

AN ACT concerning civil law.

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

Section 5. The Code of Civil Procedure is amended by changing Section 15-1701 as follows:

(735 ILCS 5/15-1701) (from Ch. 110, par. 15-1701)

Sec. 15-1701. Right to possession.

(a) General. The provisions of this Article shall govern the right to possession of the mortgaged real estate during foreclosure. Possession under this Article includes physical possession of the mortgaged real estate to the same extent to which the mortgagor, absent the foreclosure, would have been entitled to physical possession. For the purposes of Part 17, real estate is residential real estate only if it is residential real estate at the time the foreclosure is commenced.

(b) Pre-Judgment. Prior to the entry of a judgment of foreclosure:

(1) In the case of residential real estate, the mortgagor shall be entitled to possession of the real estate except if (i) the mortgagee shall object and show good cause, (ii) the mortgagee is so authorized by the terms of the mortgage or other written instrument, and

(iii) the court is satisfied that there is a reasonable probability that the mortgagee will prevail on a final hearing of the cause, the court shall upon request place the mortgagee in possession. If the residential real estate consists of more than one dwelling unit, then for the purpose of this Part residential real estate shall mean only that dwelling unit or units occupied by persons described in clauses (i), (ii) and (iii) of Section 15-1219.

(2) In all other cases, if (i) the mortgagee is so authorized by the terms of the mortgage or other written instrument, and (ii) the court is satisfied that there is a reasonable probability that the mortgagee will prevail on a final hearing of the cause, the mortgagee shall upon request be placed in possession of the real estate, except that if the mortgagor shall object and show good cause, the court shall allow the mortgagor to remain in possession.

(c) Judgment Through 30 Days After Sale Confirmation. After the entry of a judgment of foreclosure and through the 30th day after a foreclosure sale is confirmed:

(1) Subsection (b) of Section 15-1701 shall be applicable, regardless of the provisions of the mortgage or other instrument, except that after a sale pursuant to the judgment the holder of the certificate of sale (or, if none, the purchaser at the sale) shall have the mortgagee's right to be placed in possession, with all rights and

duties of a mortgagee in possession under this Article.

(2) Notwithstanding paragraph (1) of subsection (b) and paragraph (1) of subsection (c) of Section 15-1701, upon request of the mortgagee, a mortgagor of residential real estate shall not be allowed to remain in possession between the expiration of the redemption period and through the 30th day after sale confirmation unless (i) the mortgagor pays to the mortgagee or such holder or purchaser, whichever is applicable, monthly the lesser of the interest due under the mortgage calculated at the mortgage rate of interest applicable as if no default had occurred or the fair rental value of the real estate, or (ii) the mortgagor otherwise shows good cause. Any amounts paid by the mortgagor pursuant to this subsection shall be credited against the amounts due from the mortgagor.

(d) After 30 Days After Sale Confirmation. The holder of the certificate of sale or deed issued pursuant to that certificate or, if no certificate or deed was issued, the purchaser, except to the extent the holder or purchaser may consent otherwise, shall be entitled to possession of the mortgaged real estate, as of the date 30 days after the order confirming the sale is entered, against those parties to the foreclosure whose interests the court has ordered terminated, without further notice to any party, further order of the court, or resort to proceedings under any other statute other than this Article. This right to possession shall be limited by

the provisions governing entering and enforcing orders of possession under subsection (g) of Section 15-1508. If the holder or purchaser determines that there are occupants of the mortgaged real estate who have not been made parties to the foreclosure and had their interests terminated therein, the holder or purchaser may bring a proceeding under subsection (h) of this Section or under Article 9 of this Code to terminate the rights of possession of any such occupants. The holder or purchaser shall not be entitled to proceed against any such occupant under Article 9 of this Code until after 30 days after the order confirming the sale is entered.

(e) Termination of Leases. A lease of all or any part of the mortgaged real estate shall not be terminated automatically solely by virtue of the entry into possession by (i) a mortgagee or receiver prior to the entry of an order confirming the sale, (ii) the holder of the certificate of sale, (iii) the holder of the deed issued pursuant to that certificate, or (iv) if no certificate or deed was issued, the purchaser at the sale.

(f) Other Statutes; Instruments. The provisions of this Article providing for possession of mortgaged real estate shall supersede any other inconsistent statutory provisions. In particular, and without limitation, whenever a receiver is sought to be appointed in any action in which a foreclosure is also pending, a receiver shall be appointed only in accordance with this Article. Except as may be authorized by this Article,

no mortgage or other instrument may modify or supersede the provisions of this Article.

(g) Certain Leases. Leases of the mortgaged real estate entered into by a mortgagee in possession or a receiver and approved by the court in a foreclosure shall be binding on all parties, including the mortgagor after redemption, the purchaser at a sale pursuant to a judgment of foreclosure and any person acquiring an interest in the mortgaged real estate after entry of a judgment of foreclosure in accordance with Sections 15-1402 and 15-1403.

(h) Proceedings Against Certain Occupants.

(1) The mortgagee-in-possession of the mortgaged real estate under Section 15-1703, a receiver appointed under Section 15-1704, a holder of the certificate of sale or deed, or the purchaser may, at any time during the pendency of the foreclosure and up to 90 days after the date of the order confirming the sale, file a supplemental petition for possession against a person not personally named as a party to the foreclosure. The supplemental petition for possession shall name each such occupant against whom possession is sought and state the facts upon which the claim for relief is premised.

(2) The petitioner shall serve upon each named occupant the petition, a notice of hearing on the petition, and, if any, a copy of the certificate of sale or deed. The proceeding for the termination of such occupant's

possessory interest, including service of the notice of the hearing and the petition, shall in all respects comport with the requirements of Article 9 of this Code, except as otherwise specified in this Section. The hearing shall be no less than 21 days from the date of service of the notice.

(3) The supplemental petition shall be heard as part of the foreclosure proceeding and without the payment of additional filing fees. An order for possession obtained under this Section shall name each occupant whose interest has been terminated, shall recite that it is only effective as to the occupant so named and those holding under them, and shall be enforceable for no more than 90 days after its entry, except that the 90-day period may be extended to the extent and in the manner provided in Section 9-117 of Article 9 and except as provided in item (4) of this subsection (h).

(4) In a case of foreclosure where the tenant is current on his or her rent, any order of possession must allow the tenant to retain possession of the property covered in his or her rental agreement (i) for 120 days following the notice of the hearing on the supplemental petition that has been properly served upon the tenant, or (ii) through the duration of his or her lease, whichever is shorter. This item (4) shall only apply if the tenant continues to pay his or her rent in full during the 120-day

Public Act 095-0262

SB0258 Enrolled

LRB095 09724 LCT 29928 b

period.

(Source: P.A. 88-21; 88-265; 88-670, eff. 12-2-94; 89-203, eff. 7-21-95.)