



Sen. Jason A. Barickman

Filed: 3/8/2017

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LRB100 09226 HEP 22874 a

1 AMENDMENT TO SENATE BILL 1447

2 AMENDMENT NO. _____. Amend Senate Bill 1447 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Sections 15-1603.5 and 15-1701 as follows:

6 (735 ILCS 5/15-1603.5)

7 Sec. 15-1603.5. Strict foreclosure of an omitted
8 subordinate interest.

9 (a) As used in this Section, "omitted subordinate interest"
10 means a recorded subordinate interest in real estate where:

11 (1) the real estate is the subject of a foreclosure
12 action under this Article;

13 (2) a motion to confirm judicial sale under subsection
14 (b) of Section 15-1508 is either pending or has been
15 granted;

16 (3) the interest attached to the real estate prior to

1 the filing or recording of any notice in accordance with
2 Sections 2-1901 and 15-1503; and

3 (4) the person who has the interest was not named in
4 the foreclosure complaint or was a named party in the
5 foreclosure action over which the court lacked personal
6 jurisdiction due to defective service of process.

7 (b) The holder of the certificate of sale or any person who
8 acquired title pursuant to Section 15-1509 or any subsequent
9 successor, assignee, transferee, or grantee who discovers an
10 omitted subordinate interest may file a strict foreclosure
11 complaint naming the person who has the omitted subordinate
12 interest as the defendant. A complaint filed under this Section
13 must include substantially the following:

14 (1) the identity of the plaintiff and how the plaintiff
15 acquired its interest in the property which is the subject
16 of the strict foreclosure;

17 (2) the docket number of the prior foreclosure action
18 and the recording number and date of the mortgage that was
19 previously foreclosed;

20 (3) the legal description, common address, and parcel
21 identification number of the real estate which is the
22 subject of the strict foreclosure;

23 (4) the recording number and a copy of the recorded
24 instrument identifying the person who has the omitted
25 subordinate interest that is named as the defendant;

26 (5) the amount of the successful bid at the foreclosure

1 sale, as stated in the report of sale in the prior
2 foreclosure action, with a copy of the report of sale
3 attached to the complaint;

4 (6) an allegation that, due to inadvertence or mistake
5 or such other reason as may be applicable, the person who
6 has the omitted subordinate interest was not made a party
7 defendant in the prior foreclosure action and the omitted
8 subordinate interest was not terminated by the judgment of
9 foreclosure and when the subject property was sold by
10 judicial sale; and

11 (7) a request for relief setting forth the redemption
12 period as provided in this Section and identifying a
13 contact by name and telephone number who will accept tender
14 of the redemption amount.

15 (c) Subject to the objection of the defendant, the court
16 shall enter a judgment extinguishing the omitted subordinate
17 interest.

18 (d) If the defendant objects to the entry of the judgment,
19 the court, after a hearing, shall enter an order providing
20 either:

21 (1) that the defendant has not agreed to pay the amount
22 required to redeem, in which event the court shall proceed
23 to enter the judgment; or

24 (2) that the defendant has agreed to pay the amount
25 required to redeem.

26 (d-5) The foreclosure proceeding may be reopened as to the

1 defendant only if the defendant: (i) was a named party in the
2 foreclosure action over which the court lacked personal
3 jurisdiction due to defective service of process; and (ii) has
4 a meritorious defense to the foreclosure action. After the
5 foreclosure proceeding is reopened, if the defendant is
6 unsuccessful in defeating the foreclosure action, then the
7 defendant shall have the option to redeem pursuant to
8 subsection (e) of this Section. Nothing contained in this
9 Section affects any existing right that the holder of the
10 certificate of sale or any person who acquired title pursuant
11 to Section 15-1509 or any subsequent successor, assignee,
12 transferee, or grantee of such a person may have against the
13 defendant or the real estate.

14 (e) The amount required to redeem shall be the sum bid at
15 the prior foreclosure sale plus any costs and fees incurred
16 subsequent to the sale for the payment of taxes, preservation
17 of the property, or any other actions taken by the holder of
18 the certificate of sale to protect its interest in the
19 property. The amount required to redeem shall not include any
20 costs or fees incurred by the plaintiff in the strict
21 foreclosure case filed under this Section.

22 Notwithstanding any provision of Sections 15-1602,
23 15-1603, or 15-1604 to the contrary, the redemption period
24 shall extend 30 days after the entry of the order if the
25 defendant has not been in possession of the real estate for a
26 period of 6 months prior to the entry of the order. The order

1 shall state that upon payment of the redemption amount within
2 the redemption period, which shall extend 30 days after the
3 entry of the order, title to the real estate shall vest in the
4 defendant who redeems pursuant to this Section. If the
5 defendant subject to the order has not paid the amount required
6 to redeem within the 30-day redemption period, the interest of
7 the defendant in the property is terminated.

8 (f) A person whose omitted subordinate interest was not
9 terminated by a prior foreclosure action does not have a right
10 to file a strict foreclosure action.

11 (g) Notwithstanding that the person's omitted subordinate
12 interest in the real estate has been terminated pursuant to
13 this Section, nothing in this Section shall be construed to
14 extinguish or impair any claim of such person in the surplus
15 proceeds of a sale held or distributed pursuant to subsection
16 (d) of Section 15-1512 of this Code after the confirmation of
17 the sale of the real estate for which such person had an
18 omitted subordinate interest.

19 (Source: P.A. 98-1099, eff. 8-26-14.)

20 (735 ILCS 5/15-1701) (from Ch. 110, par. 15-1701)

21 Sec. 15-1701. Right to possession.

22 (a) General. The provisions of this Article shall govern
23 the right to possession of the mortgaged real estate during
24 foreclosure. Possession under this Article includes physical
25 possession of the mortgaged real estate to the same extent to

1 which the mortgagor, absent the foreclosure, would have been
2 entitled to physical possession. For the purposes of Part 17,
3 real estate is residential real estate only if it is
4 residential real estate at the time the foreclosure is
5 commenced.

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

8 (1) In the case of residential real estate, the
9 mortgagor shall be entitled to possession of the real
10 estate except if (i) the mortgagee shall object and show
11 good cause, (ii) the mortgagee is so authorized by the
12 terms of the mortgage or other written instrument, and
13 (iii) the court is satisfied that there is a reasonable
14 probability that the mortgagee will prevail on a final
15 hearing of the cause, the court shall upon request place
16 the mortgagee in possession. If the residential real estate
17 consists of more than one dwelling unit, then for the
18 purpose of this Part residential real estate shall mean
19 only that dwelling unit or units occupied by persons
20 described in clauses (i), (ii) and (iii) of Section
21 15-1219.

22 (2) In all other cases, if (i) the mortgagee is so
23 authorized by the terms of the mortgage or other written
24 instrument, and (ii) the court is satisfied that there is a
25 reasonable probability that the mortgagee will prevail on a
26 final hearing of the cause, the mortgagee shall upon

1 request be placed in possession of the real estate, except
2 that if the mortgagor shall object and show good cause, the
3 court shall allow the mortgagor to remain in possession.

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

7 (1) Subsection (b) of Section 15-1701 shall be
8 applicable, regardless of the provisions of the mortgage or
9 other instrument, except that after a sale pursuant to the
10 judgment the holder of the certificate of sale (or, if
11 none, the purchaser at the sale) shall have the mortgagee's
12 right to be placed in possession, with all rights and
13 duties of a mortgagee in possession under this Article.

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

1 credited against the amounts due from the mortgagor.

2 (d) After 30 Days After Sale Confirmation. The holder of
3 the certificate of sale or deed issued pursuant to that
4 certificate or, if no certificate or deed was issued, the
5 purchaser, except to the extent the holder or purchaser may
6 consent otherwise, shall be entitled to possession of the
7 mortgaged real estate, as of the date 30 days after the order
8 confirming the sale is entered, against those parties to the
9 foreclosure whose interests the court has ordered terminated,
10 without further notice to any party, further order of the
11 court, or resort to proceedings under any other statute other
12 than this Article. This right to possession shall be limited by
13 the provisions governing entering and enforcing orders of
14 possession under subsection (g) of Section 15-1508. If the
15 holder or purchaser determines that there are occupants of the
16 mortgaged real estate who have not been made parties to the
17 foreclosure and had their interests terminated therein, the
18 holder or purchaser may bring a proceeding under subsection (h)
19 of this Section, if applicable, or under Article IX of this
20 Code to terminate the rights of possession of any such
21 occupants. The holder or purchaser shall not be entitled to
22 proceed against any such occupant under Article IX of this Code
23 until after 30 days after the order confirming the sale is
24 entered.

25 (e) Termination of Leases. A lease of all or any part of
26 the mortgaged real estate shall not be terminated automatically

1 solely by virtue of the entry into possession by (i) a
2 mortgagee or receiver prior to the entry of an order confirming
3 the sale, (ii) the holder of the certificate of sale, (iii) the
4 holder of the deed issued pursuant to that certificate, or (iv)
5 if no certificate or deed was issued, the purchaser at the
6 sale.

7 (f) Other Statutes; Instruments. The provisions of this
8 Article providing for possession of mortgaged real estate shall
9 supersede any other inconsistent statutory provisions. In
10 particular, and without limitation, whenever a receiver is
11 sought to be appointed in any action in which a foreclosure is
12 also pending, a receiver shall be appointed only in accordance
13 with this Article. Except as may be authorized by this Article,
14 no mortgage or other instrument may modify or supersede the
15 provisions of this Article.

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

24 (h) Proceedings Against Certain Occupants.

25 (1) The mortgagee-in-possession of the mortgaged real
26 estate under Section 15-1703, a receiver appointed under

1 Section 15-1704, a holder of the certificate of sale or
2 deed, or the purchaser may, at any time during the pendency
3 of the foreclosure and up to 90 days after the date of the
4 order confirming the sale, file a supplemental petition for
5 possession against a person not personally named as a party
6 to the foreclosure. This subsection (h) does not apply to
7 any lessee with a bona fide lease of a dwelling unit in
8 residential real estate in foreclosure.

9 (2) The supplemental petition for possession shall
10 name each such occupant against whom possession is sought
11 and state the facts upon which the claim for relief is
12 premised.

13 (3) The petitioner shall serve upon each named occupant
14 the petition, a notice of hearing on the petition, and, if
15 any, a copy of the certificate of sale or deed. The
16 proceeding for the termination of such occupant's
17 possessory interest, including service of the notice of the
18 hearing and the petition, shall in all respects comport
19 with the requirements of Article IX of this Code, except as
20 otherwise specified in this Section. The hearing shall be
21 no less than 21 days from the date of service of the
22 notice.

23 (4) The supplemental petition shall be heard as part of
24 the foreclosure proceeding and without the payment of
25 additional filing fees. An order for possession obtained
26 under this Section shall name each occupant whose interest

1 has been terminated, shall recite that it is only effective
2 as to the occupant so named and those holding under them,
3 and shall be enforceable for no more than 120 days after
4 its entry, except that the 120-day period may be extended
5 to the extent and in the manner provided in Section 9-117
6 of Article IX and except as provided in item (5) of this
7 subsection (h).

8 (5) In a case of foreclosure where the occupant is
9 current on his or her rent, or where timely written notice
10 of to whom and where the rent is to be paid has not been
11 provided to the occupant, or where the occupant has made
12 good-faith efforts to make rental payments in order to keep
13 current, any order of possession must allow the occupant to
14 retain possession of the property covered in his or her
15 rental agreement (i) for 120 days following the notice of
16 the hearing on the supplemental petition that has been
17 properly served upon the occupant, or (ii) through the
18 duration of his or her lease, whichever is shorter,
19 provided that if the duration of his or her lease is less
20 than 30 days from the date of the order, the order shall
21 allow the occupant to retain possession for 30 days from
22 the date of the order. A mortgagee in possession, receiver,
23 holder of a certificate of sale or deed, or purchaser at
24 the judicial sale, who asserts that the occupant is not
25 current in rent, shall file an affidavit to that effect in
26 the supplemental petition proceeding. If the occupant has

1 been given timely written notice of to whom and where the
2 rent is to be paid, this item (5) shall only apply if the
3 occupant continues to pay his or her rent in full during
4 the 120-day period or has made good-faith efforts to pay
5 the rent in full during that period.

6 (6) The court records relating to a supplemental
7 petition for possession filed under this subsection (h)
8 against an occupant who is entitled to notice under item
9 (5) of this subsection (h), or relating to a forcible entry
10 and detainer action brought against an occupant who would
11 have lawful possession of the premises but for the
12 foreclosure of a mortgage on the property, shall be ordered
13 sealed and shall not be disclosed to any person, other than
14 a law enforcement officer or any other representative of a
15 governmental entity, except upon further order of the
16 court.

17 (i) Termination of bona fide leases. The holder of the
18 certificate of sale, the holder of the deed issued pursuant to
19 that certificate, or, if no certificate or deed was issued, the
20 purchaser at the sale shall not terminate a bona fide lease of
21 a dwelling unit in residential real estate in foreclosure
22 except pursuant to Article IX of this Code.

23 (j) If an omitted subordinate interest, as defined in
24 Section 15-1603.5, asserts a challenge to the jurisdiction of
25 the trial court following confirmation of the sale and transfer
26 of title to the mortgaged real estate to a non-party to the

1 underlying foreclosure action who acquired title for value, the
2 trial court shall permit the non-party to retain possession of
3 the mortgaged real estate pending entry of a final order
4 relative to the jurisdiction challenge and any subsequent
5 proceedings in the foreclosure action if the non-party provides
6 adequate security for any loss of use or occupancy by the
7 person who has the omitted subordinate interest. For purposes
8 of this Section, a bond presented to, approved by, and filed
9 with the court shall be deemed to provide adequate security.

10 (Source: P.A. 98-514, eff. 11-19-13.)

11 Section 99. Effective date. This Act takes effect upon
12 becoming law."