No.

IN THE
SUPREME COURT OF THE UNITED STATES

KYLE KINZY and JACKI KINZY,
Petitioners,
v.

FIRST TENNESEE BANK, N.A.

Respondent.

Petition for a Writ of Certiorari to the
Illinois Appellate Court, Second District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a state official arbitrarily and capriciously violates substantive due process by rejecting a timely electronic filing merely because attached exhibits were filed in "landscape" rather than "portrait" format.

2. Whether state court filing rules which fail to provide fair notice that electronic filings require the filing of exhibits in "portrait" rather than "landscape" format deprive civil litigants of their right to procedural due process.

3. Whether a state statute which bars all claims following the confirmation of a judicial sale is preempted by the automatic stay provisions of the federal bankruptcy laws.

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The order of the Illinois Supreme Court, denying the petition for leave to appeal is unpublished. It is attached as Appendix A.
The order of the Illinois Appellate Court for the Second District is cited as *First Tenn. Bank, N.A., v. Kinzy*, 2020 IL App (2d) 180799 and is attached as Appendix B.

JURISDICTION

The Illinois Supreme Court denied the Kinzys' petition for leave to appeal on September 30, 2020. This court has jurisdiction under 28 U.S.C. Sec. 1257.
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CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, amend. XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Constitution, Article VI, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The remaining statutes and rules involved are included in Appendix D.

STATEMENT OF THE CASE

Although this case ultimately stems from complex litigation involving an action for foreclosure of a mortgage filed by respondents against petitioners, the key questions with respect to this petition both involve a motion to vacate a default judgment and a confirmation of sale, under the pertinent Illinois statute, 735 ILCS § 5/2-1401.

Therefore, this statement of facts begins with the procedural history of the 2-1401 motion and contains references to the prior litigation only where necessary.

Under Illinois law, a 2-1401 petition allows a litigant relief predicated upon proof, by a preponderance of evidence, of a defense or claim that would have precluded entry of the judgment in the original action and diligence in both discovering the defense or claim and presenting the petition. *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007). The petition must be filed not later than 2 years after the entry of the order or judgment. 735 ILCS 5/2-1401 (c). [1]

1 Illinois case law refers to actions taken under 2-1401 as both petitions and motions. Herein, "2-1401 petition" or "2-1401 motion" are used

A default judgment was entered against Kyle Kinzy and Jacki Kinzy on May 6, 2015, and a confirmation of sale was entered on July 27, 2016. (R. C 7674). The deadline for filing a 2-1401 petition with respect to this judgment was therefore July 27, 2018.

On July 26, 2018, shortly before midnight, petitioners attempted to electronically file their 2-1401 motion. The motion alleged the following broad grounds for relief: (1) the Kinzys had a meritorious claim or defense to the underlying action (S.R. I, 8-15), (2) that the Kinzys had acted with due diligence in pursuing the underlying action and in filing the 2-1401 (S.R. I, 16-17), and (3) that 735 ILCS 5/15-1309(c), which bars all claims following a confirmation of judicial sale, is preempted by federal law and is unconstitutional. (S.R. I, 17-18).

More specifically, the 2-1401 petition claimed that the Kinzys had the following meritorious claims or defenses: (1) that after the closing, First Tennessee forged the underlying mortgage documents and recorded the forgeries in order to avoid the effect of an Illinois law that caused the mortgage to be void ab initio (S.R. I,

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interchangeably depending upon whether the party or case law referred to it that way.

8-9), (2) that First Tennessee breached first and intentionally triggered events that led to the Kinzys' bankruptcy including the bank's wrongful withholding of hundreds of thousands of dollars of construction draw funds from the workmen while the Kinzys continued to timely pay the mortgage; (3) that the Kinzys' defenses and counterclaims survived their respective bankruptcies (S.R. I, 9), (4) that Illinois Supreme Court Rule 305(k), which had been invoked by the second district, in dismissing the Kinzys prior appeal, was unconstitutional (S.R. 9-11), (5) that First Tennessee, acting under color of state law, violated the Kinzys' fourteenth amendment due process rights, and (6) that the foreclosure and judicial sale were preempted by the federal bankruptcy laws and therefore void. (S.R. I, 13- 15).

With respect to due diligence, the 2-1401 motion alleged that the Kinzys acted with due diligence because they had been denied their right to inspect the original mortgage documents, because they could not file the 2-1401 motion while the original appeal was pending, and because the two-year limit for filing the petition was tolled by First Tennessee's fraudulent concealment of the forgery of the mortgage documents among other documents

that demonstrated First Tennessee's role in the forgery. (S.R. I, 16-17). Additionally, the motion alleged that if the prior judgments were rendered void due to a violation of the automatic stay or void on other grounds, then the two-year limit for filing the petition did not apply.

Finally, the motion alleged that 735 ILCS 5/15-1309(c), which bars all claims following a confirmation of judicial sale, as interpreted by the appellate court decisions in *U.S. Bank National Ass'n v. Prabhakaran*, 2013 IL App (1st) 111224 and *Harris Bank, NA. v. Harris*, 2015 IL App (lst) 133017 ¶ 47, was unconstitutional in light of federal preemption. The motion argued that the court should fashion a remedy which would leave the in rem judgment in favor of the innocent third party purchasers of the property intact, while allowing the Kinzys the ability to pursue their in personam counter claims for money damages against First Tennessee. (S.R. I, 17-18).

The facts concerning the electronic filing of the motion to vacate are as follows. The two-year statute of limitations for filing a 2-401 motion to vacate would normally expire at midnight on July 27, 2018, two years after the confirmation of sale.

On July 26, 2018, a few months after the resolution of a previous appeal in the Illinois Appellate Court, 2nd District, and before midnight, more than 24 hours prior to the expiration of the statute, Kyle Kinzy submitted a complete copy of the motion, together with the supporting exhibits via the court's efiling system. Shortly thereafter, and still before midnight on July 26, 2018, Mr. Kinzy emailed a copy of the motion to opposing counsel. (R. C9472).

On Friday, July 27, 2018, after receiving a notice that the filing had been rejected, Mr. Kinzy communicated with the clerk and received instructions on how to refile the motion. After complying with those instructions, he promptly resubmitted the motion that same day. (R. C9473).

The following Monday, July 30, 2018, Mr. Kinzy again received a notice that the filing had been rejected. Mr. Kinzy called the clerk and learned that the purported reason for the rejection was that some of the exhibits contained images, printouts of the payment history made by First Tennessee and other exhibits, which were in landscape format. The Clerk of Lake County's software for the efile system automatically rotated the landscape images into

portrait images without resizing them, which violated the margin requirements of Lake County Local Rule 2-1.02. (R. C9473).

After two previously unsuccessful attempts to file the motion, the Kinzys submitted the motion once again on Monday, July 30, 2018, with the exhibits attached in portrait format. The next day, Tuesday, July 31, 2018, the filing was accepted, with a file-stamped date of Monday, July 30, 2018. (R. C9473).

The Kinzys asked the Clerk several times over the next few weeks for the rule which required the Clerk to reject the filings. No rule was ever provided. (R. C9473).

On August 15, 2018, the Illinois circuit court judge dismissed the 2-1401 petition. On August 23, 2018, the Kinzys filed a motion to reconsider Judge Berrones's order. (R. C8633). The Kinzys argued: (1) Judge Berrones erred by striking the 2-1401 motion on the basis that it was not in the form of a petition (R. C8639), (2) Judge Berrones dismissed the 2-1401 motion prematurely, before the mandatory 30 day period for a response (R. C8640), (3) the Kinzys' submission of the 2-1401 motion before the two-year deadline was timely (R. C8640-41), (4) the

Clerk's initial rejections of the 2-1401 motion conflicted with Illinois Supreme Court Rule 131 (R. C8641-43), (5) the motion to vacate also raised issues of voidness and therefore could be filed beyond the two-year statute (R. C8641-42), and (6) the court should have considered the contemporaneously filed motion for recusal before ruling on the motion to vacate. (R. C8643-44).

During the oral arguments Mr. Kinzy contended that the trial judge should accept the petition as timely filed because it was timely submitted, or in the alternative that good cause and/or a technical/mechanical failure of the efile system excused the Kinzys from timely filing and the petition should be accepted late for good cause shown.

Simultaneously pending with the 2-1401 motion was a Motion to Substitute Judge for Cause. The Illinois circuit court judge decided he need not make any decision about the recusal for cause, nor refer the motion to another judge, because the petition was untimely filed and accordingly the trial court had no jurisdiction. (App. 20).

On appeal, the Kinzys argued, among other things, that the failure to allow the filing

of the 2-1401 motion denied them federal due process. However, the Illinois appellate court ignored the claim, holding only that the Kinzys had not shown the defective filing was due to a "technical failure" because a "technical failure" does not include a failure of the user's equipment. 2 The Illinois appellate court did not consider whether there was "good cause" for the defective filing or whether the failure to accept the filing violated due process. *First Tenn. Bank, N.A., v. Kinzy*, 2020 IL App (2d) 180799, ¶ 24.

Because of this disposition, the Illinois appellate court did not rule as to whether 735 ILCS 5/15-1309(c), which bars all claims following a confirmation of judicial sale, as interpreted by the appellate court decisions in *U.S. Bank National Association v. Prabhakaran*, 2013 IL App (1st) 111224 ¶ 30 and *Harris Bank, NA. v. Harris*, 2015 IL App (lst) 133017 ¶ 47, was unconstitutional in light of federal preemption.

A petition for leave to appeal to the Illinois Supreme Court, which raised both constitutional issues, was denied on September 30, 2020.

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2 In the instant case, Mr. Kinzy's equipment did not fail. Instead, the Clerk's software rotated the landscape exhibits and then the Clerk decided to reject the timely submitted petition. Accordingly, the technical failure occurred in the Clerk's office rather than with Mr. Kinzy's equipment

REASONS FOR GRANTING THE PETITION

I.

THIS COURT SHOULD GRANT THE PETITION TO DETERMINE WHETHER A STATE OFFICIAL ARBITRARILY AND CAPRICIOUSLY VIOLATES DUE PROCESS BY REFUSING TO ALLOW A TIMELY ELECTRONIC FILING MERELY BECAUSE ATTACHED EXHIBITS WERE FILED IN A "LANDSCAPE" RATHER THAN A "PORTRAIT" FORMAT

This Court should grant certiorari to determine the Kinzy's substantive due process rights were violated when the Illinois courts refused an otherwise timely electronic filing merely because attached exhibits were filed in a "landscape" rather than a "portrait" format.

Given the growing ubiquity of electronic filing in all courts, state and federal, this is a question of national importance. Depriving a

litigant of her day in court merely because a clerk arbitrarily chooses to "reject" her filing for reasons which are not adequately specified in advance, either orally or in writing, is extraordinarily unjust. But this is exactly what happened in this case.

Under the fourteenth amendment to the United States constitution no State may "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV. As this Court explained in *Sacramento v. Lewis,* 523 U.S. 833, 845 (1998) "since the time of the [the Court's] early explanations of due process, [the Court has] understood the core of the concept to be protection from arbitrary action."

As this Court further explained in *Hurtado v. California*, 110 U.S. 516, 527 (1884:

"The principal and true meaning of the phrase has never been more tersely or accurately stated than by Mr. Justice Johnson, in *Bank of Columbia v. Okely*, 4 Wheat. 235-244 [(1819)]: `As to the words from Magna Carta, incorporated into the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has

at last settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice.'"

The "touchstone" of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonn*ell, 418 U.S. 539, 558 (1974), whether the fault lies in a denial of fundamental procedural fairness, see, e.g., *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"), or in the exercise of power without any reasonable justification in the service of a legitimate governmental objective, see, e.g., *Daniels v. Williams*, 474 U.S., at 331 (the substantive due process guarantee protects against government power arbitrarily and oppressively exercised). Due process protection in the substantive sense limits what the government may do in both its legislative see, e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965), and its executive capacities, see, e.g., *Rochin v. California*, 342 U.S. 165 (1952). With respect to executive action, the due process clause is intended to prevent government officials "from abusing [their] power, or employing it as an instrument of oppression."

Davidson v. Cannon, 474 U.S. 344, 348) (1986).

This Court has not had occasion to decide whether the arbitrary and capricious application of a time limit or a statute of limitation will violate substantive due process. This makes this case a case of first impression and makes the grant of the petition for writ of certiorari even more important. But lower courts have, on occasion, decided similar cases and found the arbitrary and capricious application of time limits violated due process.

For example, in *Mitchell v. Comm'r of Soc. Sec.*, No. 11-15592, at *1 (E.D. Mich. Mar. 13, 2013), a claim for social security benefits, the plaintiff was unrepresented in her original hearing before the Administrative Law Judge, and then missed the 60-day deadline to file for rehearing by 60 days. At a hearing on her request for an extension of time to file plaintiff explained that she was unaware of her ability to file for rehearing until she spoke to a lawyer and was not able to call the SSI office for assistance because she was dealing with her son's illness.

Although the Code of Federal Regulations specified that good cause could be established by a death or serious illness in the claimant's

immediate family, 20 C.F.R. § 416.1411., the ALJ disregarded plaintiff's excuse and found the petition for rehearing to be untimely. Because the ALJ had acted arbitrarily and capriciously by ignoring the regulation, plaintiff's due process rights had been violated.

Here, similarly arbitrary and capricious action by the Illinois clerk deprived the Kinzy's of due process. No statute, rule, or court decision informed the Kinzys in advance that exhibits had to be submitted in portrait rather than landscape format.

Instead, the Illinois rules regarding electronic filing provide explicitly that "a document is considered timely if submitted before midnight (in the court's time zone) on or before the date on which the document is due." Illinois Supreme Court Rule 9 (eff. January 1, 2018). There is no question here that the Kinzys submitted their filing, which was correct with the exception of the format orientation of the exhibits, on July 26, 2018, more than 24 hours prior to the expiration of the statute, with notice to opposing counsel. (R. C9472).

Moreover, like 20 C.F.R. § 416.1411, the Illinois Supreme Court rules contains a savings

provision where late filing can be excused for "good cause shown." Even though it is hard to imagine a better "good cause" than an otherwise timely filing which was correct apart from the orientation of two exhibits, the Illinois appellate court failed to even consider "good cause" and instead focused only on the other savings clause, "technical failure." The failure to apply their own rules to the Kinzy's situation was the very definition of "arbitrary and capricious."

Therefore, the petition for writ of certiorari should be granted.

II.

THIS COURT SHOULD GRANT THE PETITION TO DETERMINE WHETHER COURT RULES WHICH DO NOT GIVE FAIR NOTICE THAT AN ELECTRONIC FILING CANNOT BE ACCEPTED IF EXHIBITS ARE FILED IN "LANDSCAPE" RATHER THAN "PORTRAIT" FORMAT VIOLATE DUE PROCESS

In addition to violating the Kinzys substantive due process rights, the failure of Illinois court rules to give the Kinzys adequate notice that their filing would be rejected if the attached exhibits were submitted in landscape rather than portrait format denied them procedural due process.

The Clerk's decision to reject the Kinzys' petition was not only made without notice to the Kinzys of the unwritten "efile exhibits in portrait format only" rule, but altogether deprived the Kinzys of their opportunity to be heard on their petition.

The fundamental requirement of due process is the opportunity to be heard "at a

meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). See ***Grannis v. Ordean***, 234 U.S. 385, 394, (1914). In this case, the Kinzys were deprived of any opportunity to be heard at any time and in any manner.

At the hearing on the 2-1401 petition all the substantive arguments after the petition were ignored due to the lack of any notice that the 2-1401 petition would be rejected for the inclusion of two exhibits in landscape rather than portrait format.

Since Sec. 2-1401 is a jurisdictional rule, the Clerk's decision to reject the timely submitted 2-1401 petition directly impacts the Kinzys opportunity to be heard, " 'Due process,' unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." *Cafeteria Workers v. McElroy*, 367 U.S. 886, 895 (1961). "(D)ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and

private interests that are affected. *Arnett v. Kennedy*, 416 U.S. 134, 167-68 (1974)(Powell, J., concurring in part); *Goldberg v. Kelly*, 397 U.S., 254, 263-266; *Cafeteria Workers*, 367 U.S., at 895.

Consideration of the interests and the procedures involved here compels the conclusion that the Kinzys were deprived of substantive due process.

First, in the instant case, the Kinzys' private interest in having their 2-1401 petition heard was substantially destroyed by the official action of the clerk. Second, there was a serious risk of an erroneous deprivation of such interest through the unwritten "efile in portrait format only" rule, which had no safeguards and completely surprised the Kinzys. Third, the state's interest could have been cheaply and effectively be served by publishing a rule requiring portrait only format or by allowing additional time for litigants to refile petitions that were unwittingly filed in the landscape format.

Efiling, which has suddenly become ubiquitous throughout the nation's courts, has brought a new set of standards and rules to

follow for attorneys and pro se litigants. In this case, rules regarding the efiling of documents with the Clerk of court of Lake County have been published, along with rules published by the Illlinois Supreme Court.

But none of the published rules mentioned that documents submitted through the efile system must be submitted in portrait format only. Before efiling, the documents submitted would be stamped and accepted regardless of whether they were in landscape or portrait format. Unless or until the Illinois courts or legislature amends their rules to include instruction about landscape or portrait format, many additional litigants may be deprived of due process when the Clerk applies an unwritten rule to reject such filings. No litigant should be deprived of the opportunity to be heard after their petition is timely filed through the application of an unwritten rule which permanently deprives a litigant of all rights.

This case is therefore a case of first impression to this Court regarding state efiling procedures that deprive litigants of substantive or procedural due process rights without fair notice due to an unconstitutionally vague, unwritten rule.

Moreover, a grant of the petition for writ of certiorari would also enable this Court to decide a question left open for decision by this Court's split opinion in *Sessions v. Dimaya*, 138 S. Ct. 1204, 1213 (2018) as to whether a less exacting standard for a vagueness challenge applies in ordinary civil cases than applies in criminal and exceptional civil cases. *Compare Dimaya*, 138 S. Ct. 1204, at 1213-15 (opinion of court by Kagan, J., with respect to Parts I, III, IV-B, and V, and plurality opinion with respect to parts II, and IV-A, joined by Justices Ginsburg, Breyer, and Sotomayor) (applying criminal standard for vagueness to deportation proceedings but declining to apply the same standard to all civil proceedings) *with Sessions v. Dimaya,* 138 S. Ct. 1204, 1225 (Gorsuch, J., concurring in part and concurring in judgment)(declining to join plurality's reasoning that criminal standard for vagueness should apply only to deportation proceedings and not to other civil cases).

Perhaps the best recent explication of this aspect of procedural due process is contained in Justice Neil Gorsuch's eloquent concurrence in *Dimaya*, 138 S. Ct. at 1223 (Gorsuch, J., concurring in part and concurring in the judgment):

> "Vague laws invite arbitrary power. Before the Revolution, the crime of treason in English law was so capaciously construed that the mere expression of disfavored opinions could invite transportation or death. The founders cited the crown's abuse of "pretended" crimes like this as one of their reasons for revolution. See Declaration of Independence ¶ 21. Today's vague laws may not be as invidious, but they can invite the exercise of arbitrary power all the same—by leaving the people in the dark about what the law demands and allowing prosecutors and courts to make it up."

Judge Gorsuch went on to forcefully counter the view of the *Dimaya* dissenters that due process does not include a prohibition on vagueness:

> The Fifth and Fourteenth Amendments guarantee that "life, liberty, or property" may not be taken "without due process of law." That

means the government generally may not deprive a person of those rights without affording him the benefit of (at least) those "customary procedures to which freemen were entitled by the old law of England." *Pacific Mut. Life Ins. Co. v. Haslip*,499 U.S. 1, 28, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991) (Scalia, J., concurring in judgment) (internal quotation marks omitted). Admittedly, some have suggested that the Due Process Clause does less work than this, allowing the government to deprive people of their liberty through whatever procedures (or lack of them) the government's current laws may tolerate. Post, at 1243, n. 1 (opinion of THOMAS, J.) (collecting authorities). But in my view the weight of the historical evidence shows that the clause sought to ensure that the people's rights are never any less secure against governmental invasion than they were at common law. Lord Coke took this view of the English due process guarantee. 1 E. Coke, The Second Part of the Institutes of the

> Laws of England 50 (1797). John Rutledge, our second Chief Justice, explained that Coke's teachings were carefully studied and widely adopted by the framers, becoming " 'almost the foundations of our law.' " *Klopfer v. North Carolina*, 386 U.S. 213, 225, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967). And many more students of the Constitution besides—from Justice Story to Justice Scalia—have agreed that this view best represents the original understanding of our own Due Process Clause. See, e.g., *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272, 277, 15 L.Ed. 372 (1856) ; 3 J. Story, Commentaries on the Constitution of the United States § 1783, p. 661 (1833); *Pacific Mut.*, supra, at 28–29, 111 S.Ct. 1032 (opinion of Scalia, J.); Eberle, Procedural Due Process: The Original Understanding, 4 Const. Comment. 339, 341 (1987)."

138 S. Ct. 1204, 1224-25 (2018)(Gorsuch, J., concurring in part and concurring in the judgment).

Justice Gorsuch went on to explain that, historically, the key component of procedural due process, in both criminal and civil cases, is the requirement of "fair notice." As to civil cases, Justice Gorsuch explained the historical origins of the fair notice requirement as follows:

> "A civil suit began by obtaining a writ—a detailed and specific form of action asking for particular relief. Bellia, Article III and the Cause of Action, 89 Iowa L. Rev. 777, 784–786 (2004) ; Subrin, How Equity Conquered Common Law: The Federal Rules of Civil Procedure in Historical Perspective, 135 U. Pa. L. Rev. 909, 914–915 (1987). Because the various civil writs were clearly defined, English subjects served with one would know with particularity what legal requirement they were alleged to have violated and, accordingly, what would be at issue in court. Id., at 917; Moffitt, Pleadings in the Age of Settlement, 80 Ind. L.J. 727, 731 (2005). And a writ risked being held defective if it didn't provide fair notice. *Goldington v. Bassingburn*, Y.B. Trin. 3 Edw. II,

> f. 27b (1310) (explaining that it was "the law of the land" that "no one [could] be taken by surprise" by having to "answer in court for what [one] has not been warned to answer")."

138 S. Ct. at 1225 (2018)(Gorsuch, J., concurring in part and concurring in the judgment).

The vagueness principle applied not only to civil writs, but also to statutes:

> "Blackstone illustrated the point with a case involving a statute that made "stealing sheep, or other cattle" a felony. 1 Blackstone 88 (emphasis deleted). Because the term "cattle" embraced a good deal more then than it does now (including wild animals, no less), the court held the statute failed to provide adequate notice about what it did and did not cover—and so the court treated the term "cattle" as a nullity. Ibid. All of which, Blackstone added, had the salutary effect of inducing the legislature to reenter the field and

> make itself clear by passing a new law extending the statute to "bulls, cows, oxen," and more "by name." Ibid.

138 S. Ct. at 1225 (Gorsuch, J., concurring in part and concurring in the judgment).

In conclusion, Justice Gorsuch put paid to the notion that civil deprivations of property are somehow less serious than criminal penalties and are therefore subject to a less demanding standard of review for vagueness:

> "This Court has made clear, too, that due process protections against vague laws are "not to be avoided by the simple label a State chooses to fasten upon its conduct or its statute." *Giaccio v. Pennsylvania*, 382 U.S. 399, 402, 86 S.Ct. 518, 15 L.Ed.2d 447 (1966). So the happenstance that a law is found in the civil or criminal part of the statute books cannot be dispositive. To be sure, this Court has also said that what qualifies as fair notice depends "in part on the nature of the enactment." *Hoffman Estates*, 455

U.S., at 498, 102 S.Ct. 1186. And the Court has sometimes "expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe." Id., at 498–499, 102 S.Ct. 1186. But to acknowledge these truisms does nothing to prove that civil laws must always be subject to the government's emaciated form of review.

In fact, if the severity of the consequences counts when deciding the standard of review, shouldn't we also take account of the fact that today's civil laws regularly impose penalties far more severe than those found in many criminal statutes? Ours is a world filled with more and more civil laws bearing more and more extravagant punishments. Today's "civil" penalties include confiscatory rather than compensatory fines, forfeiture provisions that allow homes to be taken, remedies that strip persons of their professional licenses and

> livelihoods, and the power to commit persons against their will indefinitely. Some of these penalties are routinely imposed and are routinely graver than those associated with misdemeanor crimes—and often harsher than the punishment for felonies. And not only are "punitive civil sanctions ... rapidly expanding," they are "sometimes more severely punitive than the parallel criminal sanctions for the same conduct." Mann, Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law, 101 Yale L.J. 1795, 1798 (1992) (emphasis added). Given all this, any suggestion that criminal cases warrant a heightened standard of review does more to persuade me that the criminal standard should be set above our precedent's current threshold than to suggest the civil standard should be buried below it."

138 S. Ct. at 1229 (Gorsuch, J., concurring in part and concurring in the judgment).

This case is a very good vehicle for

addressing the standard for vagueness in civil cases. The loss suffered – the Kinzys' loss of any inability to litigate a claim that forgery had deprived them of their legal interest in a particular, valuable property was very substantial. The notice that they had to electronically file the exhibits to their motion in a particular format was non-existent. The vagueness of the terms "technical failure" and "good cause" was palpable, particularly given the lack of judicial or other guidance as to the application of these terms to the format of electronic filings. The Kinzys acted in good faith by attempting to file 24 hours before the deadline and were falsely told that their filing would be accepted. They did not receive any guidance as to how to properly file until the deadline had passed.

Therefore, the petition for writ of certiorari should be granted.

III:

THIS COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI TO DETERMINE WHETHER ILLINOIS STATUTE 735 ILCS 5/15-1309(c), WHICH BARS ALL CLAIMS FOLLOWING A CONFIRMATION OF JUDICIAL SALE IS PREEMPTED BY FEDERAL BANKRUPTCY LAWS, INCLUDING 11 U.S.C. SEC. 362 (THE AUTOMATIC STAY PROVISION) AND SEC. 362(K) (WILLFUL VIOLATIONS OF THE AUTOMATIC STAY)

Although the Illinois courts did not reach the issue, properly raised below, as to whether Illinois Statute 735 IlCS 5/15-1309(C), which bars all claims following a confirmation of judicial sale is preempted by federal bankruptcy laws, including 11 U.S.C. Sec. 362 (the automatic stay provision) And Sec. 362(K) (willful violations of the automatic stay), this court should grant the petition to consider the issue and/or remand to the Illinois courts for their resolution.

In the Illinois courts below, the Kinzys filed a 2-1401 motion which alleged, in pertinent part, that 735 ILCS 5/15-1309(c), which bars all claims following a confirmation of judicial sale, as interpreted by the appellate court decision in *Harris Bank, NA. v. Harris*, 2015 IL App (lst) 133017 ¶ 47 is facially unconstitutional.

The motion argued, in pertinent part, that § 5/15-1309(c) was unconstitutional because it was preempted by the federal bankruptcy laws. The motion argued that the constitution required the court to fashion a remedy which would leave the in rem judgment in favor of the innocent third party purchasers of the property intact, while allowing the Kinzys the ability to pursue their in personam counter claims for money damages against First Tennessee. (S.R. I, 17-18).

The Illinois appellate court failed to reach the merits of this argument because it found that the Kinzys filing was untimely and because it believed that this issue had been resolved in a prior appeal. For the reasons given in Points I and II, the first holding deprived the Kinzys of

due process. For the reasons given in this point it deprived them of their constitutional rights and was not barred by res judicata.

It is a familiar and well-established principle that the Supremacy Clause, U.S. Const., Art. VI, cl. 2, invalidates state laws that "interfere with, or are contrary to," federal law. *Gibbons v. Ogden*, 9 Wheat. 1, 211 (1824) (Marshall, C. J.). Under the Supremacy Clause, federal law may supersede state law in several different ways.

First, when acting within constitutional limits, Congress is empowered to pre-empt state law by so stating in express terms. *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). In the absence of express pre-emptive language, Congress' intent to preempt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Pre-emption of a whole field also will be inferred where the field

is one in which "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." 331 U.S. at 230. See *Hines v. Davidowitz*, 312 U.S. 52 (1941).

Even where Congress has not completely displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," *Florida Lime Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines*, 312 U.S. at 67. See generally *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 698-699 (1984).

Here, 735 ILCS § 5/15-1309(c), and Illinois Supreme Court Rule 301(k), as judicially interpreted by Illinois courts, contravenes the federal bankruptcy laws, see, e.g. 11 U.S.C. sec. 362 (the automatic stay provision) and sec. 362(k) (willful violations of the automatic stay),

and the Supremacy Clause because they stand as an obstacle to the intent of the federal bankruptcy laws by preventing debtors from collecting in personam damages incurred in the course of a foreclosure simply because a state court has ordered a judicial sale.

This court should therefore grant the petition for certiorari to resolve this issue or direct the Illinois courts to address this issue on remand.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

KYLE KINZY AND JACKI KINZY

By:
/s/ Stephen L. Richards

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APPENDIX A

IN THE SUPREME COURT OF OILLINOIS

No. 126521

FIRST TENNESSEE BANK, N.A.,

Plaintiff-Appellee,

-vs-

KYLE KINZY and JACKI KINZY,

Defendants-Appellants.

[September 30, 2020]

Disposition: Petition for leave to appeal denied.

APPENDIX B

IN THE APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

No. 2–18–0799

FIRST TENNESSEE BANK, N.A. Plaintiff-Appellee,

v.

KYLE KINZY and JACKI KINZY,

Defendants-Appellants.

2020 IL App (2d) 180799

[May 28, 2020]

ORDER

JUSTICE HUDSON delivered the judgment of the court.

Appeal from the Circuit Court of Lake County.

No. 09-CH-2632

Honorable Luis A. Berrones, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice Birkett and Justice Bridges concurred in the judgment.

ORDER

¶ 1 Held: Defendant's petition for relief from judgment was moot in part and barred by res judicata in part; additionally, defendants did not

present adequate record for appellate court to conduct meaningful review; and defendants' allegations of judicial bias were moot.

¶ 2 I. INTRODUCTION

¶ 3 Defendants, Kyle Kinzy and Jacki Kinzy, appeal an order of the circuit court of Lake County dismissing their petition for relief from judgment (735 ILCS 5/2-1401 (West 2018)) for want of jurisdiction. Defendants also press an issue the trial court did not address after determining it lacked jurisdiction: whether a substitution was necessary due to the trial judge's alleged bias.

Plaintiff, First Tennessee Bank, N.A., moves, inter alia, that this appeal be dismissed. For the reasons that follow, we affirm. We also dismiss all outstanding motions.

¶ 4 II. BACKGROUND

¶ 5 The instant case is a collateral attack. The underlying case resulted in an appeal that led to our disposition in First Tennessee Bank, N.A. v.

Kinzy, 2016 IL App (2d) 160706-U (the 2016 appeal). In that case, defendants attempted to appeal a confirmation order, which had been entered on July 27, 2016, in a foreclosure proceeding initiated against them by plaintiff. We held that the appeal was moot because the property at issue in the foreclosure proceeding had been purchased by a third party. See Illinois Supreme Court Rule 305(k) (eff. July 1, 2004).

¶ 6 Defendants attempted to initiate the current action by filing their petition for relief from judgment on July 26, 2018, the day before the two-year deadline for filing a section 2-1401 petition expired. Defendants state that "[t]he trial court's e-filing system (EFS) rejected that submission because a few of the exhibits exceeded the electronic file size restrictions." They resubmitted the petition the next day—a Friday—and received an email confirmation. However, the following Monday, defendants state, "[T]he Clerk of Court rejected the submission on the basis that certain of the exhibits were attached in landscape rather than portrait format." Later that same day, defendants resubmitted their petition, and it was accepted.

¶ 7 The petition sought the following relief:

"WHEREFORE, this Court should grant the Kinzys' Motion to Vacate and, pursuant to 5/2-1401, vacate the orders of this Court from Feb. 6, 2015, until the present; grant the Kinzys fourteen (14) days to answer or otherwise plead to the Third Amended Complaint; grant the Kinzys an evidentiary hearing to prove forgery and fraud and such other relief as this Court deems just. In the alternative that this Court deems it necessary

to preserve the in rem judgment against the Property, the Kinzys respectfully request that the judgments be vacated to allow the Kinzys to pursue their in personam claims against First Tennessee and third parties.

We note that defendants' notice of appeal, in addition to the trial court's orders dismissing the section 2-1401 petition, also lists a number of orders entered by the trial court in the underlying action, including the confirmation order that was the subject of the previous appeal.

¶ 8 The trial court determined that the petition was not timely filed and that it therefore lacked jurisdiction to entertain the matter. Further, defendants had also filed a motion to disqualify the trial judge. The trial court found that it lacked jurisdiction to consider this motion as well. The report of proceedings from the day this order was entered has not been made a part of the record. Defendants now appeal to this court.

¶ 9 Plaintiff has filed a motion to dismiss this appeal, which we ordered taken with the case. Plaintiff advances three bases for dismissal. First, it asserts that defendants are seeking to reargue issues addressed in this court's disposition of the 2016 appeal. Second, it contends that this appeal, like the last one, is moot. Third, it argues that we lack jurisdiction to review the orders appealed. Plaintiff has also filed a motion to strike the appendix to defendants' response to plaintiffs' motion to dismiss this appeal.

¶ 10 III. ANALYSIS

¶ 11 We will address three main issues here. First, we will consider whether this appeal is

barred by various preclusive principles, namely, the mootness doctrine and res judicata. Next, we will address the propriety of the trial court's order dismissing defendants' petition. Third, we will address defendants' contention that the trial court should have considered their motion for a substitution of judges before it assessed whether it had jurisdiction.

¶ 12 A. PRECLUSIVE PRINCIPLES

¶ 13 We will first consider the applicability of the doctrines of mootness and res judicata to this case. Both doctrines present questions of law subject to de novo review. Lutkauskas v. Ricker, 2015 IL 117090, ¶ 43 (res judicata); In re Alfred H.H., 233 Ill. 2d 345, 350 (2009) (mootness).

¶ 14 As a preliminary matter, we note that a portion of this case is moot. In the 2016 (First Tennessee Bank, N.A., 2016 IL App (2d) 160706-U), we held that this case was moot in accordance with Illinois Supreme Court Rule 305(k) (eff. July 1, 2004), as the property that was at issue in the underlying proceeding had been sold to a third party. Defendants point out that we need not follow an earlier decision if we

determine it is "palpably erroneous." See Norris v. National Union Fire Insurance Co., 368 Ill. App. 3d 576, 581 (2006). However, defendants then go on to complain that the trial court did not consider the merits of their 2-1401 petition; attack a finding the trial court made regarding their efforts to file the petition; assert that the trial court did not address their motion to disqualify the judge; argue the merits of the underlying case; and complain of the trial court's decision in the underlying case to grant a default judgment against them. None of this has anything to do with our decision in the 2016 appeal that this case became moot when the subject property was sold to a third party. We have no quarrel with the proposition that we could reconsider our decision if we found it palpably erroneous; however, defendants have provided us with no basis to come to such a conclusion.

¶ 15 In the previous appeal, defendants also argued that the case was not moot because "monetary damages would be sufficient and that specific performance is not necessary to make them whole." Id. ¶ 24. We rejected this argument because defendants had only appealed the confirmation order and our jurisdiction was

limited to reviewing that order. Id. Such claims were not properly before us in the 2016 appeal. However, defendants make no attempt to explain why they could not have been raised at that time.

¶ 16 Res judicata applies to claims that were or could have been raised in an earlier proceeding. See Stolfo v. KinderCare Learning Centers, Inc., 2016 IL App (1st) 142396, ¶ 30 ("As the arguments raised in Stolfo's section 2-1401 petition either were or could have been raised in his unsuccessful direct appeal from the November 2011 judgment, we agree with the respondents that dismissal of the section 2-1401petition was warranted by res judicata."). Thus, the mere fact that defendants did not raise these claims in the earlier action does not allow them to escape the preclusive effect of res judicata.

¶ 17 The doctrine requires three elements: "(1) that a court of competent jurisdiction rendered a final judgment on the merits; (2) that there is an identity of the parties or their privies; and (3) that there is an identity of cause of action." Cload

v. West, 328 Ill. App. 3d 946, 949-50 (2002). Clearly, the earlier action resulted in a final judgment and the same parties are involved. Further, there is an identity of cause of action where the claims arise from the same group of operative facts. Id. at 950. Here, defendants alleged monetary claims all arise out of the same set of operative facts as the foreclosure action. Res judicata applies to matters that could have been asserted in a counterclaim. Corcoran-Hakala v. Dowd, 362 Ill. App. 3d 523, 530-31 (2005).

¶ 18 Defendants assert that the judgment in the underlying case is void. Res judicata generally does not apply to void judgments. In re Marriage of Hulstrom, 342 Ill. App. 3d 262, 270 (2003). A void judgment is one entered by a court lacking jurisdiction over the subject matter or parties. Id. A judgment that is entered by a court of competent jurisdiction is voidable if it is entered erroneously. Id. Defendants advance three arguments as to why the judgment may be void. They contend that they were not provided with due process. However, due process violations do not

render a judgment void under Illinois law. See People v. Hubbard, 2012 IL App (2d) 101158, ¶ 22. Similarly, defendants assert that the failure of both parties to sign the original mortgage renders it void ab initio in accordance with section 1c of the Joint Tenancy Act (765 ILCS 1005/1c (West 2008)). However, the failure to follow a statute renders a judgment voidable rather than void. Hulstrom, 342 Ill. App. 3d at 270-71. Moreover, we note that the statute, by its own language, states that a mortgage against a tenancy by the entirety is not "effective" rather than it is "void." Finally, defendants assert that the trial court violated the automatic stay of a bankruptcy court. The earliest order identified in defendant's notice of appeal is dated March 19, 2015. The stay in this case (actually, the second stay, as defendants also filed a bankruptcy petition in 2014) was lifted on March 7, 2015. Thus, none of the after-occurring orders are void by virtue of the stay. Hence, defendants have not identified a basis upon which any of the orders they seek to undo are void.

¶ 19 Defendants make numerous assertions that they are being denied due process and an

opportunity to be heard. However, they had ample opportunity to present their substantive claims. Following plaintiff's filing of their third amended complaint, a date was set for defendants to respond. Instead of answering the complaint, defendants moved for and received an extension to file their answer. On the extended date, again, instead of answering, they sought another extension. The trial court denied this request; it was not required to grant it (Miller v. Consolidated Rail Corp., 173 Ill. 2d 252, 260 (1996)). It was at this point in the proceedings below that defendants had the opportunity to advance their claims but did not do so as required.

¶ 20 Defendants argue that res judicata does not apply because the very purpose of a section 2-1401 petition is to undo a final judgment. While true, there must be a legitimate basis for undoing the judgment. Matters that were or could have been argued in the underlying proceeding do not constitute such a basis, as explained above. See Stolfo, 2016 IL App (1st) 142396, ¶ 30.

Defendants have failed to identify a basis upon which the trial court's earlier judgment could be disturbed.

¶ 21 In sum, we hold that defendants' claims are moot as they pertain to the subject property and are otherwise barred by res judicata.

¶ 22 B. DISMISSAL

¶ 23 The trial court dismissed defendants' petition for relief from judgment because it found the petition untimely. By affidavit, defendant (Kyle Kinzy) avers that defendants initially attempted to file their petition on July 26, 2018, but it was rejected by the electronic filing system because it was too big. The petition was resubmitted on July 27, 2018 (the day it was due), and defendants learned on July 30, 2018, that it was again rejected because some of the exhibits were in landscape rather than portrait format. They successfully resubmitted the petition the same day. Defendant further avers that he spoke with the clerk of court, who informed him that "the exhibits could not be

submitted in landscape format because the efile system would rotate them into portrait format and cause them to go beyond the margins of the page." The trial court held that the petition was untimely and dismissed it.

¶ 24 Illinois Supreme Court Rule 9 (eff. January 1, 2018) governs electronic filings in the circuit courts. The rule provides two savings provisions for petitions that were not timely filed. A party may seek relief where the untimely filing was caused by "any court-approved electronic filing system technical failure" or for "good cause shown." Id. The former encompasses " 'a malfunction of the e-filing provider's or the Court's hardware, software, and or telecommunications facility which results in the inability of a registered user to submit a document electronically. It does not include the failure of a user's equipment.' " Peraino v. County of Winnebago, 2018 IL App (2d) 170368, ¶ 22 (quoting Ill. S. Ct., M.R. § 2(h) (eff. Feb. 3, 2014)).

¶ 25 Here, defendants assert that it was a technical failure of the electronic filing system to rotate documents to a portrait orientation. It is unclear to us whether this is a technical failure at all. It is common knowledge that court records (both common law records and reports of proceedings) are stored in a portrait orientation. Thus, the trial court could have determined that this was something defendants should have been aware of and accounted for when they filed their petition. It further could have determined that this was a failing of defendants rather than the electronic filing system.

¶ 26 However, we do not know what the trial court determined because a transcript of the hearing during which the trial court dismissed defendants' 2-1401 petition has not been made a part of the record. It is the appellant's burden to provide a complete record. In re Estate of Jackson, 354 Ill. App. 3d 616, 620 (2004). Where the record is lacking, we must presume the trial court's ruling conformed with the law and had an adequate factual basis. Id. This provides an alternate basis to affirm the trial court's judgment.

¶ 27 C. MOTION TO DISQUALIFY

¶ 28 Defendants also contend that the trial judge should have addressed their recusal motion before considering its jurisdiction. This issue is moot. The first issues we addressed (mootness and res judicata) present questions of law and are subject to de novo review. The second issue was resolved in reliance on a presumption rather than on any finding of the trial court. In similar circumstances, the Fifth District explained:

"Lastly, although nothing suggests that the trial court's judgments were improperly influenced, because all of the issues raised in the plaintiff's present appeals are reviewed de novo, "we perform the same analysis a trial court would perform and give no deference to the judge's conclusions or specific rationale.' Bituminous Casualty Corp. v. Iles, 2013

IL App (5th) 120485, ¶ 19. 'The term "de novo" means that the court reviews the matter anew-the same as if the case had not been heard before and as if no decision had been rendered previously.' Ryan v. Yarbrough, 355 Ill.App.3d 342, 346 (2005)."

Thus, assuming, arguendo, defendants' motion is well founded, defendants have suffered no prejudice as we have resolved this appeal independently.

¶ 29 IV. CONCLUSION

¶ 30 In light of the foregoing, the judgment of the circuit court of Lake County is affirmed. All outstanding motions are dismissed.

¶ 31 Affirmed.

APPENDIX C

IN THE CIRCUIT COURT OF THE
NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

No. 09-CH-2632

[August 15, 2018]

ORDER

This matter coming to be heard on the Kinzy's Motion to Vacate under Section 5/2-1401 and the Kinzys' Motion for Substitution Recusal or Disqualification of Judge for Cause, counsel for Plaintiff and the Kinzys present and the Court being fully advised in the premises:

IT IS HEREBY ORDERED:

(1) The Court finds it lacks jurisdiction to hear the 2-1401 petition because it was filed 2 years after the Order confirming Sale was entered on July 27, 2016. Therefore, the petition is denied.

(2) Additionally the Court finds the 2-1401

Petition was not in the proper form and therefore it is stricken.

(3) The Court does not have jurisdiction to hear the Motion to Substitute Judge because the Court does not have jurisdiction over the matter.

ENTER:

Luis A. Berrones

_____

Judge

APPENDIX D – STATUTES AND RULES INVOLVED

11 U.S.C. Sec. 362:

a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of-
(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
(4) any act to create, perfect, or enforce

any lien against property of the estate;
(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

***

section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section

559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of-

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment,

of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;
(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;
(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;
(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;
(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer-
(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or
(B) a loan from a thrift savings plan permitted under subchapter III of chapter

84 of title 5, that satisfies the requirements of section 8433(g) of such title;
but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;
(21) under subsection (a), of any act to enforce any lien against or security interest in real property-
(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;
(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;
(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the

30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;
(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;
(25) under subsection (a), of-
(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;
(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or
(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;
(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that

ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or

other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue;
(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act); and
(29) under subsection (a)(1) of this section, of any action by-
(A) an amateur sports organization, as defined in section 220501(b) of title 36, to replace a national governing body, as defined in that section, under section 220528 of that title; or
(B) the corporation, as defined in section 220501(b) of title 36, to revoke the certification of a national governing body, as defined in that section, under section 220521 of that title.
The provisions of paragraphs (12) and (13) of this subsection shall apply with respect

to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section-
(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;
(2) the stay of any other act under subsection (a) of this section continues until the earliest of-
(A) the time the case is closed;
(B) the time the case is dismissed; or
(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;
(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)-
(A) the stay under subsection (a) with

respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;
(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and
(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)-
(i) as to all creditors, if-
(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;
(II) a previous case under any of chapters 7, 11, and 13 in which the individual was

a debtor was dismissed within such 1-year period, after the debtor failed to-
(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);
(bb) provide adequate protection as ordered by the court; or
(cc) perform the terms of a plan confirmed by the court; or
(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded-
(aa) if a case under chapter 7, with a discharge; or
(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and
(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been

resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and
(4)
(A)
(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and
(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;
(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;
(C) a stay imposed under subparagraph

(B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and
(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)-
(i) as to all creditors if-
(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the

next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if-

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;
(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later-
(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or
(B) the debtor has commenced monthly payments that-
(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or
(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-
(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
(B) multiple bankruptcy filings affecting such real property.
If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a

hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)
(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such

final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.
(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless-
(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or
(B) such 60-day period is extended-
(i) by agreement of all parties in interest; or
(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.
(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided

under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.
(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section-
(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and
(2) the party opposing such relief has the burden of proof on all other issues.
(h)
(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)-
(A) to file timely any statement of intention required under section 521(a)(2)

with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor

to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.
(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.
(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.
(k)
(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be

limited to actual damages.
(l)
(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that-
(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and
(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.
(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured,

under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)

(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)-

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with

paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)-
(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and
(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).
(5)
(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed

under this subsection.
(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify-
(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and
(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.
(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.
(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.
(m)

(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).
(2)
(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.
(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.
(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under

this section.
(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied-
(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and
(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.
(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)-
(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and
(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.
(n)
(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in

which the debtor-
(A) is a debtor in a small business case pending at the time the petition is filed;
(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;
(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or
(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.
(2) Paragraph (1) does not apply-
(A) to an involuntary case involving no collusion by the debtor with creditors; or
(B) to the filing of a petition if-
(i) the debtor proves by a preponderance of the evidence that the filing of the

petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and
(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.
(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

735 ILCS § 5/2-401:

(a) Relief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section. Writs of error coram nobis and coram vobis, bills of review and bills in the nature of bills of review are abolished. All relief heretofore obtainable and the grounds for such relief heretofore available, whether by any of the foregoing remedies or otherwise, shall be available in every case, by proceedings hereunder, regardless of the nature of the order or judgment from which relief is sought or of the proceedings in which it was entered. Except as provided in the Illinois Parentage Act of 2015, there shall be no distinction between actions and other proceedings, statutory or otherwise, as to availability of relief, grounds for relief or the relief obtainable.

(b) The petition must be filed in the same proceeding in which the order or judgment was entered but is not a continuation thereof. The petition must be supported by affidavit or other appropriate showing as to

matters not of record. A petition to reopen a foreclosure proceeding must include as parties to the petition, but is not limited to, all parties in the original action in addition to the current record title holders of the property, current occupants, and any individual or entity that had a recorded interest in the property before the filing of the petition. All parties to the petition shall be notified as provided by rule.

(c) Except as provided in Section 20b of the Adoption Act and Section 2-32 of the Juvenile Court Act of 1987 or in a petition based upon Section 116-3 of the Code of Criminal Procedure of 1963 or subsection (b-10) of this Section, the petition must be filed not later than 2 years after the entry of the order or judgment. Time during which the person seeking relief is under legal disability or duress or the ground for relief is fraudulently concealed shall be excluded in computing the period of 2 years.

735 ILCS § 5/15-1309 (C):

(c) Claims Barred. Any vesting of title by a consent foreclosure pursuant to Section 15-1402 or by deed pursuant to subsection (b) of Section 15-1509, unless otherwise specified in the judgment of foreclosure, shall be an entire bar of (i) all claims of parties to the foreclosure and (ii) all claims of any nonrecord claimant who is given notice of the foreclosure in accordance with paragraph (2) of subsection (c) of Section 15-1502, notwithstanding the provisions of subsection (g) of Section 2-1301 to the contrary. Any person seeking relief from any judgment or order entered in the foreclosure in accordance with subsection (g) of Section 2-1301 of the Code of Civil Procedure may claim only an interest in the proceeds of sale.

Illinois Supreme Court, Rule 9:

(a) Electronic Filing Required. Unless exempt as provided in paragraph (c), all documents in civil cases shall be electronically filed with the clerk of court using an electronic filing system approved by the Supreme Court of Illinois.
(b)Personal Identity Information. If filing a document that contains Social Security numbers as provided in Rule 15 or personal identity information as defined in Rules 138 or 364, the filer shall adhere to the procedures outlined in Rules 15, 138, and 364.
(c)Exemptions. The following types of documents in civil cases are exempt from electronic filing:
(1) Documents filed by a self-represented litigant incarcerated in a local jail or correctional facility at the time of the filing;
(2) Wills;
(3) Documents filed under the Juvenile Court Act of 1987;
(4) Documents filed by a person with a disability, as defined by the Americans

with Disabilities Act of 1990, whose disability prevents e-filing; and

(5) Documents in a specific case upon good cause shown by certification. Good cause exists where a self-represented litigant is not able to e-file documents for the following reasons:

(i) no computer or Internet access in the home and travel represents a hardship;

(ii) a language barrier or low literacy (difficulty reading, writing, or speaking in English);

(iii) the pleading is of a sensitive nature, such as a petition for an order of protection or civil no contact/stalking order; or

(iv) a self-represented litigant tries to e-file documents but is unable to complete the process and the necessary equipment and technical support for e-filing assistance is not available to the self-represented litigant.

A Certification for Exemption From E-filing, which includes a certification under section 1-109 of the Code of Civil Procedure, and any accompanying documents shall be filed with the court-in person or by mail. The Certification for Exemption From E-filing and documents may also be filed by others means, such as

e-mail, if permitted by the local court. The court shall provide, and parties shall be required to use, a standardized form expressly titled "Certification for Exemption From E-filing" adopted by the Illinois Supreme Court Commission on Access to Justice. Judges retain discretion to determine whether good cause is shown. If the court determines that good cause is not shown, the court shall enter an order to that effect stating the specific reasons for the determination and ordering the litigant to e-file thereafter.

Judges retain discretion to determine whether, under particular circumstances, good cause exists without the filing of a certificate, and the court shall enter an order to that effect.

(d)Timely Filing. Unless a statute, rule, or court order requires that a document be filed by a certain time of day, a document is considered timely if submitted before midnight (in the court's time zone) on or before the date on which the document is due. A document submitted on a day when the clerk's office is not open for business will, unless rejected, be file stamped as

filed on the next day the clerk's office is open for business. The filed document shall be endorsed with the clerk's electronic file mark setting forth, at a minimum, the identification of the court, the clerk, the date, and the time of filing.

(1) If a document is untimely due to any court-approved electronic filing system technical failure, the filing party may seek appropriate relief from the court, upon good cause shown.

(2) If a document is rejected by the clerk and is therefore untimely, the filing party may seek appropriate relief from the court, upon good cause shown.

(e)Filer Responsible for Electronic Submissions. The filer is responsible for the accuracy of data entered in an approved electronic filing system and the accuracy of the content of any document submitted for electronic filing. The court and the clerk of court are not required to ensure the accuracy of such data and content.

(f)Effective Date. This rule is effective July 1, 2017 for proceedings in the Supreme Court and the Appellate Court. For proceedings in the circuit court, this rule is effective January 1, 2018.

Lake County Illinois, Local Rule 2-1.02:

A. All uploaded documents that are not exhibits or attachments created by word processing programs must be formatted as follows: (a) the size of the type in the body of the text must be no less than twelve point font, and footnotes no less than ten point font; (b) the size of the pages must be 8½ by 11 inches; and (c) the margins on each side of the page must each be a minimum of 1 inch; and (d) the top right 2" x 2" corner of the first page of each pleading shall be left blank for the Clerk of the Circuit Court's stamp. Additionally, each electronically filed document shall include the case title, case number and the nature of the filing of each document.

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