemption based on the last publication is not only consistent with the law and in accord with the broader statutory scheme, but also ensures that all borrowers in foreclosure benefit from the full measure of the IMFL's statutory protections.

* The author is a judicial law clerk with the Circuit Court of Cook County, and has clerked in both the Mortgage Foreclosure/Mechanics Lien and General Chancery sections. The views expressed in this Article are the author's and his alone, and should not be construed as endorsed either by the Judge whom he serves or the court. Special thanks to attorneys David Griffin, Jenna M. Rogers, and Arthur C. Czaja for their insights; and to Talar A. Khosdeghian, Nicole Collins, Suzanne McFate, and Dr. Lawrence Moe for their assistance in this process. A particular thanks to the (often necessarily) anonymous practitioners, judges, and clerks who shared their time and personal experiences to inform this Article.

INTRODUCTION

Foreclosure of a residential mortgage in Illinois is a tightly controlled process. From beginning to end, the Illinois Mortgage Foreclosure Law (IMFL) establishes a series of minimum requirements for every step of the foreclosure, from first filing to an eventual eviction. The statute strikes a balance: lenders benefit from clearly defined obligations and largely form-based litigation, while borrowers benefit from generous waiting periods. Central to this balance is statutory redemption, a seven-month window during which borrowers can essentially pay off the loan and rescue their property.

The primary purpose of redemption is not, as the definition suggests, an actual redemption. Relatively few borrowers have the means to formally exercise their redemption rights; if a borrower can pay off their loan, chances are they would have done so before the foreclosure was filed. Rather, the redemption period provides time: time for a borrower to get back on their feet, time for the parties to negotiate another form of settlement, and—as a matter of public policy—time for the borrower to stay in their home.

The IMFL accomplishes this by using redemption to establish a simple waiting period. A lender may seek and receive a judgment of foreclosure early on in the process. But they cannot hold a judicial sale of the subject property until the redemption period expires. The timing of redemption is of critical importance to determine when and how the case can move forward.

Redemption is calculated from the date of service on the borrower.[1] Personal service occurs on a specific date, so this is a simple calculation.[2] Service by publication, however, occurs over a three-week period, so redemption could be calculated from the first or the third publication date.[3] If redemption should be calculated from the third date, but is actually being calculated from the first, the entire foreclosure process is accelerated by two weeks, and the IMFL's central balance would be disrupted.

New research demonstrates that it is common practice to calculate redemption from the *first* publication. In approximately 3.9 percent of residential foreclosure cases, service occurred by publication, redemption was calculated from the first of the three publications rather than the third,

1. 735 ILL. COMP. STAT. 5/15-1603(b) (2020).
2. Relatively. *See infra* Section II.A (appropriate mode of calculation).
3. § 15-1603(b)(1).

and the foreclosure sale occurred immediately after redemption expired. This extrapolates to approximately 430 cases yearly.[4]

Foreclosure is a volume business; the IMFL has likely seen a million residential foreclosures,[5] and any systemic issue can only be coherently described as a matter of statistics. To reach these conclusions, more than three hundred foreclosure filings were randomly sampled to generate some basic conclusions about residential foreclosure practice.[6] The data derives from Cook County residential foreclosures filed in 2018, and as such is an imperfect proxy for an issue of statewide concern, but it is robust enough to sustain general conclusions.[7]

---

4. This conclusion can be reached by two different analyses: through court records, and through external sources. First, the 3.9 percent figure is for cases filed as Owner Occupied Single Family Home or Condominium (OOSFHC) foreclosures. Such cases represent about 90 percent of all foreclosure filings generally. Audit Report, Circuit Court of Cook County, Chancery Division, 2019 (Jan. 8, 2020) (on file with author). Furthermore, the Institute for Housing Studies at DePaul University maintains a database of residential foreclosure filings. *Housing Market Indicators Data Portal: Total Foreclosure Filings Activity – All Residential Properties*, INST. FOR HOUSING STUD. DEPAUL UNIV. [hereinafter *Residential Foreclosure Filings Database*], https://www.housingstudies.org/data-portal/browse/?indicator=total-foreclosure-activity&view_as=view-table (last visited May 4, 2020) (choose "All Residential Properties" from the "Property Type" dropdown, then click "Submit"). Court records look to foreclosure filings at the front end; the IHS database cross-checks land and title records to identify residential cases "on the ground," as it were. Though they stem from different sources, both datasets indicate that approximately 11,000 residential foreclosures are filed yearly. This suggests a final figure of 433 cases yearly. Given that limiting the analysis to OOSFHC cases *omits* other, smaller, types of cases (e.g. owner-occupied buildings of six units or less, which may still count as residential property, *see infra* notes 34–35), the 3.9 percent figure is likely an underestimate. And, given the approximate margins of error of this analysis, two significant figures are indicated; thus the final estimate of 430.

5. Between 2005 and 2018, Cook County alone saw 378,000 residential foreclosure filings. *Residential Foreclosure Filings Database*, *supra* note 4. Add to that figure all filings between 1987 and 2004, and filings in the rest of the state during both time periods, and a million is a decent enough estimate.

6. Cases filed in Cook County are assigned sequential case numbers based on the date of filing. In 2018, 16,195 chancery cases were filed. All foreclosures are chancery cases, but not all chancery cases are foreclosures. Cases were sampled sequentially, starting with 18 CH 00001, until ten cases coded as OOSFHC were recorded. Then, sampling jumped to the next five hundred cases (e.g., 18 CH 00500), and another ten cases were recorded. This procedure was repeated for all 2018 cases, for a total of 330 cases evenly distributed over the course of the year. For each case, information was collected by reviewing scanned copies of affidavits, orders, and other documents of public record. Specific information recorded included the dates of publication, of judgment, and of sale, if any; the case's ultimate disposition; whether it was contested; and other information. Thus, though the purpose of the sampling was to identify publication dates, the dataset is broad enough to reveal other first-order conclusions, referenced elsewhere in this Article. The data is available upon request, and the author would be happy to share it with any interested parties. Accessing case files is a time-consuming procedure, and to the author's knowledge, no one else has been daft enough to do something like this before.

7. Limitations of the above described analysis are legion: it only samples 2018 data; it is restricted to Cook County; and the sampling methodology, while necessary to preserve the author's sanity, introduces potential clumping artifacts; among many others. It is nevertheless sufficiently robust for these purposes. External data indicates that 11,000 OOSFHC cases—far and away the

If, as this Article argues, redemption must be calculated from the third publication, then this systemic miscalculation is significant. Where redemption ends two weeks early, the entire timeline is accelerated, and the foreclosure sale, confirmation, and eventual eviction happen two weeks *before* they should have. And, crucially, this occurs where the borrowers were unaware that such miscalculation was taking place, and that the full measure of redemption entitled them to more.

To fully address the origin of this issue, Part I of this Article starts with a general overview of the IMFL, discussing the four mechanisms that permit a borrower to force a lender's hand and accept a form of settlement: statutory reinstatement, statutory redemption, the special right of redemption, and equitable redemption. These four redemptive mechanisms work in concert to offer borrowers windows of opportunity to save their properties. Their histories are intertwined, and understanding where each came from is necessary to untangle the conflict surrounding redemption.

Part II addresses the proper measure of redemption. The time period is supposed to run from the date of service, but service by publication does not occur on a single date. This Article proposes that, where a borrower is served by publication, the redemption period must run from the third and final publication, rather than the first. This conclusion is evident from the plain language of the redemption statute, the operation of the publication statute, and the history of both.

Part III turns to the problem at hand: calculating redemption from the first publication is incorrect, and yet it still occurs. There are a number of institutional pressures that explain the miscalculation's frequency. The problem is exacerbated by the fact that it will only ever affect cases where the borrower has *not* participated—for if a borrower shows up and contests their case, the resulting delay would moot the question of publication.

Fortunately for borrowers and the redemption statute alike, addressing this issue is relatively straightforward: once plaintiff's attorneys and

most common type, and a good proxy for conventionally "residential" foreclosures, *see infra* Section I.B.1—were filed in 2018. Cochran's formula suggests, for a 95 percent confidence interval and 0.5 standard deviation, an ideal population size is in the 385 range. The margin of error here is difficult to calculate, both because the methodology is not ideal and there are a number of extrapolations between stages of the calculation. To the extent possible, the data itself was calculated with a standard 95 percent confidence interval, suggesting the 3.9 percent figure is ±0.175. Accounting for extrapolations—e.g. potential miscoding of OOSFHC cases, and foreclosure filing frequency—the actual error is more likely ±1.0. Plugging this into the statistical analysis, *supra* note 4, yields a final Cook County estimate of 320–540 cases yearly. A more statistically rigorous study would be more precise, but this analysis is sufficiently accurate for these purposes; even on the most skeptical of assumptions, it is clear that redemption is miscalculated in hundreds of cases every year.

judges are aware of the potential for a miscalculated redemption period, it is easily corrected. Furthermore, judicial action by way of a general order directing that the proper calculation be followed would provide the cleanest solution. Regardless of how it is eventually addressed, calculating redemption from the third publication not only comports with the letter of the law but also ensures that the IMFL's careful balances are maintained, to all parties' benefit.

I. MORTGAGE, FORECLOSURE, AND REDEMPTION

The IMFL is a complex statute, but it is entirely self-contained. Within its confines, the redemption procedure both fundamentally defines the foreclosure timeline while also largely standing apart from the rest of the foreclosure process. Thus, while redemption drives every single case, it is very rarely litigated, and does not often get dragged into other foreclosure litigation.

This Part first discusses the foreclosure timeline generally to provide context. Second, it addresses certain caveats of scope: this Article's discussion is limited to residential borrowers only, as redemptive rights are limited to a much greater degree in other cases. Third, it describes the four primary redemptive mechanisms of the IMFL: statutory reinstatement, statutory redemption, the special right of redemption, and equitable redemption.

A. The Foreclosure Timeline

The IMFL sets out a unified foreclosure procedure that strikes a careful balance between the interests of a lending mortgagee and the borrowing mortgagors.[8] Lenders benefit from a streamlined procedure, form complaints and standardized affidavits, and limitations on the types of defenses that may be litigated in the course of a foreclosure.[9] Borrowers, in turn, benefit from the IMFL's generous timeline and many windows of opportunity through which they may rescue their properties.[10]

8. Wells Fargo Bank v. Simpson, 2015 IL App (1st) 142925, ¶ 45.

9. Wells Fargo Bank v. McCluskey, 2013 IL 115469, ¶ 24 (basic statutory framework); 735 ILL. COMP. STAT. 5/15-1504 (2020) (form complaint); ILL. SUP. CT. R. 113(c) (form prove-up affidavit); Parkway Bank & Tr. Co. v. Korzen, 2013 IL App (1st) 130380, ¶¶ 2, 20–78 (rejecting a number of common, unfounded defenses).

10. Chief among these is the redemption statute, the subject of this Article. 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020).

The foreclosure itself follows a single sequential procedure.[11] Every foreclosure will start when the mortgagor defaults,[12] usually by failing to pay the monthly mortgage payment when due.[13] The mortgagee must then send a number of pre-foreclosure notices, offering an opportunity to cure.[14] If no action is taken, the mortgagee may file its suit thereafter.[15] If the mortgagee chooses to proceed,[16] it will then seek and almost certainly receive a judgment of foreclosure.[17]

11. In this respect the modern IMFL differs from the prior foreclosure statute, which permitted post-sale redemption and thus allowed for property to remain in a limbo of seisin for a time after the foreclosure itself terminated. *See* ILL. REV. STAT. ch. 95, ¶ 57 (1975). Indeed, one of the major changes in the modern IMFL was to mandate that the sale occur *after* redemption, thus ensuring that all windows of opportunity expire prior to the sale. 735 ILL. COMP. STAT. 5/15-1507(b) (2020). For an excellent discussion of redemption and reinstatement under the IMFL as compared to the prior foreclosure statute, see generally Catherine A. Gnatek, *The New Mortgage Foreclosure Law: Redemption and Reinstatement*, 1989 U. ILL. L. REV. 471, 483.

12. To assuage those of my friends in the defense bar: *allegedly* defaults.

13. Payment default is far and away the most common, but defaults can occur for other reasons: nonpayment of taxes, failure to carry insurance, changing residence, failing to maintain the property, and so forth. Pan Am. Bank v. Martino, 2018 IL App (1st) 172199-U, ¶¶ 26–28 (property taxes); Wells Fargo Bank v. Balachia-Zapalik, 2018 IL App (2d) 170915, ¶¶ 26–27 (hazard insurance); U.S. Bank v. Sierra, 2015 IL App (1st) 142809-U, ¶ 3 (occupying property as principal residence); CF SBC Pledgor 1 2012-1 Tr. v. Clark/Sch., LLC, 2016 IL App (4th) 150568, ¶¶ 20, 31 (failure to maintain property and failure of LLC to remain incorporated).

14. The most salient of these is the Notice of Acceleration (NOA), a contractual requirement present in virtually every mortgage. CitiMortgage, Inc. v. Hoeft, 2015 IL App (1st) 150459, ¶ 1. *Accord, e.g.*, RESTATEMENT (THIRD) OF PROP. (MORTG.) § 8.1 cmt. a (1997) ("Virtually all mortgages today contain acceleration clauses."). The NOA requires a lender to notify a delinquent borrower of the default amount and give them thirty days to cure the default. *See, e.g.*, *Hoeft*, 2015 IL App (1st) 150459, ¶ 2. Upon expiration of the thirty-day period, the lender may accelerate the entire debt and, barring any other procedural requirements, file its foreclosure action. Cathay Bank v. Accetturo, 2016 IL App (1st) 152783, ¶ 37. The pre-foreclosure notice regime is a complex one with far reaching ramifications, most of which are beyond the scope of this Article. For more information, see generally Alex S. Moe, *Against* Accetturo *and Beyond* Bukowski*: Litigating Notices in Illinois Foreclosures*, 48 LOY. U. CHI. L.J. 949 (2017).

15. The IMFL once contained a Grace Period Notice (GPN) requirement, since repealed. 735 ILL. COMP. STAT 5/15-1502.5 (2009) (repealed 2016). Effective between 2009 and 2016, the GPN required mortgagees to send the eponymous grace period notice at least thirty days prior to filing their case. *Id.* § 15-1502(d). Even though there is no IMFL requirement, however, there may still be other statutory notice regimes under applicable federal law, including a federal delinquency notice, 12 C.F.R. § 1024.39(b)(1) (2020), federal pre-foreclosure review periods, *id.* § 1024.41(f), and the face-to-face counseling requirement, 24 C.F.R. § 203.604 (2020). The interaction of federal standards with Illinois foreclosures is poorly understood. *See* Moe, *supra* note 14, at 967–75 (discussing federal notice requirements).

16. Most of the time, the parties will settle short of a formal foreclosure sale. Around 70 percent of all residential foreclosure cases end in a voluntary dismissal, for one of various reasons. *See supra* note 4 (statistical analysis).

17. 735 ILL. COMP. STAT. 5/15-1506 (2020). Judgments are obtained in the usual ways as any other civil case. 735 ILL. COMP. STAT. 5/2-1301 (2020) (default judgment); id. § 2-1005 (summary judgment).

The judgment of foreclosure disposes of virtually every issue in the case; for all intents and purposes, the mortgagor has then lost their case.[18] But the case is not over: the mortgagee must wait the longer of seven months from the date of service or three months from the date of judgment, at which point the redemption period expires.[19] Only then can the property be sold.[20] Once sold, the mortgagee must present the sale documents to the judge for confirmation of the judicial sale.[21] Assuming all is in order, the confirmation of sale order will approve the sale, disburse sale proceeds, transfer title, and otherwise wrap up the foreclosure.[22] It will also contain an eviction order as to the mortgagors[23]—and, relevant here, *stay* that eviction thirty days, for the mortgagors have one more chance to redeem with the special right of redemption, which also runs thirty days from confirmation.[24] Only then do a mortgagor's various redemptive rights finally expire, and only then can the new property owner move forward.[25]

From this alone it is apparent that the right of redemption is significant: in establishing that the sale cannot occur until a minimum of seven months from the date of service, it sets a minimum timeline for the bulk of the foreclosure process.[26]

18. Parkway Bank & Tr. Co. v. Korzen, 2013 IL App (1st) 130380, ¶ 60.

19. 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020).

20. *Id.* § 15-1507(b).

21. *Id.* § 15-1508(b). Because the sale is an extrajudicial action, technically speaking no case needs to be pending at the time of the sale itself. Theoretically, one could seek a judgment of foreclosure, cause the case to be terminated, execute the judgment by holding a sale, and file a *separate* case solely to confirm the sale—though that would probably be a waste of time. Plaza Bank v. Kappel, 779 N.E.2d 359, 363–64 (Ill. App. 1st Dist. 2002) (featuring a case dismissed with prejudice at time of sale, but reinstated prior to confirmation of sale). *Accord* Robinson v. Maghee, 85 Ill. 545, 545–46 (1877) (holding if foreclosure judgment entered, and case dismissed, case may be instated and sale approved, but only upon notice to defendant).

22. 735 ILL. COMP. STAT. 5/15-1508(b), (e) (2020).

23. *Id.* § 15-1508(g). The order approving sale can only evict named mortgagors. Evictions of other occupants can be secured as part of the foreclosure case by filing a supplemental eviction petition (formerly known as a supplemental petition for possession) under section 1701, *id.* § 15-1701(d), (h); *accord id.* § 15-1508(g), or by filing a separate action under the Forcible Entry and Detainer Act, 735 ILL. COMP. STAT. 5/9-101–121 (2020). Eviction through a supplemental eviction petition is usually faster and always cheaper, because it does not incur additional filing fees. 735 ILL. COMP. STAT. 5/15-1701(h)(4) (2020).

24. 735 ILL. COMP. STAT. 5/15-1604(a) (2020).

25. The thirty-day marker is significant. It marks the end of the trial court's primary jurisdiction, 735 ILL. COMP. STAT. 5/2-1401(a) (2020), the end of the appellate period, ILL. SUP. CT. R. 303(a)(1), and the IMFL's own deed-vesting provisions bar most claims beyond that point, 735 ILL. COMP. STAT. 5/15-1509(c) (2020).

26. Redemption can be shortened in cases of abandonment, among others. 735 ILL. COMP. STAT. 5/15-1603(b) (2020). By and large, this Article does not address such exceptions, focusing instead on the most likely path forward: the full residential redemption period.

B. A Question of Scope: Residential Borrowers and Other Caveats

The IMFL tracks longstanding public policy, extending its strongest protections to residential borrowers.[27] The four redemptive mechanisms track this, and all are curtailed, to a greater or lesser degree, for nonresidential borrowers. This Article focuses exclusively on typical residential borrowers, and therefore explicitly excludes from its scope both nonresidential borrowers and certain other special circumstances.

1. Residential Borrowers

The first, and arguably most important, procedural question in any foreclosure is whether the subject property is residential. Most of the time, the answer is intuitive: a single-family suburban home with a white picket fence is residential, and a shopping mall is not. The IMFL, unlike some other statutes, provides an explicit definition, *most* of which is intuitive.[28] At its core, section 1219 requires that residential property be occupied by the mortgagor.[29]

Occupation is straightforward: a mortgagor must live at the subject property, using it as their primary residence.[30] That mortgagor must either be the individual who executed the mortgage, or—if the property is owned by a land trust—the trust beneficiaries.[31] The definition is written broadly, covering mortgagors and their heirs or descendants.[32] If the subject property has between one and six separate units, it can still be considered residential so long as the mortgagor resides in one of them.[33]

27. First Bank of Highland Park v. Sklarov, 2019 IL App (2d) 190210, ¶ 29 (providing overview of statutory scheme's heightened protections for homeowners). *See also, e.g.*, Schuck v. Gerlach, 101 Ill. 338, 342–43 (1882) (explaining redemptions favored in the law).

28. *Compare,* 735 ILL. COMP. STAT. 5/15-1219 (2020), *with, e.g.*, Peterson Plaza Pres. v. City of Chi. Dep't of Fin., 2019 IL App (1st) 181502 (use-based classification of property as commercial when used for residential purposes to claim tax credit).

29. *See* 735 ILL. COMP. STAT. 5/15-1219 (2020). There are plenty of other exceptions—farms larger than forty acres are excluded—but the bulk of the definition boils down to two prongs. Note that occupation alone is not enough to make property residential; if the property is not zoned for residence, occupancy would be illegal, so actual residence is irrelevant. *See* Order of Nov. 13, 2014, First Nations Bank v. Arabshian, 14 CH 05199 (Cir. Ct. Cook Co. Nov. 13, 2014) (finding illegal occupancy does not affect status of property as nonresidential under IMFL definitions because court cannot enforce illegal use of property).

30. 735 ILL. COMP. STAT. 5/15-1219 (2020). Thus, a mortgagor may own multiple properties, but only one of them can be "residential."

31. *Id.* Note that this expands on the definition of "mortgagor" for the purposes of the rest of the IMFL. *Id.* § 15-1209 (defining "mortgagor").

32. *Id.* § 15-1219. Indeed, the "mortgagor" requirement is so broad that property could still considered residential if occupied by the mortgagor's *spouse*, but not the mortgagor themselves. *Id.* This ensures that residential protections would still inure if the spouse who actually signed the documents abandoned the residential spouse.

33. *Id.*

Most of the time, the definition leads to logical conclusions, though there are some seeming contradictions. If a tenant occupies a condo unit, it's not "residential real estate"—for the mortgagor does not live there.[34] Yet if a six-flat has a live-in landlord, the entire building is considered residential.[35]

The classification as residential is important for the redemptive mechanisms, because nonresidential property—often synonymous with "commercial" property, though the IMFL does not use that term—does not benefit from as many protections. Waivers of reinstatement or redemption are void with respect to residential property, but perfectly enforceable with nonresidential property.[36] Statutory redemption is seven months for residential property, but only six months for nonresidential property.[37] And if the property has been abandoned, regardless of its residency status, redemption can be shortened to thirty days.[38] Lastly, the special right of redemption is *only* available to residential borrowers.[39]

2. Other Considerations

Other aspects of a mortgage foreclosure are as varied as the human imagination; institutional lenders have a strong incentive to complicate the process, and canny defense attorneys are always testing the strength of foreclosure cases.[40] It would be impossible to investigate or disclaim all potential circumstances, so this section focuses on two: bankruptcy and lender consent.

Bankruptcy is an extraordinarily powerful process by design, and it unsurprisingly has substantial ramifications on the redemptive mechanisms of the IMFL. Depending on when the bankruptcy is filed, what type of bankruptcy it is, whether the borrower chooses to reaffirm

---

34. *See, e.g.*, Urban P'ship Bank v. Winchester-Wolcott, 2014 IL App (1st) 133556, ¶ 14.

35. Banco Popular N. Am. v. Gizynski, 2015 IL App (1st) 142871, ¶ 51. Note, however, that in such a scenario the other five tenants would be entitled to other tenant protections. *See, e.g.*, 735 ILL. COMP. STAT. 5/15-1508(h) (2020) (former landlord mortgagor must account for security deposits). And the mortgagor could not rely solely on the "residential" classification to defeat appointment of a receiver over the other five units. *See id.* § 15-1701(b)(1) (presumptive rights to possession parsed out by unit). *See also* BMO Harris v. Kautz, 2014 IL App (2d) 140399 (discussing interaction of two statutes, albeit in case where subject property only contained one unit).

36. 735 ILL. COMP. STAT. 5/15-1601(a) (2020).

37. *Id.* § 15-1603(b)(1)–(2).

38. *Id.* § 15-1603(b)(4). This is a factual finding, usually satisfied with an affidavit from the lender as to the property's status. *See, e.g.*, United States v. Starkey, No. 18-CV-02164, 2019 WL 1749523, at *6 (C.D. Ill. Apr. 19, 2019) (explaining affidavits of abandonment).

39. 735 ILL. COMP. STAT. 5/5-1604(a) (2020).

40. *See, e.g.*, Harold L. Levine, *A Real Estate Focus: A Day in the Life of a Residential Mortgage Defendant*, 36 J. MARSHALL L. REV. 687 (2003) (providing comprehensive overview of defense strategies and recommendations as of 2003, years before the 2008 recession and ensuing proliferation of caselaw).

the debt, and what (if any) actions are taken during the bankruptcy with respect to the property, a pending bankruptcy can have many effects. Bankruptcy can extend some statutory periods,[41] has no effect on others,[42] and has other effects as yet unsettled in the law.[43]

Likewise, the lender's consent is equally powerful. As in any other civil case, the lender and borrower can settle a foreclosure; due to the nature of a mortgage, many of those settlements look an awful lot like a reinstatement or a redemption.[44] Not all settlements will trigger the various statutory redemptive mechanisms.[45] But, if the parties should choose to use a statutory mechanism, they can generally do so at any time.[46] Because the *limitations* on reinstatement and redemption exist to benefit the lender, the lender can choose to waive those deadlines and accept late redemptions.[47] The principal advantage to the borrower through the redemptive mechanisms is to force the lender to accept a reinstatement or redemption, which usually entails the lender not wanting to do so.[48]

---

41. *See, e.g.*, *In re* Snowden, 345 B.R. 607, 611 (Bankr. N.D. Ill. 2006) (citing 11 U.S.C. § 108(b) (2020)) (acknowledging Chapter 13 bankruptcy can extend special right of redemption by 60 days).

42. Bank of Am. v. Z Fin. Ill. G Props., 2016 IL App (1st) 150371-U, ¶ 29 (explaining bankruptcy stay will not affect expiry of redemption; the stay prohibits only *affirmative* acts against an estate).

43. The unknown is infinite, but one case stands out here: *PNC Bank v. Wilson*, a Second District decision from 2017 that held that a discharge in bankruptcy without reaffirmation "nullifies" the mortgage contract. 2017 IL App (2d) 151189, ¶ 26. The *Wilson* court clearly could not mean what it said; if a Chapter 7 discharge "nullifies" the mortgage, what basis does the mortgagee have to recover its attorney's fees, or appoint a receiver, or in fact foreclose on the suddenly "nullified" document at all? Taking *Wilson* to its logical extreme, if a borrower does not reaffirm the mortgage, redemptive mechanisms simply don't make sense; are they all therefore extinguished? *Wilson* has many ramifications, and a full examination is both warranted and far beyond the scope of this Article.

44. The most common type is a nonstatutory reinstatement. A borrower asks for reinstatement figures, and the lender generates a reinstatement document, which functions as a contract: if the borrower pays such-and-such amount by a date certain, the loan will be reinstated. Assuming they do so, the loan is validly reinstated, though not through the statutory mechanism.

45. For instance, statutory reinstatement requires the payment of all lender costs and expenses required to be paid under the mortgage. 735 ILL. COMP. STAT. 5/15-1602 (2020). A reinstatement without payment of those costs may function as a valid settlement, but it would not be a statutory reinstatement pursuant to section 1602. PNC Bank v. Stepney, 2014 IL App (4th) 140078-U, ¶ 31.

46. *See, e.g.*, Van Vlissingen v. Lenz, 49 N.E. 422, 423–24 (Ill. 1897) (noting that, where the mortgagee accelerates debt, "upon such default having been removed, or for any other reason satisfactory to himself, [he may] waive his election and permit the contract of indebtedness to continue under its original terms").

47. *See, e.g.*, *id.* (acknowledging lender's right to permit borrower to reinstate); Household Bank v. Lewis, 890 N.E.2d 934, 940 (Ill. 2008) (accepting post-sale redemption); *In re* Scheldt, 220 B.R. 362, 363 (Bankr. C.D. Ill. 1998) (acknowledging that lender extended special redemption).

48. By and large, whether a lender will accept a settlement short of foreclosure is a purely business decision.

The remainder of this Article assumes that the borrower is the mortgagor of residential property as defined under section 1219, has not sought bankruptcy relief, and has not otherwise engaged in conduct intended to frustrate the foreclosure process.[49] The Article likewise assumes that the lender refuses to accept any other form of settlement,[50] has no obligation to do so,[51] and has not engaged in fraud or other misconduct.[52] In other words—no funny business.

C. Reinstatement, Redemption, and More

The IMFL offers four redemptive mechanisms, statutory procedures through which a borrower can force the lender to relinquish rights it would otherwise hold under the mortgage.[53] Generally speaking, all four require the borrower to pay specified outstanding amounts through specified procedures, which grow larger and more onerous, respectively, the longer the borrower waits. These mechanisms are powerful tools, as they provide borrowers the only practical means under the IMFL to *force* lenders to terminate a foreclosure.[54]

In order of availability, the IMFL grants borrowers the statutory right of reinstatement under section 1602, the statutory right of redemption under section 1603, the statutory special right of redemption under section 1604, and acknowledges that borrowers may still access equitable

---

49. This last category is hard to define, but you often know it when you see it. *See infra* note 113 (discussing sovereign citizens).

50. Whatever that reason may be; it need not be nefarious. *See infra* note 127 (indicating differently tranched securities can create counterintuitive incentives for lenders).

51. A lender may be obligated to accept some form of settlement for reasons external to the IMFL. This usually comes by way of federal law, which often imposes a stunning array of loss mitigation requirements. These often impact either the foreclosure process, the range of potential outcomes, or both. *See, e.g.*, Loss Mitigation Procedures, 12 C.F.R. § 1024.41(g) (2020) (restraining lender from seeking foreclosure judgment if borrower timely submits loss mitigation application); HUD HANDBOOK: ADMINISTRATION OF INSURED HOME MORTGAGES (4330.1) REV-5, ch. 13, § 29(A), *available at* https://www.hud.gov/sites/documents/43301C13HSGH.PDF [https://perma.cc/6GWF-GTVY] (stating reverse mortgagor, or their estate, may sell at any time for lesser of outstanding debt or appraised value at time of sale).

52. This last assumption effectively negates equitable redemption. *See infra* Section I.C.4 (explaining equitable redemption mostly parallels statutory redemption, and generally would only be invoked in cases of fraud, misrepresentation, or other lender misconduct).

53. While in effect, the GPN requirement did not provide for redemption or reinstatement as such. It did, however, provide a mechanism for a borrower to delay a foreclosure for up to sixty days, and force a lender to at least consider a proposed loan workout plan. 735 ILL. COMP. STAT 5/15-1502.5 (2009) (repealed 2016). Thus, while it was in effect, the GPN joined the ranks of the redemptive mechanisms proper as a way for a borrower to affirmatively force action in their case. *See also supra* note 15 (discussing GPN).

54. As noted above, many lenders will gladly negotiate a settlement, even if it doesn't technically comply with the reinstatement or redemption requirements. *See supra* Section I.B. Often, lenders will be obligated under federal law to do so. But if properly followed, these mechanisms mandate an outcome in the borrower's favor—something rare indeed in the foreclosure business.

redemption under section 1605.[55] Though this Article focuses on statutory redemption, all four redemptive mechanisms bear comment to establish context for how redemption operates.

1. Statutory Reinstatement

The statutory right of reinstatement under section 1602 offers "limited relief to temporarily distressed mortgagors prior to a foreclosure sale."[56] If the mortgagor pays all outstanding amounts due, save for accelerated principal, the statute will cure defaults, unwind acceleration, and reinstate the loan as it was prior to default. It is essentially statutory backsies. And, just like schoolyard backsies, reinstatement must be executed quickly: within ninety days of service of process on the mortgagor.

The right of reinstatement was unknown at common law.[57] To the extent courts granted mortgagors equitable relief in the nature of reinstatement—and Illinois courts did not—they did so either through equitable redemption or through other inchoate relief at equity.[58] The IMFL's reinstatement statute dates to 1961.[59] It remains largely unchanged today, save for its integration into the IMFL.[60]

As do many statutes of a certain age, the current reinstatement statute, section 1602, is presented in the codebooks as a single block paragraph

---

55. 735 ILL. COMP. STAT. 5/15-1602–1605 (2020).

56. First Fed. Sav. & Loan Ass'n v. Walker, 437 N.E.2d 644, 646–47 (Ill. 1982).

57. Jim Blanco & David Crumbaugh, *Illinois Legislative Review: Foreclosures, Redemptions, and Homeowners*, 1975 U. ILL. L.F. 335, 337–38. *See also Walker*, 437 N.E.2d at 646–47 (reviewing statute's history and collecting citations); State Farm Life Ins. Co. v. Town & Country Assocs., 406 N.E.2d 923, 926 (Ill. App. 4th Dist. 1980) (same).

58. Carol M. Rose, *Crystals and Mud in Property Law*, 40 STAN. L. REV. 577, 584–85 (1988) (discussing forms of equitable relief used to sidestep draconian results in installment land contracts). *See, e.g.*, Macfadden v. Walker, 488 P.2d 1353, 1356–57 (Cal. 1971) (recasting installment land contract as mortgage and offering "carefully hedged" equitable remedy). The practice of using the power of chancery to get around an unjust statutory scheme in the foreclosure context is not new. Emanuel Coll. v. Evans, 21 Eng. Rep. 494 (1625) (ordering mortgagee to accept payment when, notwithstanding foreclosure procedure, mortgagor was unable to pay debt when due but tendered funds thereafter).

59. ILL. REV. STAT. ch. 95, § 57 (1963); Act Relating to Mortgages of Real Property of Nov. 14, 1961, § 7, 1961 Ill. Laws 1st Spec. Sess. (eff. July 1, 1962). The statute was implemented alongside other procedural changes that accompanied Illinois' adoption of the Uniform Commercial Code; other contemporary mortgage legislation explicitly mentions the UCC as a motivating factor. *See* Act to Amend the Act Concerning Mortgages of March 26, 1874, at pmbl., 1961 Ill. Laws 1st Spec. Sess. (Nov. 14, 1961) (amending mortgage statute).

60. The exhaustive legislative history is relatively brief. In 1973 and 1976 certain procedural language was updated to modernize it under the 1970 Constitution. P.A. 78-263 (eff. Oct. 1, 1973) (adding language clarifying submission to jurisdiction); P.A. 79-1358 (eff. Oct. 1, 1976) (conforming language to Constitution). In 1986 it was shifted into the IMFL, with a minor clarification to wording. P.A. 84-1462 (eff. July 1, 1987) (creating IMFL and updating wording generally); P.A. 85-907 (eff. Nov. 23, 1987) (breaking out jurisdictional language into two-point list). And in 1989, the "first date of publication" language was added. P.A. 86-974 (eff. July 1, 1990).

of text. Yet each sentence of the whole functions as a discrete subsection, and is useful for parsing through the statute's function.

Starting with the opening sentence: "In any foreclosure of a mortgage executed after July 21, 1959, which has become due prior to the maturity date . . . through acceleration because of a default under the mortgage, a mortgagor may reinstate the mortgage as provided herein."[61] Aside from framing the remainder of the statute, this section identifies when the right of reinstatement accrues. Reinstatement may be had after an acceleration occurs because of a default. This dovetails neatly with the notice of acceleration: when the thirty-day cure period expires, the right to reinstatement becomes available.[62] Note, however, that this makes reinstatement unique among the redemptive provisions in that it is available to mortgagors *prior* to the initiation of judicial proceedings.[63]

Then comes the first of two principal requirements: "Reinstatement is effected by curing all defaults then existing, other than payment of such portion of the principal which would not have been due had no acceleration occurred, and by paying all costs and expenses required by the mortgage to be paid in the event of such defaults . . . ."[64] Actual payment of the sums due is the "crucial act" for reinstatement, and this sentence is the meat of the section, specifying what *exactly* must be paid.[65] The "defaults then existing" language is straightforward enough; the mortgagor must pay all outstanding regular payments, save for any accelerated amounts.[66] These amounts are calculated under the loan documents as written; entering a payment plan, and then paying under that plan, is not reinstatement because it does not entail the full amounts due under the loan documents—though it may otherwise be a perfectly valid settlement.[67]

It is that second phrase which is more difficult: "all costs and expenses required by the mortgage to be paid."[68] This logically includes any late

61. 735 ILL. COMP. STAT. 5/15-1602 (2020).

62. *See supra* note 14 (discussing mechanics of the notice of acceleration).

63. For obvious reasons, judicial commentary on the availability of reinstatement *prior* to a lawsuit is rare, but not unknown. N. Cmty. Bank v. 17011 S. Park Ave., 2015 IL App (1st) 133672, ¶¶ 18–20 (accepting without comment that mortgagor *could* reinstate one month prior to filing, but rejecting the argument on other grounds). *But see* Fed. Nat'l Mortg. Ass'n v. Bryant, 378 N.E.2d 333, 335–36 (Ill. App. 5th Dist. 1978) (holding that, under prior foreclosure law, reinstatement only available *after* suit filed, but ordering reinstatement in equity instead).

64. 735 ILL. COMP. STAT. 5/15-1602 (2020).

65. State Farm Life Ins. Co. v. Town & Country Assocs., 406 N.E.2d 923, 925 (Ill. App. 4th Dist. 1980).

66. Evergreen Sav. & Loan Ass'n v. Barnard, 382 N.E.2d 467, 472–73 (Ill. App. 1st Dist. 1978).

67. PNC Bank v. Stepney, 2014 IL App (4th) 140078-U, ¶ 31.

68. 735 ILL. COMP. STAT. 5/15-1602 (2020).

fees on the missed payments, which are, of course, being made late.[69] But it also includes any other expenses incurred for which the mortgage provides reimbursement—most saliently, attorney's fees.[70] Under the mortgage, a lender may recover attorney's fees; to the extent any have been incurred, the borrower must pay them.[71]

Finally, reinstatement requires actual payment or tender of the reinstatement amount.[72] Once made, reinstatement occurs automatically, without further action necessary from either party[73]:

> [P]rovided that such cure and payment are made prior to the expiration of 90 days from the date the mortgagor or, if more than one, all the mortgagors
>
> (i) have been served with summons or by publication or
>
> (ii) have otherwise submitted to the jurisdiction of the court.

---

69. HSBC Bank USA v. Townsend, 793 F.3d 771, 790 (7th Cir. 2015). To the best of the author's knowledge, no state courts have addressed this issue, but the Seventh Circuit's rationale is clear and compelling. It is not, however, unanimous: at least one judge has proposed that, because a reinstatement puts the parties in the position they would have been in had no default occurred, that no default means no late payments, and therefore no late fees should be included in the cure amount. Rizzo v. Pierce & Assocs., 351 F.3d 791, 795 (7th Cir. 2003) (Williams, J., concurring). This analysis encounters a bootstrapping issue: the late payments are only deemed timely (and thus any late fees negated) *as a result of* reinstatement. Up until the point when reinstatement occurs, however, those payments are still late, and late fees properly assessed. Because the late fees have accrued, and they are "required to be paid" under the mortgage, they should be validly included in any reinstatement cure amount.

70. Though the only caselaw on this issue concerns attorney's fees, the language is broad enough to cover other costs. Consider a default predicated on failure to insure the property: a mortgagee could secure force-placed insurance, and then properly include that amount—a cost required to be paid in case of default—in any reinstatement figure.

71. *See, e.g.*, Harris N.A. v. Chhabria, No. 1-10-1580, 2011 WL 10069432, at *4 (Ill. App. 1st Dist. June 28, 2011); HSBC Bank USA v. Townsend, 793 F.3d 771, 790 (7th Cir. 2015). Notably, the prior version of the reinstatement statute, predating the modern IMFL, explicitly provided for recovery of "reasonable attorney's fees." ILL. REV. STAT. ch. 95, § 57 (1963). The redrafting that accompanied the IMFL simplified the language, making section 1602 consistent with other provisions concerning fees. *See, e.g.*, 735 ILL. COMP. STAT. 5/15-1510(b) (2020) (permitting recovery of plaintiff's attorney's fees and other costs). This suggests a potential problem: how is a borrower to know of a lender's attorney's fees incurred prior to litigation? Equity suggests this is a problem for the lender; unless attorney's fees have been identified and claimed, a borrower would have no reason to know of them, and tender of all other amounts would discharge all the borrower's obligations under the statute, which would be sufficient. *See* Fed. Nat'l Mortg. Ass'n v. Bryant, 378 N.E.2d 333, 336 (Ill. App. 5th Dist. 1978) (attorney's fees can be recovered). Caselaw suggests the most prudent course of action for a borrower would be to pay all claimed amounts, and then dispute them thereafter. Lomas & Nettleton Co. v. Humphries, 703 F. Supp. 757, 759 (N.D. Ill. 1989).

72. N. Cmty. Bank v. 17011 S. Park Ave., 2015 IL App (1st) 133672, ¶¶ 19–20. *See also, e.g.*, State Farm Life Ins. Co. v. Town & Country Assocs., 406 N.E.2d 923, 925 (Ill. App. 4th Dist. 1980). Tender must be legally cognizable. *See infra* note 113 (discussing sufficiency of tender for reinstatement).

73. *Town & Country Assocs.*, 406 N.E.2d at 924; K Town, Inc. v. Metropolitan Bank & Trust Co., 171 B.R. 313, 318–19 (Bankr. N.D. Ill. 1994).

> When service is made by publication, the first date of publication shall be used for the calculation.[74]

This is the second of two principal requirements, setting forth the specific timeline for reinstatement: before ninety days after service occurs.[75] This is a simple calculation, and serves to ensure that reinstatement occurs early on, if it is to happen at all. Reinstatement is intended to be useful to borrowers undergoing temporary financial difficulties, and ninety days from service—which is necessarily at least thirty days removed from the Notice of Acceleration, which itself may be well after the first event of default—is as reasonable a cutoff point as any.[76]

That last sentence, specifying that the *first* date of publication is to be used, is innocent enough, and its meaning is facially clear. It is, however, somewhat of an anomaly: it was not present in the 1987 revisions that created the IMFL, but was added thereafter in 1990.[77] This makes it the most recent change to section 1602. And, though not particularly relevant to section 1602, it forms the basis for the misunderstanding of the *redemption* statute upon which this Article is predicated—but more on that later in Section II.D.

The last provision of the section gives the restatement payment legal effectivity: "Upon such reinstatement of the mortgage, the foreclosure and any other proceedings for the collection or enforcement of the obligation secured by the mortgage shall be dismissed and the mortgage documents shall remain in full force and effect as if no acceleration or default had occurred." Within the context of the IMFL, "shall" language is mandatory, and not permissive[78]: if reinstatement occurs, the case must be dismissed.[79] But the statute is not quite done yet, as it has one final caveat to apply:

---

74. 735 ILL. COMP. STAT.-5/15-1602 (2020) (formatting for clarity).

75. Note that the statute does not say "*within* 90 days" or similar. Rather, it must happen before a date 90 days from service. This does not foreclose the possibility of reinstating prior to a foreclosure case being filed, for service is not a prerequisite, but simply an outer limit. *See supra* note 63 (discussing the permissibility of pre-suit reinstatement).

76. *See* First Fed. Sav. & Loan Ass'n v. Walker, 437 N.E.2d 644, 647 (Ill. 1982) (discussing motivation for ninety-day period, and finding that it meets rational basis review under special legislation challenge to constitutionality of reinstatement statute).

77. H.B. 1480, 86th Gen. Assemb., 1989 Sess. (Ill. 1990).

78. 735 ILL. COMP. STAT. 5/15-1105(b) (2020). *See* RBS Citizens v. Ladany, 2011 IL App (1st) 111966-U, ¶ 4 (usual practice is to dismiss upon reinstatement).

79. This provision is as yet unlitigated, but it is likely that, by analogy to the redemption statute, failure to dismiss a case or otherwise reinstate the loan in a reinstated mortgage may lead to tort or other liability. *See* Nelson v. Bayview Loan Servicing, 2014 IL App (5th) 120419-U, ¶ 87 (viable slander of title claim for failure to release mortgage). *See also infra* note 116 (failure to release redeemed mortgage).

> The relief granted by this Section shall not be exhausted by a single use thereof, but if the court has made an express written finding that the mortgagor has exercised its right to reinstate pursuant to this Section, such relief shall not be again available to the mortgagor under the same mortgage for a period of five years from the date of the dismissal of such foreclosure . . . .[80]

And therein lies the catch: reinstatement is only available once every five years. This limitation is conditioned on courts making an explicit finding that statutory reinstatement occurred.[81] When lenders dismiss cases for reinstatement, language pursuant to section 1602 is generally included in the dismissal as a matter of course.[82] If the nature of a reinstatement is disputed, whether the borrower's payment(s) to the lender constitute a reinstatement is a question of fact.[83] Note, however, that the five-year period is firm; because the right to reinstate is purely statutory, courts have no discretion to circumvent the period and order a reinstatement be accepted anyway.[84]

80. 735 ILL. COMP. STAT. 5/15-1602 (2020) (formatting and omissions for clarity).

81. The five-year clock only runs from the date the prior case is dismissed, so if reinstatement occurs prior to a court case being filed, *see supra* note 63, then it would arguably not apply at all. There is a logic in this; after all, borrowers can cure under repeated Notices of Acceleration indefinitely, so permitting serial reinstatement would not be inconsistent with the broader foreclosure regime. The potential risks for abuse are low; a lender could cut short such a ping-ponging reinstatement simply by promptly filing suit the next time it happens—and, in the meantime, the lender is still getting its money.

82. Specifically, the case will be "dismissed pursuant to Section 1602," or similar. A quick search of the relevant caselaw reveals a spate of minute dismissal orders from Cook County with variants of that language. *See, e.g.*, Nation Star Mortg. v. Casimiro, 2019 Ill. Cir. LEXIS 2616 (Cir. Ct. Cook Co. Aug. 26, 2019). The author is without knowledge as to why electronic database providers select trivial trial orders for publication, of all things; in Cook County alone, dozens of similar orders get entered every day. Any reader with particular insight as to how seemingly random orders make their way to the world at large in this manner is urged to contact the author, as neither he nor his colleagues have the foggiest idea *why* it occurs.

83. PNC Bank v. Stepney, 2014 IL App (4th) 140078-U, ¶¶ 30–31. It is admittedly not a difficult fact question, but it does require the factual finding that the necessary payments were made in the requisite timeframe. Early commentators on the IMFL's revisions to the reinstatement statute suggested that courts should jealously guard the ability to make such a finding, requiring *mortgagees* to show good cause to secure such a finding. *See, e.g.*, Eric Freyfogle, *The New Roles in Illinois Mortgage Foreclosure*, 19 LOY. U. CHI. L.J. 933, 947–48 (1988) ("Clearly, something more should be required, something that amounts in substance to a showing of good cause to bar the mortgagor from reinstating again for five years."); Gnatek, *supra* note 11, at 483–84 ("Moreover, a good-cause rule would be fair to all parties to the action because courts would consider a mortgagors' past behavior and ability to pay in the future, and because upon reinstatement courts would compensate mortgagees for their damages."). Courts have uniformly declined to do so. On the rare occasions they have been called upon to interpret the statute, strict interpretation has been the rule, entering a finding of reinstatement when the conditions are met, without further exercise of discretion. *See, e.g.*, *Stepney*, 2014 IL App (4th) 140078-U, ¶ 31 (noting that, if properly presented, the reinstatement question would only concern whether statutory conditions met).

84. *See* First Fed. Sav. & Loan Ass'n v. Walker, 437 N.E.2d 644, 648 (Ill. 1982) (five-year

Ultimately, reinstatement offers delinquent borrowers a good statutory safety valve, permitting those with the means to do so a way to mitigate the foreclosure early on in the process. It is also the last opportunity for borrowers to force a lender to reinstate the loan: though they can always try to negotiate later on, the reinstatement statute is the last guaranteed method of reinstatement. From here on out, borrowers must either pony up the entire loan amount, or rely on the lender's willingness to settle for something less than what they are owed.[85]

2. Statutory Redemption

Once a judgment of foreclosure is entered, the borrower has a statutory opportunity to rescue their property by paying off the entire loan, plus costs and interest. This is the right of statutory redemption, granted under section 1603.[86] Within the longer of three months from judgment, or seven months from service, a borrower can redeem by paying the judgment amount, plus interest. This causes the release of the mortgage, satisfaction of the debt, and generally has the same effect as any other payoff of the mortgage—assuming the borrower can collect the necessary funds.[87] Even if redemption never occurs, the redemption timeline dictates the timing of the foreclosure sale, and is thus a crucial element of any foreclosure.

i. Historical Developments

Redemption of a foreclosure derives from venerable English law.[88] As feoffments developed into early mortgage instruments,[89] they became

---

limitation does not conflict with court's equitable power, because when it comes to reinstatements, courts *have* no equitable powers). But note that in an appropriate scenario equitable redemption may still be available. *See infra* Section I.C.4 (discussing equitable redemption).

85. This is not the end of the line for borrowers; the constellation of loss mitigation options is vast and constantly shifting, regulated at both the state and federal levels to form a web of programs, procedures, and practice. Even a cursory discussion of nonstatutory loss mitigation alternatives is well beyond the scope of this Article. *See, e.g.*, Hannah Costigan-Cowles, *Negotiations for the Home: A Balanced Approach to Good Faith in Foreclosure Mediation*, 2013 U. ILL. L. REV. 1571, 1576–81 (common retention and non-retention alternatives to foreclosure). As noted *supra* note 16, this is frequent enough; around 70 percent of cases settle out with a voluntary dismissal. *See generally supra* note 4 (statistical analysis).

86. 735 ILL. COMP. STAT. 5/15-1603 (2020).

87. *Id.* § 15-1603(b)(1), (d)(1), (f)(3).

88. *See* Milton M. Hermann, *Redemptions: The Historical Background, The Modern-Day Problems of Redemptions*, 48 ILL. B.J. 34, 35–36 (1959) (discussing the Court of Chancery giving relief to a debtor in 1625).

89. A feoffment, of course, is a land deed given in exchange for service, and formed the basis for its cognate, feudalism. From there, it was a relatively short jump to give a deed in exchange for uses, which included a penal bond—i.e. payment—and thus the mortgage makes itself known. Much has been written of this development in the past six hundred years. *See generally, e.g.*, Charles J. Reid, Jr., *The Seventeenth-Century Revolution in the English Land Law*, 43 CLEV. ST. L.

more strictly enforced at law.[90] Chancellors responded in the late sixteenth century by granting equitable relief to early mortgagors in cases of fraud and hardship.[91] By the mid–seventeenth century, equitable relief standardized into redemption, which was allowed as a matter of course.[92] The resulting procedure is recognizable as a modern foreclosure.[93] Equitable redemption, as part and parcel of the foreclosure process thus passed into colonial common law, and from there into Illinois.[94]

The Illinois redemption statute dates to 1825, and permitted a borrower to redeem for up to twelve months after the sale, and a judgment creditor for three months thereafter.[95] Under this procedure, the sale might occur and the foreclosure case might be terminated, but the mortgagor's interest lingered on.[96] Notably, until 1961 the statute applied to *any* type of judicial sale of real property, not just foreclosures.[97] The statute thus saw more changes than might otherwise be expected, but it survived a variety

REV. 221, 234–37 (1995) (development of feoffment to uses to evade traditional feudal obligations).

90. *See* ROBERT W. TURNER, THE EQUITY OF REDEMPTION 25–26 (1931) ("He gives no hint of any notion of relief being given to forfeited bonds or mortgages without special circumstances of hardship being averred and proved."). This practice was criticized by contemporary playwrights; Shylock's proverbial "pound of flesh" functions as satire of strict enforcement. WILLIAM SHAKESPEARE, THE MERCHANT OF VENICE, act 4, sc. 1.

91. *See* TURNER, *supra* note 90, at 24 ("Both cases savoured of fraud, and hence the relief given was probably on that ground.").

92. *Id.* at 29–30. The practice appears to have reached a tipping point between 1615 and 1630, at which point equitable redemption became standardized and widely accepted. *Id.* at 28–29; *see also* RAYMOND J. WERNER & ROBERT KRATOVIL, REAL ESTATE LAW 290 (10th ed. 1992) ("This right came to be known as the equitable right of redemption, or the equity of redemption.").

93. Indeed, the linguistic origin of the eponymous "foreclosure" was because the purpose of the lender's chancery suit was to terminate—i.e., foreclose—the right of redemption. WERNER & KRATOVIL, *supra* note 92. The closest modern analogue to this procedure is the strict foreclosure, a procedure that Illinois limits to omitted subordinate lien interests only. 735 ILL. COMP. STAT. 5/15-1603 (2020).

94. Gnatek, *supra* note 11, at 475 (citing William C. Prather, *Foreclosure of the Security Interest*, 1957 U. ILL. L.F. 420). *See, e.g.*, Hall v. Augustine Byrne & Co., 2 Ill. 140, 141 (1834) (defining mortgage by reference to equity of redemption).

95. An Act concerning Judgments and Executions, 1825, §§ 11–12; REVISED CODE OF LAWS, ILLINOIS, CONTAINING THOSE OF A GENERAL AND PERMANENT NATURE PASSED BY THE SIXTH GENERAL ASSEMBLY, AT THEIR SESSION HELD AT VANDALIA, COMMENCING ON THE FIRST MONDAY OF DECEMBER, 1828, at 88–89 (1827). Note that a number of sources incorrectly date the redemption statute to later versions, such as an 1879 law. *See, e.g.*, Gnatek, *supra* note 11, at 485. Illinois only became an exclusively judicial foreclosure state in 1879, *see* Prather, *supra* note 94, at 445 ("Since 1879 the method of foreclosure has been exclusively by judicial proceedings."), but redemption in some form was cognizable before then.

96. For more on the reason underlying this policy decision, see Gnatek, *supra* note 11, at 486 (explaining the goals of the Illinois redemption statute). As a practical matter, though a mortgagee could receive a judgment and proceed to sale relatively quickly, they would calculate the amount due before proceeding to sale, so the redemption amount would be known with certainty. ROGER FOSTER, FEDERAL PRACTICE 999 (4th ed. 1909).

97. Hermann, *supra* note 88, at 34; *see* Act of Aug. 7, 1961, 1961 Ill. Laws 2852 (eff. Aug. 7, 1961) (adding foreclosure-specific redemption subdivision); ILL. REV. STAT. ch. 77, § 18(e) (1963).

of procedural challenges in the wake of the Panic of 1837,[98] the Civil War,[99] and the Great Depression.[100]

Slow as it was, change still came. In 1957, redemption was limited to twelve months for either mortgagor or creditor;[101] in 1961, it shrank again to the later of twelve months from the judgment of foreclosure or six months from sale;[102] and in 1982 it had reached its final form of six months from sale for any defendant, borrower or creditor alike.[103] Aside from sundry procedural modifications,[104] the core premise of reinstatement—paying off the judgment amount post-sale—lasted for more than 160 years.

ii. The Modern Redemption Statute

The 1987 IMFL further limited the redemption period in three ways. First, only a mortgagor can redeem.[105] Second, it shifted away from post-sale redemption, requiring that redemption expire *before* any sale could

---

98. A related foreclosure-relief statute of 1841, part of a post-Panic procedural relief package, was struck down by the United States Supreme Court as unconstitutional. Act of Feb. 27, 1841, 1841 Ill. Laws 172 (eff. Feb. 27, 1841); Bronson v. Kinzie, 42 U.S. 311, 319–20 (1843); *see also* Robert M. Lawless, *The American Response to Farm Crises: Procedural Debtor Relief*, 1988 U. ILL. L. REV. 1037, 1037–40 (highlighting the re-emergence of procedural relief statutes).

99. Many states implemented procedural relief statutes at around this time as an attempt to alleviate economic uncertainty caused by the ravages of the Civil War. Lawless, *supra* note 98, at 1040 (discussing statutory redemption periods in Alabama and Illinois). The vast majority were struck down as running afoul of the Union Constitution, the Confederate Constitution, or both. *Id.*

100. *See* Prather, *supra* note 94, at 446 (explaining that the law remained relatively unchanged for eighty-five years). Unlike affirmative challenges, post-Depression efforts centered on reforming the foreclosure process to speed disposition of uncontested cases. By and large, they were unsuccessful at that time. *Id.*

101. Act of May 24, 1957, 1957 Ill. Laws 280 (eff. May 24, 1957); ILL. REV. STAT. ch. 77, §§ 18, 20 (1957). The distinction between mortgagor and creditor redemptions is an odd one, and the statute's developments trended towards unifying the timelines. *See* Kerr v. Miller, 259 Ill. 516, 520–21 (1913) (after twelve months, but before fifteen, borrower engaged in straw transaction to create judgment creditor for purposes of redemption; this circumvented twelve-month limitation on borrower redemption, but was permissible). *See also* E.M.L., *Mortgages—Redemption by Judgment—Creditor*, 9 ILL. L. REV. 39, 60–61 (1914–15) (describing this practice as common).

102. Act of Aug. 7, 1961, 1961 Ill. Laws 2852 (eff. Aug. 7, 1961); ILL. REV. STAT. ch. 77, § 18(e) (1961). *See also* Blanco & Crumbaugh, *supra* note 57, at 347–48 (discussing mechanics of the 1961 law). In this respect Illinois is somewhat of an outlier: most states maintained antebellum redemption statutes until the early twentieth century but had started paring them down by mid-century. Andra Ghent, *How Do Case Law and Statute Differ? Lessons from the Evolution of Mortgage Law*, 57 J.L. & ECON. 1085, 1105 (2014). Illinois's twelve-month period was on the longer end to start with, and its reduction was late in coming. *See id.* at 1106–08 (survey of nineteenth century redemption periods).

103. P.A. 82-511, 1982 Ill. Laws 2602 (eff. Jan. 1, 1982); ILL. REV. STAT. ch. 110, ¶ 12-122 (1985).

104. Such as the redemption statute's integration into the Code of Civil Procedure in 1981. P.A. 82-280, 1982 Ill. Laws 1382 (eff. July 1, 1982); ILL. REV. STAT. ch. 110, ¶ 12-122 (1985).

105. ILL. REV. STAT. ch. 110, § 15-1212 (1987); *accord* 735 ILL. COMP. STAT. 5/15-1212 (2020) (defining an owner of redemption).

be held.[106] And third, combining those two changes, the redemption period is now the later of seven months from the date of service or three months from the date of the judgment of foreclosure.[107] All three changes were substantial at the time,[108] but the biggest change is most visible in hindsight: because the sale cannot happen without the expiry of redemption, and because a foreclosure without a sale is not particularly useful, the redemption period directly drives the timeline of a foreclosure case in a way it had never done before.

Mechanically, the redemption statute lays out a clear procedure. The mortgagor picks a date during the redemption period on which they intend to redeem, and must file a Notice of Intent to Redeem at least fifteen days prior to that date.[109] The actual redemption amount is the amount of the judgment of foreclosure, plus per diem interest from the date of the judgment, calculated at the mortgage's rate of interest as if no default had occurred.[110] The mortgagee then has an opportunity to claim additional costs incurred since the judgment of foreclosure by filing a certification.[111] Costs so certified are added to the redemption amount.[112]

---

106. ILL. REV. STAT. ch. 110, § 15-1507(b) (1987); *accord* 735 ILL. COMP. STAT. 5/15-1507(b) (2020) (outlining the sale procedures for a judicial sale).

107. ILL. REV. STAT. ch. 110, § 15-1603(b)(1) (1987); *accord* 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020) (defining redemption period).

108. The IMFL, the result of fifty years of criticism of the old foreclosure law, was itself the subject of much debate and discussion. *See generally* Gnatek, *supra* note 11 (discussing changes in reinstatement and redemption between old and new statutes, and warning of potential conflicts).

109. 735 ILL. COMP. STAT. 5/15-1603(e) (2020). Because the chosen redemption date must be during the redemption period, and notice must go out at least fifteen days before that redemption date, the mortgagor must *start* the redemption process at least fifteen days before the end of the redemption period. Barrick v. Barrick, 2018 IL App (2d) 170974-U, ¶ 38. Note that the statute requires that the notice be *received* fifteen days before the redemption date—perhaps a minor quibble in a world of electronic notice, *see* ILL. SUP. CT. R. 11(c) (specifying that documents must be served electronically unless otherwise specified), but one more hurdle for a redeeming mortgagor to clear.

110. 735 ILL. COMP. STAT. 5/15-1603(d) (2020). Note that this section identifies six categories of costs which can go into the judgment of foreclosure: (i) principal and interest, (ii) other costs allowed by law (e.g., filing fees); (iii) costs and expenses approved by the court (such as receiver costs); (iv) costs as allowed in the mortgage (such as attorney's fees), (v) amounts paid to a senior mortgagee to maintain the lien's position, and (vi) interest. *Id*. Curiously, this is the only place in the IMFL that lays out what a judgment of foreclosure should include; the provisions on judgment are silent. *See id*. § 15-1506 (outlining the judgment process).

111. *Id*. § 15-1603(e). The mortgagee's notice must be filed at least three days before the specified redemption date and must be supported by evidence.

112. A mortgagee may fail to include certain expenses in a judgment of foreclosure, by mistake or otherwise. *See* BMO Harris Bank v. Wolverine Props., 2015 IL App (2d) 140921, ¶ 27 (failure to amend judgment prior to sale resulted in inability to collect unintentionally excluded $470,000 tax payment). Following this statutory procedure gives the mortgagee a chance to recover those fees in redemption. *See* Order of May 2, 2016, at 8, CitiBank v. Harper, 12 CH 09335 (Cir. Ct. Cook Co. May 2, 2016) (explaining failure to include tax payment in judgment meant it was not included in redemption amount).

On the redemption date, and by analogy to a closing date, the mortgagor can redeem by paying the redemption amount to the mortgagee.[113] If the mortgagee refuses to accept the payment, or the mortgagor disputes the mortgagee's certified additional costs, the mortgagor can pay the entire amount—including any disputed payment—to the clerk of court, specifying the amount to which the mortgagor objects.[114] The judge can then hear and resolve the objection, determining whether redemption is properly sought, whether additional certified costs are warranted, and otherwise determining how to accomplish the redemption, if at all.[115] Finally, once redemption occurs, the mortgage is to be released and any other necessary steps taken to memorialize the satisfaction of the debt.[116]

The redemption statute has value to the mortgagor in what it does, but its value to the mortgagee lies in when it ends. Presumptively, the redemption period ends at the later of seven months from service or three months from judgment.[117] This period can be extended by consent of the

113. 735 ILL. COMP. STAT. 5/15-1603(f)(1) (2020). Tender must be facially viable; i.e., it must be sufficient legal tender. CIT Bank v. Johnson, 2019 IL App (1st) 182152-U, ¶ 5 (rejecting bogus "bill of exchange" as not being legal tender); *see also* Joiner v. SVM Mgmt., LLC, 2020 IL 124671, ¶¶ 37–46 (exhaustively describing tender). Unsurprisingly, this basic requirement serves to filter the wheat from the chaff, and only tends to trip up sovereign citizens, whose pseudolegal theories and fetishization of tender and security instruments does not serve them well. *See generally* Francis X. Sullivan, *The "Usurping Octopus of Jurisdictional/Authority": The Legal Theories of the Sovereign Citizen Movement*, 1999 WIS. L. REV. 785 (legal framework of sovereign citizen theories); *id.* at 811 n.144 (notions of tender). That is, to the extent such litigants engage with the legal system at all—some sovereign citizen activities are best described as ritual or magic, rather than law. *See generally* David Griffin, Truth Language: The Pseudolegal Discourse of the Sovereign Citizen Movement (2017) (unpublished M.A. thesis, Cardiff University School of English, Communication and Philosophy) (on file with author) (analyzing sovereign citizen theories in legal framework by reference to ritual and magic).

114. 735 ILL. COMP. STAT. 5/15-1603(f)(2) (2020).

115. *Id.* § 15-1603(g) (discussing the procedure to take upon objection). *See, e.g.*, *Johnson*, 2019 IL App (1st) 182152-U, ¶ 5 (ruling that mortgagee's rejection of facially insufficient tender was not rejection within the meaning of section 1603, because it was not legal tender).

116. § 15-1603(f)(3) (explaining what steps the clerk takes after payment). Once redemption occurs, the rest of the process is automatic and mandatory. Failure to release a redeemed mortgage gives rise to liability under the Mortgage Act. 765 ILL. COMP. STAT. 905/4 (2020) (requiring a $200 statutory penalty for failure to release mortgage instrument within one month); Nelson v. Bayview Loan Servicing, 2014 IL App (5th) 120419-U, ¶¶ 48–55 (affirming liability under Mortgage Act for failure to release). Depending on the circumstances of the failure to release, it may also create a slander of title claim. *See Nelson*, 2014 IL App (5th) 120419-U, ¶ 87 (slander claim cognizable, but under those facts, duplicative of Mortgage Act claim).

117. 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020).

lender,[118] by order of court,[119] or by operation of law.[120] But such extensions are tightly guarded, and courts take a dim view of attempts to circumvent the redemption period.[121] This is because the expiry of redemption is permanent: once expired, regardless of the reason, it can

118. This can occur by agreement, though it would be more common to either agree to stay entry of judgment or negotiate loss mitigation directly. *See, e.g.*, Wells Fargo Bank v. Zimmers, 2012 Ill. App. (2d) 110393-U, ¶¶ 2, 5 (featuring parties that agreed to extend redemption by sixty days). It can also happen by accident; in the author's experience, redemption dates are often hand-written into prepared judgment orders, and scrivener's errors may set a longer date than the statute requires. Unless corrected—which can be done easily enough *nunc pro tunc*—the extended date would be binding. Either way, because the temporal limitation on foreclosure is a benefit to the mortgage, it is theirs to waive. Household Bank v. Lewis, 890 N.E.2d 934, 940 (Ill. 2008).

119. § 15-1603(c)(2). It is unclear what circumstances would warrant judicial extension of statutory redemption, as the IMFL grants a court no authority to extend it. Mountain States Mortg. Ctr. v. Allen, 628 N.E.2d 1052, 1057 (Ill. App. 1st Dist. 1993). Section 1603 even specifically provides that staying the effect of a judgment of foreclosure will not stop the redemption clock. § 15-1603(c)(1). Where a trial court wishes to extend redemption on purely equitable grounds, it is the author's experience that the preferred method is to delay entry of the judgment of foreclosure, thus permitting redemption to run three months from that *future* date of judgment.

120. § 15-1603(c)(2). Note that the author has yet to find a statute that mandates a stay of redemption. Neither filing a bankruptcy petition nor the Bankruptcy Code's automatic stay provision will affect the redemption clock. § 15-1603(c)(1); Bank of Am. v. Z Fin. Il. G Props. (*In re* County Treasurer), 2016 IL App (1st) 150371-U, ¶ 29 (bankruptcy stay prohibits *affirmative* acts against an estate, but expiry of redemption is not an affirmative act); *accord* NNN Cypresswood Drive 25 v. WBCMT 2007-C33 Office 9729, 517 B.R. 828, 833 (N.D. Ill. 2013) (similar analysis under similar Texas statute). *But see In re* Tynan, 773 F.2d 177, 179 (7th Cir. 1985) (holding that under prior foreclosure statute, filing of bankruptcy petition stayed redemption sixty days under 11 U.S.C. § 108(b)(2) (2020) (validity called into question by *In re* Kohler, 107 B.R. 167, 169 n.2 (Bankr. S.D. Ill. 1989)).

121. Wilmington Sav. Fund Soc'y v. Morris, 2018 IL App (2d) 170116-U, ¶¶ 28–29 (noting that a motion to reconsider will not stay redemption); Colon v. Option One Mortg. Corp., 319 F.3d 912, 920–21 (7th Cir. 2003) (citing 11 U.S.C. 1322(c)(1) (2020)) (recognizing that a broadly worded bankruptcy cure provision will not apply to expand redemption).

never be revived.[122] And once redemption expires, the foreclosure sale must follow.[123]

The redemption procedure is technical and precise, requiring a mortgagor's specific compliance with tight deadlines. In practice, the specific statutory procedure is almost never used.[124] Lenders routinely waive strict compliance, often accepting late redemption; they can even decline to confirm a judicial sale in lieu of accepting a late redemption.[125] This is because, while the *right* of redemption benefits the mortgagor, the *conditions* on that right, including virtually all statutory limits on redemption, benefit the mortgagee, who may freely waive them.[126] And this makes sense: a redemption necessarily brings in the judgment amount, plus interests and costs. That guaranteed payment will usually be much more attractive to a lender than recovering value through a short sale.[127]

---

122. 735 ILL. COMP. STAT. 5/15-1603(c)(1) (2020). *See* Wells Fargo Bank v. McCluskey, 2013 IL 115469, ¶ 25 (construing interaction of default and sale provisions based on the principle that a borrower should not be allowed to revive redemption); Wilmington Sav. Fund Soc'y v. Ogbonna, 2019 IL App (1st) 181559-U, ¶ 25 (finding that, even if redemption was improperly shortened, the appellate court would not revive the redemption period on remand); Margaretten & Co. v. Martinez, 550 N.E.2d 8, 9–10 (Ill. App. 2d Dist. 1990) (holding that, while the redemption period was improperly calculated, it could not be revived). If this limitation was not enough, a mortgagor has an additional hurdle: unless the mortgagor actually attempted to redeem, they will not have suffered any prejudice, and any error in the redemption process would likely be harmless. Deutsche Bank Nat'l Tr. v. Paige, 2013 IL App (1st) 120715-U, ¶ 21. The only possible method to revive redemption would be to reset one of the two prongs of the process: either successfully quash service or vacate the judgment of foreclosure. Either method would result in the redemption clock never running in the first place. *See Morris*, 2018 IL App (2d) 170116-U, ¶¶ 28–29 (suggesting that, if a motion to reconsider successfully vacated judgment of foreclosure, redemption would remain in play). In such a situation, even if a court ruled that statutory redemption was not available, a borrower could likely access equitable redemption on the same terms as if statutory redemption *had* been revived. *See* 735 ILL. COMP. STAT. 5/15-1605 (2020) (describing when equitable redemption is not available); *infra* Section I.C.4 (discussing equitable redemption).

123. 735 ILL. COMP. STAT. 5/15-1603(h) (2020); *accord id*. § 15-1507(a). The sale may occur at any time after redemption expires but is usually scheduled immediately after redemption's expiry—often the very next day.

124. Usually, a borrower will ask for a payoff letter. The lender will generate a letter, and if the borrower pays the requested amount by the given date, the loan is paid off—i.e. redeemed. Institutional pressures on both sides favor such less formal payoffs because protracted litigation costs both sides time and money. *See* Robert Kratovil, *Mortgage Law Today*, 13 J. MARSHALL L. REV. 251, 251–52 (1980) (arguing that extrajudicial settlement is facilitated by both institutionalization and standardization of mortgage lending).

125. Household Bank v. Lewis, 890 N.E.2d 934, 936 (Ill. 2008). *See also, e.g.*, Fleet Mortg. Corp. v. Deale, 678 N.E.2d 35, 36, 38–39 (Ill. App. 1st Dist. 1997) (upholding redemption in lieu of sale, where mortgagee accepted untimely redemption amount); Order of May 2, 2016, *supra* note 112, at 3–4 (holding that the plaintiff waived strict compliance by providing payoff letter and accepting tender directly, despite failure to file Notice of Intent to Redeem).

126. *Lewis*, 890 N.E.2d at 940.

127. Usually. Because of the complexities of financial instruments, their securitization, and their servicing, different mortgagees (or entities acting as mortgagees) may have very different

Statutory redemption contains multitudes, and it is a powerful tool for the borrower to force the lender's hand and undo foreclosure proceedings.[128] Even though borrowers rarely redeem property, formally or otherwise, the importance of the redemption statute cannot be understated. Because all cases necessarily pass through the redemption process, the timelines set by the redemption statute touch on every case, however lightly.

3. Special Right of Redemption

After statutory redemption expires, a sale will be held—but after the sale, the borrower still has one last chance to redeem. Section 1604 provides that, starting at sale and running until thirty days after confirmation, a borrower can redeem by paying off the sale price, plus costs and interest.[129] But this mechanism is only available where the *lender* repurchases the property at sale, *and* the sale price is less than the outstanding debt, resulting in a deficiency.[130] Whereas statutory redemption is generally applicable, this right is not: hence, *special* redemption.

Because special redemption is much more restricted than statutory redemption, its procedure is more straightforward. A borrower wishing to specially redeem must pay the sum of the sale price, any of the lender's outstanding costs and expenses, and statutory interest from the date of sale.[131] Payment is to be made directly to the lender.[132] Unlike statutory redemption, special redemption has no procedure for the borrower to dispute costs, or essentially escrow the balance with the clerk of court. This is because, once sale occurs, the report of sale must be "promptly" filed with the court; the report of sale will identify the sale price and all costs down to the cent.[133] Statutory interest is a simple arithmetic

---

incentives when it comes to loss mitigation such as accepting a late redemption. *See* CW Capital Asset Mgmt. v. Chi. Props., 610 F.3d 497, 499–500 (7th Cir. 2010) (discussing, in an opinion penned by Judge Posner, securitization and differential loss mitigation incentives for different tranche-holders of mortgage-backed securities).

128. *See* HSBC Bank USA v. Townsend, 793 F.3d 771, 775 (7th Cir. 2015) (stating broadly the mechanics of redemption).

129. 735 ILL. COMP. STAT. 5/15-1604(a) (2020).

130. *Id.*

131. *Id.* Additional costs here are *de rigueur*, as this is the only way for plaintiffs to recover costs such as publication of the sale and the selling officer's commission—costs that are necessarily incurred after judgment, and therefore can never be included in that judgment. Note further that interest in special redemption is statutory from the date of sale, rather than based on the mortgage; this acknowledges that special redemption is one step farther removed from the loan. *Compare id.* § 15-1604(a), *with id.* § 15-1603(d)(1).

132. *Id.* § 15-1604(a).

133. *See id.* § 15-1508(a) (requiring a report of sale).

calculation from those known quantities.[134] Once property is specially redeemed, the lender must transfer the property to the borrower.[135]

As noted, however, special redemption is limited to foreclosure sales where the bid price was *lower* than the judgment amount. This means that, if a borrower specially redeems, there will necessarily be an outstanding debt equal to the difference between the sale price and judgment.[136] This debt remnant remains on the property as an in rem deficiency, and though the property has been returned to the borrower, the outstanding debt simply turns into a judgment lien.[137] Indeed, if a borrower specially redeems, all outstanding liens are simply turned into judgment liens, with the same priority order as before.[138] The borrower may have their property back, but their situation is still precarious—if the outstanding amounts are not satisfied, the former mortgagee might simply start a new foreclosure on their new judgment lien.[139]

Historically, the general statutory redemption provision persisted for six months following a sale. When the IMFL restructured the foreclosure process to eliminate post-sale redemption generally, it added special

---

134. *Id.* § 2-1303(a) (setting a nine percent statutory interest rate on civil judgments). *See* Deutsche Bank Nat'l Tr. v. Paige, 2013 IL App (1st) 120715-U, ¶¶ 35–36 (holding that the specially redeeming defendant was not entitled to accounting).

135. 735 ILL. COMP. STAT. 5/15-1604(b). This either involves assigning the certificate of sale, which is redeemable for a judicial deed, *see id.* § 15-1507(f), or simply executing a subsequent deed from that judicial deed.

136. Theoretically, if the sale price was barely below judgment, the sale price *plus interest and cost* could top the outstanding judgment. Nevertheless, because the payment is directed towards the sale price, costs, and interest, the outstanding balance would still remain as a lien—despite the borrower's final payment being slightly above that amount. Such marginal cases are an unfortunate consequence; the longer a borrower waits to redeem, the worse off they may end up. *See, e.g.*, *Paige*, 2013 IL App (1st) 120715-U, ¶¶ 35–36 (recognizing that the defendant was not entitled to take credit against the special redemption amount for payments made because the statute does not account for such credit).

137. 735 ILL. COMP. STAT 5/15-1604(b) (2020).

138. This conclusion is somewhat counterintuitive, but statutorily sound. Any outstanding junior liens would have been reduced to judgment liens by operation of the judgment of foreclosure. *Id.* § 15-1506(i)(1). Those liens (but not the underlying debts) would normally be extinguished by confirmation of sale. *Id.* But the special redemption statute specifically provides that the lender's reconveyance to the borrower is "subject only to those encumbrances that would normally arise on title if a redemption were made under Section 15-1603." *Id.* § 15-1604(b). Because any redemption under section 1603 necessarily occurs *before* the foreclosure sale, junior liens would still exist as *judgment* liens at the time of a section 1603 redemption. Thus, the "encumbrances that would normally arise" language in section 1604 operates as an exception to section 1506's lien-extinguishment provisions. This statutory interaction has not been tested in court but is the only logical interpretation: to allow otherwise would permit a borrower to abuse the special redemption procedure to extinguish junior liens on the property.

139. Junior lienors would naturally complicate things further: default on a senior mortgage is universally accepted as a default on a junior, so though any mortgage liens may have been converted to judgment liens, *see supra* note 138, the juniors will probably not be happy about the involuntary downgrading of their security interest.

redemption so as to preserve that small vestige of the old.[140] Though it is incongruous with the remainder of the IMFL's redemptive provisions, the special right of redemption adds little by way of overhead to the foreclosure process. It extends post-sale, but only for thirty days.[141] For other practical reasons, nothing would happen during that thirty-day period anyway. The trial court retains primary jurisdiction, so a motion to reconsider or to quash service could upend the foreclosure.[142] An appeal could be filed.[143] The IMFL's own deed-vesting provisions provide that no subsequent purchaser is a proverbial bona fide purchaser for value unless and until that appellate period passes.[144] Not even the eviction order can take effect during that time.[145]

In other words, because as a practical matter the lender wouldn't be doing anything with their newly purchased property during that thirty day period, granting the borrower one last-ditch option to redeem would not disrupt the normal foreclosure process.[146] The lender loses nothing by way of such redemption: not only do they get the bid price plus costs and statutory interest, but they also retain a judgment lien for the balance. Ultimately, the principal barrier to the borrower is the same under special

---

140. *See* Gnatek, *supra* note 11, at 484–85 (describing special redemption as the only exception to IMFL's bar on post-sale redemption). Special redemption has undergone only one statutory change, a modification in 1989 to account for the survival of junior liens, *see supra* note 138, as part of one of several "cleanup" bills that followed on the heels of the IMFL itself. P.A. 86-974, 1989 Ill. Laws 6578 (eff. July 1, 1990).

141. As with most other redemptive rights, this period can be extended by agreement of the parties. *In re* Scheldt, 220 B.R. 362, 363 (Bankr. C.D. Ill. 1998). It can also be extended to sixty days by operation of the Bankruptcy Code if a borrower files a Chapter 13 during the special redemption period. *In re* Snowden, 345 B.R. 607, 611 (Bankr. N.D. Ill. 2006) (citing 11 U.S.C. § 108(b) (2020)). *See also In re* McKenith, 428 B.R. 462, 464 (Bankr. N.D. Ill. 2010) (noting that a Chapter 13 plan cannot extend the special redemption window beyond the sixty-day period).

142. 735 ILL. COMP. STAT. 5/2-1401(a) (2020). After a sale occurs, borrowers challenging the case on its merits must necessarily seek to set aside the sale. Wells Fargo Bank v. McCluskey, 2013 IL 115469, ¶ 18. This imposes a high burden, as there are only very limited grounds on which to do so. *Id.* (citing 735 ILL. COMP. STAT. 5/15-1508(b) (2020)). Even section 1401 proceedings are limited by other provisions. U.S. Bank v. Prabhakaran, 2013 IL App (1st) 111224, ¶¶ 29–30 (relief barred by deed-vesting provisions of 735 ILL. COMP. STAT. 5/15-1509 (2020)). For more on these interactions, see generally Cecilia A. Horan, *Mortgage Foreclosure Relief*, 108 ILL. B.J. 38 (2020) (comprehensive discussion of framework for vacating judgments).

143. ILL. SUP. CT. R. 303(a)(1).

144. 735 ILL. COMP. STAT. 5/15-1509(a) (2020).

145. *Id.* § 15-1508(g). Though a strict reading of the statute would only bar *prosecution* of an eviction for thirty days, it is the current practice of the Cook County Sheriff to not permit an order approving sale to be *placed* for eviction until after the period ends.

146. It is the longstanding public policy of the state to promote certainty in judicial sales. *E.g.*, *McCluskey*, 2013 IL 115469, ¶ 25; Conover v. Musgrave, 68 Ill. 58, 62 (1873). Indeed, the elimination of post-sale redemption in the IMFL was meant to serve this end. Gnatek, *supra* note 11, at 486–87. Because special redemption is limited to cases where the *lender* repurchased, these traditional policy concerns simply don't apply. Special redemption will never disincentivize a third party from bidding on property, because a third party bid bars special redemption.

redemption as statutory: actually coming up with the money, a problem no statute could ever resolve.[147]

4. Equitable Redemption

The fourth and final mechanism is also the oldest: equitable redemption. Because it derives from the trial court's inherent equitable powers, the IMFL does not so much provide for it as account for it, limiting equitable redemption in two main ways. First, section 1605 provides that a judicial sale extinguishes any equitable redemption.[148] And second, in providing a comprehensive battery of statutory redemptive mechanisms, the IMFL as a whole makes equitable redemption largely redundant. As a result, equitable redemption is virtually unknown in the modern foreclosure context.

Historically, redemption originated as a way for the chancery court to offer relief to mortgagors; equitable redemption was the only redemption.[149] Illinois codified such equitable relief in 1825, barely six years after statehood;[150] if purely equitable redemption ever saw use, extant sources do not clearly record it.[151] Equity persisted under statutory redemption, whereby courts retained discretion to modify the length of the statutory redemption period, as circumstances required.[152] As the statute grew more comprehensive, equity became less necessary; by the twentieth century, courts would strictly enforce the statutory period, though they would happily enforce oral agreements to *extend* that

147. Whereas statutory reinstatement and statutory redemption are merely rare and exceedingly rare, respectively, special redemption is personally unknown in the experience of the author, his colleagues, and every practitioner with whom he has consulted. Post-sale settlements generally, however, are rare but not unknown. *E.g.*, Household Bank v. Lewis, 890 N.E.2d 934, 936 (Ill. 2008) (involving a lender that vacated its own sale to accept full payoff).

148. 735 ILL. COMP. STAT. 5/15-1605 (2020).

149. *See supra* Section I.C.2.i (discussing the historical background of the redemption statute).

150. An Act Concerning Judgments and Executions, §§ 11, 12 (eff. May 1, 1825); REVISED CODE OF LAWS, ILLINOIS, CONTAINING THOSE OF A GENERAL AND PERMANENT NATURE PASSED BY THE SIXTH GENERAL ASSEMBLY, AT THEIR SESSION HELD AT VANDALIA, COMMENCING ON THE FIRST MONDAY OF DECEMBER, 1828, at 88–89 (1827).

151. The first unambiguous reference to redemption in reported caselaw comes in *Hall v. Augustine Byrne & Co.*, 2 Ill. 140, 141 (1834). *Hall* discusses the mortgagor's equity of redemption but does so by reference to the Act Concerning Judgments and Executions, i.e. the 1825 redemption statute. It is likely that the mortgagor's equity to which the *Hall* court refers is the statutory right.

152. Bremer v. Calumet & Chi. Canal & Dock Co., 18 N.E. 312, 322 (Ill. 1889) ("The usual time allowed is six months, but that is not obligatory in all cases."); *see, e.g.*, Decker v. Patton, 11 N.E. 897, 897 (Ill. 1887) (describing a twelve-month redemption); Rodman v. Quick, 75 N.E. 465, 466 (Ill. 1905) (involving a ninety-day redemption).

period.[153] By midcentury, courts appear to have lost discretion to equitably extend the redemption period at all.[154]

The first limitation the 1987 IMFL imposed was to explicitly provide that no equitable right of redemption would exist after a judicial sale.[155] That original language, unchanged today, was part of the IMFL's broader move away from post-sale redemption: because all statutory redemptive rights expire at sale, it was logical to foreclose the use of equitable relief to circumvent the redemption period.[156] Thus, if equitable redemption is available, chances are that there exists another, better method—either reinstatement, which is substantially cheaper; or statutory redemption, which lays out a clear procedure that does not require the borrower to drag the lender to court to force an equitable redemption. Coupled with lenders' willingness to accept untimely redemptions anyway,[157] as a practical matter, equitable redemption is simply redundant.[158]

The second limitation is one implicit to the structure of the IMFL. Taken together, the procedures for reinstatement, statutory redemption, and special redemption cover the vast majority of circumstances in which a borrower would want to exercise a redemptive right. There simply isn't that much *left* where purely equitable relief is necessary. No appellate case arising under the IMFL reports the use of equitable redemption; cases may discuss its existence, but all adjudicate the case at bar on other grounds.[159] It is utterly unknown to the experience of the author, his

153. Taggart v. Blair, 74 N.E. 372, 375 (Ill. 1905); *see also, e.g.*, Benckendorf v. Streator Fed. Sav. & Loan Ass'n, 111 N.E.2d 572, 575 (Ill. App. 2d Dist. 1953) (enforcing oral agreement to extend redemption period).

154. *See* Weiner v. Eder, 176 N.E.2d 777, 778 (Ill. 1961) (involving a redemption check tendered on last day of redemption period, but because the check did not *clear* until after the period expired, redemption was not proper—with no suggestion that equity could salvage the attempt).

155. P.A. 84-1462, 1986 Ill. Laws 4360 (eff. July 1, 1987); *see* 735 ILL. COMP. STAT. 5/15-1605 (2020). Prior to the IMFL, such a barrier was implicit. First Ill. Nat'l Bank v. Hans, 493 N.E.2d 1171, 1174 (Ill. App. 2d Dist. 1986) (under prior foreclosure law, equitable redemption "generally" lasted until sale).

156. *See* 735 ILL. COMP. STAT. 5/15-1602 (2020) (statutory reinstatement); *Id.* § 15-1603(b)(1) (statutory redemption). *See, e.g.*, Wells Fargo Bank v. McCluskey, 2013 IL 115469, ¶ 25 (demonstrating that IMFL's specific prohibitions on reviving reinstatement and redemption periods should not be circumvented).

157. *See supra* Section I.B.2 (discussing that lenders generally seek out and accept otherwise untimely reinstatements and redemptions).

158. In this respect, equitable redemption did not see much use in the later days of the pre-IMFL regime either, as other mechanisms largely displaced it. Blanco & Crumbaugh, *supra* note 57, at 337–39.

159. The closest the caselaw comes is *React Financial v. Long*, 852 N.E.2d 277 (Ill. App. 3d Dist. 2006), where the junior lienor failed to equitably redeem—but the question there centered not on the expiration of equitable redemption, which all parties took for granted, but rather what its effects were. *Id.* at 280–81. However unlikely, it is possible that a case exists under a different name; courts occasionally mis-cite the various redemptive mechanisms of the IMFL. *E.g.*, Lowry

colleagues, and those members of the Bar with whom he has consulted. At most, equitable redemption provides a court a way to incorporate equitable *principles* into a discussion of other redemptive mechanisms, and thus offers a backstop, authorizing deviation from the strict terms of the statute where equity demands.[160]

It is difficult to imagine a case where equitable redemption is truly the only option available to a borrower, largely because the right is extinguished at sale. Such a scenario could be constructed, though it would likely involve egregious facts: if, for instance, the lender deliberately miscalculated the redemption period to expire early and then rushed to sale, that sale would cut off any equitable relief.[161] The sale might be subject to vacation under section 1508's justice provision, but statutory redemption—even if miscalculated—could not be revived.[162] After vacating the sale, a court could order a mortgagor to take equitable redemption.[163] But even then, equitable redemption would not be so much a standalone mechanism as a way to copy in equity what the letter of the statute would not otherwise permit as a way to correct a clear injustice.[164]

Even at its zenith, equitable redemption under the IMFL is dependent on and parallels statutory redemption. Because it terminates at sale and is generally more cumbersome than the statutory mechanisms, it is impractical and not particularly effective. Equitable redemption is technically still available under the IMFL, but, aside from egregious or otherwise fringe cases, it is not a factor in modern foreclosure practice.

---

v. Wells Fargo Bank, No. 15-C-4433, 2016 WL 4593815, at *12 (quoting the special right of redemption, section 1604, as section 1603).

160. *See* Order of May 2, 2016, *supra* note 112, at 3–4 (relying on combination of plaintiff's waiver and "interests of justice" to justify lack of strict compliance with statutory redemption procedure).

161. Margaretten & Co. v. Martinez, 550 N.E.2d 8, 10 (Ill. App. 2d Dist. 1990) (holding that equitable redemption was unavailable post-sale, even where statutory redemption was miscalculated).

162. *Id.*; *see also* 735 ILL. COMP. STAT. 5/15-1508(b) (2020) (stating the grounds to deny confirmation of judicial sale); *see also, e.g.*, Wilmington Sav. Fund Soc'y v. Ogbonna, 2019 IL App (1st) 181559-U, ¶ 25 (involving a statutory redemption period which was improperly shortened, but expired, and the appellate court declined to revive it); Deutsche Bank Nat'l Tr. v. Paige, 2013 IL App (1st) 120715-U, ¶ 21 (holding that any redemption error was harmless because the defendant made no attempt to redeem).

163. Section 1508's justice provision is a notoriously difficult threshold to meet. *See* NAB Bank v. LaSalle Bank, 2013 IL App (1st) 121147, ¶¶ 16–19 (recognizing that the court's discretion to deny confirmation is "extraordinarily narrow"). That said, virtually the only reported circumstances permitting vacation of a sale involved a lender's misconduct. Wells Fargo Bank v. McCluskey, 2013 IL 115469, ¶ 26. Ordering equitable redemption is a major action, but so too is vacating a sale under the justice provision.

164. *See, e.g.*, Fed. Nat'l Mortg. Ass'n v. Bryant, 378 N.E.2d 333, 335–36 (Ill. App. 5th Dist. 1978) (holding that, under prior foreclosure law, reinstatement was only available *after* suit was filed, but ordering reinstatement in equity instead).

II. THE MEASURE OF REDEMPTION

The redemption statute provides an unambiguous calculation of the redemption period in almost all cases. The sole exception is where service is by publication, which runs for three weeks. The proper calculation of the statutory redemption period begins with the third publication. This conclusion can be reached in a number of ways, but they break into two primary categories.

First, the plain language of the redemption statute conditions the redemption period on the *completion* of service by publication. The plain language of the publication statute, in turn, evidences that service is completed only on the third publication. These conclusions find support in the historical record and development of service by publication.

Second, the redemption statute's calculation language is modeled on that of the reinstatement statute. Comparing the two statutes directly demonstrates that only one reading is consistent with the language of the statutes and core tenets of statutory construction: the redemption period must run from the third publication, rather than the first.

A. Calculating Redemption

The length of the redemption period is straightforward, and is subject to the usual principles of statutory calculation. Because a judgment of foreclosure sets an unambiguous redemption period, calculating redemption from such a judgment is a useful exercise to identify the principles involved. Calculating redemption from publication is more ambiguous, and results in two alternative dates, based on whether the first or third date of publication is used.

1. Redemption from a Judgment of Foreclosure

The first of two potential statutory redemption calculations provides that "the redemption period shall end on . . . the date 3 months from the date of entry of a judgment of foreclosure."[165] The three-month period is by far the most common redemption calculation. Because redemption calculations involve day-by-day precision, it is worth examining what, exactly, "3 months" means.

It is tempting to calculate the three-month period in a number of different ways: by counting out ninety days, somewhat by analogy to the reinstatement timeline;[166] by adding three calendar months, plus a day;

165. 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020).
166. Reinstatement is explicitly given as "90 days." *Id*. § 15-1602.

adding perhaps two or three days, if the period includes February; and so forth.[167] All of these methods are incorrect.[168]

The proper calculation is a strict calculation from the calendar day in one month to the corresponding number in the third month thereafter. Thus, a judgment entered on January 14 should provide that the redemption period ends on April 14.[169] This is because the redemption statute is framed in terms of months, rather than days.[170] If the target month does not have as many days as the month the judgment was entered, redemption ends on the last date of the month regardless.[171] Thus, a judgment entered November 30 does not expire February 30 (which does not exist) or March 2 (to account for February being two days short), but instead on February 28.[172] As with all statutory calculations, if the last date is a weekend of legal holiday, it is extended by operation of law to the next business day.[173]

This calculation mechanism—from one calendar day to another—holds for every redemption period. When calculated as three months from the date of judgment, the math is trivial, because the judgment, a court order, is entered on a specific date. Likewise, if the mortgagor is served with summons or submits to personal jurisdiction, because either event is

---

167. In the author's experience, "three months plus a day" seems most common, but most calculations (reasonably) tend to err on the side of a longer, rather than shorter, period. *See, e.g.*, Order of Aug. 9, 2019, at 6–7, Fannie Mae v. Barrett, 2019 Ill. Cir. LEXIS 505 (Cir. Ct. Cook. Co. Aug. 9, 2019) (redemption expires November 11, 2019, i.e., three months and two days).

168. Which is not to say that a redemption period so set would necessarily be *wrong*: a lender can always set longer redemption. *See supra* note 118 and accompanying text.

169. Note that section 1603 provides that the period "shall *end* on" that date. 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020). Many judgments use "shall *expire* on" language, or similar. *See, e.g.*, Order of Aug. 9, 2019, *supra* note 167, at 6–7. "Expire" may suggest that the right cannot be exercised on that final date, which is incorrect. *See* Fleet Mortg. Corp. v. Deale, 678 N.E.2d 35, 36 (Ill. App. 1st Dist. 1997) (involving a redemption made on last date of the period); 5 ILL. COMP. STAT. 70/1.11 (2020) ("The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last . . . ."). It would be preferable to simply mirror the statute's language and provide that the right "ends on" the appropriate date certain.

170. 5 ILL. COMP. STAT. 70/1.10 (2020) (statute on statutes). *See, e.g.*, People v. Gilbert, 181 N.E.2d 167, 169 (Ill. 1962) (describing the seminal interpretation of "month" as used in statutory construction).

171. *See Gilbert*, 181 N.E.2d at 203–04 (collecting cases).

172. It expires on February 29 in a leap year, because that would be the last day of the month. Leap days are generally relevant only when time periods are to be calculated in days. *E.g.*, People v. Hazzard, 2016 IL App (1st) 141356-U, ¶ 35 (crediting criminal defendant with a leap day for number of days spent in presentence custody). When discussing months or years, the extra day is largely irrelevant. *See, e.g.*, Cella v. Sanitary Dist. Emps.' & Trs.' Annuity & Benefit Fund, 639 N.E.2d 1335, 1343 (Ill. App. 1st Dist. 1994) (when calculating yearly salary, leap year argument "is very attractive, but it is a 'red herring'").

173. 5 ILL. COMP. STAT. 70/1.11 (2020). *See* Metro. Life Ins. Co. v. Keefe, 407 N.E.2d 864, 866–67 (Ill. App. 1st Dist. 1980) (demonstrating that, under prior foreclosure statute, where redemption was calculated to end on a Sunday, the payment was properly made on the following Monday).

fixed to a date certain, the redemption period—there, seven months[174]—is easily ascertainable.

2. Redemption from Service by Publication

Of the various starting points for the redemption calculation, only publication does not occur on a single date. It in fact occurs on three: publication requires that the notice be published at least once a week for three successive weeks.[175] Redemption could thus be calculated from either the first or the third publication date.[176]

Service by publication[177] is a two-step process. First, the plaintiff files an affidavit stating that the defendant has left the state, cannot be found, or is otherwise unable to be served.[178] Then, the plaintiff may publish a legal notice in the appropriate county newspaper, which must be published once each week for three consecutive weeks.[179] The clerk of court then mails a copy of the notice to each address of record.[180] This

---

174. 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020).

175. 735 ILL. COMP. STAT. 5/2-207 (2020).

176. Or, theoretically, any date in between, such as the *second* publication date. To the author's knowledge, such an argument would be novel; only the first and third dates are legally meaningful. In any event, the answer proposed by this Article—that only the third date may be used—displaces all other calculations.

177. All other forms of service require a summons: the "process" that is served. *E.g.*, 735 ILL. COMP. STAT. 5/2-203(a)) (2020) (personal service); *id.* § 2-203.2 (inmate); *id.* § 2-204 (corporate); *id.* § 2-205(a) (partnership); *id.* § 2–211 (municipalities). Publication is of a notice, not the summons; it does not (nor could it reasonably) include a complaint. *Id.*; *compare id.* 5/2-2206, *with* ILL. SUP. CT. R. 104(a) (all summonses must include complaint). It could be argued that "service by publication" is a misnomer, as publication is not service at all—it is perfectly legally effective at securing personal jurisdiction for an in rem or quasi in rem action, but it is not technically "service of *process*." This Article is technical enough in other respects, and simply adopts the common phrasing of "service by publication" for a jurisdictional publication event.

178. 735 ILL. COMP. STAT. 5/2-206(a-5). (2020). Subsection (a-5), which specifically governs publication in mortgage foreclosure actions, is a new addition in 2020; previously, mortgage foreclosure publications went through subsection (a). P.A. 101-0539 (eff. Jan. 1, 2020). The new subsection's changes are minor, and do not change the overall publication process. *Compare* 735 ILL. COMP. STAT. 5/2-206(a) (2020), *with id.* § 2-206(a-5).

179. 735 ILL. COMP. STAT. 5/2-206(a-5) (2020) (plaintiff to cause publication); *id.* § 2-207 (three-week period). Though the statute does not require it to be the *same* day each week, as a practical matter is always is, because it is easier and simpler to do so.

180. *Id.* As a practical matter, this mailing provides the most notice a defendant is likely to receive. In this day and age, legal notices in a newspaper are unlikely to be read by anyone for any reason. And yet, publication is accepted as sufficient service. *See, e.g.*, Aurora Loan Servs. v. Black, 2012 IL App (1st) 111698-U, ¶ 24 (finding service proper even if defendants had no chance to read notice). Service by publication is ouroboric: publication serves no modern purpose other than to be published. The practical purpose of service by publication as a concept is not what it once was, and sooner or later, the statutory scheme will need to be revisited. *See, e.g.*, William Wagner & Joshua R. Castillo, *Friending Due Process: Facebook as a Fair Method of Alternative Service*, 19 WIDENER L. REV. 259, 260–61 (2013) (arguing that due process must adapt to the times).

initiates the thirty-day clock after which a party against whom publication is had is in technical default.[181]

It is the common practice of foreclosing plaintiffs to calculate redemption based on the first of the three publications, rather than the third.[182] Thus, if publication occurs on January 7, 14, and 21, redemption calculated from the first date would end on August 7.

The proper calculation of redemption runs from the third date of publication, rather than the first. Thus, if publication runs on the same dates of January 7, 14, and 21, redemption properly calculated from the third date would end on August 21, a full fortnight later.

Choosing between these interpretations requires parsing the text of section 1603, which provides that "the redemption period shall end on the later of (i) the date 7 months from the date the mortgagor . . . [has] been served with summons or by publication."[183] The language can be addressed either by reference to the publication process itself, or to the remainder of the IMFL. Either analysis leads to the same conclusion: the third date of publication should be used.

B. Completing Service by Publication

Section 1603 provides that the redemption period is to run after service is complete. This conclusion is compelled both by the wording of section 1603 itself and by the operation of its other service provisions. Furthermore, where service is by publication, that service is complete only after the third publication occurs. The publication statute's exception concerning default judgments does not change this outcome, and an examination of the statute's history demonstrates that those exceptions cannot and should not affect the redemption calculation itself.

1. Section 1603 Requires Completed Service

The plain language of section 1603 requires service to be completed *before* redemption runs. Service by publication, in turn, requires all three publications to be complete. The only permissible interpretation of the statute is that the redemption period can only run from the third publication.

181. Local rules, however, may limit the ability of a plaintiff to seek a default judgment on that timeframe. *See* General Administrative Order 2012-10 (Cir. Ct. Cook Co. Oct. 17, 2012) (creating the sixty-day rule). By and large, local rules governing the mechanics of how a foreclosure case is actually prosecuted do not affect the legal point of how redemption is to be calculated, and this Article generally omits discussion of same.

182. *See infra* Section III.A (discussing scope of problem).

183. 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020). The omitted text simply requires service to be had on all mortgagors. Because the calculation with respect to a single publication does not change if multiple publications occur, for simplicity's sake this Article collapses the publication analysis to a hypothetical single mortgagor.

i. Plain Language of Section 1603

The fundamental principle of statutory interpretation is also its most intuitive: the best evidence of what a statute means is its plain language.[184] Where that language is clear, it should be applied directly.[185]

Here, section 1603 provides that redemption ends seven months from when "the mortgagor or, if more than one, all the mortgagors *have been served* with summons or by publication."[186] The verb form here, "have been served" is in the present perfect tense,[187] which grammatically requires the action at issue—here, the date of service by publication—to have been completed before the relevant subject timeframe—here, the running of redemption.[188] The grammatical conjugation of the statute's language does not permit of an interpretation where both service and redemption occur simultaneously.[189] In other words, the plain language of section 1603 requires service by publication to be complete *before* the redemption period begins to run.

184. *E.g.*, Lakewood Nursing & Rehab. Ctr. v. Dep't of Pub. Health, 2019 IL 124019, ¶ 17. This principle of statutory construction is ancient, in Illinois and elsewhere. *E.g.*, Lockridge v. Nuckolls, 25 Ill. 159, 162 (1861) (interpreting similar statutory sections differently, based on their plain language); Elmer v. Burgin, 2 N.J.L. 173, 179–80 (1807) (plain language shows intent of legislature).

185. *E.g.*, Hadley v. Ill. Dep't of Corr., 864 N.E.2d 162, 165 (Ill. 2007).

186. 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020) (with emphasis added and internal lettering omitted).

187. The author has consulted a number of linguists and adjacent professionals in reaching this conclusion. It can be reasonably argued that the construction is a variant of the past perfect or pluperfect; these two tenses are closely related, and in nonacademic settings are often collapsed. *Compare § 5.133: Past-Perfect Tense*, THE CHICAGO MANUAL OF STYLE ONLINE (2017), available at https://www.chicagomanualofstyle.org/book/ed17/part2/ch05/psec133.html (defining one as the other), *with* Raphael Salkie, *Perfect and Pluperfect: What Is the Relationship?*, 25 J. LINGUISTICS 1, 3–13 (1989) (conducting a literature review of differences between the two). Regardless of the specific definition, all consulted agree that the core of the verbal phrase is a perfect construction, which necessarily occurs entirely in the past.

188. *§ 5.132 Present-Perfect Tense*, THE CHICAGO MANUAL OF STYLE ONLINE (2017), https://www.chicagomanualofstyle.org/book/ed17/part2/ch05/psec132.html.

189. This degree of statutory analysis is rare, but not unknown, in the caselaw. *See* Hayashi v. Ill. Dep't of Fin. & Prof'l Regulation, 2014 IL 116023, ¶ 17 (describing the effect of a phrase in present perfect tense). There are certainly cases where a single statutory command could be phrased multiple ways, where the specific wording chosen is of little consequence. *E.g.*, Paramount Pictures, Inc. v. Rodney, 186 F.2d 111, 114 (3d Cir. 1950) (minor difference between imperfect and pluperfect subjunctives "is no more than one of tense and grammar"). Here, however, only a perfect tense construction can convey the intent that a prior event occurred wholly in the past—and if the legislature had that intent, it could only convey it with such a construction. The present perfect, with the caveat noted in footnote 187, *supra*, is the only available construction. The statute is complex, but unambiguous.

ii. Publication Requires Three Full Weeks

The specific requirements of service by publication have varied over the years, depending on statutory requirements and custom of the day.[190] The Code of Civil Procedure currently provides that publication is to run "at least once in each week for 3 successive weeks."[191] No Illinois court has addressed when service by publication is complete, in those terms. But that is not to say the issue has not been addressed; it simply does not merit inclusion in a written disposition because it is too self-evident.[192] At the risk of tautologizing, the statutory procedure is completed when all statutory requirements are satisfied.[193] The statute means exactly what it says: service by publication requires a full three weeks of publication.[194]

The same conclusion can be reached the other way around, by looking to when publication is *not* complete. All three publications must occur for service by publication to be jurisdictionally effective.[195] If fewer than the required number of publications occur, the publication process is incomplete and therefore ineffective.[196] If publication ran only two

190. *E.g.*, REV. STAT. 1858, at 139, Chancery, § 8 (four weeks' publication by default); Hollenbeck v. Detrick, 44 N.E. 732, 734 (Ill. 1896) (six weeks' publication to dissolve corporation); Taylor v. Taylor, 52 Ill. App. 527, 528 (4th Dist. 1893) (seven weeks' publication for divorce); Hernandez v. Drake, 81 Ill. 34, 37 (1875) (eight or nine weeks' publication is "amply sufficient"); Aldis v. South Park Comm'rs, 49 N.E. 565, 567 (Ill. 1898) (five consecutive *days'* publication for park district taking). Despite the varied uses of publication, it has historically most often been important in cases concerning real estate. *See* F. Barth, Comment, *Chancery Practice*, 8 ILL. L. REV. 203, 206 (1913–14) (reviewing the purposes of publication).

191. 735 ILL. COMP. STAT. 5/2-207 (2020).

192. If publication is even mentioned, it is usually only to say that it occurred, without more. *E.g.*, *In re* L.H.S., 2015 IL App (3d) 140844-U, ¶ 31 (holding that publication "had been completed"). Even a case that turns on a challenge to service by publication might only mention the dates of publication, without bothering to specify that those dates discharged the publication requirement. *E.g.*, U.S. Bank Tr., v. Colston, 2015 IL App (5th) 140100, ¶ 18.

193. *See* Green Tree Servicing v. Stuckey, 2016 IL App (3d) 150233-U, ¶ 21 (noting that "act of publication" for jurisdictional purposes was the publication of notices for three successive weeks, in compliance with statute). This proposition is hardly novel. *Accord* CitiMortgage, Inc. v. Lewis, 2014 IL App (1st) 131272, ¶ 39 (explaining for service of motions, rather than service of process, "[s]ervice is complete when all the required acts are done").

194. The statute also requires that a copy of the notice actually published be mailed to the last known address of the party against whom publication is sought. 735 ILL. COMP. STAT. 5/2-206(a-5) (2020). This requirement is separate and apart from the publication itself, though both are required. Bell Fed. Sav. & Loan Ass'n v. Horton, 376 N.E.2d 1029, 1035 (Ill. App. 5th Dist. 1978). Because the notice must be mailed within ten days of the first publication, it is irrelevant for determining when publication is complete, for either notice was sent by the time the third publication occurs (and the issue is therefore moot), or it was not (in which case the publication is defective on other grounds).

195. *Stuckey*, 2016 IL App (3d) 150233-U, ¶ 21; Aurora Loan Servs. v. Black, 2012 IL App (1st) 111698-U, ¶ 24.

196. No cases stand for this proposition in Illinois caselaw. The closest the reported cases come is an 1899 First District case, which favorably recites an earlier New York decision. In the New

weeks, would any party to a foreclosure consider it legally effective? Certainly not.[197]

Because publication must run for three full weeks, it is not complete until the third publication occurs. Service is complete at the third publication, and only then can the redemption period under section 1603 start to run.

2. Section 1603's Other Service Provisions

Because the plain language of section 1603 admits of only one interpretation, that language is dispositive of the inquiry.[198] To the extent ambiguity exists, the remaining service provisions bear discussion. This is because statutes should be evaluated as a whole, comparing phrases and provisions against one another where appropriate.[199]

Every other redemption calculation in section 1603 runs from the date service is unambiguously completed: either a singular service event; submission to jurisdiction; entry of a judgment of foreclosure; or, in certain cases with severely undervalued property, at the expiry of statutory reinstatement.[200] These are admittedly not useful direct comparisons, because all *other* service events contemplated occur at a point in time. But the comparison has value not for what the other provisions contain, but what they do *not*.

If the General Assembly wished a statutory period to run against the mortgagor from a point in time prior to the completion of service, it could have said so. We know this to be true because it *has* said so in another context: section 1505.6.[201] That section specifically provides that if a

York case, publication was required to run for six weeks; after four, the plaintiff died. The court held that, because there was no longer a plaintiff for the last two weeks' publication, they were not legally effective, and so with only four of the six weeks published, jurisdiction was not obtained. King v. Mitchell, 83 Ill. App. 632, 641 (1st Dist. 1899) (quoting Reilly v. Hart, 29 N.E. 1099, 1100 (N.Y. 1892)). The Illinois court did not rely on that particular conclusion—it was concerned with the effect of the death of a party on the abatement of a cause of action—but it clearly considered the analysis favorably.

197. Again, no cases stand for this proposition with respect to service by publication. The closest decision is an 1878 case where a special master was required to publish a sale for three weeks; he published for two, and the sale was therefore in error. Augustine v. Doud, 1 Ill. App. 588, 592–93 (2d Dist. 1878). In the author's own experience, this sort of flaw would never reach the appellate courts: no trial judge would enter judgment over such a glaring jurisdictional defect, and if such judgment were entered, none would hesitate to vacate it. In other words, even if such an obvious error occurred, it is exceedingly unlikely that it would ever survive for appellate review and reporting.

198. *See, e.g.*, Hadley v. Ill. Dep't of Corr., 864 N.E.2d 162, 165 (Ill. 2007) (holding that where plain language is unambiguous, it is dispositive).

199. *E.g.*, People v. Glisson, 782 N.E.2d 251, 255 (Ill. 2002).

200. 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020) (service other than by publication). *See also id.* § 2-213(d) (submission to jurisdiction); *id.* § 15-1603(b)(3) (calculation based on reinstatement in certain cases).

201. 735 ILL. COMP. STAT. 5/15-1505.6(a) (2020).

foreclosure defendant participates in a hearing, they have sixty days from that hearing within which to challenge personal jurisdiction, or else the objection is waived.[202] It mirrors—but actually predates—the similar provision of the Code of Civil Procedure generally regarding waivers of personal jurisdiction.[203]

Section 1505.6 is designed to prevent abuses of challenges to personal jurisdiction by preventing a borrower from participating in a case, receiving some benefit therein, and then launching frivolous jurisdictional motion practice once the case turns against them.[204] Its relevance here is simpler even than that: it provides for a statutory period to run against the mortgagor based solely on their participation in a case *prior* to service occurring.[205] Given this, if the General Assembly wished redemption to run before service was complete, it could have said so, adding a third prong to section 1603.[206]

3. Default Judgments by Publication

A judgment by default may be sought thirty days after service.[207] When service is by publication, however, the Code of Civil Procedure specifies that the thirty-day period runs from the *first* of the three publications.[208] The interaction with redemption is self-evident: if the default period runs from the first publication, why shouldn't the redemption period track?

At the risk of stating the obvious, it should be noted that the statutory exception for default publications is exactly that: an exception that governs how the time period for *default* operates. By its terms, it cannot directly govern the redemption calculation. Closer examination of the

202. *Id.*

203. *Cf.* 735 ILL. COMP. STAT. 5/2-301(a-6) (2020). The IMFL's provision was enacted in 2011, P.A. 97-0329, 2011 Ill. Laws 8198 (eff. Aug. 12, 2011), and the Code in 2018, P.A. 100-291 (eff. Jan. 1, 2018).

204. *See* U.S. Bank Tr. v. Colston, 2015 IL App (5th) 140100, ¶¶ 22–23.

205. It is unlikely that a mortgagor would participate in a case without having been served, for service attempts are early and routine. But section 1505.6 by its terms waives *any* challenge to personal jurisdiction based on participation in a hearing, just as waiver would occur with the filing of a non-jurisdictional responsive pleading. 735 ILL. COMP. STAT. 5/15-1505.6(b) (2020); *id.* § 2-301(a).

206. It might be observed that section 1505.6 dates to 2011, nearly a quarter century after adoption of the IMFL at large in 1987. Ultimately, the chronology is irrelevant, for the question is what the General Assembly *could have* done when enacting section 1603.

207. 735 ILL. COMP. STAT. 5/2-1301(d) (2020) (providing that default judgment can be entered for failure to appear or plead); ILL. SUP. CT. R. 101(d) (providing that summons requires an appearance within thirty days of service); *Id.* R. 181(a) (requiring an appearance within thirty days of service). This general provision may be altered by local rule. Cook County, for instance, requires a sixty-day period for residential foreclosures. General Administrative Order 2012-10 (Cir. Ct. Cook Co. Oct. 17, 2012) (creating the sixty-day rule).

208. 735 ILL. COMP. STAT. 5/2-207 (2020).

default provision's history and operation, however, demonstrate that it is not a good comparator for the redemption statute, as their underlying purposes and motivations are radically divergent.

First and foremost, the default statute's exception is exactly that: an exception. If service by publication were complete after the first publication, there would be no need to specify that the default time period ran from the first publication—indeed, there would be no need for the second two publications at all. The fact that the publication statute requires an exception demonstrates that, absent that express provision, a contrary result would issue.[209]

Second, however, the history of the publication statute sheds light on both its meaning and application. The statutory exception may seem incongruous to a modern read, but makes perfect historical sense. Service by publication dates to 1827.[210] At that time, courts were not in continuous session, but sat in discrete spring and fall terms, a practice that continues today in both state and federal supreme courts. Publication was coupled to terms: if you could not serve the complaint by term time, you then published, and the court could enter judgment.[211] This process was inefficient. At the time, terms of court could easily be measured in days, so publishing would inevitably delay judgment until the next court term—six months or one year later.[212]

In recognition of this problem, the greatly expanded provisions of the Chancery Act of 1845 reframed publication: instead of coming to court, publishing, and then coming *back* to court, the revised publication statute permitted a party to publish *first*, setting a return date during the term of court, so as to require only one appearance.[213] Publication was thus fixed at four weeks' publication and sixty days before default could be taken.[214]

---

209. That is not to tritely say that the exception proves the rule; it could simply resolve a latent ambiguity. But in order for the exception to have meaning, it must have legal effect. People v. Glisson, 782 N.E.2d 251, 255 (Ill. 2002) (noting that all portions of the statute should carry meaning). At the least, the existence of the exception disproves a contrary rule.

210. Chancery Act of June 1, 1827, § 5.

211. *Id.*

212. Early in the 1800s, terms of court were often measured in days, with single-digit caseloads. By midcentury a more robust caseload had developed, which measured terms in weeks. Either figure is refreshingly quaint to the modern eye. Terry Wilson, *The Business of a Midwestern Trial Court: Knox County, Illinois, 1841-1850*, 84 ILL. HIST. J. 249, 251 (1991). For a fascinating history of the territorial and early state court system, see generally George A. Dupuy, *The Earliest Courts of the Illinois Country*, 1 ILL. L.R. 81 (1906–07).

213. Chancery Act of March 3, 1845, § 8. This quirk of publication remains to this day: for in rem or quasi in rem cases, a plaintiff may simply publish as to defendants, *without* seeking court approval first. 735 ILL. COMP. STAT. 5/2-206 (2020); *cf. id.* § 2-203.1. Though not strictly necessary, it is always preferable to comprehensively document and exhaust other service mechanisms, if only to strengthen the case for publication, should it be later challenged.

214. Chancery Act of June 1, 1827, § 5.

The purpose of the statutory exception in this situation is clear: if a plaintiff needed to file a case, publish for four weeks, and *then* wait an additional sixty days before moving for judgment, the publication process might still outpace the term of court, and the statutory streamlining would serve no purpose. By allowing publication and the default period to both run in substantial part prior to the term of court, cases could be timely decided so long as the judgment was entered on or after the return date.[215]

Two hundred years of statutory development have led to a modern default procedure that, while still based on that 1845 framework, is substantially slimmer than the original: publication runs three weeks, with a thirty-day default period. Courts have responded by giving defendants extensions on those time periods for good cause shown, which often requires nothing more than the ask—indeed, seeking additional time to answer is often considered a routine motion.[216] Furthermore, if a default should be entered, it can be vacated within thirty days almost as a matter of right.[217]

It is therefore evident that the default period and the redemption period serve two very different purposes. The default period marks out a time after which an adverse event—judgment—may occur if a subsequent motion is filed and presented. And, even then, the default period is often extended or waived as a matter of course; even if default is entered, it can be easily undone. Permitting the default to run from the first publication makes practical sense: if the defendant does not participate, then the plaintiff can seek their judgment and resolve the case sooner rather than later.[218] But the moment a defendant seeks to participate, they have ample

215. *E.g.*, Pile v. McBratney, 15 Ill. 314, 317, 318 (1853) (noting that the publication ran from March 8 through April 26, and the judgment was entered May 13).

216. ILL. SUP. CT. R. 183; *accord* 735 ILL. COMP. STAT. 5/2-1007 (2020). *See, e.g.*, Venteurs, LLC v. Johnson, 2017 IL App (1st) 151464-U, ¶ 16 (collecting cases for proposition that motions are routine); Adcock v. Adcock, 91 N.E.2d 99, 101–02 (Ill. App. 2d Dist. 1950) (noting that a key factor under Rule 183 is diligence exercised by party seeking additional time).

217. 735 ILL. COMP. STAT. 5/2-1301(e) (2020). A defendant need not make out a defense on the merits; the only question is whether vacating a default would work "substantial justice" between the parties. People v. Ralph L. (*In re* Haley D.), 2011 IL 110886, ¶ 57. Usually, this is met simply by asking to vacate the default; law and equity both disfavor defaults. *Id.* at ¶ 69. Note that because the judgment of foreclosure is *not* a final order, a trial court usually will not lose primary jurisdiction thirty days after its entry. Thus, motions to vacate a default judgment of foreclosure are technically timely up to thirty days after confirmation of sale, though by that point a defendant faces other hurdles as well. *See generally* Wells Fargo Bank v. McCluskey, 2013 IL 115469 (holding that a 1301 motion is timely until after confirmation of sale, but after sale occurs, such motions must *also* seek to vacate the sale under 735 ILL. COMP. STAT. 5/15-1508(b) (2020). For an excellent overview of the procedures and practice surrounding vacating default judgments in foreclosure cases, see generally Horan, supra note 142.

218. This interest is most obvious in foreclosure cases. Over seventy percent of all foreclosure cases are defaults, where no defendant appears or otherwise takes any action with respect to judicial proceedings. *See supra* note 4 (statistical analysis). In the author's chancery experience, only insurance declaratory actions have a similarly high rate of nonparticipation.

opportunity and provision, both through statute and caselaw, to remedy any default and litigate on the merits.

Redemption, by contrast, is a homeowner's last practical opportunity to save their property, after which the right is automatically extinguished. And, once expired, it can neither be extended nor revived.[219] The principle of flexibility underlying the default period is simply absent in the redemption statute. Because the statutes have radically divergent motivations and applications, it would be inappropriate to appeal to the default publication exception as the basis of an analogy justifying interpretation of a redemption calculation from the first date of publication.

C. Redemption by Way of Reinstatement

Redemption and reinstatement are different statutes with different histories, but their plain text is deeply intertwined. The redemption statute's language concerning the calculation of the statutory time period is deliberately copied from the reinstatement statute, almost word for word. The most salient difference is that the reinstatement statute has an exception that redemption does not: for reinstatement, and reinstatement only, the calculation explicitly runs from the first publication.

The existence of the exception in the reinstatement statute demonstrates how the general rule underlying the calculation language must be to calculate the time period from the third publication—for if it were otherwise, the exception would mean nothing. Virtually every applicable principle of statutory construction supports transferring this reasoning to the redemption statute, concluding that, absent an exception to the contrary, redemption should run from the third publication. The redemption statute has no exception, and none should be implied.

1. Different Statutes, Common Calculation

Statutory redemption dates to 1825, predating the 1961 statutory reinstatement provisions by nearly a century and a half.[220] Yet reinstatement is a particularly valuable lens through which to understand redemption. This is because the IMFL, which reworked the entire statutory scheme governing foreclosures, affected each section differently.

By 1987, redemption was well into its second century, and had undergone substantial changes and additions during that period, leading

219. 735 ILL. COMP. STAT. 5/15-1603(c)(1) (2020).

220. An Act concerning Judgments and Executions, §§ 11, 12 (eff. May 1, 1825) (redemption); Act Relating to Mortgages of Real Property, Nov. 14, 1961, § 7 (eff. July 1, 1962), *codified as* ILL. REV. STAT. ch. 95, § 57 (1963) (reinstatement). *See also supra* accompanying text notes 51, 95 (history of reinstatement and redemption statutes, respectively).

to a proliferation of substantially similar redemption statutes, each governing a slightly different situation.[221] All versions, however, allowed for post-sale redemption, one of the main procedures the IMFL was intended to change.[222] As part of the IMFL, the redemption statute had to be reworked to incorporate a mechanism to start the redemption clock from the date of service, which, at the time, the statute did not contain.[223]

Alongside this statutory change, the IMFL collected all the various foreclosure-related statutory provisions to a single location, where they had previously been scattered throughout the Code of Civil Procedure.[224] As part of this, reinstatement was corralled into the IMFL as section 1602—but because the new statutory scheme did not implicate reinstatement, the language of the statute remained unchanged in substance, save for minor consistency changes to unify the foreclosure lexicon.[225]

Crucially, then as now, the reinstatement statute explicitly calculates the reinstatement period from the date of service. So when the *redemption* statute was integrated into the IMFL as section 1603, and the new statute needed a way to calculate the redemption period from the date of service, it simply copied the reinstatement statute's method of calculation, which at that point had been refined over the better part of twenty-five years.

Consider, therefore, the relevant portions of the reinstatement statute, which set forth when reinstatement is to be made:

> [P]rior to the expiration of 90 days from the date the mortgagor or, if more than one, all the mortgagors (i) have been served with summons or by publication or (ii) have otherwise submitted to the jurisdiction of the court.[226]

And compare the relevant portions of the redemption statute, setting out the redemption time period:

> [O]n the later of (i) the date 7 months from the date the mortgagor or, if more than one, all the mortgagors (A) have been served with summons or by publication or (B) have otherwise submitted to the jurisdiction of

221. *See supra* Section I.C.2.i (historical developments of statutory redemption).

222. *See supra* Section II.C.2.ii (principal motivations of IMFL); *see generally* Gnatek, *supra* note 11 (discussing same).

223. The statute *had* contained such an exception, but the provision that had contained it was eliminated as redundant four years prior. The circumstances of that elimination were messy, to say the least. *See infra* notes 241–45 and accompanying text.

224. For instance, the redemption statute itself did not become part of the Code of Civil Procedure until as late as 1981. P.A. 82-280 (eff. July 1, 1982); *see also supra* text accompanying note 104 (statutory shuffling of redemption statute).

225. *See supra* note 60 and accompanying text (reviewing complete legislative history).

226. ILL. REV. STAT. ch. 110, § 15-1602 (1987); *cf.* 735 ILL. COMP. STAT. 5/15-1602 (2020).

> the court, or (ii) the date 3 months from the date of entry of a judgment of foreclosure.[227]

Even though the redemption statute is far older, its language is quite clearly modeled on the reinstatement statute. This establishes an almost perfect test case for the venerable doctrine of statutory construction known as *in pari materia*: it should be presumed that two sections of the same statute are governed by the same motivations and should be construed together and consistently.[228]

Untangling the redemption statute's calculation by reference to reinstatement is made substantially easier by the fact that reinstatement has what redemption does not: an exception.

2. The "First Publication" Exception

Immediately following the above-quoted reinstatement calculation, the reinstatement statute provides a black-and-white exception: "When service is made by publication, the first date of publication shall be used for the calculation."[229] Currently, the reinstatement statute has this exception, and the redemption statute does not—but it was not always so. The "first publication" exception has come and gone in *both* statutes over the past half-century, and a close examination of the chronology is necessary to understand why.[230]

As originally enacted, the 1825 redemption statute permitted redemption for up to fifteen months following a sale.[231] Subsequent legislation whittled that period down bit by bit, both by directly reducing the general redemption period and by adding statutory exceptions for certain types of cases, parties, or both.[232] One of these changes came in 1961, with the addition of an optional hard cap on the redemption timeline designed to rein in the sprawling redemption timetable.[233] The general redemption period was still twelve months from sale, but the

227. ILL. REV. STAT. ch. 110, § 15-1603(b)(1) (1987); *cf.* 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020).

228. *E.g.*, Relf v. Shatayeva, 2013 IL 114925, ¶ 39; Nance v. Howard, 1 Ill. 242, 245 (1828); *accord, e.g.*, Respublica v. Nicholson, 2 Yeates 9, at **3 (Pa. 1795).

229. 735 ILL. COMP. STAT. 5/15-1602 (2020).

230. Usually, the legislative history is the best source of insight as to what motivated these repeated and facially contradictory changes. Here, that history is unavailable; information about even the most recent changes in 1987 is hard to find at best, to say nothing of sixties-era legislation. The best way to unravel this statutory ping-pong is to closely scrutinize the statutory configurations of the era to determine what practical problems motivated the changes. *See* Hillman v. Hillman, 910 A.2d 262, 274 (Del. Ch. 2006) (containing a similar analysis on repeatedly and contradictorily revised statute).

231. Twelve for the mortgagor, and three thereafter for creditors. An Act Concerning Judgments and Executions, §§ 11, 12 (eff. May 1, 1825).

232. *See generally supra* Section I.C.2.ii (history of statutory redemption in Illinois).

233. Blanco & Crumbaugh, *supra* note 57, at 347.

judgment of foreclosure could now identify the date of service upon the mortgagors; if it did so, the redemption period instead expired on the later of twelve months from service or *six* months from sale.[234] As part of that calculation, if service was by publication, the period was to be calculated from the first publication.[235]

The reinstatement statute also dates to 1961, but from a different law passed nine months later.[236] It simply calculated ninety days "from the date of service of summons," and contained no provision accounting for cases of service by publication.[237] The reinstatement statute's calculation language today is substantially unchanged from the original 1961 language.[238]

Redemption changed again in 1982, shrinking again to six months from sale, unless cut short by a calculation of six months from service or six months from the judgment.[239] It again contained a "first publication" exception in the optional hard cap.[240] As with the 1961 version, though, because the redemption timeline operated independently of the sale and judgment process, it is unclear what, if any, effect these calculations had on the foreclosure process as a whole.

At around the same time, however, the redemption provisions were shifted into the Code of Civil Procedure, with its adoption in 1983.[241] As part of those revisions, the optional hard cap, with its "first publication" exception, was dropped entirely.[242] This makes sense: the hard cap originated when redemption was twelve months from sale, but now that it was only six months, the cap was redundant, and eliminating it helped simplify the dizzying web of redemptions.[243]

---

234. Act of August 7, 1961, L. 1961, p. 2852. *See* ILL. REV. STAT. ch. 77, § 18 (1961) (discussing the general redemption period); *id*. § 18e (discussing exception).

235. ILL. REV. STAT. ch. 77, § 18e (1961).

236. Act Relating to Mortgages of Real Property, Nov. 14, 1961, § 7 (eff. July 1, 1962).

237. ILL. REV. STAT. ch. 95, § 57 (1961).

238. *Compare* ILL. REV. STAT. ch. 95, § 57 (1961), *with* 735 ILL. COMP. STAT. 5/15-1602 (2020).

239. P.A. 82-783, 1982 Ill. Laws 384 (eff. July 13, 1982).

240. *Id*. Note that, because the Illinois Revised Statutes were issued on odd-numbered years, and this version was effective 1982 and lasted barely one month, it was never formally published in a regular issue of the statute books. *See infra* note 243 and accompanying text (identifying convoluted procedural history).

241. P.A. 82-280, 1981 Ill. Laws 1524 (eff. July 1, 1982).

242. P.A. 82-937, 1982 Ill. Laws 3249 (eff. Aug. 18, 1982).

243. The chain of events here is somehow even more complex than as described here. Going into 1980, the general redemption provision was a twelve-month window, with a six-month hard cap, tied to the "first publication" language. ILL. REV. STAT. ch. 77, § 18e (1979). In August 1981, the Code of Civil Procedure moved the redemption provision from the Judgments Act to the newly created Code, without changes. P.A. 82-280, 1981 Ill. Laws 1524 (eff. July 1, 1982). The general redemption provision was then reduced to six months—but because the Code had not yet taken

The complexity of this conditional redemption calculation alone should make the impetus for an amended, unified mortgage foreclosure law painfully clear.[244] Among many other things, the IMFL combined reinstatement and redemption under a single Act, changing the language of both in the process. So when the IMFL's drafters decided to put a publication calculation back into the redemption statute, instead of reaching back to the redemption statute's own prior calculation—which was wrapped up in a complex web of statutory repealers that no one wanted to reopen—the drafters simply copied the reinstatement statute's publication calculation, which had no "first publication" exception. As initially enacted in the IMFL, both the reinstatement and redemption statutes calculated time periods based on service by publication, but *neither* contained the "first publication" exception.[245]

Shortly after the IMFL's implementation, the General Assembly passed two "clean-up" Acts, which implemented a scattershot of changes to the statute.[246] Some of the changes added necessary clarification, some were simple copyedits, and some fixed things that had slipped through the cracks.[247] For reasons unknown, the old redemption statute's "first publication" exception was revived in the reinstatement statute—and *only* in the reinstatement statute—in 1990.[248] Redemption, then as now, contains no such exception.

---

effect at the time the reduction act was drafted, it actually accomplished the reduction by amending the Judgments Act, *not* the Code. P.A. 82-783, 1982 Ill. Laws 384 (eff. July 13, 1982). The hard cap, and "first publication" language, was now redundant, and repealed not even a month thereafter—but again, this repealer targeted the Judgments Act, not the Code. P.A. 82-937, 1982 Ill. Laws 3249 (eff. Aug. 18, 1982). Thus, by the end of 1982, the Code had a twelve-month window with six-month hard cap, but the Judgments Act, which the Code was *supposed* to have repealed, was freshly amended with a six-month window and no hard cap. The General Assembly solved the problem in 1983 with a second repealer, which incorporated all of the 1982 changes into the Code and repealed the Judgments Act once and for all. P.A. 82-1057, 1982 Ill. Laws 3249 (eff. Feb. 11, 1983).

244. *See generally, e.g.*, Blanco & Crumbaugh, *supra* note 57 (painstakingly describing old mode of procedure and proposing substantial reforms, some of which survived into the IMFL).

245. ILL. REV. STAT. ch. 110, §§ 15-1602, 15-1603(b)(i) (1987).

246. P.A. 85-907, 1987 Ill. Laws 3802 (eff. Nov. 23, 1987); P.A. 86-974, 1989 Ill. Laws 6578 (eff. July 1, 1990).

247. *See generally supra* note 246. None of this is particularly surprising, given that the IMFL was a complete overhaul of foreclosure law. If anything else, it's remarkable how *few* changes had to be made once the statute went into effect and various stakeholders could see how it worked in practice. Nevertheless, the IMFL was a major statutory overhaul with major consequences. Some were apparent at the time, and addressed via the clean-up bills. Some came out only with years of experience. *E.g.*, Stanley P. Sklar & James P. Moran, *Does the Mortgage Foreclosure Law's Notice Provision End the Relation-Back Doctrine?*, 82 ILL. B.J. 324 (1994). Some lingering issues are still outstanding—such as the proper calculation of redemption when service occurs by publication.

248. P.A. 86-974, 1989 Ill. Laws 6595 (eff. July 1, 1990). For more on *why* this circumstance may have come to pass, the author speculates in Section II.D *infra*.

3. A Meaningful Exception Requires a Rule

It is a core principle of statutory construction that every part of a statute should have meaning.[249] Both the law and common sense disfavor interpretations that nullify words or phrases; if something is in a statute, it is there for a reason, and should mean something. This principle is intuitive as applied to statutory exceptions: the general rule cannot be the same as the exception, for if it were, the exception would mean nothing.[250]

Here, the reinstatement's statute exception provides that the reinstatement period is to be calculated from the first of the three publications. The existence of this exception necessarily requires a contrary general rule: but for the exception, reinstatement would *not* be calculated from the first date of publication. And here, the general rule is self-evident from the nature of service by publication. Because service by publication is only complete after the third publication,[251] any statutory time period running from the date of publication would only run from the third publication.

Having established the general rule with respect to reinstatement, the same principle can be applied to the redemption statute's calculation. The language of the redemption statute is identical, *mutatis mutandis*, to that of the reinstatement statute. This implicates the general principle that the use of identical language in similar contexts should be construed similarly.[252] And, general principles aside, here we know that the redemption language was deliberately copied from the reinstatement statute.[253]

The redemption statute's calculation language must therefore operate on the same general rule as the reinstatement statute: redemption is to be calculated from the third publication. Reinstatement has an exception, and redemption does not. That omission is presumptively intentional, a

249. *E.g.*, Best v. Taylor Mach. Works, 689 N.E.2d 1057, 1083–84 (Ill. 1997).

250. This particular combination of statutory construction over a statutory exception is less common in the caselaw, but it is certainly established. One good, if convoluted, example is a 2011 tax appeal case concerning whether land was properly defined as "open use" land. Onwentsia Club v. Ill. Prop. Tax Appeal Bd., 2011 IL App (2d) 100388, ¶ 6. The general rule did not specify whether property improved with a building could still be considered "open use." *Id.* at ¶¶ 10–11. But one statutory exception provided that land *primarily* used for *residential* purposes was not "open use." *Id.* at ¶ 11. The exception necessarily entailed that land *not* primarily used for residential purposes was "open use." And residence necessarily entailed a building to reside in. Thus, the general rule necessarily required that land *with* a building but *not* primarily used for residential purposes could still be considered "open use." *Id.*; *see also* Shared Imaging, LLC v. Hamer, 2017 IL App (1st) 152817, ¶ 39 (featuring a similar type of analysis).

251. *See supra* Section II.B.1.ii (explaining publication requires three full weeks).

252. *In re* Estate of Wilson, 939 N.E.2d 426, 452–53 (Ill. 2010).

253. *See supra* Section II.C.1 (comparing the language in the reinstatement and redemption statutes).

presumption made all the stronger by the fact that the legislature passed the IMFL without any exceptions, and then chose to add the exception *back in*—but only to reinstatement.[254] To read a "first publication" exception into the *redemption* statute requires either interpreting the general rules of the parallel statutes differently or injecting an exception where none exists.[255] Neither is permissible.

The inescapable conclusion is that the statutory redemption period must be calculated from the third date of publication. To hold otherwise would contradict the plain language of the redemption and publication statutes, be fundamentally at odds with the purposes of the statutes, impale the reinstatement statute on the horns of a dilemma, and generally violate a half-dozen iron-clad rules of statutory construction.

D. How the Elephant Got its Trunk

It would be useful to identify why the current redemption statute *lacks* the "first publication" language present in the reinstatement statute. Unfortunately, there is no clear answer. Examining other relevant legislative changes suggests that the omission was intentional, but little else.

The original purpose of the redemption period lies in the State's agrarian roots. If a farmer had a bad crop and fell behind on the mortgage, a twelve-month redemption window gave them another season to raise a good crop and redeem.[256] Likewise, the early American economy experienced frequent real estate fluctuations; in twelve months, property value might well increase enough to make redemption viable.[257]

Neither of these original motivations makes sense for modern redemption, where the residential property does not generate income and is unlikely to significantly appreciate in value. Not even an excellent crop would yield anywhere close to the principal balance on a standard multi-decade mortgage—and, in any event, farmland is explicitly excluded

254. *See supra* Section II.C.2 (chronicling the history of reinstatement statute's exception); P.A. 86-974, 1989 Ill. Laws 6595 (eff. July 1, 1990) (re-injecting exception to reinstatement statute). *See also* People v. Molnar, 857 N.E.2d 209, 224 (Ill. 2006) (explaining legislative omissions presumptively intentional, and lead to different results).

255. Trivially, courts cannot read into statutes exceptions that are not there. *E.g.*, People v. Glisson, 782 N.E.2d 251, 255 (Ill. 2002); Collins v. Metro. Life Ins. Co., 83 N.E. 542, 543 (Ill. 1907).

256. Blanco & Crumbaugh, *supra* note 57, at 335 (citing ROBERT KRATOVIL, MODERN MORTGAGE LAW & PRACTICE 333 (1972)); *accord* Ghent, *supra* note 102, at 1106–08 (surveying early redemption periods and noting that, of states that offered redemption, many ran twelve or twenty-four months).

257. Blanco & Crumbaugh, *supra* note 57, at 335 (quoting Strause v. Dutch, 95 N.E. 286, 287–88 (Ill. 1911)) ("It is a matter of common knowledge that real estate values, either from general or local causes, make sudden and material advances.").

from the definition of residential property.[258] And though the modern economy has its swings, it is exceedingly unlikely that market appreciation alone would make a dent in the debt.[259]

Legislators were reluctant to limit redemption in explicit terms, because doing so appears to disfavor mortgagors.[260] The redemption statute therefore sprouted more and more provisions.[261] The most substantial, added in 1961, introduced the "first publication" language for the first time, and bears investigation.[262] That provision was originally designed as a backstop to ensure that, if a lender used its mechanisms, redemption would expire sooner, rather than later.[263] Thus, the "first publication" exception simply makes that period expire two weeks sooner. But because that provision did not always apply, and even when it did it would not have driven the sale timeline, it was likely more palatable than simply cutting down the redemption period in toto.

The IMFL nestled reinstatement and redemption side by side as sections 1602 and 1603, respectively, rewriting the language of both as needed.[264] As originally implemented, neither section contained the "first publication" language. The legislative history, usually the best resource for why the General Assembly took a certain action, contains no hint of *why*.[265]

But the motivation is perhaps self-evident: when rewriting a statute, why create more exceptions than necessary?[266] If the intent was for

---

258. 735 ILL. COMP. STAT. 5/15-1219 (2020).

259. If the property was worth more than the debt to start with, the borrower could always sell it, pay off the loan, and walk away with the excess; no redemption is necessary to do that. Because the property is residential, borrowers are not faced with the question of selling an asset, but rather selling their *home*, which imposes noneconomic but very real burdens. *But see* THE BEVERLY HILLBILLIES, CBS (1962–71) (chronicling the escapades of a nouveau riche family who stumble upon immense wealth following an oil survey of their backwoods swampland estate).

260. Blanco & Crumbaugh, *supra* note 57, at 381 n.324 ("Redemption laws are like cherry pie. They serve no useful purpose, but politicians are reluctant to change them, because such action appears to disfavor mortgagors.").

261. *See generally id.* at 342–51 (describing the mechanics of pre-IMFL redemption).

262. H.R. 297, 72d Gen. Assemb., Reg. Sess. (Ill. 1961); ILL. REV. STAT. ch. 77, § 18e (1961).

263. ILL. REV. STAT. ch. 77, § 18e (1961); *see also* Blanco & Crumbaugh, *supra* note 57, at 347 (noting the purpose of section 18e).

264. P.A. 84-1462, 1986 Ill. Laws 4392 (eff. July 1, 1987); *see* ILL. REV. STAT ch. 110, §§ 1602, 1603 (1987).

265. *See, e.g.*, Chicago Tribune Co. v. Johnson, 477 N.E.2d 482, 484 (Ill. 1985) (exploring the legislative history of statute instructive in determining intent); Krohe v. City of Bloomington, 769 N.E.2d 551, 554 (Ill. App. 4th Dist. 2002) (explaining the usefulness of legislative transcripts and floor remarks).

266. The author has scoured the General Assembly's archives for floor debates on the bills that became the IMFL. Debates on the matter appear few and far between, suggesting the majority of horse-trading happened, as might be expected, in committee or otherwise behind closed doors. Redemption is mentioned by reference, rather than as a topic itself. *See, e.g.*, H.R., 84th Gen.

redemption to run shorter for publication, the statute could have just said so—or even set a six-month period for publication, just like it sets a six-month period for nonresidential foreclosures.[267]

The most interesting question here, though, is why the "first publication" exception was later added back in, but *only* for reinstatement.[268] The 1989 bill that added the exception in was one of two clean-up bills that passed in the wake of the IMFL. And on that bill's third reading on the House floor, the House debate, *in its entirety*, consisted of the following statement from its sponsor, Peg Breslin:

> Thank you, Mr. Speaker. Ladies and Gentlemen this Bill now cleans up the former Mortgage Foreclosure Act that we passed a couple of years ago. Makes it more workable makes only one change in the issue of publication and that is that you don't have to republish if you have adjourned your sale. And the adjourned sale happens within 60 days of the original notice. If you adjourn more than 60 days you still have to republish. So that the only thing that it changes within the notice requirements. There is no change whatsoever with regard the redemption period. Which was the one of the controversial parts of the Bill, that has been strip from the Bill completely. I ask that it be passed. Thank you.[269]

The sixty-day discussion refers to requirements for the publication of sale, which is unrelated to service by publication.[270] The interesting part is the second half, an almost throwaway remark that there is no change to the *reinstatement* period, and that such a proposed change was controversial and stripped completely. This tantalizing hint stands alone; no other House discussion touches it, and the bill had no substantive Senate discussion at all.[271]

But from that one side comment, it is possible to make an educated guess as to what happened. In the course of negotiating the clean-up bill, lenders likely tried to re-inject the "first publication" exception. This would have been reasonable, as the exception used to be present under the prior redemption statute, though it served a different purpose. It would likewise have been reasonable to introduce it as to both redemption and reinstatement, since both used the same language of calculation. Faced

Assemb., at 290 (Ill. 1986) (statement of Rep. Greiman) (pointing out that proposed thirty-five-day delay in filing a suit is peanuts in comparison to the lengthy redemption period).

267. *See* 735 ILL. COMP. STAT. 5/15-1603(b)(2) (2020).

268. P.A. 86-974, 1989 Ill. Laws 6595 (eff. July 1, 1990).

269. H.R., 86th Gen. Assemb., at 19–20 (Ill. 1989) (statement of Rep. Breslin) (errors as in original transcript). The bill then passed virtually unanimously, with a vote tally of 102-0-1. *Id*.

270. The amendment of P.A. 86-974 remains in effect today, unchanged. 735 ILL. COMP. STAT. 5/15-1507(c)(4) (2020).

271. Note that other concurrent bills addressed shortening redemption *from tax sales*, a procedure not governed by the IMFL. *See, e.g.*, S., 86th Gen. Assemb., at. 7–8 (Ill. 1990) (statement of Senator Netsch) (discussing redemption periods for tax sales).

with the prospect of almost immediately "losing" two weeks off the redemption period, homeowner interest groups would have objected to the change—hence Representative Breslin calling it "controversial." In the end, the lenders backed down: the objectionable portions were stripped, and the bill went on to become law.

Except, of course, that the exception remained as to reinstatement. There are two principal explanations for what actually happened.

First, it is possible that the language was deliberately retained. Reinstatement does not drive the foreclosure timeline, so losing two weeks of reinstatement would be less of a loss than redemption. Homeowner interest groups may have viewed the loss to reinstatement as an acceptable payment to receive other favorable amendments. If this were the case, and omission of the "first publication" language from redemption were intentional, reading it back in would be plainly inappropriate—but we may never know.

Second, it is possible that the reinstatement exception was an error. If the focus was on reverting changes to the redemption statute, the new language of the reinstatement statute may have slipped through the cracks.[272]

Though we may never know what actually happened at the drafting table, the second explanation—simple mistake—appears more likely. If the exception was indeed "controversial," why would the sponsor characterize it as being stripped entirely when that was not the case? And if retaining the exception for reinstatement was a horse trade, it was a poor one indeed, for the rest of the bill's changes to the IMFL are uniformly beneficial to lenders, not borrowers.[273]

Ultimately, the lack of a clear statutory history means that the "first publication" exception, and indeed the redemption statute itself, can only be evaluated in its statutory context. And that context makes clear that, because redemption lacks an exception, the redemption date must run from the third publication.

III. MOVING FORWARD

Miscalculated redemption is a relatively rare problem, but it is a persistent one. Foreclosure is a volume business, and institutional pressures that strongly favor standardized and procedural litigation may explain why this issue persists. Furthermore, because this issue only

272. Indeed, from a purely editorial point of view, section 1602 is presented as a large block of text, while section 1603 is neatly subdivided. It would be easier to overlook one sentence among dozens, particularly if one was not reading particularly closely, or late into the evening towards the end of a busy legislative term.

273. *See generally* P.A. 86-974, 1989 Ill. Laws 6595–98 (eff. July 1, 1990).

arises in cases where borrowers do not participate in the judicial process, the issue fundamentally evades any judicial review.

Fortunately, the problem is primarily one of awareness. Once aware of the issue, plaintiff's firms can choose to voluntarily comply. Individual judges can address redemption on a case-by-case basis. Systemic judicial resolution by way of a general order may be a more effective solution. Ultimately, however, shortening redemption is fundamentally a policy decision, and should be done intentionally or not at all—and not by accident.

A. *Pervasiveness of Issue in Plaintiff's Bar*

Redemption is calculated by plaintiff's firms as part of their proposed judgment orders. To the extent any redemption period is miscalculated, it is because plaintiff's firms calculated it a certain way. This is not to say that plaintiffs do so maliciously. Rather, the history of the redemption statute suggests compelling reasons for why it was once done a certain way, and these processes have simply not been updated. Furthermore, the same institutional forces that cause plaintiff's firms to miscalculate redemption suggest that internal change is unlikely.

Setting aside for a moment the origin, history, and nature of the problem with the redemption calculation, it bears asking the simple question of why it persists. Reading through the redemption statute as it currently stands, without reference to the reinstatement calculation and its "first publication" exception, there is no reason to calculate redemption from the first publication. Indeed, if the plain language is unambiguous as this Article suggests it to be, one might rightly wonder why it was ever misinterpreted to start with.

The reason is simple: institutional inertia. The plaintiff's side of the foreclosure bar is dominated by a relatively small number of extremely high-volume firms.[274] Many of these firms have existed, in one form or another, for decades. And they have extensive internal procedures for managing foreclosure cases, from projected case timetables to robust forms for nearly any filing that might be necessary. These are all perfectly reasonable, particularly in such a technically complex area of law; a firm that juggles thousands of foreclosure filings per year could hardly survive without extensive and comprehensive procedures. But the end result is a system where, once codified, any given procedure becomes ossified, persisting for years—even decades.

274. In Cook County, three firms are responsible for more than half (circa 53 percent) of all residential foreclosure filings. *See supra* note 4 (statistical analysis). Just ten firms are responsible for well over ninety percent of all filings. *Id*.

Prior to the IMFL, the redemption date was calculated on a "first publication" basis.[275] It is likely that, when the IMFL went into effect, firms simply retained as many of their prior procedures as possible, changing only what was necessary. The new statute provided for seven months instead of six, but aside from that, the redemption calculation in almost every *other* case—i.e. aside from publication—would remain the same. "Almost every" might have elided to "every," and firms simply calculated redemption the same way as before—even though the statute had changed. Indeed, this may have been the basis for the debate that led to the 1990 amendment and cryptic floor comments.[276]

Whatever the origin, it is highly likely that, at some point in the years following the IMFL, at least one plaintiff's firm started (or perhaps continued) calculating redemption from the first publication. Such a procedure would remain unchanged today—for without anyone to push back on it, why would change be necessary?[277]

Finally, other practitioners have surely noticed this error; a first-year law student tasked with calculating redemption could read the statute and identify what it does not contain.[278] But plaintiff's attorneys have a simple and powerful incentive to adhere to existing methods of calculation: the resulting sale comes two weeks earlier.[279] Because lenders benefit from a faster sale, zealous advocacy would support the client's interest, and thus a "first publication" calculation. This advocacy has likely been helped in no small part by the fact that this issue is utterly unaddressed, either through caselaw or otherwise. It is the author's hope that this Article sheds light on the issue, and is cause for correction of the 430 cases per year that exhibit this problem.

---

275. ILL. REV. STAT. ch. 77, § 18e (1961). This version was the basis for all subsequent redemption statutes until the IMFL in 1987. The "first publication" language was stripped a few years before that, in 1983, with the creation of the Code of Civil Procedure. *See* P.A. 82-937, 1982 Ill. Laws 3249 (eff. Aug. 18, 1982).

276. *See supra* Section II.D (featuring comments by Representative Breslin that suggest there was some debate over amending the redemption calculation).

277. *See infra* Section III.B (noting how the redemption calculation evades judicial review). This conclusion is buttressed by the author's examination of foreclosure cases; miscalculated redemption periods appear to be evenly distributed among foreclosure firms. *See supra* note 4 (statistical analysis). This is consistent with the theory that plaintiff's firms largely duplicate each other's procedures, either intentionally or through parallel evolution, thus permitting this issue to persist.

278. Indeed, a first-year law student serving as a judicial extern under the author's supervision *did* spot this discrepancy. The productive conversation about statutory interpretation that followed is responsible in part for this Article.

279. When the author asked point-blank why their firm calculated redemption from the first publication, one attorney responded, only half in jest, with a blunt "[because] it's shorter."

B. Redemption Evades Judicial Review

Almost as problematic as its prevalence is the fact that any issue concerning the proper calculation of redemption is largely beyond the scope of judicial review. The issue here is twofold. First, as a practical matter, in the time it would take to challenge redemption, the period would expire, and any challenge would be moot. Second, and structurally, even if the issue were somehow addressed, the IMFL itself largely bars courts from granting effectual relief.

1. Raising a Challenge Delays Redemption

The basis of the mootness issue is simple: redemption is calculated as the *longer* of seven months from service, however calculated, or three months from judgment.[280] Usually, those timelines will be fairly similar, diverging only by a month or two. While the seven-month period starts running at the time of service, the three-month period can only run once a judgment is entered, which in turn requires waiting out the thirty (or sixty) day default period, filing judgment motions, and getting a judgment entered. On top of this, because foreclosure dockets tend to be congested, even routine continuances tend to run long, in the sixty- to ninety-day range. Thus, even a simple delay—failure to timely tender courtesy copies, for instance[281]—can add months before a judgment is entered. If entry of the judgment is delayed, even a bit, redemption will likely be calculated based on the judgment, and *not* the date of service.

On top of this there is the simple fact that, in order to challenge anything, there must be a challenger. As soon as a borrower wishes to challenge the redemption calculation, they will be granted additional time—either to file a responsive pleading, to participate in a court-

280. 735 ILL. COMP. STAT. 5/15-1603(b)(1) (2020).

281. The importance of tendering courtesy copies in a timely fashion cannot be understated, and in the author's experience, is not fully appreciated by many practitioners. Unless a party tenders copies of its motions in advance, the judge generally does not know about it, and certainly has not reviewed it. It is irrational to expect a judge to review motions on the bench, particularly when judgment motions can run to hundreds of pages of exhibits each. It is, however, a great way to lose judicial favor and irritate chambers staff.

sponsored mediation program,[282] or simply because they asked for it.[283] Indeed, even if a default judgment had been entered, such judgments are routinely vacated upon a party's appearance.[284]

The effect of this additional time is simple: as a practical matter, the very fact of a borrower's appearance will cause the case to be continued such that the redemption period will be calculated from the date of judgment, rather than service. Any challenge to the calculation of redemption from publication will therefore be moot, simply by the fact that the challenge itself was raised.[285]

2. The IMFL Offers Alternate Relief

It is exceedingly difficult to construct a situation where a "first publication" calculation affects the borrower in a way other than simply shortening the case, but it can be done.[286] Consider: if a judgment is entered, and redemption is calculated based on publication, there is a two-week period between the ends of redemption, based on whether it is calculated from the first or third publication. If the borrower attempts to redeem during that period, the lender might reject it on the basis that the redemption period, that it had calculated based on the first publication, expired.[287]

---

282. The commentary to Supreme Court Rule 114 recognizes the value of mediation and strongly encourages circuit courts to adopt such programs. *See* ILL. SUP. CT. R. 114. Unfortunately, the biggest of these, the Cook County mortgage foreclosure mediation program, was terminated at the end of 2017 due to budget cuts, a victim of the infamous Cook County sweetened beverage tax debacle. *See* General Administrative Order 2018-01 (Cir. Ct. Cook Co. Jan. 16, 2018) (effectuating shutdown); Hal Dardick & Steve Schmaedeke, *Preckwinkle Agrees to Fewer Cook County Job Cuts; Hundreds of Layoffs Still in Works*, CHI. TRIB. (Nov. 21, 2017), https://www.chicagotribune.com/politics/ct-met-cook-county-budget-changes-20171120-story.html [https://perma.cc/ABJ2-5UWJ] (detailing the aftereffects of budget showdown). The mediation program's loss was keenly felt, and borrowers and lenders both have suffered for it.

283. In its most extreme form, if a borrower simply shows up to court and has *no idea* what's going on, the most probable judicial reaction would be to *sua sponte* continue the matter to allow them to seek legal counsel.

284. *See* 735 ILL. COMP. STAT. 5/2-1301(e) (2020) (vacation of default judgments); *see also supra* note 217 (detailing the low threshold for vacation). For more on the procedures surrounding vacation, see Horan, *supra* note 142 (engaging in a comprehensive discussion of vacation provisions available in foreclosure cases).

285. This entails a paradox by analogy to Heisenberg's uncertainty principle: a borrower can *either* preserve the challenge to the publication calculation, *or* participate in the case, but not both. Foreclosure is complicated, but it's not quantum physics, and borrowers can have their cake and eat it too. By participating in the case, the challenge is irrelevant. The borrower has gained additional time—which is far more important than preserving a deeply weird procedural argument.

286. It goes without saying that this fact pattern, or anything even remotely resembling it, is unknown in the appellate reporting, and unknown to the author (or anyone else with whom he has consulted) at the trial level.

287. Why a lender would choose to reject a full payoff is both beyond the scope of this hypothetical and a good indication of just how improbable this whole situation is. *See supra* Section I.B.2 (noting that lenders tend to accept settlements, even if outside of IMFL's strict requirements).

In such a situation, the borrower might argue the lender should be forced to accept reinstatement. But, even if redemption had been improperly calculated based on the first, rather than third, publication, the court would be powerless to revive or extend the redemption period. This is because the IMFL's language is clear: once expired, redemption "shall not be revived."[288] Trial courts cannot extend it, and not even appellate courts can restore it on remand.[289]

What a court could do, however, is sidestep the redemption issue entirely, and order the lender to accept the money as an *equitable* redemption instead.[290] This might involve additional steps—vacating a sale under the justice provision, for instance—but at its core, the remedy to an improperly calculated statutory redemption period is not through statutory redemption at all, but equitable redemption.[291]

Crucially, in such a situation, it would be unnecessary to address whether the redemption calculation was correct or not. Because redemption cannot be revived, the question of whether it was wrongly terminated is irrelevant—and because the remedy comes through equitable redemption, an examination of the mechanics of statutory redemption is simply not necessary.[292]

The issue of whether redemption is to be calculated from the first or third publication is one that will likely never see judicial review. By raising the issue, borrowers moot it; even if it somehow survived, the remedy necessarily comes elsewhere. A solution to this lingering issue cannot come through the normal litigation process.

C. Potential Legislative Action

The core problem identified in this Article—that redemption is being improperly calculated from the first, rather than third, date of publication—is not a legislative problem. As argued in Part II above, the statute is unambiguous; as demonstrated in Section III.A above, it is not being followed. A legislative amendment to the redemption statute, making explicit what is currently implicit, would certainly accomplish

---

288. 735 ILL. COMP. STAT. 5/15-1603(c)(1) (2020).

289. *See supra* note 122 (collecting cases for, and discussing, both propositions). The only way to revive reinstatement is to vacate the judgment itself—at which point the redemption period would run from any renewed judgment, rather than service, making any challenge to calculation from the first publication moot.

290. *See* 735 ILL. COMP. STAT. 5/15-1604 (2020) (discussing equitable redemption).

291. *See generally supra* Section I.C.4 (discussing uses of equitable redemption).

292. A court could certainly opine as to whether the "first publication" calculation was correct or not, but it would not be necessary to do so to address and resolve the issue.

the task.[293] But it is not necessary, and other solutions, such as judicial action, would be far more efficient.

Dissecting the nature of the redemption calculation has, however, shed light on a related and genuinely legislative problem. It appears that the "first publication" language of the *reinstatement* statute, introduced as part of a clean-up bill that addressed fifteen different code sections,[294] was included in error.[295] The statutory structure of the IMFL suggests that reinstatement and redemption were always meant to operate on the same timetable. The arguably inadvertent "first publication" language in reinstatement splits the two provisions, running counter to the original design of the statute, introducing an unnecessary layer of complexity, and operating to homeowners' detriment to boot. It would be appropriate for the General Assembly to correct this longstanding error and strike "first publication" language from the reinstatement statute, thereby bringing both reinstatement and redemption into their intended lockstep.[296]

Though fixing the reinstatement statute would be preferable in theory, the fact of the matter is that the error is thirty years old. Whatever the original reason for including "first publication" in reinstatement, it is by now a *fait accompli*. The legislative record is unclear on many things, but the one point on which there is no doubt is that amending the reinstatement or redemption timetables has historically been a contested matter.[297] The statutory scheme of the IMFL would benefit from such a fix, becoming simpler, consistent, and true to the original intent. But though such an amendment would originate as a simple legislative fix, it would surely be taken—and evaluated—as an attempt to lengthen the reinstatement period. This thrusts the merits of such an amendment to reinstatement firmly into the realm of public policy, as discussed further in Section III.E below, and beyond the scope of this Article.

---

293. Borrowing from the language of the reinstatement statute, such an amendment could be as simple as adding "When service is made by publication, the *last* date of publication shall be used for the calculation" to section 1603(b)(1). 735 ILL. COMP. STAT 5/15-1603(b)(1) (2020). Legislative amendments that are declarative of existing law are rare, but not unknown; of late, the foreclosure caselaw has seen turmoil concerning the Residential Mortgage Licensing Act. *See* First Mortg. Co. v. Dina, 2017 IL App (2d) 170043, ¶ 2 (featuring *Dina II*'s discussion of the original *Dina I* decision and the General Assembly's statutory rejection).

294. P.A. 86-974, 1989 Ill. Laws 6578 (eff. July 1, 1990).

295. *See supra* Section II.D.

296. Such an amendment would be straightforward indeed, and could be accomplished by removing the "[w]hen service is made by publication, the first date of publication shall be used for the calculation" sentence from section 1602. *See* 735 ILL. COMP. STAT 5/15-1602 (2020). Though a few well-placed comments on the House floor couldn't hurt, either.

297. *See* H.R., 86th Gen. Assemb., at 19–20 (Ill. 1989) (statement of Rep. Breslin) (discussing the controversy in changes to timelines); Blanco & Crumbaugh, *supra* note 57, at 381 n.324 (noting, in 1975, foreclosure experts recognized that legislators are reluctant to change redemption laws, "because such action appears to disfavor mortgagors").

To address the issue concerning redemption, however, non-legislative solutions are both simpler and more effective.

D. Judicial Action

Because the calculation of redemption from dates of publication always occurs when no defendants have appeared to contest the calculation, the best way of ensuring that it is calculated correctly is for the judges who review and enter judgment orders to make it so.[298] Judges can and do review each case individually, and can correct errors on a case-by-case basis. But on a broader level, this issue lends itself to the issuance of a general order.

1. Case-by-Case Correction is Possible

If a judge were to agree with the above discussion regarding the proper calculation of redemption, it would be within their discretion to direct the redemption date in the judgment of foreclosure be amended to reflect the proper calculation. Such a change could be done at the time of the judgment's entry by correcting the date on the proposed order; it would take but a moment. And incorporating the redemption calculation in the pre-hearing review of the file would ensure that the judge was aware of the issue where and when it arose.[299]

Judgment orders are required to contain the last date of redemption.[300] They also contain a great many other things, including technical language such as full legal descriptions of the subject property, and end up running in the five- to ten-page range.[301] Due to their length and complexity, judgment orders are usually drafted by plaintiff's counsel and tendered as proposed orders in the courtesy copy package.

Generally, the judge or chambers staff will review judgment motions and proposed orders before their entry. Because the borrower has not appeared to contest the case, this chambers review is often the only time

---

298. This is not necessarily so, but as a practical matter, it might as well be. *See supra* Section III.B.1 (explaining if a borrower appears, the delay caused will inevitably push redemption beyond any publication calculation).

299. The additional burden imposed by checking the redemption date against the publications would be proportionate to the degree of review normally undertaken by chambers staff. *See infra* note 303 (differing judicial philosophies).

300. 735 ILL. COMP. STAT. 5/15-1506(e) (2020). This date is descriptive, rather than proscriptive. Because redemption is calculated as a matter of law, the judgment order does not "adjudicate" redemption in any sense; it simply identifies what that date is. *See id.* § 15-1603(b)(1) (redemption calculation leaves no room for discretion).

301. A quick search on your legal database of choice will reveal hundreds. *See, e.g.*, Bank of N.Y. Mellon v. Shirley, 2019 Ill. Cir. LEXIS 1643 (Ill. Cir. Ct. Sept. 6, 2019) (containing a representative set of judgment orders). *See supra* note 82 (addressing the unsolved mystery of why such orders are picked up for publication).

the case is reviewed by a third-party neutral.[302] Different judges will review for different things, depending on the judge's preferences, their judicial philosophy, and—bluntly—chambers workload.[303] Reviewing for redemption in this situation would require implementing a workflow change, but it would not be a substantial one.[304]

The underlying question here is one of awareness. If judges are aware of the potential for miscalculated redemption under these circumstances, they check for it, and they change it where appropriate, the issue is resolved.[305] But while resolving the issue on a case-by-case basis is good, an institutional resolution is better.

2. A General Order Is Warranted

Ultimately, redemption is calculated the way it is because plaintiff's firms choose to do so a certain way. If they chose to do so another way—in accordance with what this Article proposes the law requires—the redemption issue resolves. The purpose of this Article is to identify and discuss the issue; ideally, once the concern became known, plaintiff's firms would voluntarily change practices to comply with what is proposed to be the correct interpretation of the law.[306] Absent such a change, however, there is one judicial tool that could be used to compel compliance: a general order.

302. Plaintiff's counsel will of course review the file, often many times. In the author's experience, on those occasions where a chambers review finds a problem, it is almost inevitably a simple scrivener's error or other inadvertent mistake of the sort to be expected in a volume business.

303. These first two are perhaps best described by example. One judge might believe that their obligation is to ensure that the law is strictly complied with, and might review the file in depth—checking to see that the required notices are in the record, reviewing the signature pages on the mortgage documents, running the numbers on the plaintiff's affidavit of amounts due and owing, and so forth. Another judge might observe that such detailed review is akin to advocacy, and review only for proof of service and proper notice, reasoning that the burden to ensure strict compliance in all other respects should remain on the defendant. As the tone of this Article suggests, the author tends towards the first of these two camps. This is not a question of right or wrong; it is simply of differing judicial philosophies, and both are equally valid.

304. The author has reviewed many thousands of files for a number of judges under a number of standards. Many of those judges already checked service affidavits and publications, where present in a case. For those who did not, doing so would require only a few seconds more.

305. The author does *not* mean to suggest that judges who have reviewed and entered judgments with miscalculated redemption dates have knowingly erred in any way. Judicial training materials, like those at plaintiff's firms, have a long and plodding pedigree, and simply don't address the issue. *See supra* Section III.A (discussing plaintiff's-side institutional inertia). And under some views of the issue, such review is simply not the judge's job. *See infra* note 303 (discussing differing judicial philosophies).

306. Or, if someone believes that calculating redemption from the first publication is in fact correct, they naturally would be welcome to present a well-reasoned argument to keep doing so. IMFL scholarship is a tiny field, and the author would welcome spirited debate on the issue!

The chief judge of each circuit court has the authority to enter general orders affecting all cases of a certain character in that circuit.[307] In Cook County,[308] general orders affecting foreclosure cases are relatively common, and have affected various procedures,[309] set forth form language for use in certain orders,[310] and otherwise resolved statutory ambiguity.[311] Entry of a general order addressing the proper calculation of redemption from service by publication would be consistent with other types of matters addressed in prior general orders. And because this issue only arises in uncontested cases, and voluntary compliance by the plaintiff's bar is institutionally unlikely, systemic judicial action provides the simplest and most effective resolution.[312]

E. A Measured Policy Decision

This Article characterizes the proposed miscalculation of redemption as an error, and one prevalent in contemporary foreclosure practice. But

307. ILL. SUP. CT. R. 21(c). In Cook County, this authority is devolved from the chief judge to presiding judges of the various divisions. For a good overview of this authority, *see* U.S. Bank v. Dzis, 2011 IL App (1st) 102812, ¶ 20. Because foreclosures are classified as chancery cases, general orders affecting foreclosures are entered in the Chancery Division. Note that, in Cook, orders entered by presiding judges, such as these, are known as General *Administrative* Orders (GAO), to distinguish from General Orders entered by the chief judge on a countywide basis. Nomenclature aside, the effect is the same, and this Article uniformly adopts the language of general orders, on the understanding that, in Cook, it would be a GAO instead.

308. Cook is not the only county to issue general orders addressing foreclosures. *See, e.g.*, General Order No. 13-23 (Cir. Ct. Kane Co. May 6, 2013) (supplementing Rule 113 with mandatory language in notice of default). But because Cook is by far the most populous county, with the most foreclosures, it is unsurprising that its general order regime governing such cases is the most comprehensive. The frequency of general orders is a function of how sprawling a given jurisdiction is. Smaller counties simply would not need as many general orders, because it is more efficient for judges to simply address the cases before them, without need of general pronouncements.

309. *See, e.g.*, General Administrative Order 2016-03 (Cir. Ct. Cook Co. April 7, 2016) (setting forth legal standard for reformation of mortgage); General Administrative Order 2012-10 (Cir. Ct. Cook Co. Nov. 27, 2012) (formalizing sixty-day rule).

310. *See, e.g.*, General Administrative Order 2018-03 (Cir. Ct. Cook Co. Aug. 8, 2018) (judgment language for third-party marketing platforms); General Administrative Order 2018-02 (Cir. Ct. Cook Co. April 9, 2018) (real estate transfer tax language in orders approving sale).

311. *See, e.g.*, General Administrative Order 2017-02 (Cir. Ct. Cook Co. Mar. 16, 2017) (bonding requirements for selling officers); General Administrative Order 2012-06 (Cir. Ct. Cook Co. April 26, 2012) (form language in judgments of foreclosure to comply with publication of sale requirements).

312. Entry of a general order in one county would only affect cases in that county. The author's experience is in Cook, which necessarily injects some bias to this discussion. That having been said: because Cook is home to 40 percent of the state's population, it is also home to the plurality of foreclosure cases. If Cook imposes a requirement, and plaintiff's firms change their procedures to account for it, such change is usually found in other counties, because it is easier to maintain one system than two. It can be reasonably speculated that, if systemic change in Cook affected the calculation of redemption for Cook County foreclosures, the solution would propagate itself to the rest of the state. And, at the very least, a change in Cook alone would resolve hundreds of potentially improperly calculated foreclosures per year, an action with intrinsic value.

it is possible to treat the "first publication" calculation not as an error, but as a natural consequence of failing to participate in court proceedings. Failure to participate leads to other penalties—default judgment, for instance—so why should a fringe reduction in redemption be treated differently?

There are numerous potential arguments in favor of such a position, but perhaps the most compelling is that, in order for miscalculated redemption to affect them, the borrower must not have participated in any meaningful way. As noted in Section III.B above, if the borrower interacts with the case before entry of judgment, virtually any amount of activity in a case would moot the issue. If they participated after entry of judgment, because judgments are easily vacated, prejudice is easily cured.[313]

And there are plenty of other procedural mechanisms that offer some degree of protection against this situation arising in the first place. Chief among them is the fact that service by publication can only occur after a lender undertakes a diligent search to execute service through normal means.[314] This will almost always involve repeated service attempts at the subject property, at any other property with which the borrower is affiliated, and a small blizzard of legal mailings.[315]

In other words, if a borrower is wholly unresponsive throughout this entire months-long process, how much prejudice can truly occur by losing two weeks of redemption? In any sort of equitable analysis, it could be strongly argued that their utter inaction justifies trimming access to redemption.

This is the policy rationale underlying the "first publication" exception in the reinstatement statute.[316] More broadly, this rationale grounds *any* limitation on the redemptive mechanisms of the IMFL: the borrower's redemptive rights have to be cut short sooner or later, and it makes sense to truncate them based on this type of metric. Nonresidential properties get six months, severely underwater properties get sixty days, and

313. For more on the many ways in which vacations can occur, *see* Horan, *supra* note 142, at 43 (table of procedural postures and standards). As observed earlier, around seventy percent of foreclosure cases end in a voluntary dismissal. *See supra* note 4 (statistical analysis). Settlements routinely occur following entry of judgment, which is routinely vacated as part of the dismissal itself.

314. 735 ILL. COMP. STAT. 5/2-206(a-5) (2020).

315. Unsurprisingly, the borrower participation rate for cases where service occurred by publication (approximately six percent) is substantially less than the participation rate for foreclosure cases generally (around thirty percent). *See supra* note 4 (statistical analysis). Because service by publication necessarily entails the exhaustion of normal service methods, this suggests that the process is working as intended: service by publication captures those borrowers who are genuinely not amenable to regular service—evading service, have moved out of state, are deceased, and so forth.

316. *See* 735 ILL. COMP. STAT. 5/15-1602 (2020) (detailing "first publication").

abandoned properties get thirty days.[317] The entire statutory scheme countenances meting out redemption on a case-by-case basis.

But that is exactly why the redemption period *cannot* be cut short. If the past two hundred years of foreclosure law demonstrate nothing else, it is that the exact measure of redemption is, and always has been, a contested subject.[318] The IMFL is ultimately a grand bargain between the rights of lenders and the time periods available to borrowers. As part of that bargain, borrowers are entitled to their redemption period under the letter of the law.[319]

The question then becomes what that law should be: the length of the redemption period is first and foremost a policy decision. In 1825, that policy called for a twelve-month post-sale right; in 1987, policy crafted the current seven-month window. But the fact remains that seven-month redemption is a policy decision that the General Assembly has already made.

Redemption can certainly be shortened or extended, under whatever terms and for whatever classes of borrowers as may be appropriate. But doing so is inherently a policy decision, one that has historically been hotly contested and solely legislative—demonstrated by, if nothing else, the multiple carve-outs of section 1603 and its predecessors.[320]

If redemption is to be cut short where a borrower is served by publication, doing so is quite easy: add "first publication" language to section 1603, just as it is in section 1602.[321] But that *must* be a legislative act. Major policy decisions—and, in the foreclosure context, any alteration to the length of redemption is one such decision—cannot and should not be made by accident or implication. "The history of liberty has largely been the history of observance of procedural safeguards,"[322] and

317. *Id.* § 15-1603(b)(2), (3), and (4), respectively. These periods have been tested over many years, and each is accepted as constitutionally valid. *See, e.g.*, First Fed. Sav. & Loan Ass'n of Chi. v. Walker, 437 N.E.2d 644, 647 (Ill. 1982) (holding that the ninety-day reinstatement period meets rational basis test).

318. *See, e.g.*, *supra* Section I.C (discussing historical developments of redemptive mechanisms).

319. So it has been for hundreds of years. *See, e.g.*, Stone v. Gardner, 20 Ill. 304, 309 (1858) (strictly construing redemption statute against judgment creditor who did not comply with its terms).

320. *See generally* 735 ILL. COMP. STAT. 5/15-1603(b) (2020). The most complex version of the prior statute, immediately prior to its incorporation in the Code of Civil Procedure, had nine different subsections dedicated solely to different flavors of residential redemption. ILL. REV. STAT. ch. 77, § 18 (1979). *See supra* note 297 (collecting sources for contested nature of changes).

321. This Article does not take a position on whether such change would be desirable. As with many policy decisions, the ramifications of changing the redemption period, even in a small way, implicate practical concerns well beyond the scope of this Article.

322. McNabb v. United States, 318 U.S. 332, 347 (1943) (Frankfurter, J., majority opinion). *McNabb* itself was, ironically, later superseded by statute. 18 U.S.C. § 3501(c) (eff. Dec. 1, 1990) (2020).

until and unless the redemption statute is amended, it must be applied by its terms. Redemption must run from the third publication date.

CONCLUSION

When a mortgagor is served by publication, the statutory redemption period must run from the third date of publication, not the first. Where the borrower participates in the case, this calculation is unused and the point is moot. But if the borrower does not participate in the case, and the lender miscalculates redemption from the first date of publication, the entire foreclosure process is accelerated by two weeks. The expiry of redemption, the judicial sale, and ultimately the borrower's eviction happen two weeks too early. This is not in accord with the plain language of, or legislative intent underlying, the IMFL.

This miscalculation occurs not by malice but by ignorance; the complex history of the redemption statute, plus various institutional pressures on the plaintiffs who actually calculate and propose the redemption periods in the first place, make it easy for this error to occur and slip through unnoticed. Miscalculated redemption is an infrequent but regular occurrence: an estimated 430 cases per year in Cook County alone are procedurally flawed in this respect.

Ultimately, the problem is one of awareness. Plaintiff's firms can change their own calculations to conform to the statute's requirements. Individual judges can enforce a proper calculation on a case-by-case basis. Ideally, a broader general order would compel systemic change. However given effect, a proper calculation of statutory redemption from the third date of publication would comport with the meaning and intent of the IMFL, and ensure that the foreclosure process gives all borrowers the protections required by law.