

1 AN ACT concerning civil procedure.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Code of Civil Procedure is amended by  
5 changing Section 2-616 as follows:

6 (735 ILCS 5/2-616) (from Ch. 110, par. 2-616)

7 Sec. 2-616. Amendments. (a) At any time before final  
8 judgment amendments may be allowed on just and reasonable  
9 terms, introducing any party who ought to have been joined as  
10 plaintiff or defendant, dismissing any party, changing the  
11 cause of action or defense or adding new causes of action or  
12 defenses, and in any matter, either of form or substance, in  
13 any process, pleading, bill of particulars or proceedings,  
14 which may enable the plaintiff to sustain the claim for which  
15 it was intended to be brought or the defendant to make a  
16 defense or assert a cross claim.

17 (b) The cause of action, cross claim or defense set up  
18 in any amended pleading shall not be barred by lapse of time  
19 under any statute or contract prescribing or limiting the  
20 time within which an action may be brought or right asserted,  
21 if the time prescribed or limited had not expired when the  
22 original pleading was filed, and if it shall appear from the  
23 original and amended pleadings that the cause of action  
24 asserted, or the defense or cross claim interposed in the  
25 amended pleading grew out of the same transaction or  
26 occurrence set up in the original pleading, even though the  
27 original pleading was defective in that it failed to allege  
28 the performance of some act or the existence of some fact or  
29 some other matter which is a necessary condition precedent to  
30 the right of recovery or defense asserted, if the condition  
31 precedent has in fact been performed, and for the purpose of

1 preserving the cause of action, cross claim or defense set up  
2 in the amended pleading, and for that purpose only, an  
3 amendment to any pleading shall be held to relate back to the  
4 date of the filing of the original pleading so amended.

5 (c) A pleading may be amended at any time, before or  
6 after judgment, to conform the pleadings to the proofs, upon  
7 terms as to costs and continuance that may be just.

8 (d) A cause of action against a person not originally  
9 named a defendant is not barred by lapse of time under any  
10 statute or contract prescribing or limiting the time within  
11 which an action may be brought or right asserted, if all the  
12 following terms and conditions are met: (1) the time  
13 prescribed or limited had not expired when the original  
14 action was commenced; (2) ~~failure-to-join--the--person--as--a~~  
15 ~~defendant-was-inadvertent;-~~(3) ~~service-of-summons-was-in-fact~~  
16 ~~had--upon--the--person,-~~ ~~his--or-her-agent-or-partner,~~ ~~as-the~~  
17 ~~nature-of-the-defendant-made-appropriate,~~ ~~even-though--he--or~~  
18 ~~she--was-served-in-the-wrong-capacity-or-as-agent-of-another,~~  
19 ~~or-upon-a-trustee-who-has-title-to-but-no-power-of-management~~  
20 ~~or-control-over-real-property-constituting-a-trust--of--which~~  
21 ~~the--person-is-a-beneficiary;-~~(4) the person, within the time  
22 that the action might have been brought or the right asserted  
23 against him or her plus the time for service permitted under  
24 Supreme Court Rule 103(b), received such notice of the  
25 commencement of the action that the person will not be  
26 prejudiced in maintaining a defense on the merits and knew or  
27 should have known that, but for a mistake concerning the  
28 identity of the proper party, the action would have been  
29 brought against him or her ~~knew-that-the-original-action-was~~  
30 ~~pending-and-that-it-grew-out-of-a-transaction--or--occurrence~~  
31 ~~involving--or--concerning--him-or-her;~~ and (3) (5) it appears  
32 from the original and amended pleadings that the cause of  
33 action asserted in the amended pleading grew out of the same  
34 transaction or occurrence set up in the original pleading,

1 even though the original pleading was defective in that it  
2 failed to allege the performance of some act or the existence  
3 of some fact or some other matter which is a necessary  
4 condition precedent to the right of recovery when the  
5 condition precedent has in fact been performed, and even  
6 though the person was not named originally as a defendant.  
7 For the purpose of preserving the cause of action under those  
8 conditions, an amendment adding the person as a defendant  
9 relates back to the date of the filing of the original  
10 pleading so amended.

11 (e) A cause of action against a beneficiary of a land  
12 trust not originally named a defendant is not barred by lapse  
13 of time under any statute or contract prescribing or limiting  
14 the time within which an action may be brought or right  
15 asserted, if all the following terms and conditions are met:  
16 (1) the cause of action arises from the ownership, use or  
17 possession of real estate, record title where to is held by a  
18 land trustee; (2) the time prescribed or limited had not  
19 expired when the original action was commenced; (3) the land  
20 trustee of record is named as a defendant; and (4) the  
21 plaintiff proceeds with reasonable diligence subsequent to  
22 the commencement of the action to serve process upon the land  
23 trustee, to determine the identity of the beneficiary, and to  
24 amend the complaint to name the beneficiary as a defendant.

25 (f) The changes made by this amendatory Act of the 92nd  
26 General Assembly apply to all complaints filed on or after  
27 the effective date of this amendatory Act, and to complaints  
28 filed before the effective date of this amendatory Act if the  
29 limitation period has not ended before the effective date.

30 (Source: P.A. 85-907.)