

## Illinois Mortgages Are Not Required to Disclose Interest Rate and Maturity

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On February 29, 2012, the United States Bankruptcy Court for the Central District of Illinois decided *In re:Crane*, which single-handedly threatened to change the way lenders document and perfect mortgages on real property. In *Crane*, the Bankruptcy Court allowed a bankruptcy trustee to avoid certain mortgages because the mortgages failed to recite the interest rate and the maturity date of the note secured by the mortgages. These defects, the Court opined, rendered the mortgages not properly perfected and subject to avoidance by the trustee. The Bankruptcy Court held that under the Illinois Statute related to the perfection of mortgages a lender must include the interest rate and maturity date on the face of the mortgage for the mortgage to be properly perfected. And, because the mortgages at issue did not contain that information, they could be avoided by the bankruptcy trustee.

The response to the *Crane* decision has been swift and two-fold. First, and not surprisingly, the mortgagee has appealed the decision. The appeal is currently pending in the United States District Court for the Central District of Illinois and is known as *The Gifford State Bank v. Richardson*.

The second response was legislative. On or about January 27, 2012, Senate Bill 0016 was filed with the Secretary of the Illinois State Senate and had its first reading. Subsequently, on November 29, 2012 Senate Bill 0016 was amended to include language which clarified the meaning of 765 ILCS 5/11 and effectively overruled *Crane*. Specifically, Senate Bill 0016 clarified that including the interest rate and maturity date in a mortgage are not mandatory but are permissive and failing to include them in the mortgage does not render the filed mortgage ineffective. Senate Bill 0016 765 ILCS 5/11 includes the following language:

(b)The provisions of subsection (a) regarding the form of a mortgage are, and have always been, permissive and not mandatory. Accordingly, the failure of an otherwise lawfully executed and recorded mortgage to be in the form described in subsection (a) in one or more respects, including the failure to state the interest rate or the maturity date, or both, shall not affect the validity or priority of the mortgage, nor shall its recordation be ineffective for notice purposes regardless of when the mortgage was recorded.

The text of amended 765 ILCS 5/11 is clear, Senate Bill 0016 only clarified the existing language — it did not alter or amend the intent of 765 ILCS 5/11. On February 8, 2013, Governor Quinn signed Senate Bill 0016, which will become effective June 1, 2013. This amendment alleviates an unnecessary burden on secured lenders, and provides comfort that previously filed mortgages will not be found improperly perfected because they lack an interest rate or maturity date.

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